(2017) 04 KAR CK 0096

In the Karnataka High Court

Case No : 78 of 2016

NATIONAL INSURANCE CO. LTD. APPELLANT

Vs

KAMALAKSHA KUMAR.R & ORS. RESPONDENT

Date of Decision : 24-04-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 173(1), Section 173(1) - Appeals

Citation : (2017) 04 KAR CK 0096

Hon'ble Judges : B.Manohar

Bench : SINGLE BENCH

Advocate : A.N.KRISHNA SWAMY, LOKESH MALAVALLI

Judgement

1. The National Insurance Company Limited has filed this appeal challenging the legality and correctness of the judgment and award dated 16-04-2015 made in MVC No.355/2013 passed by the Additional Motor Accident Claims Tribunal, Shivamogga (hereinafter referred to as "the Tribunal" for short).

2. Respondents 1 to 3 herein filed a claim petition contending that on 13-12-2012, son of the claimants 1 and 2

and brother claimant No.3 deceased Ranjan K. Shetty was proceeding on his Pulsar motorcycle bearing Registration No.KA-14/EA-2769 from Shivamogga towards Kanchinakatte village. While he was proceeding on Shivamogga - N.R.Road, in front of the house of Ramanna at Kanchinakatte village, the driver of the car bearing Registration No.KA-30/M-4427 drove the same in a rash and negligent manner and dashed against the motorcycle of the deceased Ranjan K.Shetty. Due to the impact, he fell down and sustained grievous injuries. However, he succumbed to injuries on the spot. In the claim petition, it was contended that at the time of death, the deceased was aged about 23 years, working as a LIC agent and earning Rs.20,000/- p.m. In view of death of the deceased, the family has lost the bread earner. Hence sought for compensation of Rs.15,05,000/-.

3. In response to the notice issued by the Tribunal, the respondents entered appearance and filed written statement denying the rash and negligent driving of the offending Car.

4. After trial, the Tribunal held that due to the actionable negligence on the part of driver of the offending car the accident had occurred, the claimants are the parents and sister of the deceased. Hence, they are entitled for compensation. With regard to quantum of compensation is concerned, though the claimants claimed that the deceased was earning Rs.20,000/- p.m., by doing the work of LIC agent, no document has been produced to substantiate the same. The records produced by the parties clearly disclose that the deceased was earning a sum of Rs.8,247/- p.m. Hence, taking the income of the deceased as Rs.8,247/- p.m., deducting 50% towards his personal expenditure, as he was bachelor at the time of accident and applying the multiplier 18, as he was aged about 23 years as on the date of accident, the Tribunal has awarded a sum of Rs.8,90,676/- towards loss of dependency and a sum of Rs.40,000/- towards conventional heads. In all, the Tribunal has awarded compensation of Rs.9,30,676/- which was rounded off to Rs.9,30,700/-. As on the date of accident, the offending vehicle was covered by the insurance policy. Hence, the liability was fastened on the insurance company to compensate the claimants. The insurance company being aggrieved by the exorbitant quantum of compensation awarded by the Tribunal has filed this appeal.

5. Sri.A.N.Krishna Swamy, learned counsel appearing for the appellant contended that the judgment and award passed by the Tribunal is contrary to law. The Tribunal ought to have taken into consideration the age of the mother of the deceased while adopting the multiplier, whereas the Tribunal has applied the multiplier taking into consideration the age of the deceased which is contrary to law.

6. On the other hand, Sri.Lokesh Malavalli, learned counsel appearing for the claimants argued in support of the judgment and award passed by the Tribunal and contended that the Tribunal taking the income of the deceased as Rs.8,247/- p.m., and adopting the appropriate multiplier has awarded just and fair compensation. He further contended that the issue raised in this appeal is no more res-integra. The Hon''ble Supreme Court in a latest judgment reported in (2015) 6 SCC 347 in the case of MUNNALAL JAIN AND ANOTHER v/s VIPINKUMAR SHARMA AND OTHERS has laid down a law that age of the deceased has to be taken into consideration while adopting the appropriate multiplier. Hence, sought for dismissal of the appeal.

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

8. The dispute in this appeal is with regard to quantum of compensation is concerned.

9. The main contention of the appellant is that the Tribunal ought to have taken into consideration the age of the younger parent while applying the multiplier instead of the age of the deceased. However, the said issue is no more res-

integra, in view of the law laid down by the Hon''ble Supreme Court in the judgment referred to above, whereby the Hon''ble Supreme Court has held that the age of the deceased had to be taken into consideration while adopting the appropriate multiplier. In the instant case, the Tribunal taking the monthly income of the deceased as Rs.8,247/-, deducting 50% towards personal expenditure, applying the multiplier 18 taking into consideration the age of the deceased has awarded just and fair compensation. I find there is no infirmity or irregularity in the judgment and award passed by the Tribunal. Accordingly, the appeal is dismissed. The amount in deposit is directed to be transferred to the Motor Accident Claims Tribunal, Shivamogga for disbursement.