(2015) 09 KAR CK 0031

In the Karnataka High Court

Case No : M.F.A. Nos. 1218/2011 and 2979/2010

D. Rathnamma and Others — APPELLANT

Vs

The National Insurance Co. Ltd. and Others — RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0031

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : V.B. Siddaramaiah, Advocate, for the Appellant; O. Mahesh, Advocate, for the Respondent

Judgement

B.S. Patil, J.—These appeals arise out of the common award passed by the Motor Accident Claims Tribunal, Hosdurga, in MVC. No. 179/2008. Hence, they are clubbed, heard together and are disposed of by this common judgment.

2. M.F.A. No. 2979/2010 is filed by the National Insurance Company, the insurer of the offending vehicle. M.F.A. No. 1218/2011 is filed by the dependents of the deceased.

3. In the appeal filed by the Insurance Company, it has challenged the findings of the Tribunal as regards negligence of the driver of the bus and also its liability on the ground of absence of valid permit for the bus to ply on the route at the relevant point of time. Quantum of compensation awarded is also called in question.

4. In the appeal filed by the dependents of the deceased, they have sought for enhancement of compensation.

5. On 28.09.2007 at about 2.15 p.m. near Government Hospital, Hosdurga, when the deceased was riding a motorcycle bearing registration No. KA16/Q-7514 from T.B. Circle towards Ajjampura road, a bus bearing registration No. TN-30/B-7221 driven in a rash and negligent manner dashed against the

motorcycle, as a result of which, the rider of the motorcycle - Mahendra sustained grievous injury and succumbed to the same. His mother and sister filed claim petition before the Tribunal seeking compensation contending that the accident was caused due to the actionable negligence on the part of the driver of the bus.

6. They urged that deceased Mahendra was the only breadwinner in the family; he was a promising student studying in B.B.M. and on account of his death, their family had been pushed into great crisis. They sought for compensation in a sum of Rs. 10,00,000/-.

7. Owner of the bus did not represent himself. He was placed exparte. Divisional Manager of the Insurance Company contested the claim contending inter alia that the accident occurred solely due to the negligence of the rider of the motorcycle; that the driver of the offending vehicle had no valid and effective driving licence or route permit and therefore sought for dismissal of the claim petition.

8. Claimant No. 1 mother of the deceased examined herself as P.W. 1. One eyewitness by name Somashekara was examined as P.W. 2. Exs. P1 to P66 were produced and marked. For the respondent, one of the officials of the Insurance Company by name T.E. Chandrasekarappa was examined as R.W. 1. Exs. R1 to R4 were produced and marked.

9. On consideration of the evidence on record, the Tribunal has recorded a finding that claimants were able to establish occurrence of the accident and the actionable negligence on the part of the driver of the bus, resulting in serious injuries to deceased Mahindra on account of which he died on the same day. The contention of the Insurance Company that the driver of the offending bus had no route permit and driving licence has been repelled by the Tribunal.

10. So far as quantum of compensation is concerned, the Tribunal has taken the daily income of the deceased at Rs. 150/-. Deducting 50% towards personal expenditure and applying multiplier of 14 having regard to the age of the mother, the Tribunal has quantified the loss of dependency and has awarded compensation under different heads as under:

Thus, in all, a sum of Rs. 5,09,300/- has been awarded as compensation.

11. I have heard the learned counsel for both parties. Points that arise for consideration are:

"i) Whether the findings recorded by the Court below regarding actionable negligence on the part of the driver of the bus is illegal?

ii) Whether the quantum of compensation awarded is just, fair and reasonable?"

12. Ex. P1 is the copy of the FIR. Complaint is lodged by one G. Siddaiah against the driver of the bus. No complaint is filed alleging any negligence against the deceased rider of the motorcycle either by the driver of the bus or by any other

person. P.W. 2 is the eyewitness to the incident. He has stated in his evidence that he was proceeding in the same direction where the bus dashed against the motorcyclist and saw the accident happening. He has clearly stated that accident occurred due to the negligence on the part of the bus driver. There is nothing worthwhile elicited to discard the veracity of this witness in the cross-examination.

13. Learned counsel for the Insurance Company contends that the person who filed the complaint has not been examined, therefore, actionable negligence on the part of the driver of the bus has not been proved. This contention cannot be accepted because the claimants have examined eyewitness to the incident whose evidence probablises the FIR. This document has come into existence at the earliest point of time. It is necessary to also notice that neither the driver of the bus, nor any passenger in the bus or any other person has been examined in support of the contention taken by the Insurance Company that driver of the bus was not negligent. Indeed the owner of the bus has remained exparte. He has not even contested the case. Therefore, it cannot be held that there was any negligence on the part of the rider of the motorcyclist. The findings recorded by the Tribunal in this regard is just and illegal.

