(2015) 04 KAR CK 0054

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 30849 and 30994/2012(MV)

Hemaraj and Others APPELLANT

Vs

Mehaboob Subani and Others RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 134

Citation : (2015) 04 KAR CK 0054

Hon'ble Judges : Budihal R.B., J.

Bench : Single Bench

Advocate : Veeranagouda, for the Appellant

Judgement

Budihal R.B., J.—Since these two appeals are arising out of the common judgment passed by the tribunal and since the common question of law and facts are involved in both the appeals, parties are also same, both the appeals have been taken together to dispose off them by this common judgment.

2. M.F.A. No. 30994/2012 is the appeal preferred by the appellant - Insurance Company, challenging its liability on fastening the entire liability on the part of insurance company and also challenging the legality and correctness of the judgment and award passed by the tribunal on the grounds urged in the appeal memorandum of the said insurance company.

3. MFA No. 30849/2012 is the appeal preferred by the appellants/claimants seeking enhancement of the compensation amount and they have also challenged the legality and correctness of the judgment and order of the tribunal on the grounds as urged in the appeal memorandum.

4. The case in brief leading to filing of the petition before the tribunal is that on 12-12-2010 deceased Mounesh had engaged respondent No. 1''s lorry bearing Regn. No. AP-28-W-8357 for transporting Onion load for selling in Hyderabad and he was also travelling along with the goods in the same lorry. When the said lorry came near Thimmapur village within the limits of Andhra Pradesh, at about 5-30

a.m., driver of another lorry bearing Regn. No. AP-04-W-5898 parked his lorry on the middle of NH-7 road near S.B.I. Bank, within the limits of Thimmapur village, without putting any signals as per traffic rules. It is also alleged that driver of the lorry bearing Regn. No. AP-28-W-8357 drove his lorry in rash and negligent manner with high speed and dashed respondent No. 3''s parked lorry from behind. Due to this heavy impact, Mounesh sustained grievous and fracture injuries on the left humerus, right ear and left side ribs and died at the spot. The case was registered against the drivers of both the vehicles in Crime No. 216/2010. Hence the legal representatives of the deceased filed the claim petition before the tribunal.

5. After service of notice from the tribunal, respondent Nos. 2 and 4, i.e. insurers of both the lorries, have appeared and filed their written statements. Respondent No. 2 insurance company in its written statement, while admitting that lorry bearing Regn.No.AP-28-W-8357 is insured with the appellant-insurance company has denied its liability contending that deceased was a passenger in the lorry. Therefore, there is a violation of policy conditions by the owner of the lorry. Driver of the lorry had no valid and effective driving license and respondent No. 1 owner of the lorry had contravened Sec. 134 of M.V. Act in not informing about the accident. It has also denied the manner of accident and rash and negligent driving attributed against the driver of the said lorry. It has denied that Mounesh engaged this lorry and loaded his Onion in the said lorry. Hence it is contended that another lorry bearing Regn. No. AP-04-W-5898 was parked on the middle of the road within the limits of Thimmapur village without putting any parking lights, thereby because of negligence of the said driver this accident took place. The compensation claimed is excessive.

6. Respondent No. 4 insurer of the lorry bearingRegn.No.AP-04-W-5898 has denied the manner of accident contending that due to rash and negligent driving on the part of the lorry bearing Regn.No.AP-28-W-8357, the liability subject to terms and conditions of the policy and production of the vehicle documents. Hence sought to dismiss the claim petition.

7. On the basis of the said pleadings, tribunal raised issues and ultimately the tribunal allowed the claim petition in part awarding the compensation of Rs. 3,66,000/- and fastened the liability against respondent Nos. 1 and 2 jointly and severally and dismissed the claim petition as against respondent Nos. 3 and 4.Hence the present appeal by the insurance-company challenging the liability and another appeal challenging the quantum of compensation and seeking the enhancement.

