

(2015) 12 KAR CK 0085
In the Karnataka High Court
Case No : M.F.A. No. 5077 of 2013 (MV)

M. Malini and Others

APPELLANT

Vs

ICICI Lombard Motor Insurance and Others

RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 163-A, 166

Citation : (2015) 12 KAR CK 0085

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : Vinay T.R. for M.D. Anuradha Urs, Advocate, for the Appellant; B. Pradeep, Advocate, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the claimants is directed against the judgment and award dated 18th April 2013, passed in MVC No. 753/2012, by the X Additional Small Causes Judge, 35th ACMM, Motor Accident Claims Tribunal, Bangalore (SCCH-16), (for short, "Tribunal") for awarding reasonable compensation on the ground that, the Tribunal is not justified in dismissing the claim petition.

2. The facts in brief as stated in the claim petition are that, the claimants are the wife and a minor daughter of the deceased M. Krishna. They filed the claim petition under Section 166 of the Motor Vehicles Act, contending that, at about 8:15 P.M, on 15-01-2012, when the deceased M. Krishna was traveling on Honda Active bearing Registration No. KA-03/HK-2797 and returning home, he met with an accident, on account of rash and negligent riding by the rider of the motor cycle Honda Active bearing Registration No. KA-03/HK-6206. Due to the impact, the deceased fell down and sustained grievous injuries to head and was immediately shifted to Hospital, Bangalore, where he succumbed to the injuries sustained in the road traffic accident.

3. It is the case of the appellants that, the deceased was aged about 41 and working as a Driver in a Private Company, earning Rs. 3,000/- per month and hale and healthy prior to the accident. On account of the untimely death of the

deceased, the appellants have lost the love and affection, inspiration and guidance, apart from social, financial and moral support and therefore, they have to be compensated reasonably.

4. On account of the death of the deceased, the appellants filed the claim petition under Section 163A of the Motor Vehicles Act, before the Tribunal, seeking compensation against the respondents. The said claim petition had come up for consideration before the Tribunal on 18th April, 2013. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, dismissed the claim petition, holding that the claimants have failed to prove the negligence on the part of the rider of the other motor cycle and the claimants have not filed the case against the Insurance Company of the motor cycle of the deceased as a necessary party. Being dissatisfied with the dismissal of the claim petition by the Tribunal, the appellants are in appeal before this Court, seeking reasonable compensation with reasonable rate of interest from the date of petition till the date of claim petition on account of the death of the deceased in the road traffic accident.

5. We have gone through the grounds urged in the memorandum of appeal and heard the learned counsel appearing for appellants and also the Insurer, for quite some time.

6. Shri. Vinay T.R., appearing for Smt. Anuradha Urs. M.D., learned counsel appearing for claimants/appellants vehemently submitted that, the Tribunal grossly erred in dismissing the claim petition on the ground that the claimants have failed to prove the negligence on the part of the rider of the motor cycle and they have also not filed the case against the insurer of the motor cycle of the deceased. The said reasoning given for dismissing the claim petition cannot be sustained and is liable to be set aside, for the reason that the claim petition is filed under Section 163A of the Motor Vehicles Act and therefore, the impugned judgment and award passed by Tribunal may be set aside and reasonable compensation may be awarded on account of the death of the deceased in the road traffic accident.

He further submitted that the deceased was hale and healthy and aged about 41 years working as Driver in a private Company, earning substantial sum. He was the only earning member in the family and the entire family was dependent on the income of the deceased. Claimants are none other than the wife of the deceased aged about 35 years and minor daughter is the deceased aged about ten years. The claim petition is filed under Section 163-A of the M.V. Act. But, the Tribunal, contrary to the material on record and also the law laid down by the Hon'ble Apex Court and this Court in host of judgments, has dismissed the claim petition, which cannot be sustained. Therefore, as per II Schedule to Section 163-A of the M.V. Act, reasonable compensation may be awarded towards loss of dependency, taking the annual income of the deceased at Rs. 40,000/- per annum, deducting 1/3rd towards personal and living expenses of deceased and adopting multiplier of "14" as the deceased was aged about 41 years, at the time

of death and also towards conventional heads, in the light of the judgment of the Hon'ble Apex Court and this Court in host of decision.

Further, learned counsel appearing for claimants vehemently submitted that, as the accident has occurred on 15-01-2012, in view of the ratio of law laid down by the Hon'ble Apex Court and this Court in catena of decisions, at least 9% to 10% interest per annum may be awarded, to meet the ends of justice and the impugned judgment and award be modified accordingly.

7. As against this, Shri. B. Pradeep, learned counsel appearing for both respondent Nos. 1 and 3/ICICI Lombard Motor Insurance & ICICI Lombard General Insurance Company Limited, tried to substantiate the impugned judgment and award passed by Tribunal, dismissing the claim petition. However, after going through the relevant provisions of the Motor Vehicles Act, viz. Section 163-A and also Second Schedule to the said provision, and also the judgments of the Apex Court and this Court in host of judgments, he fairly submitted that the reasoning given by the Tribunal cannot be sustained and the same is liable to be set aside and appropriate order may be passed in accordance with law, setting aside the impugned judgment and award and awarding reasonable compensation on account of the death of the deceased in the road traffic accident, in accordance with law.

