(2013) 01 KAR CK 0065

In the Karnataka High Court

Case No : M.F.A. No. 1551 of 2005 (MV)

M/s. Oriental Insurance Company Ltd. APPELLANT

Vs

Prema Kumari and Others RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 01 KAR CK 0065

Hon'ble Judges : N.K. Patil, J;B.S. Indrakala, J

Bench : Division Bench

Advocate : A.M. Venkatesh, for the Appellant; Shripad. V. Shastri, Advocate for R1 to 5, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the appellant-Insurer is directed against the impugned judgment and award dated 15/12/2003 passed in MVC No. 1700/1999 by the IX Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal-7, Bangalore (SCCH-7), (for short ''Tribunal''). By its judgment and award, the Tribunal has awarded a sum of Rs. 3,45,000/- under different heads with interest at 8% p.a., from the date of petition till the date of payment/ deposit as against the claim of the claimants for a sum of Rs. 7,00,000/-, on account of the death of the deceased Sri. K.S. Basappa in the road traffic accident.

2. The appellants being the legal representatives of the deceased Sri. K.S. Basappa, have filed a claim petition before the Tribunal u/s 166 of M.V. Act, claiming compensation against the respondents, on account of the death of the deceased in the road traffic accident, contending that, on 19.10.1998 at about 12.30 p.m. while deceased was driving the auto bearing No. CAA 4688 on 50th Cross, 3rd Block, Rajajinagar from western side to southern side towards Vatal Nagaraj Road, at that time, one Scooter bearing No. KA. 02.V.6063 came from eastern side in a rash and negligent manner and dashed against the auto. As a result, the auto fell upside down and deceased sustained grievous injuries. He

was immediately taken to KIMS, where he took treatment as inpatient for 7 days and he succumbed to the injuries on 26.10.2008.

3. It is the further case of the claimants that deceased was aged about 44 years, he was hale and healthy prior to the accident, working as auto driver and earning Rs. 3,000/- per month and looking after the welfare of the family. Due to his untimely death, the claimants have suffered mental shock and agony apart from financial insecurity.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after hearing the learned counsel for the parties and after perusal of the oral and documentary evidence available on file, has allowed the said petition in part and awarded the compensation of Rs. 3,45,000/- under different heads with interest at 8% p.a., from the date of petition till its payment/deposit.

5. Being aggrieved by the said judgment and award passed by the Tribunal, the Insurer has presented this appeal, contending that Insurer is not liable to indemnify the award passed by the Tribunal, on the ground that the rider of the scooter does not possess any DL nor there is any negligence on his part and therefore, the impugned judgment and award is liable to be set aside.

6. We have heard learned counsel appearing for the appellant and learned counsel for claimants.

7. After hearing the learned counsel for the parties and after careful perusal of the materials available on record, including the impugned judgment and award passed by the Tribunal, it could be seen that the occurrence of the accident and the resultant death of the deceased are not in dispute. It is also not in dispute that the claimants are the wife and children of the deceased. Further it emerges that, the Tribunal has allowed the petition holding that due to rash and negligent driving by the driver of the scooter the driver of the auto died and the said scooter was insured with the Insurer as on the date of the accident and directed the Insurer to indemnify the award amount. The said direction issued by the Tribunal cannot be sustained and is liable to be set aside as rightly pointed out by the learned counsel for the Insurer. The reasoning assigned by the Tribunal while answering issue Nos. 1 and 2 cannot be accepted for the reason that, except referring that two FIRs, Chargesheet, mahazar, inquest report and P.M. report and also the evidence of PW2 who is alleged to be an eye witnesses to substantiate negligence on the part of Scooterist, nothing is forthcoming. It is significant to note that, parties have not examined the charge sheet and mahazar witnesses. Even the evidence of PW2 the alleged eye witnesses is also not have been discussed by the Tribunal and no valid reasons are assigned to hold that due to rash and negligent driving by the scooterist the accident had occurred. The reasoning given by the Tribunal is contrary to the evidence available on record. In view of not considering the oral and documentary evidence available on file properly by the Tribunal, we are of the considered view that the impugned judgment and award passed by the Tribunal cannot be

sustained and is liable to be set aside and the matter requires reconsideration afresh by the Tribunal since the claimants are the legal representatives of the deceased. The Tribunal ought to have discussed the contents of FIR, charge-sheet and the mahazar to know whether the rider of the scooter possess a valid licence as on the date of the accident. But no efforts as such has been made by the Tribunal to find out the ground reality as to how the accident had occurred and on whose fault it had occurred. Therefore, without expressing any views on merits and demerits of this case, it would suffice for this Court to issue appropriate directions to the insurer as well as the claimants having regard to the peculiar facts and circumstances of the case. In the light of the facts and circumstances of the case as stated above, the appeal filed by the Insurer is allowed.

The impugned judgment and award dated 15/12/2003 passed in MVC No. 1700/1999 by the IX Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal-7, Bangalore (SCCH-7), is hereby set aside and the matter is remitted back to the jurisdictional Tribunal to reconsider the same afresh and to pass appropriate orders in accordance with law, after affording reasonable opportunity to the Insurer and claimants personally or through their counsel and dispose of the same, as expeditiously as possible, at any rate, within a period of eight months from the date of receipt of the application to be filed by the either appellant or claimants for additional grounds.

Liberty is reserved to the Insurer and the claimants to file applications before the Tribunal for additional oral and documentary evidence, if any, within a period of four weeks from the date of receipt of a copy of this judgment.

If such applications are filed by the Insurer or the claimants, the Tribunal is directed to receive the same and pass appropriate orders, in accordance with law and then proceed with the matter as per the above directions issued by this Court.

The Insurer and the claimants are directed to appear before the Tribunal on 04th February 2013 at 11.00 a.m. personally or through their counsel to collect the next date of hearing.

Office is directed to refund the amount deposited by the Insurer immediately and also to return the entire original records to the Tribunal immediately.

Learned counsel Sri. Shripad V. Shatry is permitted to file vakalath for respondents 2 to 3 within four weeks from today.

