
(2009) 09 KAR CK 0050

In the Karnataka High Court

Case No : Miscellaneous First Appeal No"s. 8876 and 9256 of 2006

Marakka and Others

APPELLANT

Vs

Shahid Khan and Another

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 177, 181, 3

Citation : (2011) ACJ 690 : (2009) 6 KarLJ 678 : (2010) 1 KCCR 138 : (2011) 7 RCR(Civil) 2184

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Mahesh R. Uppin, in M.F.A. No. 9256 of 2006 and A.M. Venkatesh, in M.F.A. No. 8876 of 2006, for the Appellant; Mahesh R. Uppin, for Respondents-1 to 4 in M.F.A. No. 8876 of 2006 and A.M. Venkatesh, for Respondent-2 in M.F.A. No. 9256 of 2006, for the Respondent

Judgement

B.V. Nagarathna, J.—Though these appeals are posted for admission, with the consent of Counsel on both sides, they are heard finally.

2. M.F.A. No. 9256 of 2006 is filed by the claimants seeking enhancement of compensation while M.F.A. No. 8876 of 2006 is filed by the Insurance Company with regard to the liability.

3. For the sake of convenience, the parties shall be referred to in terms of their status before the Tribunal.

4. The claimants filed the claim petition seeking compensation in respect of the death of one Nagaraja in a road traffic accident that occurred on 27-9-2004 at about 10.00 a.m. when he was proceeding in an autorickshaw bearing No. KA-16-7984 as a passenger from Molakalmuru to Megalahatti. When the said autorickshaw came near Nunkappa Katti, at that time, the driver of the autorickshaw drove in a rash and negligent manner, as a result the vehicle hit the road side tamarind tree and toppled towards the side of the road and Nagaraja sustained serious and grievous injuries and succumbed to the same on his way

to VIMS Hospital, Bellary at about 6.30 p.m. on the same day. His legal representatives filed the claim petition seeking compensation on account of his death.

5. After service of notice from the Tribunal, the owner of the vehicle did not appear and was placed *ex parte*, while the Insurance Company appeared and filed its written statement denying the averments made in the claim petition and specifically contended that the Insurance Company was not liable to satisfy the award.

6. On the basis of the said pleadings, the Tribunal framed the following issues for its consideration:

(1) Whether the petitioners prove that on 27-9-2004 at about 10.00 a.m. the deceased was moving in an autorickshaw bearing Regn. No. KA-16/7984 as a passenger from Molakalmur to Megalahatti. The respondent 1 being the driver of the said auto drove the same in a rash and negligent manner with high speed near Nunkappana Katte and both the back tyres got bursted and hit to the road side tamarind tree and the autorickshaw toppled towards road side and caused accident? Due to the said accident the petitioner sustained injuries and he was succumbed to injuries on the way to the VIMS Hospital, Bellary?

(2) Whether the respondent 3 prove that the first respondent was not at all possessed valid and effective driving licence to drive the autorickshaw and the respondent 2 violated the policy condition on the date of the alleged accident as contended?

(3) Whether the petitioners are entitled to compensation against the respondents?

(4) What order or award?

7. In support of their case, the claimants examined P.W. 1 and got marked Exs. P. 1 to P. 9 while the respondent examined R.W. 1 and got marked Exs. R. 1 and R. 2. On the basis of the said material, the Tribunal awarded compensation of Rs. 3,03,800/- with interest at 6% p.a. from the date of the claim petition till realisation and directed the Insurance Company to satisfy the award jointly and severally with the owner of the said vehicle.

8. Not being satisfied with the said quantum of compensation, the claimants have preferred this appeal while Insurance Company has filed an appeal challenging its liability to satisfy the award.

9. The respondents appeared, but only 2nd respondent herein contested the matter.

10. We have heard the learned Counsel for the claimants and the learned Counsel for the Insurance Company.

11. It is submitted on behalf of the claimant-appellants that the accident

occurred in the year 2004 and the deceased was working as a coolie and earning a sum of Rs. 6,000/- per month but the Tribunal took into consideration monthly income at Rs. 2,100/- and thereby awarded a meager compensation on the head of loss of dependency. He further submits that taking into consideration the number of claimants only 1/4th of the income ought to be deducted towards the personal expenses of the deceased and therefore, this is a fit case for enhancing the compensation on the head of loss of dependency as well as on other conventional heads.