8. After hearing learned counsel for the parties, and after careful perusal of the judgment and award passed by the Tribunal, the only point that arise for our consideration in this appeal is,

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

9. The undisputed facts of the case are, the occurrence of accident and the resultant death of the deceased Krishna M. It is also not in dispute that the deceased was aged about 41 years and working as Driver in a private company. It emerges that the claimants are none other than the wife aged about 35 years and minor daughter aged about 10 years and the deceased was the sole earning member in the family and the entire family was dependent on his income. On account of the untimely death of deceased in the road traffic accident, the claimants have suffered mental pain and agony and are in serious financial distress.

10. The claim petition is filed under Section 163A of the Motor Vehicles Act. Having regard to the age and avocation of the deceased, we assess the income of the deceased at Rs. 40,000/- per annum, as per Second Schedule to Section 163A of the Motor Vehicles Act. The deceased was aged about 41 years and the proper multiplier applicable is "15". Further, as the dependents are two in number, we deduct 1/3rd towards personal expenses of the deceased. Accordingly, If 1/3rd (i.e. Rs. 13,333/-) is deducted from Rs. 40,000/- towards his personal and living expenses, the net income would be Rs. 26,667/- per annum. Thus, the compensation towards loss of dependency would work out to

Rs. 4,00,005/- (i.e. Rs. 26,667/- x "15") and accordingly it is awarded.

11. Further, as per the Second Schedule to Section 163A of Motor Vehicles Act, the claimants are entitled to a sum of Rs. 2,000/- towards funeral expenses; Rs. 5,000/- towards loss of consortium, and Rs. 2,500/- towards loss of estate.

12. Thus, the total compensation payable to claimants works out to Rs. 4,09,505/- and the same is awarded.

13. Regarding the specific contention of the learned counsel appearing for Insurer and the reasoning given by Tribunal at paragraph No. 20, internal page No. 8 of its judgment, it is significant to note that when the claim petition is filed under Section 163A of the Motor Vehicles Act, the claimants are not under an obligation to prove the negligence and therefore, the Tribunal ought not to have dismissed the claim petition, contrary to the relevant provisions of the Motor Vehicles Act.

14. Further, one more reason for dismissing the claim petition is that, the claimants have not impleaded the insurance company of the motor cycle of the deceased. However, they have filed necessary application for impleading and thereafter filed the amended memorandum of appeal, impleading the insurance company of the motor cycle of the deceased and the insurers of both the vehicles are one and the same, i.e. ICICI Lombard Motor Insurance, one having its office at Mumbai and another at Andhra Pradesh. Therefore, the said reasoning given by Tribunal cannot be sustained and is liable to be set aside and consequently, the impugned judgment and award passed by Tribunal, dismissing the claim petition is also liable to be set aside.

15. Further, it is a case of death of the deceased who has left behind wife aged about 35 years and minor daughter aged about 10 years, at the time of accident.

16. Therefore, taking into consideration the totality of the case on hand and facts and circumstances of the case, we hold that the claimants are entitled to just and reasonable compensation of Rs. 4,09,505/- on account of the death of deceased in the road traffic accident and the claim petition is to be allowed setting aside the impugned judgment and award passed by Tribunal.

17. Further, as rightly pointed out by learned counsel appearing for claimants, as the accident has occurred on 15-01-2012, in the light judgment of the Hon''ble Apex Court and this Court in catena of decisions, we award interest at the rate of 9% per annum, to meet the ends of justice.

18. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellants is allowed.

The impugned judgment and award dated 18th April 2013, passed in MVC No. 753/2012, by the X Additional Small Causes Judge, 35th ACMM, Motor Accident Claims Tribunal, Bangalore (SCCH-16), is hereby set aside;

The claim petition filed by claimants is allowed-in-part;

The claimants are held entitled to a compensation of Rs. 4,09,505/- with 9% interest per annum from the date of petition till the date of realization.

The Respondent Nos. 1 and 3/ICICI Lombard Motor Insurance are directed to deposit the compensation of Rs. 4,09,505/-, with interest thereon at 9% per annum, within three weeks from the date of receipt of copy of the judgment.

Immediately on such deposit by them, a sum of Rs. 1,50,000/- with proportionate interest shall be invested in the name of first appellant -wife of deceased, in Fixed Deposit, in any scheduled/Nationalized/Grameena Bank, for a period of fifteen years, renewable by fifteen years, with liberty reserved to her to withdraw the periodical interest.

A sum of Rs. 1,50,000/- with proportionate interest shall be invested in the name of second appellant -minor daughter of deceased, in Fixed Deposit, in any scheduled/Nationalized/Grameena Bank, till she attains the age of 30 years, with liberty reserved to first appellant/mother and natural guardian to withdraw the periodical interest for her welfare till she attains the age of 21 years and from 22 years to 30 years, the appellant No. 2 is entitled to withdraw the interest periodically.

Remaining sum of Rs. 1,09,505/- with proportionate interest shall be released in favour of the appellant No. 1, immediately.

Office to draw award, accordingly.