(2017) 02 KAR CK 0151

In the Karnataka High Court

Case No : 4244 of 2012

LOKESHA S/O. LATE DYAVEGOWDA — APPELLANT

Vs

BAJAJ ALLIENZE GENERAL INSURANCE CO. LTD. & ANR. — RESPONDENT

Date of Decision : 06-02-2017

Acts Referred:

Citation : (2017) 02 KAR CK 0151

Hon'ble Judges : B Manohar

Bench : SINGLE BENCH

Advocate : G. B. BALADARE, B. PRADEEP

Judgement

1. Appellant is the claimant being not satisfied with the quantum of compensation and also fastening the liability on the owner of the vehicle to compensate the claimant, filed this appeal challenging the judgment and award dated 28.02.2012 made in MVC No.1964/2008 on the file of Additional Senior Civil Judge and Additional MACT., Hassan (hereinafter referred to as ''the Tribunal'').

2. The appellant filed the claim petition contending that on 13.09.2008, when his father deceased Dyavegowda after finishing the work in the field, was returning to his house, near the field of Patel Shivaram, Doddagenigere village, a Tractor and Trailer bearing No.KA 13-A-4002/4003 came from Chikkagenigere side in a rash and negligent manner and dashed against the said Dyavegowda. As a result, Dyavegowda sustained fatal injuries and succumbed to the injuries on the spot. The son of the deceased filed a claim petition contending that at the time of accidental death, the deceased was aged about 45 years. He was earning Rs.13,000/- per month by doing agricultural work. Due to rash and negligent driving of the Tractor and Trailer which was insured with the 2nd respondent, the accident has occurred. Hence, both respondent Nos.1 and 2 are liable to pay the compensation of Rs.15,00,000/-.

3. In response to the notice issued by the Tribunal, the owner of the vehicle

entered appearance and filed written statement denying the entire

averments made in the claim petition and contended that as on the date of the accident, the Tractor and Trailer was insured with the 2nd respondent. Hence, the insurance company has to pay the compensation to the claimant.

4. The insurance company in the written statement denied the contention raised in the claim petition and also contended that the driver of the Tractor and Trailer was not having valid and effective driving license as on the date of the accident. The insurance policy is subject to the validity of driving license and terms and conditions of Insurance Policy. Hence, the insurance company is not liable to pay the compensation.

5. On the basis of the pleadings of the parties, the Tribunal framed the following issues for its consideration: 1. Whether the petitioner proves that the accident that took place on 13.09.2008 at about 6.30 p.m. Tar road, Doddagenigere village was due to rash and negligent driving of the Tractor and Trailer bearing Reg. No.KA.13-A-4002-4003 by its driver and he had sustained injuries in the said accident?

2. Whether the petitioner is entitled for compensation, if so, for what amount and from whom?

3. What order or award?

6. The claimant in order to prove his case examined himself as PW.1 and one independent witness has been examined as PW.2 and got marked Exs.P1 to P11. The officer of the Insurance Company was examined as RW1 and got marked the documents as Exs.R1 to R7.

7. The Tribunal after appreciating the oral and documentary evidence let in by the parties and taking into consideration the IMV report, spot mahazar copy of

the sketch and complaint held that due to actionable negligence on the part of the driver of the Tractor and Trailer, the accident has occurred and Dyavegowda succumbed to the injuries. With regard to the liability is concerned, the driver of the Tractor and Trailer was having license to drive the Tractor and Trailer (NT). The vehicle has been registered as a commercial vehicle (package policy). The driver of the Tractor and Trailer obtained the driving license subsequent to amendment of the motor vehicle Act and Rules i.e. on 01.06.2007. Hence, he is not liable to drive the commercial vehicle. Hence, the liability was fastened on the owner of the vehicle. Being not satisfied with the quantum of compensation and fastening the liability on the owner of the vehicle, the claimant has preferred this appeal.

