(2015) 02 KAR CK 0185

In the Karnataka High Court

Case No : M.F.A. Nos. 23494/2012 (MV) and 20741/2013

Branch Manger United India Insurance Co. Ltd. and Others APPELLANT

Vs

Prabhavati and Others RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Citation : (2015) 02 KAR CK 0185

Hon'ble Judges : P.D. Waingankar, J.;A.S. Bopanna, J.

Bench : Division Bench

Advocate : C.V. Angadi, for the Appellant; S.S. Sajjan, Advocates for the Respondent

Judgement

A.S. Bopanna, J.—The appellant in MFA No. 23494/2012 is the insurer of the Indica Car bearing KA-48/M-721. The appellants in MFA No. 20741/2013 are the claimants who are the wife, children and the parents of the deceased who was the rider of the motorcycle bearing KA-18/E-5826.

2. The insurer is before this Court in this appeal assailing the finding with regard to the negligence on the part of the driver of the Indica Car. Further the insurer is also assailing the quantum of the compensation as awarded by the Tribunal. The claimants on the other hand are before this Court seeking enhancement of the compensation as against the sum awarded by the Tribunal.

3. The accident occurred on 02.03.2008, wherein the Indica Car is alleged to have dashed against the motorcyclist. After obtaining prolonged treatment, the motorcyclist succumbed to the injuries. He was the employee of the State Bank of India, Jamkhandi. The Tribunal while considering the rival contentions has held that the driver of the Indica Car was negligent in causing the accident and has thereafter awarded the compensation.

4. The learned counsel for the insurer/appellant would contend that the Tribunal was not justified in recording the said conclusion. It is his case that apart from the first claimant i.e., the wife of the deceased who was examined as PW1, no

other witness who has seen the accident has been examined on behalf of the claimants. It is also his case that no damage has been caused to the car and therefore, the negligence as alleged cannot be held against the driver of the Indica Car. He further contends that the driver of the car has been acquitted in the criminal proceedings and therefore, the Tribunal was not justified in arriving at the conclusion that the driver of the car was negligent.

5. The learned counsel for the respondents would however seek to sustain the finding rendered by the Tribunal on this aspect of the matter.

6. In the light of the rival contentions, a perusal of the papers including the records received from the Tribunal would no doubt indicate that claimant No. 1 was examined as PW1 to establish the accident. The document at Exhs. P1 to P4 have been produced and marked. The said documents include spot mahazar, which refers to the accident. Keeping in view the nature of contentions put forth on behalf of the Appellant-Insurance Company that no other witness has been examined, the sequence of the event, which led to the accident is to be noticed. The complaint narrating the accident is marked as Ex. P2. It is seen that one Ishwar Siddappa Jigajinni has lodged a complaint with the Police. A perusal of the complaint would indicate that he had received a telephonic message with regard to the accident having occurred and as such he immediately went to the hospital to where the husband of the first claimant was taken. At that time, the Police and all other persons were there in the hospital. Based on the narration made by the motorcyclist, he has lodged a complaint with the Police, pursuant to which the charge sheet has been filed in the criminal proceedings.

7. It is no doubt true that the driver has been acquitted in the criminal proceedings and the judgment rendered therein has been marked as Ex. R1. A perusal of the said judgment would indicate that the acquittal is not based on the analysis of the evidence so as to consider as a clear acquittal. Since the witness had not supported the case of the prosecution the benefit has been granted to the driver. In any event notwithstanding the nature of the proceedings in the criminal trial, the negligence would have to be established in the proceedings before the Tribunal. Having noticed the manner in which the complaint had been lodged with the Police in the proceedings which had been held, there is no indication to the fact as to whether there was any other person who was present at the spot when the accident had occurred other than the rider of the motorcycle and the driver of the Indica Car. The rider of the motorcycle has succumbed to the injuries and as such only the driver of the car was available. He has been examined as RW3 before the Tribunal. We have perused the evidence tendered through him. The major portion of the evidence has been devoted to state with regard to the different manner in which he was being called and therefore, to indicate that different names refer to his name. He has infact admitted with regard to the accident having occurred on the said date and he having driven the car at the time of accident. In his entire evidence, there is not even a statement to the effect that he was not negligent in causing the accident

and that the motorcyclist was negligent in causing the accident.

