(2015) 07 KAR CK 0222

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 3195 and 4713 of 2011 (MV)

E.V. Sheetal Kumar and Others — APPELLANT

Vs

Syed Azzez Ulla Rehaman and Others — RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 66

Citation : (2015) 07 KAR CK 0222

Hon'ble Judges : N.K. Patil, J;Rathnakala, J

Bench : Division Bench

Advocate : Iqbal Ahmed Khan, for the Appellant; B.H. Sunitha for Suresh M. Latur, Advocates for the Respondent

Judgement

N.K. Patil, J—These appeals by the owner of the offending vehicle and by the claimants respectively are directed against the same impugned judgment and award dated 04/09/2010, passed in MVC No. 3175/2008, by the XVIII Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tnbunal-4, Bangalore (SCCH-4), (hereinafter referred to as '' Tribunal'' for short).

2. The Tribunal by its judgment and award, has awarded a sum of Rs. 3,66,000/- under different heads with interest at 6% per annum from the date of petition till the date of deposit, as against the claim of the appellants for a sum of Rs. 25,00,000/-, on account of the death of the deceased Sri Syed Zabiulla Rehaman, in the road traffic, fastening the liability on the respondent No. 1/ owner of the bus and directing him to indemnify the award amount and dismissing the petition against the Insurance Company.

3. Being aggrieved by the same, respondent No. 1/owner of the bus has filed an appeal on the ground that, the liability fastened on him is liable to be modified by fixing the liability jointly and severally on the owner and insurer of the bus and directing the respondent No. 3/Insurer of the bus to indemnify the award amount. Whereas, it is the case of the claimants that the compensation awarded by the Tribunal is inadequate and it requires to be enhanced.

4. In brief, the facts of the case are:

The claimant Nos. 1 and 2 are the parents of the deceased. They filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the owner and insurer of the offending vehicle, on account of the death of the deceased in the road traffic accident, contending that on 28.3.2008 at about 12.45 noon when the deceased was riding the motor cycle bearing Reg. No. KA.01.EF.4150 from Bangalore towards Kyathasandra, at that time, the driver of the private bus bearing reg. No. KA.16.A.6779 came from behind with high speed in a rash and negligent manner and dashed against the motor cycle. Due to which, deceased fell down and sustained grievous injuries and took treatment at Hospital, inspite of best treated he succumbed to the injuries on 2.4.2008.

5. It is the further case of the claimants that, deceased was aged about 23 years, hale and healthy prior to the accident, working in Furniture business of his father and earning Rs. 10,000/- per month and looking after the welfare of the family. The untimely death of the deceased has affected the social and financial condition of the family as they have lost their earning member, apart from mental shock and agony.

6. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petition in part, awarding a sum of Rs. 3,66,000/- under different heads with interest at 6% per annum from the date of petition till the date of deposit, fastening the liability on the respondent No. 1/owner of the bus and directing him to indemnify the award amount and dismissing the petition against the Insurance Company.

7. Being aggrieved by the said judgment and award passed by the Tribunal, respondent No. 1/owner of the bus and the claimants have presented these appeals, seeking appropriate reliefs as stated supra.

8. The submission of learned counsel Sri. Iqbal Ahmed Khan, appearing for the owner of the bus, at the outset is that, the Tribunal has erred in dismissing the claim petition against the respondent No. 3/Insurer of the bus and issuing a direction to the owner to indemnify the award amount, on the sole ground that, as on the date of the accident, owner does not possess permit to ply the bus in the said route. The said reasoning cannot be sustained and is liable to be set aside, on the ground that, as on the date of the accident, the bus was insured with the Insurer, policy was in force and the Tribunal ought to have accepted the same and fixed the negligence jointly and severally on the part of the owner and insurer of the bus and ought to have directed the insurer to indemnify the award amount. Therefore, he submitted that the impugned judgment and award is liable to be modified by fixing the liability jointly and severally on the owner and insurer of the bus and directing the insurer to indemnify the award amount.

9. As against this, learned counsel appearing for the claimants, inter-alia,

submitted that, the Tribunal has erred in not awarding reasonable compensation towards loss of dependency and towards conventional heads and what is awarded is on the lower side. To substantiate the said submission, she submitted that, deceased was aged about 23 years, working in Furniture business of his father and therefore, the income of Rs. 3,000/- per month assessed by the Tribunal is on the lower side and is liable to be enhanced reasonably and after deducting 50% towards personal and living expenses of the deceased, adopting appropriate multiplier taking the age of the younger parent, mother of the deceased, reasonable compensation may be awarded towards loss of dependency. She further submits that the compensation awarded by the Tribunal towards conventional heads and towards medical expenses is on the lower side and is liable to be enhanced reasonably, on the ground that, deceased has met with an accident on 28.3.2008 and died on 2.4.2008 and during the treatment period, claimants have spent huge amount towards medical expenses, including incidental expenses. Therefore, she submitted that the impugned judgment and award is liable to be modified.

10. After hearing the learned counsel for both the parties and after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration< is:

Whether the compensation awarded by the Tribunal is just and reasonable?

