(2017) 03 KAR CK 0096

In the Karnataka High Court

Case No : M.F.A. No. 6624 of 2015 (MV)

M/s. The Oriental Insurance Company Limited — APPELLANT

Vs

Hayathbee — RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, Section 173

Citation : (2017) AAC 926

Hon'ble Judges : Mr. B. Manohar, J.

Bench : Single Bench

Advocate : Sri. Umesh B.S, Advocate, for the Appellant; Sri. Basava Rajendra Y.M, Advocate, for the Respondent No. 1; Are Served, for the Respondent Nos. 2 and 3

Final Decision : Allowed

Judgement

Mr. B. Manohar, J.—The Oriental Insurance Company Limited has filed this appeal challenging the legality and correctness of the judgment and award dated 26-02-2015 made in MVC No.781/2011 passed by the Motor Accident Claims Tribunal, Chikkanayakanahalli (hereinafter referred to as "the Tribunal" for short) fastening the liability on them to compensate the claimants.

2. Smt. Hayathbee W/o. Siraj Sab, filed a claim petition contending that while her son Dadapeer was standing in Yelanadu Bus-stand to go to Huliyar on 08-03-2010 at about 9.00 p.m., a Hero Honda Splendour motorcycle bearing Registration No.KA-44/E-258 ridden by its rider in a rash and negligent manner came and dashed against Dadapeer. Due to that, Dadapeer fell down and sustained grievous injuries all over the body. Immediately after the accident, he was shifted to General Hospital, Huliyar, subsequently he was shifted to General Hospital at Tiptur. As per the advice of the doctor, he was once again shifted to Srinivasa Hospital, Bangalore for better treatment. In spite of giving best treatment, he died 45 days after the accident. The mother of the deceased filed a claim petition contending that he was the sole bread earner of the family. In view

of death of the deceased, the family has become destitute and sought for compensation of Rs.30,00,000/-.

3. During the pendency of the said claim petition, the mother of the deceased also died. The brothers and sister of the deceased came on record to prosecute the claim petition.

4. The insurance company defended the case by filing the written statement.

5. After trial, the Tribunal held that the accident occurred due to the actionable negligence on the part of rider of the offending Hero Honda motorcycle which dashed against the deceased. The claimants are dependents of the deceased and they are entitled for compensation. With regard to quantum of compensation is concerned, the Tribunal taking the income of the deceased as Rs.4,500/- p.m., deducting 50% since the deceased was bachelor and applying the multiplier 9 taking into consideration the age of the mother of the deceased as 60 years, awarded compensation of Rs.2,43,000/- towards loss of dependency. Further during the course of treatment, the claimants had spent Rs.5,85,000/- towards medical expenditure. The Tribunal had awarded the said amount towards medical expenditure and a sum of Rs.20,000/- towards conventional heads. In all, the Tribunal has awarded compensation of Rs.8,48,000/- with interest at the rate of 6% p.a. Since the offending vehicle was covered by the Insurance policy, the liability was fastened on the insurance company to compensate the claimants. Being aggrieved by the exorbitant quantum of compensation awarded by the Tribunal, the insurance company has filed this appeal.

6. Sri. B.S. Umesh, learned counsel appearing for the appellant contended that the judgment and award passed by the Tribunal is contrary to law. The claimants are not dependants of the deceased and hence they are not entitled for compensation. Further a sum of Rs.5,85,000/- awarded towards medical expenditure is contrary to law. A sum of Rs.2,40,000/- was paid as advance to the hospital. The Tribunal has included the said amount to the medical bills and awarded a sum of Rs.5,85,000/- towards medical expenditure which is contrary to law. Rs.2,40,000/- paid as advance has to be deducted from the said medical bills. Further, the compensation claimed is exorbitant and hence sought for setting aside the said judgment and award.

7. Sri. Basava Rajendra Y.M., learned counsel appearing for the claimants argued in support of the judgment and award passed by the Tribunal and contended that the claimants are the legal representatives of the deceased and they are entitled for compensation and hence sought for dismissal of the appeal.

8. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award, oral and documentary evidence adduced by the parties.

9. The only dispute in this appeal to be decided is quantum of compensation.

10. The main contention of the insurance company is that the claimants 1(a) to

1(c) are the elder brothers and married sister of the deceased. At no stretch of imagination, they can be treated as dependents of the deceased. Hence they are not entitled to compensation. There is some substance in the submission of the advocate appearing for the appellant. No document has been produced to show that the claimants are depending upon the income of the deceased. Hence, they are entitled for compensation towards loss of estate only. Further, a sum of Rs.5,85,000/- awarded towards medical bills is contrary to the records. A sum of Rs.2,40,000/- paid as advance to the hospital was included in the medical bills. The said amount has already been claimed. Hence, the claimants are not entitled to the said amount which was paid as advance to the hospital. The Division Bench of this Court in a judgment reported in ILR 2004 KAR 3268 in the case of A.Manavalagan v. A. Krishnamurthy and Others, has laid down a law regarding procedure for determination of loss to estate. The procedure for determination of loss to estate is broadly the same as the procedure for determination of the loss of dependency. In the instant case, since the claimants are majors and elder to the deceased, they are not entitled to loss of dependency, however, they are entitled for loss to estate. Taking into consideration the income of the deceased as Rs.4,500/- p.m., taking ?rd thereof, which comes to Rs.18,000/- p.a., applying the multiplier 18 since the deceased was aged about 24 years, the claimants are entitled to a sum of Rs.3,24,000/- towards loss to estate. Further, the claimants are entitled for a sum of Rs.3,45,000/- towards medical expenditure; Rs.25,000/- towards conventional heads. In all, the claimants are entitled for a sum of Rs.6,94,000/- as against Rs.8,48,000/- awarded by the Tribunal, with interest at the rate of 6% p.a. Accordingly, I pass the following:

ORDER

The appeal is allowed in part. The judgment and award dated 26-02-2015 made in MVC No.781/2011 passed by the Motor Accident Claims Tribunal, Chikkanayakanahalli is modified. The claimants are entitled for compensation of Rs.6,94,000/- as against Rs.8,48,000/- awarded by the Tribunal, with interest at the rate of 6% p.a.

The amount in deposit before this Court is directed to be transmitted to the Motor Accident Claims Tribunal, Chikkanayakanahalli, for disbursement.