8. Therefore, in such circumstance when the driver of the car who was available had been examined has not shifted the burden of having caused the accident on the motorcyclist and when the accident has occurred between the car and the motorcycle, in any event the Tribunal was ultimately justified in arriving at its conclusion that the driver of the car was negligent in causing the accident. In that view, we are unable to accept the contention put forth by the learned counsel for the insurer.

9. Having arrived at the above conclusion the next aspect, which is to be taken into consideration, is with regard to the quantum of compensation. The fact that the deceased was an employee of the State Bank of India, Jamkhandi is not in dispute. The salary certificate has been produced and is marked in evidence. From the same, the total salary is indicated at Rs. 30,150/-. The Tribunal has deducted an amount of Rs. 200/- towards Professional Tax and Rs. 948/- towards Income Tax which are permissible deductions. Hence, the monthly salary is taken at Rs. 29,002/-. The claimants have filed the appeal contending that the Tribunal has failed to include the ''future prospectus'' though the deceased was aged about 52 years and had a job in a Bank as Assistant Manager. Certainly in this regard the Tribunal was not justified and therefore, we find in necessary to add 15% of his salary as ''future prospectus''. If the same is done, the total salary to be reckoned for the purpose of calculation would be in a sum of Rs. 33,350/-. The Tribunal has thereafter adopted the split multiplier for the purpose of arriving at the compensation. The said method has been disapproved by the Hon''ble Supreme Court which has also been subsequently held by a Division Bench of this Court.

10. Therefore, in the instant case, the multiplier as applicable is 11 and would have to be taken into consideration for the purpose of calculation. To do so, from the said amount of Rs. 33,352/-, 1/4th would have to be deducted towards personal expenses of the deceased. In such event, the loss to the family would be in a sum of Rs. 25,014/-. If the same is multiplied by 12, it would be in a sum of Rs. 3,00,168/-. If the multiplier of 11 is adopted, the compensation under the head of ''loss of dependency'' would be in a sum of Rs. 33,01,848/-. The Tribunal has awarded a sum of Rs. 23,49,162/- under the said head. Hence, the appellants/claimants would be entitled to the difference of the amount. Further, the amount awarded under the conventional heads is on the lower side. Hence, a further sum of Rs. 40,000/- is awarded under the conventional heads.

11. One other issue which arises for consideration herein is that, the Tribunal while considering the payment of medical expenses incurred till the date of death has awarded a sum of Rs. 8,19,325/-. However, the Tribunal has permitted the insurer to pay the said amount to the employer of the deceased viz., the State Bank of India, Jamkhandi Branch. The said order has been made on the premise that the employer had reimbursed the medical expenses to the deceased till the date of his death. During the pendency of this appeal, on obtaining the

appropriate information, the insurer has filed a memo along with the document obtained from the State Bank of India. From the said communication, it is seen that the Bank has indicated that it has paid a sum of Rs. 5,32,740/- to the deceased during his life time towards reimbursement of the medical expenses. If that be so, the insurer would be entitled to deduct a sum of Rs. 5,32,740/- from the amount of Rs. 8,19,325/- quantified by the Tribunal and pay the balance amount to the claimants.

12. The judgment and award therefore stands modified in the above terms, holding that the appellants are entitled to the enhanced compensation of Rs. 9,92,686/- with interest at the same rate as determined by the Tribunal. In addition, from the medical expenses determined by the Tribunal after deducting the sum of Rs. 5,32,740/-, it shall also be paid by the insurer to the claimants.

13. It is brought to the notice of this Court that the respondents No. 4 and 5 viz., the parents of the deceased have died during the pendency of this appeal. Hence, the enhanced compensation shall be apportioned in equal proportion in favour of the surviving dependents viz., the wife and children of the deceased.

14. The insurer is permitted to deduct the interest for a period of 247 days while depositing the compensation. On deposit, the amount shall be disbursed the claimants.

The amount in deposit before this Court shall be transmitted to the Tribunal.

In terms of the above, MFA No. 23494/2012 is dismissed and MFA No. 20741/2013 is allowed in part.