

(2016) 06 KAR CK 0025

In the Karnataka High Court

Case No : M.F.A. No. 25218 of 2010(MV).

**Minor Vasanthamma K. Mahadevappa - Appellant @HASH N.K.
Sadashivappa Honnurappa and another**

Date of Decision : 02-06-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, Section 166

Citation : (2016) AAC 2338

Hon'ble Judges : Mrs. Rathnakala. J.

Bench : Single Bench

Advocate : Y. Lakshmikant Reddy, Advocate, for the Appellant; B. Sharana Basawa and R.R. Mane, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

Mrs. Rathnakala. J. - Though the matter is listed for admission, after hearing both the learned counsel it is taken up for final disposal.

2. Facts not in dispute between the parties are, a claim petition under Section 166 of the I.M.V, Act was filed in respect of accidental injuries suffered by the minor claimant aged 6 years in a motor vehicle accident dated 03.02.2009 at 9.30 a.m. on Bellari-Raydurga Road in Hosagudda village. It was the case of the claimant that during the accident, she suffered crush injury to her right leg due to rash and negligent driving of mini lorry bearing registration No.KA-34/4883 by it's driver. The police had registered a case against the driver of the vehicle in respect of the said accident. The claim petition was contested by the driver, owner and insurer of the vehicle. The Tribunal on overall consideration of the material on record placed before it, capitalized the compensation to Rs. 1,10,000/- with interest at 6% per annum. However, bailed out the insurance company from it's liability to indemnify the owner on observing that the driver of the vehicle did not possess valid driving licence to drive the kind of vehicle i.e., mini lorry, but had licence to drive light motor vehicle.

3. Sri. Y. Laxmikant Reddy, learned counsel for the appellant assailing the impugned judgment and award submits that the Tribunal unmindful of the

seriousness of the injuries suffered by the minor, pain and agony undergone, expenses meted out by her parents has awarded compensation of Rs. 1,10,000/- which is too meager; Relying upon the judgment of the Apex Court reported in 2013 ACJ 2445 : (AIR 2014 SC 736) in the matter of Mallikarjun v. Divisional Manager, National Insurance Co. Ltd., reported in 2013 ACJ 2445, learned counsel submits that the Apex Court has laid down certain guidelines regarding compensation in respect of the injuries/permanent disability suffered by the minor children in motor vehicle accident cases. In the light of the judgment supra, the compensation awarded by the Tribunal may be enhanced and the judgment of the Tribunal may be modified to the said extent. By the impugned judgment, the insurance company is exonerated from it's liability to indemnify the risk of the owner of the vehicle, but same is not legal in the light of the judgment of the Apex Court in the case of National Insurance Co. Ltd., v. Annappa Irappa Nesaria reported in LAWS (SC) 2008 (1) 142 : (AIR 2008 SC 1418). Though the driver of the vehicle did not possess the licence to drive transport vehicle, he had valid driving licence to drive light motor vehicle and was competent to drive the mini lorry. For the said reason only the insurance company cannot be absolved of it's liability.

4. In reply, Sri. B. Sharanabasava, learned counsel for the first respondent-owner though supports the submission of Sri. Y. Laxmikant Reddy, in respect of liability of the insurance company to indemnify the risk of the owner, contends that the compensation awarded is adequate in the absence of any documentary proof with regard to the expenses meted towards medical expenses and incidental charges and the Tribunal has rightly quantified the compensation and interference is not called for.

5. Sri. R.R. Mane, learned counsel for the insurance company relying on the very same judgment of the Apex Court i.e., Annappa's case (AIR 2008 SC 1418), took me through the definition of Sections, 2, 2(16), 2(21), 2(23) and 3 of M.V. Act and submits that though there is no dispute to the fact that the driver had valid driving licence to drive a medium goods vehicle, same cannot be equated to the nature of vehicle covered by the insurance policy at Ex.R-1 which contemplates the gross weight of the vehicle as 10500 kilograms. He contends that the Tribunal has rightly discussed this aspect of the matter at paragraphs No.15 and 16 of it's judgment. In Annappa's case (supra), the vehicle involved in the accident being a matador van, unladen weight of which was below 7500 kgs. the Apex Court found that it does not fall within the category of Section 10(2)(e) (Transport vehicle) of the Act. But in the case on hand since the vehicle involved was a lorry does not fall within the category of Section 10(2)(e) (Transport vehicle) of the Act. The driver since was holding licence to drive light motor vehicle, insurance company cannot be called upon to indemnify the risk of the owner of the vehicle under it's contractual obligation under policy at Ex.R-1. The award of the Tribunal is since well reasoned in respect of fixing the liability, the appeal so far as challenging the award with regard to the liability of the insurance company is liable to be rejected.

