

(2018) 08 KAR CK 0036

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5861, 5862 Of 2014 (Mv)

Manju @ Manjunatha

APPELLANT

Vs

Chandregowda

RESPONDENT

Date of Decision : 02-08-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149

Citation : (2018) 08 KAR CK 0036

Hon'ble Judges : K.Somashekar, J

Bench : Single Bench

Advocate : N. Gopalkrishna, O. Mahesh

Final Decision : Allowed

Judgement

1. These appeals are preferred by the appellants/claimants against the common judgment and award dated 02.06.2014 rendered by the Senior Civil Judge and JMFC, Pandavapura seeking enhancement of compensation.

2. MFA No.5861/2014 is filed against the order passed in MVC No.439/2012. MFA No.5862/2014 pertains to the case in MVC No.438/2012 and MFA No.5863/2014 is relating to MVC No.436/2012.

3. The factual matrix of the appeals is that on 11.01.2012 at about 11.00 AM, claimants and deceased Divya while traveling in TATA Ace No.KA-11-A-0957 in order to attend the function at Chikkallur Temple from Katteri village, the driver of the said TATA Ace drove the vehicle in rash and negligent manner at high speed and near Varuna lake situated on Mysore-T.Narasipura road, he lost control over the vehicle and it got turtle and toppled on the left side of the road, as a result of the same, the accident occurred and daughter of petitioner in MVC No.436/2012 sustained grievous injuries to head and died in hospital on 14.01.2012 and the petitioners in other petitions sustained injuries. They had spent huge amount towards medical expenses and food, diet, transportation, attendant charges. Prior to the accident, the petitioners were hale and healthy

and were earning good income. After the accident they are not able to do the work as earlier. Further, deceased Divya was aged 3½ years old and was very active and bright and she was the only daughter to the petitioners in MVC No.439/2012. Since the accident occurred due to rash and negligent driving of the offending TATA Ace vehicle, by its driver, respondent no.1 being the owner and respondent No.2 being the insurer are jointly and severally liable to pay the compensation. On these grounds, the claim petitions were filed seeking compensation before the Tribunal.

4. Upon service of notice, both the respondents entered appearance through their counsel. But respondent No.2 filed objection statement in respect of all the petitions denying the petition averments and sought for dismissal of the claim petitions.

5. Based on the pleadings of the parties, the Tribunal framed separate issues in all the claim petitions. In order to substantiate their case, petitioners in MVC No.436/2012, 438/2012 and 439/2012 got examined as PW.1 and PW.2 and got marked documents as per Exs.P1 to P22. On behalf of the respondents, RW.1 and 2 were examined and Exs.R1 to R3 were got marked. The Tribunal, after hearing arguments advanced by learned counsel for the parties and on evaluation of entire oral and documentary evidence on record, rendered the impugned common judgment, awarding compensation of Rs.12,000/- in MVC No.436/2012, Rs.12,000/- in MVC No.438/2012 and Rs.3,00,350/- in MVC No.439/2012 with interest @ 6% from the date of petition till the date of deposit. Further, the liability was fastened on the respondent - owner to pay the compensation awarded. It is this judgment which is under challenge under these appeals by urging various grounds.

6. Sri N.Gopalkrishna, learned counsel for the claimants in all the appeals submits that he is not insisting for enhancement relating to MVC No.436/2012 and MVC No.438/2012. He is seeking enhancement only in respect of MVC No.439/2012. His submission is placed on record.

7. He contends that the Tribunal erred in exonerating the second respondent-insurance company from the liability of paying the compensation awarded on the ground that vehicle which caused the accident was a Light Transport Vehicle, whereas, the driver of that vehicle was holding license to drive LMV, without transport endorsement, hence the liability was fastened on the owner of the vehicle. It is further contended that the Tribunal ought to have directed the second respondent- insurance company at the first instance to pay the compensation awarded to the third party victim and thereafter would have given liberty to the insurer to recover compensation paid from the insured-owner. This settled principle of "pay and recover" is recognized by the Hon'ble Supreme Court in catena of decisions.

8. He further contends that the scheme of the Act and object and purpose of the Act is to ensure that the unfortunate third party victim of road accidents would

get just and adequate compensation regardless of the paying capacity of the owner of the vehicle and driver of the vehicle. The provisions of Section 147 and 149 of the Act is to provide compensation to third party victim of road accidents. He further contends that the Tribunal ought to have awarded higher compensation than the compensation claimed in respect of death of a minor child considering the principles laid down by the Hon'ble Supreme Court in Kishan Gopal & another vs. Lala and Another (2013 ACJ 2594). According to the said judgment, the appellants are entitled for the compensation not less than Rs.5,00,000/-. On all these grounds he seeks for enhancement of compensation in MVC No.439/2012 and saddling of liability on the insurance company as per the decision rendered by the Hon'ble Supreme Court in Mukund Dewangan Vs. Oriental Insurance Co.Ltd., (2017) 14 SCC 663 wherein it is held that the absence of transport endorsement per se cannot be a ground to absolve the insurer from the award liability.

9. Per contra, Sri O.Mahesh, learned counsel for the insurer vehemently contends that the driver of the offending vehicle had no valid and driving license authorizing him to drive class type of vehicle involved in the alleged accident. The offending vehicle did not had fitness certificate and did not had permit at the time of accident. As such the first respondent owner has violated the terms and conditions of the policy as he has entrusted the vehicle to the driver who was not having valid driving license as on the date of the accident. This contention is supported by the oral evidence of RW.1 - the Assistant RTO official and RW.2 - the Assistant Manager, Legal and so also, documentary evidence such as Exs.R1 to R3. The Tribunal having considered all these evidence, has rightly held that the insurance company is not liable to pay compensation in view of violation of the terms and conditions of the policy.