8. Learned counsel appearing for the insurance company submitted that deceased was travelling in the lorry as a passenger and the driver of the lorry was also not holding valid and effective driving license. It is also the submission of the learned counsel for the appellant-insurance company that when the another lorry was parked on the middle of the road without showing any signal and the criminal case was registered against drivers of both the vehicles and

charge sheet was also filed against them. In spite of such material, the tribunal fastened the entire liability on the part of respondent Nos. 1 and 2 is not correct. The learned counsel for the appellant-insurance company firstly submitted that there is no liability on the part of insurance company as the deceased was travelling as passenger and even if the court comes to the conclusion that he was travelling along with his goods Onion bags then in that case, at least 50% of the liability has to be fastened on the insurance company and the owner of another lorry. In support of her contention, learned counsel appearing for the insurance company relied upon the decision reported in IX (2009) SLT 211 SUPREME COURTOF INDIA, in the case of Raj Rani and Ors. Vs. Oriental Insurance Co. Ltd. and Ors.

9. Per contra, learned counsel appearing in an other connected appeal, who is also claimant before the tribunal submitted that the materials, both oral and documentary evidence clearly goes to show that he was not merely passenger travelling in the lorry but he was travelling along with his Onion Bags and hired the vehicle for the purpose of transporting the said Onion bags. Hence learned counsel for the appellants-claimants submits that the tribunal has correctly comes to the conclusion that he was travelling along with his Onion bags. Learned counsel for the appellants-claimants made the submission that the compensation awarded by the tribunal is on the lower side. Hence, just and reasonable compensation is to be awarded by enhancing the compensation amount.

10. Perused the grounds urged in the appeal memorandum in respect of both the appeals, judgment and award passed by the tribunal, oral and documentary evidence adduced in the case and also the decision relied by learned counsel for the appellant - insurance company, which is referred above.

11. With regard to the deceased Mounesh travelling in the lorry is concerned, I have perused oral evidence as well as documents produced in the case, they clearly goes to show that he was no more passenger but he was travelling in the lorry along with his Onion bags. Said contention of the appellants-claimants is supported by the documentary evidence and the tribunal has correctly assessed the evidence and came to right conclusion in the matter which does not call for any interference by this court. Regarding the negligence aspect is concerned, the materials placed on record clearly goes to show that the lorry belonging to respondent No. 3-owner was parked on the road without showing any signals for the vehicles which are coming and the respondent No. 2-insurance company before the tribunal, who is the appellant therein, took the contention that it is because of the negligence of the driver of the lorry who parked the same on the road. Looking to the materials and as submitted by the learned counsel appearing for the appellant-insurance company, criminal case registered against drivers of both the lorries and even the charge sheet was also filed against both of them. Looking to these materials on record, they clearly goes to show that there was contributory negligence on the part of the drivers and owners of both

the vehicles and hence the liability is on both the owners of the vehicle, at the ratio of 50:50. Looking to this aspect of the matter, the tribunal is not correct in fastening the entire liability on the part of respondent No. 2-insurance company, which is the appellant herein.

12. Regarding the quantum of compensation, the tribunal has taken monthly income of the deceased at Rs. 4,000/- per month. The accident is of the year 2010. Tribunal ought to have taken income of deceased at Rs. 5,500/- per month and towards personal expenses of the deceased, 50% is to be deducted and the remaining amount comes to Rs. 2,750/-. The age of the mother of the deceased is assessed at 40 years. Therefore, proper multiplier applicable is 14 and the compensation towards loss of dependency comes to (2,750 x 12 x 14) = Rs. 4,62,000/-. The tribunal has awarded Rs. 3,36,000/- under that head. Hence there is a enhancement of Rs. 1,26,000/- under the head of loss of dependency. Under the other conventional heads, the appellants-claimants are entitled to another sum of Rs. 1,00,000/-.

Hence, appellants-claimants are entitled to enhanced amount of Rs. 2,26,000/-.

13. Since both the owners of the vehicles are liable to pay the compensation at the ratio of 50% each, the respondent No. 4 insurance company and also the appellant-insurance company, both are liable to pay the amount awarded by the tribunal and also the enhanced amount of this court in equal proportion with interest at 9% p.a., from the date of the petition.

14. Both insurance companies have to deposit the amount in their equal share within 30-days from the date of receipt of copy of this judgment.

15. The amount in deposit is to be transferred to the concerned tribunal.

16. Accordingly, appeal preferred by the appellant-insurance company is allowed in part and so also the appeal preferred by the appellants-claimants is also allowed.