12. Per contra, Counsel for the Insurance Company submits that in the instant case, the driver of the autorickshaw was prosecuted u/s 3 of the Motor Vehicles Act, 1988 for not possessing a valid and effective driving licence and further the vehicle had a permit within the limits of the city of Chitradurga. But in the instant case it was plied beyond the said city limits and therefore the Insurance Company is not liable to set aside the award.

13. Having heard the Counsel on both sides, the following points arises for our consideration:

(1) Whether the Insurance Company is liable to set aside the award?

(2) Whether the appellants are entitled to enhanced compensation?

14. R.W. 1 has let in evidence on behalf of the Insurance Company to contend that at the time of the accident, the driver of the autorickshaw did not possess a valid and effective driving licence and that he was prosecuted u/s 3 read with Section 181 and Rule 94-A read with Section 177 of the Motor Vehicles Act, 1988, respectively and therefore there was a violation of the terms and conditions of the policy. Evidence was also let into state that the seating capacity of the autorickshaw was 5(4+1), but in the instant case it was over loaded with six persons and therefore there was a violation of the terms and conditions of the policy. Apart from the fact that the permission which was taken in respect of the autorickshaw was restricted to only Chitradurga city, but it was plied to outside the city limits. The Tribunal while appreciating the said evidence concluded that there was violation of the terms and conditions of the policy inasmuch as the driver of the offending vehicle was not having a valid driving licence. However, in the operative portion of the order, it has directed that the Insurance Company is liable jointly and severally with the owner of the vehicle to satisfy the said award. But, from the body of the judgment of the Tribunal, it is noticed that the Tribunal has observed that the Insurance Company can recover the amount of compensation from the owner of offended vehicle. Under the circumstances, we are of the view that the Insurance Company is liable to first satisfy the award and liberty is reserved to the Insurance Company to recover the said compensation from the owner of the vehicle with regard to the violation that has been caused by the owner of the vehicle and which are narrated above. In view of our finding that the Insurance Company is at liberty to recover the compensation from the 1st respondent-owner of the vehicle, liberty is reserved

to the Insurance Company to file an appropriate proceeding and recover the same from the owner after proving the violations of the policy, including the absence of driving licence. Hence, point No. 1 is answered against the appellant-Insurance Company.

15. As far as the quantum of compensation is concerned, since the evidence is to the effect that the deceased was working as a coolie and his age was 30 years and the fact that the accident occurred in the year 2004, we are of the considered view that a sum of Rs. 3,000/- has to be assessed as the notional income of the deceased and taking into consideration the fact that there are four claimants. 1/4th of the said amount has to be deducted towards the personal expenses of the deceased and by applying the appropriate multiplier of 17, keeping in mind the ratio of the decision of the Apex Court in Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. 2009 AIR SCW 4992, compensation on the head of loss of dependency is now assessed at Rs. 4,59,000/-. In addition, a sum of Rs. 40,000/- is awarded towards the conventional heads. The Tribunal has awarded a sum of Rs. 10,000/- towards the medical expenses which amount is retained. Consequently, the total compensation is now assessed at Rs. 5,09,000/- instead of Rs. 3,03,800/-. The enhanced compensation shall carry interest at 6% p.a. from the date of claim petition till realisation.

16. Out of the enhanced compensation, a sum of Rs. 40,000/- with proportionate interest is awarded to the 4th appellant-the mother of the deceased. The said amount shall be deposited in any Nationalised Bank for an initial period of five years and she shall be entitled to draw the periodical interest on the said deposit. The balance compensation is apportioned equally between appellants 1, 2 and 3. Out of the said amount, a sum of Rs. 50,000/- with proportionate interest shall be deposited each in the name of the 2nd and 3rd appellants until they attain the age of majority and the 1st appellant-mother is entitled to draw the periodical interest on the said deposit for realising for the purpose of the minor girls, A sum of Rs. 50,000/- with proportionate interest shall be deposited in the name of the 1st appellant for an initial period of five years in any Nationalised Bank and shall be entitled to draw periodical interest on the said deposit. The balance amount shall be released to the appellants.

17. Accordingly, M.F.A. No. 9456 of 2006 is allowed-in-part. M.F.A. No. 8876 of 2006 is dismissed. The amount in deposit to be transmitted to the Tribunal.