10. He further contends that the judgment relied on by the counsel for appellants is not applicable to the facts and circumstances of the case on hand. Further, the compensation awarded by the Tribunal is on consideration of oral and documentary evidence available on record and the same is just and reasonable. The Tribunal has rightly fixed the liability on the part of the owner of the offending vehicle. The impugned judgment and award does not call for interference of this Court. Hence, sought for dismissal of the appeals.

11. Having regard to this strenuous contentions as taken by learned counsel for the claimants and counter made by learned counsel for the insurance company there is no dispute with regard to the claimants sustaining injuries and deceased Divya, aged 3 ½ years succumbed to the injuries in a road traffic accident.

Sri.N.Gopalkrishna, learned counsel for the appellants/claimants in MFA No.5862/2014 and MFA No.5863/2014 fairly submits he is not insisting for enhancement in the above appeals. His only contention is that in view of decision of Hon'ble Supreme Court in Mukund Dewangan Vs. Oriental Insurance Co.Ltd., (2017) 14 SCC 663 the liability should be saddled on the insurance company instead of the owner of the offending vehicle.

12. Whereas, Sri O.Mahesh, learned counsel for the insurer contends that the law laid down in the case of Mukund Devangan is being considered in a larger Bench. Therefore, precedential value of the case in Mukund Devangan is in doubt. The said contention cannot be accepted for the reason that the interpretation of law holding the field has to be followed. The determination of the present pending dispute cannot be kept undecided until the judgment of the larger bench is received. The pendency of consideration of the question of law by a larger Bench of the Court does not per se require deferral of consideration of the same question by all other courts indefinitely when the case in reference has already laid down the ratio. Mere reference does not rob off the precedential force of the case referred to the larger Bench. The ratio of the decision referred for consideration by a larger Bench cannot be said to be in suspended animation. A decision of the Apex Court does not diminish in precedential value merely because the same is referred to a Larger Bench for reconsideration. Therefore, the contention of learned counsel for the insurer does not hold any water to address the issues in this appeal.

13. The Hon'ble Apex Court in Mukund Devangan's case (supra) has held that the absence of transport endorsement per se cannot be a ground to absolve the insurer from the award liability and the Tribunal could not have let the insurer go free even in the absence of transport endorsement on the driving licence of the driver of the offending vehicle. Therefore, the issue is no more res integra. The present case is clearly covered by the judgment of Mukund Dewangan's case (supra). Hence, the entire liability has to be fastened on the respondent - insurance company.

14. In so far as MFA No.5861/2014 pertaining to MVC No.439/2012 is concerned, the petitioners are the parents of deceased Divya. From the perusal of PM report at Ex.P4, inquest report marked at Ex.P5, it is forthcoming that deceased Divya was aged about 3 ½ years as on the date of accident. The determination of damages for loss of human life is an extremely difficult task and it become all the more baffling when the deceased is a child. The future of a child is uncertain. Where the deceased is a child, she was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment of estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.

15. The claimants/appellants in MFA No.5861/2014 have lost their daughter and due to her untimely death certainly they have lost their future and bright

daughter and also deprived of her love and affection. The loss of their daughter cannot be compensated in terms of money. The Tribunal by considering the decisions of the Hon'ble Apex Court and so also decisions of this Court, had awarded compensation of Rs.3,00,350/- under different heads. In this regard, learned counsel for appellants has placed reliance on a judgment passed by the Hon'ble Supreme Court in the case of KISHAN GOPAL & ANR. VS. LALA & ORS. ((2014) 1 SCC 244), wherein the Hon'ble Supreme Court has awarded in all, total compensation of Rs.5,00,000/- relating to death of a boy aged about 10 years by taking his notional income at Rs.30,000/- and so also the age factor of the mother of the deceased is also considered. Hence, the learned counsel for appellants contended that the judgment rendered by the Hon'ble Supreme Court is clearly applicable to the given facts and circumstances of the case wherein the claimants have lost their daughter aged about 3½ years and also her love and affection. The judgment rendered by the Hon'ble Supreme Court in Kishan Gopal (supra) is squarely applicable to the case on hand. In this view of the matter, awarding compensation of Rs.5,00,000/- to the claimants in MFA No.5861/2014 on the basis of Kishan Gopal (supra) would meet the ends of justice.

For the aforesaid reasons and findings, I proceed to pass the following:

ORDER

The appeals are allowed in part.

Appellants/claimants in MFA No.5861/2014 are entitled for total compensation of Rs.5,00,000/- with interest @ 6% p.a. from the date of petition till realisation.

The liability saddled on the owner of offending vehicle is set aside and the entire liability is fastened on respondent - Sriram General Insurance Company Ltd in view of ratio of relevance in Mukund Dewangan's case (supra).

The impugned common judgment and award rendered by the Tribunal is modified accordingly.

The respondent - insurance company shall deposit the entire compensation, along with interest accrued, within a period of six weeks from the date of receipt of copy of this judgment and, on such deposit, the same shall be disbursed to the claimants, on proper identification.

Office to draw the decree accordingly.