

(2019) 03 KAR CK 0035

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 10539, 8961 Of 2013

M.S. Shankar

APPELLANT

Vs

Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Citation : (2019) 03 KAR CK 0035

Hon'ble Judges : Mohammad Nawaz, J

Bench : Single Bench

Advocate : Shripad V Shastri, C.R. Ravishankar, M.N. Ningaraju, Deeksha Law Chambers, Jwala Kumar

Final Decision : Dismissed

Judgement

1. MFA.No.10539/2013 is filed by the claimants seeking enhancement of compensation and MFA.No.8961/2013 is filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal.
2. Both the appeals are directed against the judgment and award dated 20.06.2013 passed in MVC.No.8119/2010 on the file of the MACT at Bengaluru, wherein a total compensation of Rs.7,30,000/- has been awarded for the death of one Smt.Manjula in a road traffic accident involving an Auto bearing registration No.KA03-B-2175 and a Maruthi Omni bearing registration No.KA01-N-6750.
3. Heard the learned counsel appearing for the claimants and the learned counsel appearing for the Insurance Company.
4. It is the case of the claimants that on 23.10.10 at about 4.30 p.m. one Manjula, her husband Shankar and daughter Kum.Kavyashree (claimants) were traveling in an Auto bearing registration No.KA03-B-2175. When the said Auto reached near Mahadevapura Revanasiddaiah's Daba, a Maruthi Omni bearing No.KA01-N-6750 driven by its driver with high speed and in a rash and negligent manner hit the auto. Due to the impact, all the three persons fell down and

sustained grievous injuries. Smt.Manjula succumbed to the injuries on the way to the hospital. Shankar and Kavyashree were shifted to NIMHANS hospital. Kavyashree was then admitted to Sanjay Gandhi Hospital and she was treated in the said hospital for the injuries sustained.

5. MVC.No.8119/2010 was filed seeking compensation for the death of Smt.Manjula, claiming a total compensation of Rs.12,00,000/-.

6. Before the Tribunal, on behalf of the claimants, claimant No.1 was examined as PW.1 and Exs.P.1 to 10 were got marked and on behalf of respondent No.1-Insurance Company, RWs-1 and 2 were examined and Ex.R.1 was got marked.

7. The Tribunal after considering the oral and documentary evidence on record, awarded a total compensation of Rs.7,30,000/-. It was further held that respondent No.1-Insurance Company and respondent No.3-RC owner of the Maruthi Omni bearing registration No.KA01-N-6750 are jointly and severally liable to pay the compensation to the extent of 50% out of the total compensation awarded.

8. Assailing the aforesaid judgment and award passed by the Tribunal, learned counsel appearing for the claimants would contend that the findings recorded by the Tribunal awarding 50% of the total compensation on the ground that the claimants have failed to implead the owner and insurer of the auto rickshaw as parties to the proceedings, is not justified. He would contend that since the drivers of both the vehicles are joint tortfeasors, the claimants are at liberty to proceed against any one of such joint tortfeasors. In support of his contention he places reliance on a full bench decision of this Court in the case of Karnataka State Road Transport Corporation by its Managing Director Vs. Arun @ Aravind and others reported in ILR 2004 KAR 26. He would further contend that the total compensation awarded by the Tribunal is on the lower side. Accordingly, he seeks to enhance the compensation by modifying the judgment and award passed by the Tribunal.

9. Per contra, learned counsel appearing for the Insurance Company vehemently contended that the accident was due to composite negligence of both

the vehicles. The claimants have failed to implead the owner and insurer of the autorickshaw as parties to the proceedings. Hence, the Tribunal was justified in directing the insurer of the Maruthi Omni to pay the compensation to an extent of 50% out of the total compensation. He would further contend that there is absolutely no evidence with regard to the income of the deceased as such, the Tribunal was not proper in taking the income of the deceased as Rs.6,000/- per month. It is also submitted that claimant No.2 is the only surviving daughter of the deceased as such it is just and proper to deduct 50% from the earning of the deceased to calculate the 'loss of dependency'. Hence, he prays to allow the appeal filed by the Insurance Company and to dismiss the appeal filed by the claimants.

10. It is the case of the claimants that on 23.10.2010 at about 4 p.m. deceased Manjula her husband and daughter (claimants) were traveling in an Auto bearing No.KA03-B-2175, and the said Auto rickshaw met with an accident due to the rash and negligent driving by the driver of Maruthi Omni No.KA01-N-6750.

