
(2014) 12 KAR CK 0045

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 405 and 4879 of 2012 (MV)

Lakshmi

APPELLANT

Vs

ICICI Lombard General Insurance Co. Ltd.

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 1 AKR 635 : (2015) 4 KCCR 3838

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

Bench : Division Bench

Advocate : Cuckoo Delhi, Advocate for the Appellant; B.C. Shivanne Gowda and Cuckoo Delhi, Advocate for the Respondent

Judgement

Ravi V. Malimath, J.—The case of the claimants is that 03.05.2009, at about 8.00 p.m., when the deceased was proceeding in a Maruthi Omni car bearing registration No. KA-02-D-4856 at Pandavapura Cross, Kabbalu, Chennapatna Road, the driver of the vehicle drove the same at a very high speed in a rash and negligent manner and dashed against a tree. Due to the impact, the deceased sustained grievous injuries and died on the spot. He was aged 40 years. He was working as a Secretary, at Sri. Nanjundeshwara Enterprises Recreation Club and earning Rs. 25,000/- per month. His wife, children and mother filed a claim petition under Section- 166 of the Motor Vehicles Act.

2. The Tribunal awarded a sum of Rs. 5,54,400/- along with interest. Questioning the liability to satisfy the award, as well as grant of excessive compensation, the insurer has filed MFA No. 4879/2012. Seeking enhancement, the claimants have filed MFA No. 405/2012.

3. The case of the insurer is that the driver of the offending vehicle did not possess an appropriate endorsement to drive the vehicle. That he possessed the driving license only to drive a light motor vehicles. That non-transportation endorsement was issued only from 15.05.2009 onwards. In the absence of appropriate endorsement, the Tribunal held that the insurer should satisfy the

award and thereafter recover the same from the owner. Therefore, it is contended that the insurer is not liable to satisfy the award.

4. The Hon'ble Supreme Court in the case of S. Iyyapan Vs. United India Insurance Company Ltd. and Another, , has held that merely because an appropriate endorsement is absent in the license, the insurer cannot be absolved of its liability to satisfy the award. In such a case, the insurer was directed to satisfy the award and recover from the owner. Following the judgment of the Hon'ble Supreme Court, the reasoning assigned by the Tribunal is just and proper and does not call for interference.

5. So far as the enhancement of compensation, it is claimed that the deceased was earning Rs. 25,000/- per month. However, there is no material to substantiate the same. Hence, the Tribunal held his income at Rs. 4,000/- per month. The accident took place on 03.05.2009. Hence, the notional income held by the Tribunal is inappropriate. Following the judgment of Hon'ble Supreme Court in the case of Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Limited, , we are of the considered view that keeping in mind the fact that he was a Manager in a Recreation Club, it would be appropriate to hold his income at Rs. 7,500/- per month. Since there were five dependents, the appropriate deduction would be 1/4th. He was aged 40 years as on the date of the accident. Hence, the appropriate multiplier is "15". Hence, the loss of dependency is worked out as follows:

"Rs. 7,500 (less) 1/4th x 12 x 15 = Rs. 10,12,500/-"

6. The compensation awarded towards conventional heads such as loss of love and affection, loss of estate, transportation of dead body and funeral expenses, a sum of Rs. 2,00,000/- in all is awarded. Hence, the amount awarded by the Tribunal is enhanced by Rs. 6,58,500/- (Rs. 12,12,500/- less Rs. 5,54,000/-) along with interest at 9% per annum from the date of the petition till the date of the realisation and shall be paid within a period of 8 weeks from the date of receipt of a copy of this order. The amount in deposit if any, is ordered to be transferred to the Tribunal.

7. Out of the enhanced compensation, 15% shall be paid to the fifth claimant, the mother of the deceased. Further, 50% of the amount enhanced along with interest shall be paid to the first claimant, the widow of the deceased, out of which 50% shall be kept in fixed deposit for a period of five years. The balance amount shall be equally distributed to the remaining claimants, namely, the children of the deceased in equal proportion. The amounts falling to the share of the children shall be kept in fixed deposit for a period of five years.

8. Accordingly, MFA No. 4879/2012 is dismissed and MFA No. 405/2012, is allowed in the aforesaid terms.