6. In the light of the above submissions, the sole point arises for consideration is,
(1) "Whether the compensation awarded by the Tribunal is just and reasonable?"
(2) Whether contractual obligation between the owner and insurer do not cover the present incident?"

7. Admittedly, the minor claimant suffered the following injuries during the accident in question.

- (1) Deglowing of skin over ® foot
- (2) ® ankle bones exposed & crushed, tendons exposed.
- (3) Lower end on ® tibia is crushed.

8. She was treated as inpatient for two months and five days. The Tribunal assessed the compensation at Rs. 25,000/- towards pain and agony, Rs. 10,000/- towards food, nourishment and attendant charges during the period of treatment, Rs. 5,000/- towards minimum medical expenses, Rs. 60,000/- towards loss of amenities and Rs. 10,000/- towards disfigurement.

9. The risk of the owner is covered by the insurance policy as on the date of accident. The Apex Court, in the case of Mallikaijun (AIR 2014 SC 736) cited supra has laid down certain guidelines as to the mode of evaluating the compensation in the case of children suffering disability on account of motor vehicle accident. In a claim for compensation pertaining to a minor aged 12 years who had suffered fracture of tibia of right leg, the Apex Court observed thus:

"12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure towards treatment, attendant etc., should be, if the disability is above 10 per cent and up to 30 per cent to the whole body, Rs. 3,00,000; up to 60 per cent, Rs. 4,00,000: up to 90 per cent, Rs. 5,00,000 and above 90 per cent, it should be Rs. 6,00,000. For permanent disability up to 10 per cent, it should be Rs. 1,00,000, unless there are exceptional circumstances to take a different yardstick."

10. In the light of the above, it is needless to state that the Tribunal has failed to capitalize the compensation properly which would neutralise the pain and suffering undergone by the minor and inconvenience, financial implication on her parents and same requires to be reassessed.

11. The doctor has assessed disability of the claimant at 40% to the limb. In reference to the whole body, it comes to about 13% (40X1/3). In accordance with the observation made by the Apex Court in the case of Mallikarjun (AIR 2014 SC 736) supra, claimant is entitled for a sum of Rs. 3,00,000/- towards

disability, Rs. 50,000/- towards medical and incidental expenses met by her parents, Rs. 20,000/- towards pain and suffering and Rs. 20,000/- towards disfigurement.

12. Coming to the question of liability to pay the compensation, the contention that the driver of the vehicle did not possess valid licence to drive the kind of vehicle he was driving at the relevant point of time was taken before the Tribunal itself by the insurer. Having observed that the driver was holding licence to drive light motor vehicle and the vehicle involved in the accident was a mini lorry and its unladen weight was 10800 kgs, certainly the driver was not authorised to drive the vehicle. The owner since had violated the terms and conditions of the policy rightly the Tribunal exonerated the insurer from the liability to indemnify the insured. The above factual aspect about unladen weight of the vehicle having not been disputed by the claimant and owner, no liability can be fastened against the insurer, having observed that the owner had committed breach of contract by entrusting the vehicle to a driver who was not entitled to drive the vehicle.

13. Accordingly, appeal is allowed in part and the judgment and award of the Tribunal is modified as below:

(i) Claimant-appellant is entitled for the compensation of Rs. 3,90,000/- as against Rs. 1,10,000/- awarded by the Tribunal with interest at 6% per annum from the date of petition till realisation.

(ii) First respondent/owner is directed to deposit the compensation along with accrued interest before the concerned Tribunal within four weeks.

14. Registry is directed to transfer the LCR to the concerned Tribunal forthwith.