11. The occurrence of the accident and the resultant death of the deceased are not in dispute. It is also not in dispute that claimants are the parents of the deceased and he was aged about 23 years and working in Furniture business of his father. It is the case of the claimants that deceased was earning Rs. 10,000/- per month. But, to prove the same, claimants have not produced any credible documents. Therefore, the Tribunal has assessed the income of the deceased at Rs. 10,000/- per month which is on the lower side and is liable to be enhanced reasonably. Considering the age and occupation of the deceased and the year of accident, we re-assess the income of the deceased at Rs. 4,000/- per month to meet the ends of justice instead of Rs. 3,000/- per month as assessed by the Tribunal. Out of which, if 50% (Rs. 2,000/-) is deducted towards the personal and living expenses of the deceased, since he was a bachelor, his contribution to the family comes to Rs. 2,000/- per month. The appropriate multiplier applicable taking the age of the younger parent, mother of the deceased as 50 years is T3'' as rightly adopted by the Tribunal and we accept the same. Therefore, we re-determine the loss of dependency at Rs. 3,12,000/- (Rs. 2,000/- x 12 x 13) instead of Rs. 2,34,000/- awarded by the Tribunal and accordingly, it is awarded.

12. Having regard to the facts and circumstances of the case, we award a sum of Rs. 50,000/- towards conventional heads, such as loss of love and affection, towards loss of estate and towards transportation and funeral expenses.

13. Further, the Tribunal has awarded a sum of Rs. 1,11,183.74/- towards

medical expenses which is on the lower side, for the reason that, deceased met with an accident on 28.3.2008 and succumbed to the injuries on 2.4.2008 and during the said period, claimants might have spent reasonable amount towards conveyance and other incidental expenses. Therefore, we award a sum of Rs. 1,25,000/- towards medical expenses, including incidental expenses instead of Rs. 1,11,183.74 paise awarded by the Tribunal.

In all, the claimants are entitled to the total compensation of Rs. 4,87,000/- instead of Rs. 3,66,000/- awarded by the Tribunal. There would be an enhancement of compensation of Rs. 1,21,000/- with interest at 6% p.a., from the date of petition till its realization.

14. Regarding the submission of the learned counsel Sri. Iqbal Ahamad Khan, appearing for respondent No. 1/owner of the bus that, Insurance Company has filed its objection admitting the issuance of the policy and its validity as on the date of the accident and if that is the case, the Tribunal ought to have fixed the liability jointly and severally against the owner and insurer of the bus and ought to have directed the insurer to indemnify the award amount instead of dismissing the petition against the Insurer and directing the owner of the bus to indemnify the award amount is concerned, the said submission cannot be accepted, nor we find any substance in the same, for the reason that, the Tribunal, after due consideration of the oral and documentary evidence available on file, after discussing the same elaborately in its judgment, has recorded the finding of fact in para-16 of its judgment for fixing the liability on the owner of the bus. Further, it is significant to note that, the Tribunal, has observed in para-16 of its judgment that, the Insured had no valid permit to operate the bus at the place of the accident which is in contravention of Section 66 of M.V. Act and the owner being fully aware, has operated the bus and thereby contravened the provisions of M.V. Act and thereby committed breach of conditions of the policy and therefore, insurer is not liable to indemnify the owner. Further, the Tribunal has observed that, in support of its contention, the Insurer has examined its Senior Executive Claims Officer as RW1, who has also deposed the same and nothing is elicited in his cross examination. Further, the Insurer has examined one Govindaraju, Steno of RTO, Tumkur as RW2 and he has produced Ex. R4 authorisation letter and Ex. P5-Temporary permit copy pertaining to the offending vehicle. The Insurer has also examined Secretary RTA, Tumkur as RW3 who has deposed that Ex. R5 is a temporary permit issued to respondent No. 1 pertaining to bus bearing No. KA.16.A6779 i.e., offending vehicle. Further she has deposed that they have stated the route in which the said bus could ply in Ex. R5. Further she has stated that the offending vehicle had no permit to ply on Kyathasandra route on 28.3.2008 i.e. on the date of accident and also deposed that if the said bus is plied in the route to which permit is not given it would amount to violation of the licence. Therefore, the Tribunal has held that, the evidence of RWs 1 to 3 prove beyond reasonable doubt that there is a breach of terms and conditions of the permit and inspite of giving sufficient opportunity to the owner, he remained ex parte nor he has made any efforts to represent

personally or through counsel or produced nay documents and therefore, it is clear that the vehicle did not have permit as on the date of the accident. Further, it is significant to note that, even before this court the matter was pending since 2011, but no efforts as such has been made out by the owner to produce any credible documents to show that he has the permit to ply the vehicle in Kyathasandra route. Therefore, the Tribunal has justified in holding that, as there is violation of the permit, the Insurer is not liable to pay the compensation it is not liable to indemnify the owner and the respondent No. 1 being the owner of the vehicle alone is liable to pay the compensation. The said finding of fact recorded by the Tribunal is just and reasonable and therefore, interference by this Court is not called for. Therefore, the above submission of the learned counsel appearing for the owner of the bus is liable to be rejected and accordingly, it is rejected.

15. For the foregoing reasons, the appeal filed by the respondent No. 1/owner of the bus is dismissed as devoid of merits and the appeal filed by the claimants is allowed in part. The impugned judgment and award dated 04/09/2010, passed in MVC No. 3175/2008, by the XVIII Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tnbunal-4, Bangalore (SCCH-4), is hereby modified, awarding a sum of Rs. 1,21,000/- with interest at 6% p.a., from the date of petition till its realization in addition to the compensation awarded by the Tribunal.

The owner of the bus/respondent No. 1/appellant in M.F.A. No. 3195/2011 is directed to deposit the enhanced compensation of Rs. 1,21,000/- with interest at 6% p.a., from the date of petition till the date of realization, within a period of three weeks from the date of receipt of a copy of this judgment.

Immediately on such deposit made by the owner of the offending vehicle, the entire enhanced compensation with interest shall be released in favour of the claimant Nos. 1 and 2 in equal proportion.

The amount deposited by the owner of the offending vehicle in M.F.A. No. 3195/2011 shall be transmitted to the jurisdictional Tribunal, immediately.

Draw the award, accordingly.