8. Sri. Girish B. Baladare, learned counsel appearing for the appellant contended that the quantum of compensation awarded by the Tribunal is on the lower side. At the time of death, the deceased was aged about 45 years and he was earning more than Rs.13,000/- per month but the Tribunal has taken the monthly income

at Rs.4,000/- only, which is on the lower side. Further driver of tractor and trailor was having driving licence to drive tractor and trailor (NT). Hence, he is entitled to drive tractor and trailor commercial vehicle having a package policy.

9. On the other hand, Sri. B. Pradeep, learned counsel appearing for the 1st respondent argued in support of the judgment and award and contended that as the claimant is the major son of the deceased, he is entitled only for the loss of estate since he is not the dependent of the deceased. With regard to the liability is concerned, the Tractor and Trailer has been registered as a commercial vehicle. The driver of the offending vehicle having driving license to drive the Tractor and Trailer which is a non transport vehicle and he has not supposed to drive the commercial vehicle unless he obtains the endorsement from the R.T.O. to the effect that he can drive the commercial vehicle. He further submits that the Tribunal has awarded just and fair compensation and sought for dismissal of the appeal.

10. I have carefully considered the arguments addressed by Sri. Girish B. Baladare, advocate for the appellant and Sri. B. Pradeep, advocate for respondent No.1 and perused the judgment and award and oral and documentary evidence.

11. The claimant is the major son of the deceased Dyavegoda who died in the road traffic accident occurred on 13.09.2008 due to actionable negligence on the part of Tractor and Trailer. Though the claimant claimed that the deceased was earning Rs.13,000/- per month, no documents have been produced to substantiate the same. The Tribunal has taken the income of the deceased at Rs.4,000/- per month and deducted 1/2 of the income towards the personal and living expenses of the deceased and comes to a conclusion that he would have saved at least Rs.1,000/- per month out of his gross income and reckoning monthly saving of Rs.1,000/-, the annual savings comes to Rs.12,000/-. Since, the deceased was aged about 45 years at the time of accident, the Tribunal has rightly taken the multiplier as ''14'' as per the decision of the Hon''ble Supreme Court in the case of Sarla Varma Vs. Delhi Transport Corporation and another, reported in 2009 ACJ 1298 and awarded compensation of Rs.1,68,000/- towards loss of estate and a sum of Rs.20,000/- is awarded towards ''conventional heads''. Totally, the Tribunal has awarded a sum of Rs.1,88,000/- with interest at the rate of 6% per annum from the date of petition till the realization including the interim compensation if any awarded.

12. The compensation awarded towards the conventional heads is on the lower side as per the judgment cited supra. Hence, a sum of Rs.45,000/- is awarded towards conventional heads as against Rs.20,000/- awarded by the Tribunal. Hence, the claimant is entitled for total compensation of Rs.2,13,000/- as against Rs.1,88,000/- awarded by the Tribunal.

13. With regard to the liability is concerned, the driver of Tractor and Trailer obtained driving license on 01.06.2007 which is a non transport vehicle licence

whereas, the Tractor and Trailer was registered as a commercial vehicle-package policy. The person holding driving lience to drive the Tractor and Trailer - non transport vehicle, he cannot drive the commercial vehicle. The Tribunal after relying upon the various judgments of this Court and also Hon''ble Supreme Court, has fastened the liability on the owner of the vehicle.

14. I find there is no infirmity or irregularity in the judgment and award passed by the Tribunal by fastening the liability on the owner of the vehicle. The officer of the Insurance Company examined himself as RW.1 and he has produced the insurance policy of the offending vehicle and ''B'' register of the driving license extract as Exs.R2 and R6. The driving license extract clearly discloses that the driver of the Tractor and Trailer is eligible to drive only Tractor trailer - non transport vehicle. Hence, he cannot drive the transport vehicle.

15. In the result, the appeal is allowed in part. The judgment and award passed by the Addl. Senior Civil Judge and Addl. MACT., Hassan is modified. The claimant is entitled for compensation of Rs.2,13,000/- as against Rs.1,88,000/- awarded by the Tribunal. Insofar as liability is concerned, the order passed by the Tribunal is upheld. The 2nd respondent is liable to compensate the claimant.

