

(2011) 08 KAR CK 0096
In the Karnataka High Court
Case No : M.F.A. No. 3756 of 2008 MV

National Insurance Co., Ltd.

APPELLANT

Vs

Smt. Sampangamma

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140 (2)

Citation : (2011) 08 KAR CK 0096

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : K. Rajshekar, for Sri B.C. Seetharama Rao, for the Appellant;
Bhushani Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri

1. The Insurance Company is in appeal against the judgment and award dated 22.10.2007 passed by the Motor Accident Claims Tribunal, Bangalore City (SCCH 14) in MVC No. 5117/2006.

2. For the demise of one Pillamma in the road traffic accident on 05.05.2006, the Tribunal awarded a compensation of Rs. 2,85,000/- to the Respondent, the daughter of the deceased. its break-up is as follows:

(i)

Towards loss of dependency:

2,40,000/-

(ii)

Towards love and affection:

15,000/-

(iii)

Towards loss of estate:

15,000/-

(iv)

Towards funeral and obsequies:

10,000/-

(v)

Towards transportation of dead body;

5,000/-

Total:

2,85,000/-

3. Sri Rajashekar, the Learned Counsel for Sri B.C. Seetharamarao, appearing for the Appellant submits that no amount whatsoever are awardable towards the loss of dependency if the claim petition is filed by a married daughter of the deceased. He read out paras 16 and 21 from the Apex Court judgment in the case of Manjuri Bera v. Oriental Insurance Company Ltd. and Anr. reported in 2007 ACJ 1279. It is extracted hereinbelow:

16. Judged in that background where a legal representative who is not dependent files an application for compensation, the quantum cannot, be less than the liability referable to Section 140 of the Act Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act The appeal is allowed. to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Mr. Jayant Bhushan, the learned amicus curiae.

...

21. In my opinion, "no fault liability", envisaged in Section 140 of the said Act, is distinguishable from the rule of "strict liability". In the former, the compensation amount is fixed. It is 50,000 in cases of death [Section 140(2)]. It is statutory liability. It is an amount which can be deducted from the final amount awarded by Claims Tribunal Since, the amount is a fixed amount/crystallized amount, the same has to be considered as part of the estate of the deceased. In the present case, the deceased was an earning member. The statutory compensation could constitute part of his estate. His legal representative, namely, his daughter has inherited his estate. She was entitled to inherit his estate. In the circumstances, she was entitled to receive compensation under "no fault liability" in terms of Section 140 of the said Act. My opinion is confined only to the "no fault liability"

u/s 140 of the said Act. That Section is a code by itself within the Motor Vehicles Act, 1988.

4. Without prejudice to the aforesaid Contention, the Learned Counsel further submits that the Tribunal's choice of multiplier is also erroneous. According to him, in some of the records, the age of the deceased is shown as 58 and not as 55 and as per the Apex Court judgment, in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the applicable multiplier would be 9. Ex. P8 is the ration card showing the deceased's as aged 55 in 2003. The Appellant's side submits that the accident has taken place three years thereafter and that is why her age has to be taken as 58 years.

5. I have browsed through the LCRs. There is no averment in the Respondents statement of objections that the Respondent was not depending upon the deceased. The objection statement is one of general denials. That is why, the Tribunal has not framed any issue or point on whether the Respondent was dependent upon the deceased.

6. The ration card at Ex. P8 shows that the Respondent and the deceased were living together. There is no hard and fast rule that a married daughter is not entitled to any amounts towards the loss of dependency. The facts of the case, in Manjuri Bera (supra) and of the instant case are entirely different. It is profitable to refer to the Apex court judgment in the case of Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and Anr. reported in 1987 ACJ 581. The relevant portion of the said judgment are extracted hereinbelow:

12. We feel that the view taken by the Gujarat High court is in consonance with the principles of justice, equity and good conscience having regard, to the conditions of the Indian society,

... ..

We should remember that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855.

7. It is also beneficial to refer to the decision of Madhya Pradesh High Court in the case of Gajanand and Ors. v. Virendra Singh and Ors. reported in 2010 ACJ 145, wherein it is held that the proof of actual dependency is not required for awarding the compensation towards the loss of dependency. It is held therein that even an elder brother is entitled to compensation under the said head.

8. An alternative submission canvassed on behalf of the Appellant is also not acceptable. The age of the deceased cannot be taken as 58. The claim petition shows the age of the deceased as 55 years. The postmortem report at Ex. P4 also discloses the age of the deceased as 55 years.

9. The deceased appears to be a rustic and unlettered villager. She has been working as a coolie. The possibility of her not knowing her exact age cannot be ruled out. Under the facts and circumstances of this case, taking the age of the deceased as 55 years is sustainable.

10. Thus, not finding either of the two grounds to be tenable, I dismiss this appeal. No order as to costs.