(2016) 06 KAR CK 0207

In the Karnataka High Court

Case No : M.F.A. No. 8715 of 2010

M/s National Insurance Company Limited — APPELLANT

Vs

R.T. Asha — RESPONDENT

Date of Decision : 14-06-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2017) AAC 384

Hon'ble Judges : Mr. B.S. Patil, J.

Bench : Single Bench

Advocate : Sri. A.M. Venkatesh, Advocate, for the Appellant; Sri. Harish Kumar and Sri R.G. Nagaraju, Advocates, for the Respondent No. 4; Sri Sundar Raj, Advocate, for the Respondent Nos. 1-3

Final Decision : Dismissed

Judgement

Mr. B.S. Patil, J.—Though this appeal has been listed for condonation of delay, as this matter is of the year 2010, with the consent of learned counsel for both parties, the same is taken up for admission, after condoning the delay.

2. Appellant is the National Insurance Company Limited. It is aggrieved by the judgment and award dated 04.02.2010 passed by the Additional Motor Accident Claims Tribunal, Hiriyur in M.V.C. No. 117/2007 awarding total compensation of Rs. 5,78,000/- along with interest at 6% per annum from the date of petition till realization. The liability has been fastened jointly and severally on the appellant - insurance Company and the owner of offending motor vehicle.

3. Briefly stated facts leading to the present appeal are, husband of 1st respondent, Dharmaraj who was the son of respondents 2 and 3 met with an accident on 02.07.2006 involving motor cycles bearing registration Nos. KA-16/J-3292 and KA-16/J-1098. Deceased was proceeding on his motor cycle from Hiriyur by-pass towards Hiriyur. At that time, another motor cycle driven by its rider - 4th respondent herein came from KSRTC bus stand in high speed and

dashed against the motor cycle belonging to the deceased. On account of the impact, Dharmaraj fell down and sustained injuries resulting in his death. Deceased was working as a Junior Technical Officer in Matrix Private Limited at Hyderabad. It was urged that he was earning salary of Rs. 5,500/- per month. On account of his death, claimants being his widow and parents were put to great loss and irreparable agony.

4. Before the Claims Tribunal, Smt R.T. Asha widow of deceased was examined as P.W.1. One Chandrashekaraiah was examined as P.W.2. Exs.P1 to P10 were produced and marked. On behalf of appellant - Insurance Company, Smt Kumuda Krishnamurthy, the Administrative Officer was examined as R.W.1. Exs. R1 to R2 were marked in evidence.

5. On appreciation of the evidence on record, the Tribunal has found that the accident was caused on account of rash and negligent act on the part of the rider of the offending motor vehicle of which the appellant is the insurer The Tribunal has persuaded itself to hold that it was a head-on collision. The contributory negligence on the part of deceased who was riding the other motor cycle has been assessed at 10% and for the remaining 90%, rider of the offending vehicle has been adjudged as negligent. Accordingly, compensation has been awarded. So lar as quantum of compensation is concerned, Tribunal has found that deceased was working as a junior technical assistant and was earning Rs. 5,500/- per month. In this regard, he has placed reliance on Ex.P.10 salary certificate. The Tribunal has deducted 50% towards personal expenses of the deceased and thus, loss of dependency has been assessed at Rs. 5,28,000/- (Rs. 2,750/- x 12 x 16) applying the multiplier of 16. It is this judgment and award that has been called in question in this appeal.

6. Learned counsel appearing for appellant contends that it was a head-on collision between the two motor cycles, hence, the Tribunal was in error in apportioning the contributory negligence on the part of the two vehicles. According to him, deceased was also equally responsible in causing the accident. Insofar as the quantum of compensation is concerned, it is urged by him that a sum of Rs. 5,500/- taken as monthly salary is on the higher side bind is not supported by acceptable evidence. Learned counsel appearing for respondent supports the findings recorded.

7. Upon hearing the learned counsel for both parties, points that arise for consideration are:

(a) Whether findings recorded by the Tribunal with regard to question of negligence and contributory negligence are illegal warranting interference by this Court in exercise of appellate jurisdiction?

(b) Whether the quantum of compensation awarded is excessive and unreasonable?

8. It is clear from the evidence on record that a complaint has been lodged

against the rider of the offending vehicle as per Ex.P. 1. P.W.2 has been examined and according to him, the accident occurred on account of actionable negligence on the part of the rider of the offending vehicle. No doubt, he is none other than the brother of deceased. The spot mahazar discloses that accident occurred in the middle of the road and there was collision. The Tribunal has analysed and examined the evidence on record to come to the conclusion that accident has occurred because of negligence of the rider of the offending vehicle, though there was some contribution on the part of deceased. Ratio of contributory negligence has been assessed at 90%: 10% between them. There is absolutely no material to hold that this finding is in any manner perverse or illegal. Merely because the accident occurred in the middle of the road and that it appeared to be head-on collision, it cannot be said that the contributory negligence had to be assessed equally between the two vehicles. Evidence on record has been rightly taken note by the Tribunal to hold that deceased was negligible to an extent of 10%. Hence, point No. 1 is answered against the appellant.

9. As regards the quantum of compensation, the Tribunal has come to the conclusion that monthly wages earned by deceased was Rs. 5,500/- based on the salary certificate produced at Ex.P.10. Deceased was working as Junior Technical Assistant in Hyderabad. In such circumstances, it cannot be said that there was no basis for the Tribunal to record such a finding. In addition, it has to be sated that the Tribunal has proceeded to deduct 50% towards personal expenses of the deceased although he was a married person and had left behind his widow. In such circumstances, compensation assessed cannot be interfered with as the same does not suffer from any illegality. Hence, point No. 2 is also answered in negative and against appellant.

10. In the result, appeal fails and the same is dismissed. Amount in deposit shall be transferred to the Claims Tribunal for disbursal in accordance with law as per the direction issued by the Tribunal.