(2015) 03 KAR CK 0247

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 21450/2013 (MV)

Deputy Manager APPELLANT

Vs

Shakuntala and Others RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2015) 03 KAR CK 0247

Hon'ble Judges : P.S. Dinesh Kumar, J.;B.S. Patil, J.

Bench : Division Bench

Advocate : G.M. Raichur, for the Appellant; Santosh S. Hatti Katagi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—This appeal by the Insurance Company is directed against the judgment and award dated 22/12/2012 passed by the Motor Accident Claims Tribunal, Hukkeri, granting compensation in a total sum of Rs. 13,13,600/- along with interest at 6% per annum to the dependants of the deceased. The Insurance company is challenging its liability as also the quantum of compensation awarded.

2. Facts necessary for disposal of the appeal are that on 29/02/2012 at Sangankeri-Yadwad Road near Beeranagaddi cross when deceased Mallikarjun was standing in front of the harvest machine along with another person, a goods vehicle bearing No. KA-09/A-9469 driven in high speed dashed against Mallikarjun and another person by name Basavaraj Huddar causing fatal injuries to both resulting in their death. Claimants being widow, minor daughter and parents of deceased Mallikarjun filed claim petition claiming compensation contending inter alia that deceased was the sole bread earner of the family and he was engaged as an operator of a harvest machine earning a sum of Rs. 12,000/- per month.

3. Insurance company contested the claim taking up all grounds both regarding liability and quantum of compensation awarded.

4. In support of case of claimant, claimant No. 1-widow of deceased examined herself as PW-1 and an eyewitnesses to the accident was examined as PW-2. Exs. P-1 to P-26 were produced and marked. On behalf of respondent, no evidence was led.

5. Based on evidence on record, the Tribunal held that actionable negligence on the part of driver of the goods vehicle had been established and that the same was the cause for the accident resulting in death of Mallikarjun. The Tribunal has also recorded a positive finding that driver of the offending vehicle did have a valid and effective driving license as on the date of accident and the insurance company had failed to prove that the driver did not possess a valid and effective driving license as on the date of the accident.

6. Insofar as quantum of compensation is concerned, the Tribunal has taken note of the age of deceased found to be 25 years at the time of accident; his occupation as an operator of harvesting machine coupled with other evidence, to hold that he was earning a sum of Rs. 6,000/- per month. Having regard to the young age and prospects of his advancements in his career ahead, the Tribunal by relying on the case of Santosh Devi Vs. National Insurance Company Ltd. and Others, has held that 30% of the monthly income has to be taken towards loss of future prospects. Thus annual income of deceased has been taken at Rs. 70,200/- and by adding 30% towards future prospects, annual net income has been worked out at Rs. 93,600/-. 1/4th of said amount was deducted towards personal expenses keeping in mind the fact that the deceased was maintaining 4 persons who were dependent on him. Thus deducting Rs. 23,400/- from out of Rs. 93,600/-, a sum of Rs. 70,200/- has been worked out as annual dependency. Applying the relevant multiplier of 18, compensation payable has been quantified at Rs. 12,63,600/- under the head loss of dependency.

7. Towards transportation of dead body and funeral expenses, compensation of Rs. 30,000/- has been awarded. As regards consortium to claimant No. 1 and loss of love and affection to minor daughter and parents of the deceased, a sum of Rs. 20,000/- has been awarded. Thus a total sum of Rs. 13,13,600/- has been awarded.

8. Learned counsel for appellant contends that as fitness certificate of the vehicle had expired, the insurance company was not liable to pay the amount. It is his further contention, as regards the quantum of compensation awarded that the Tribunal was in error in considering 30% of the earning as loss of future prospects. He urges that the said question is under consideration before the larger bench of the Apex Court and therefore, the Tribunal ought not to have awarded the said amount towards loss of future prospects.

9. Counsel appearing for respondent-claimant strongly supported the award passed by the Tribunal. He places reliance on the judgment of this Court in MFA

No. 6621/2006 dated 18/09/2007 to urge that similar contention regarding fitness certificate of lorry which was not in force at the time of the accident has been rejected and insurance company was held liable to make good the compensation.

10. On perusal of the statement of objections filed by the appellant-insurance company to the claim petition, we find that no such ground is taken by the insurance company. In the absence of such plea taken before the claims Tribunal, it is not permissible for the insurance company to take up a new plea in this regard in this appeal. At any rate we find from a perusal of sub-section (2) of Section 149 of the Motor Vehicles Act, 1988 that statutory defences available to the insurance company against an action initiated do not include the defence as sought to be urged in the instant case. Therefore, keeping in mind the facts and circumstances of the case and in the absence of any plea in that regard, we are of the view that the first contention urged regarding expiry of fitness certificate is not tenable in law.

11. So far as the quantum of compensation is concerned, this is a case where an young man aged 25 years was knocked down and done to death in the fatal accident. He was a skilled worker engaged in operating harvesting machine. The Tribunal taking note of his age and prospects, has taken the monthly earnings of the deceased as Rs. 6,000/-, though the accident has occurred on 29/02/2012. Hence, we find that the income taken is slightly on the lower side. Therefore, although learned counsel for the appellant-insurance company contends that future prospects have to be reckoned in case of an employee who is in permanent job having prospects of advancement in his career, we do not intend to dilate further in this matter because the monthly income taken by the Tribunal itself is on the lower side and towards future prospects what has been taken is only 30%. Even if the said amount is used towards monthly salary, the compensation to be worked out would be just and reasonable having regard to the nature of the skilled work in which the deceased was engaged and the young age at which he met with a fatal accident. We need to also state here that the Tribunal has awarded only Rs. 20,000/- towards loss of consortium and loss of love and affection. Amount awarded towards transportation of dead body and funeral expenses at Rs. 30,000/- is slightly on the higher side, but, the amount towards loss of consortium is on the lower side, hence we do not want to disturb the award made by the Tribunal under different heads.

In the result, we find that the Tribunal has not committed any illegality in quantifying the compensation and awarding total amount of Rs. 13,13,600/- as compensation along with interest at 6% per annum. Hence, we find that there is no merit in this appeal.

The appeal is, therefore, dismissed. Amount in deposit shall be transferred to the claims Tribunal for disbursement in accordance with law and as per the directions contained in the award passed by the Tribunal.