14. Insofar as the contention raised regarding the absence of valid permit to ply on the route for the bus, counsel for the claimants is right and justified in inviting the attention of the Court to Ex. P66 which is a permit issued in favour of the owner of the bus effective from 24.12.2003 till 23.12.2008. It contains the timings of the route. As is apparent from Ex. P66, the bus passes through Hosdurga twice in a day and the timings stipulated therein is 1.45. The complaint discloses that accident took place around 2.15. Therefore, the timings mentioned in the permit and the time at which the accident has taken place approximately matches with each other. Hence, there is no substance in the contention urged stating that there was no valid permit for the bus to ply in Hosdurga at the relevant point of time.

15. Insofar as the quantum of compensation is concerned, the accident has taken place on 28.09.2007. The injured person was an young boy aged 20 years. He had very promising career as is evident from the marks cards produced and marked in evidence at Exs. P61 to 64 which disclosed that deceased had got aggregate marks of 75% in the First to Fourth semester of B.B.M. examinations from Kuvempu University. Even in S.S.L.C., the deceased had secured First Class by securing 65.6% marks. It is thus clear that he had a promising career ahead and has been done to death at a very tender age.

16. The Tribunal has assessed monthly income of the deceased at Rs. 4,500/-. According to the counsel for the claimants, in similar circumstances, in the case of Prof. K. Rajaiah Naidu and Smt. Swarnalatha Vs. The Managing Director, Bangalore Metro Transport Corporation, , a Division Bench of this Court has taken the monthly income of deceased at Rs. 12,000/-.

17. Learned counsel appearing for the Insurance Company invites the attention of the Court to paragraph 13 of the impugned judgment to contend that even as per the assertions made by the claimants deceased was working at U.Com Computer Centre as a Teacher and was earning Rs. 3,000/- per month and therefore, the Tribunal was in error in awarding compensation by taking the monthly wages at Rs. 4,500/- instead of proceeding on the monthly income of Rs. 3,000/-.

18. The claimants version cannot be understood to mean that he was earning only Rs. 3,000/- per month. What the claimants have stated and how it has been construed by the Tribunal is that the deceased was a student studying B.B.M., he was also working at U.Com Computer Centre as a teacher and was earning Rs. 3,000/- per month. Therefore, it is not that his income was only Rs. 3,000/-. He was basically a student and was also teaching in a Computer Institute. His potentiality as a brilliant student and his age and the promises ahead of him have all to be taken into consideration while assessing loss to the family and the loss of dependency. Therefore, keeping in mind the documents produced, particularly the academic records of the student which is very encouraging and excellent, I am of the view that amount of Rs. 4,500/- as his income per month taken by the Tribunal is on the lower side. Keeping in mind the date of the accident and all other attendant circumstances, the monthly income has to be assessed at Rs. 5,500/-.

19. Though the judgment in Prof. K. Rajaiah Naidu and Smt. Swarnalatha Vs. The Managing Director, Bangalore Metro Transport Corporation, has been relied upon by the counsel for the claimants, the facts stated therein are totally different. It was a case where the deceased was studying in eighth semester of B.E. in Mechanical Engineering and was a student of high distinction with 82% marks to his credit. The Court also took note of the fact that in view of the academic excellence achieved by the deceased student there, he would have been placed in any one of the top I.T. Companies as professional and would have got stipend of not less than Rs. 8,000/- to Rs. 10,000/- per month initially with immediate hike in the salary after completion of probationary period. Facts here are totally different and therefore, the said judgment will not help the claimants to claim compensation on par with the award made in the said case.

20. Insofar as compensation awarded towards loss of expectation of life, the same deserves to be disallowed. However, towards loss of estate, the amount awarded deserves to be enhanced to Rs. 25,000/-. Similarly, the amount towards transportation of dead body and funeral expenses, another sum of Rs. 10,000/- deserves to be awarded. Taking the monthly salary of deceased at Rs. 5,500/- and deducting 50% towards personal expenditure and applying multiplier of 14 having regard to the age of the mother, loss of dependency is quantified as under:

Rs. 5,500 X 50% X 12 X 14 = Rs. 4,62,000/-.

21. In the result and for the foregoing, the appeal filed by the claimant is partly allowed and the appeal filed by the Insurance Company is dismissed. The claimants are held entitled to compensation as under along with interest at 6% p.a.:

The amount in deposit shall be transferred to the Claims Tribunal for disbursal in accordance with law.

