(2014) 11 KAR CK 0258

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 1132 of 2010 (MV) and 7966 of 2009 (MV)

Kariyappa APPELLANT

Vs

Sundaresh Kumar RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Citation : (2014) 11 KAR CK 0258

Hon'ble Judges : Ravi V. Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : A.V. Gangadharappa, Advocate for A.V.G. Associates and A.K. Bhat, Advocate for the Appellant; A.K. Bhat and A.V. Gangadharappa, Advocate for the Respondent

Judgement

K.L. Manjunath, J.—These two appeals arise out of the Judgment & award passed by the MACT, Arasikere, in MVC No. 111/2006 dated 23rd July, 2009. MFA No. 1132/2006 is filed by the claimants seeking enhancement of the compensation. MFA No. 7966/2009 is filed by the Insurance Company challenging the liability saddled on it. Therefore, these two matters are listed heard together.

2. The admitted facts are as hereunder:-

The claimants are the aged father, widow and two minor children of one Ravishankar. Ravishankar was working as conductor in Maxicab bearing No. KA-13-4437. On 22-7-2006 while discharging his duty as conductor he was travelling from J.C. Pura to Arasikere. When the vehicle was near J.C. Pura, on account of the rash and negligent driving of the driver of the Maxicab, it dashed against an oncoming Maxicab on account of the same, Ravishankar died on the spot.

The case was registered by the police against the driver of the vehicle in which the deceased was working as conductor.

According to the claimants the deceased was earning a sum of Rs. 6,000/- per month as salary and he was also looking after the agricultural operations and that he was aged 30 years. Therefore, the claim petition was filed. The Insurance Company contended that though policy has been issued by the Insurance Company in favour of the owner of the vehicle bearing No. KA-13-4437 the policy did not cover the risk of the conductor and therefore the Insurance Company requested the Court to dismiss the claim petition against the Insurance Company. The tribunal after considering the evidence let-in by the parties held that the policy covers the risk of the deceased and awarded compensation of Rs. 4,28,000/-.

Being not satisfied with the compensation awarded the claimants have filed MFA No. 1132/2010. Challenging the liability saddled on it the Insurance Company has filed the connected appeal No. 7966/2009. Therefore these two matters are heard together.

3. Mr. A.V. Gangadharappa, the learned counsel for the claimants contends that the tribunal committed an error in not considering the evidence let-in by the parties. According to him, though the deceased was earning Rs. 6,000/- as conductor as on the date of the accident, the tribunal was required to consider the future prospects of an young man who died at the age of 30 and therefore the income of the deceased has to be considered at Rs. 3,000/- and not Rs. 6,000/- per month. There were 4 dependants who are none other than the parents, widow and two minor children. Therefore he requests to deduct 1/4th towards the personal expenses of the deceased and if the same is multiplied by 17 the total compensation payable under the head loss of income would be Rs. 13,77,000/-. In addition to that the claimants are entitled for compensation under conventional heads.

4. Per contra, Mr. A.K. Bhat, the learned counsel appearing for Insurance Company submits that since the deceased was not in a permanent job the claimants cannot seek amount towards future prospects of the deceased. The Insurance Company''s contention is that the policy issued covers the risk of the driver only and not the conductor. Therefore he requests the Court to allow the appeal filed by the Insurance Company and dismiss the appeal filed by the claimants.

5. Having heard the learned counsel appearing for the parties we have to consider the following two points in this appeal:

1) Whether the policy issued by the Insurance Company covers the risk of the conductor?

2) Whether the compensation awarded by the tribunal is required to be enhanced?

We have seen the insurance policy produced by the parties. It is marked as Ex. R-1. It is clear to us that the it has collected a sum of Rs. 25/- to cover the wider coverage to an employee. This fact is not disputed by Mr. A.K. Bhat. The endorsement discloses that the policy covers the risk as per IMT 40 which reads as follows:-

"IMT 40 Legal Liability to paid driver and/or Conductor and/or-cleaner employed in connection with the operation of Motor Vehicle. (For Buses, taxis and motorized three/four-wheelers under commercial vehicles tariff)

In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify insured against his legal liability under the Workmen''s Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the vehicle insured and will in addition be responsible for all costs and expenses incurred with its written consent."

6. On perusal of IMT 40 reveals that there is legal liability to pay the driver or the conductor or an employee in connection with the operation of the policy. When it is not in dispute that the collection of premium of Rs. 25/- covers the risk of the driver or conductor, and it is not open for him to contend that the Insurance Company is not liable to satisfy the claim of the claimants. Accordingly, point No. 1 is held against the Insurance Company.

7. So far as second point is concerned, admittedly the deceased was getting a salary of Rs. 6,000/- per month as conductor. He was aged 30 years. He was under regular employment. Therefore the claimants are entitled for 50% of the salary towards future prospects. If that is so, the notional income of the deceased has to be assessed at Rs. 9,000/- per month. Considering the total number of dependants we have to deduct 1/4th towards personal expenses. We have to adopt the multiplier of 17 considering his age. Therefore if we deduct 1/4th from the annual income of Rs. 1,08,000/-, the loss of dependency comes to 81,000/- per annum and if the same is multiplied by 17, the loss of dependency has to be assessed at Rs. 13,77,000/-. In addition to that the claimants are entitled for Rs. 2,00,000/- under the conventional heads. Thus, in all the claimants are entitled for Rs. 15,77,000/- with interest at 6% per annum.

8. The tribunal has also held that the accident occurred due to the contributory negligence of the driver of both the vehicles. On perusal of the evidence let-in by the parties and the sketch prepared by the police during the investigation we are of the view that the finding of the tribunal on the question of contributory negligence is required to be set aside holding that the accident occurred due to the sole negligence of the driver of the vehicle bearing No. KA-13-4437.

9. Since the parents of the deceased have died during the pendency the matter before the tribunal the entire compensation shall be divided amongst the wife and children. Out of total compensation, 60% of the amount is awarded to the wife with interest accrued thereon and the remaining 40% to be apportioned at

the rate of 20% each to the two minor children and the entire amount payable to the minor children shall be invested in their name with interest accrued therein in any Nationalised Bank till they attain the age of majority.

10. In the result, the appeal is allowed. MFA No. 1132/2010 is allowed in-part holding that the claimants are entitled to compensation Rs. 15,77,000/- and the entire liability has to be borne by the appellants in MFA No. 7966/2009 and the appeal filed by the Insurance Company in MFA No. 7966/2009 is dismissed.

The amount in-deposit if any is ordered to be transmitted to the tribunal.