11. It is the further case of the claimants that, deceased Manjula was working as an Editor in "Sudhamani" monthly magazine and she was earning Rs.9,000/- p.m. and she was aged about 35 years at the time of accident. The Tribunal after observing that there is no documents produced to prove the age of the deceased and after considering Ex.P.6-Post Mortem Report, took the age of the deceased as 40 years. Since there was no documents produced to prove the exact income of the deceased, the Tribunal after considering the cost of living, assessed the income at Rs.6,000/- per month and after deducting 1/3 of the total income towards personal expenses and applying 15 as the multiplier, awarded Rs.7,20,000/- under the head 'Loss of dependency'. The Tribunal awarded another sum of Rs.50,000/-under the head 'transportation of dead body' and Rs.5,000/- towards 'funeral expenses' and awarded a total compensation of Rs.7,30,000/-.

12. The Tribunal after considering the evidence and material on record and also placing reliance on Ex.P.4 i.e., the sketch, proceeded to hold that the driver of the auto also contributed to the cause of accident along with the driver of the offending vehicle i.e., Maruthi Omni and held that the drivers of the Auto and Maruthi Omni contributed their negligence to the cause of accident in the ratio of 50:50.

13. This Court in the decision rendered in the case of Karnataka State Road Transport Corporation by its Managing Director Vs. Arun @ Aravind and Others (supra) has held that when there are more vehicles involved, compensation can be recovered by the claimants from any one of the joint tortfeasors and the compensation awarded cannot be reduced for non-impleading of the other Joint Feasors.

14. The Apex Court in the case of Khenyei Vs. New India Assurance Company Limited and Others reported in 2015 9 SCC (273) has held at para 22 as under:

22. What emerges form the aforesaid discussion is as follows:

22.1. In the case of composite negligence, the plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

22.3. In the case of composite negligence, apportionment of compensation between two tortfeasors vis-à-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

22.4. In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the Court/Tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of

negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of the payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the Court/Tribunal, in the main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

22.4. It would not be appropriate for the Court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.

15. In view of the aforesaid decision, the Tribunal was not justified in directing the Insurance Company to pay compensation only to an extent of 50% out of the total compensation awarded. The claimants are entitled for the entire compensation.

16. It is the contention of learned counsel for the Insurance Company that there is no evidence adduced to prove the income of the deceased and the deceased has studied only upto 6th Standard and therefore the income assessed by the Tribunal at Rs.6,000/- per month is on the higher side. The learned counsel for the claimants on the other hand would submit that the deceased was working as a Journalist and she was earning a sum of Rs.9,000/-and hence, the income taken by the Tribunal is on the lower side. The appellants have not adduced any proof regarding the actual income of the deceased. In that view of the matter, the notional income of the deceased could be taken as Rs.5,500/- per month, considering the year of accident as it is being consistently taken.

17. In view of the decisions of the Apex Court in the cases of "NATIONAL INSURANCE COMPANY VS. PRANAY SETHI AND OTHERS (AIR 2017 SC 5157)" and "HEMARAJ VS. ORIENTAL INSURANCE COMPANY LTD (2018 ACJ 5)" 25% of the income is to be added towards future prospects and 1/3rd from the total income towards personal expenses is to be deducted. The deceased was aged about 40 years. The multiplier applicable is '15'. Therefore, the claimants are entitled for a compensation of Rs.8,24,940/- (4583 x 12 x 15) under the head of 'loss of dependency'. The compensation of Rs.10,000/- awarded by the Tribunal under the conventional heads is enhanced to Rs.30,000/-. Claimant No.2 being the daughter of deceased has lost her mother at her young age, I deem it just and appropriate to award a sum of Rs.40,000/- towards loss of parental consortium. Hence, the claimants are entitled for a total compensation of Rs.8,94,940/- as against Rs.7,30,000/- awarded by the Tribunal, Hence I pass the following:

ORDER

The appeals are allowed in part.

The judgment and award dated 20.06.2013 passed by the MACT, Bengaluru in MVC No.8119/2010 is hereby modified.

The claimants in MVC.No.8119/2010 are entitled for a total compensation of Rs.8,94,940/- with interest @ 6% p.a. from the date of petition till the date of its realization.

The appellants-Insurance Company in MFA.No.No.8961/2013 shall deposit the entire compensation amount within a period of six weeks from the date of receipt of a copy of this order.

The amount in deposit before this Court shall be transmitted to the jurisdictional Tribunal forthwith.

In view of disposal of MFA.No.8961/2013, I.A.No.1/2013 does not survive for consideration and the same is dismissed.