(2014) 11 KAR CK 0082

In the Karnataka High Court

Case No : Misc. First Appeal Nos. 25658, 25853/2011(MV) and 20568/2012

National Insurance Co. Ltd. APPELLANT

Vs

Sushila
 Sushila Khanagavi Vs Bipur Jodhar RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Citation : (2014) 11 KAR CK 0082

Hon'ble Judges : Mohan M. Shantana Goudar, J;K.N. Phaneendra, J

Bench : Division Bench

Advocate : Rajashekhar S. Arani, Preeti Shashank, Srikant J. Bhat, P.V. Gunjal and M.C. Mastiholi, Advocate for the Appellant; M.C. Mastiholi, P.V. Gunjal, Preeti Shashank, Shrikanth J. Bhat, Rajashekhar S. Arani and Bahubali N. Kanabargi, Advocate for the Respondent

Judgement

Mohan M. Shantana Goudar, J.—MFA Nos. 20568/2012 and 25658/2011 are filed by the two different Insurance Companies questioning their liability imposed on them and the quantum of compensation arrived at by the Tribunal. MFA No. 25853/2011 is filed by the claimants praying for enhancement of compensation.

2. Sri Appasaheb @ Appaiah died in the accident that occurred on 15.5.2002. On that day, he was travelling in a Car bearing Registration No. KA-25/P-6336 from Hubli to Gadhinglaj to supervise his contract work at Gadhinglaj. The car was being driven by the driver. A lorry bearing Registration No. HR-38/D-3505 was proceeding in front of the Car. It is relevant to note that another four wheeler i.e., TATA 1210 bearing Registration No. KA-25/770 was proceeding ahead of the lorry. Thus, it is clear that all the three vehicles were proceeding in a road one behind other. The Car was the third vehicle. The lorry bearing Registration No. HR-38/D-3505 suddenly dashed against TATA 1210 vehicle bearing Registration No. KA-25/770 and stopped abruptly. The Car in which the deceased Appasaheb @ Appayya was travelling in turn dashed against the said lorry. Consequent upon which, Appasaheb travelling in the Car died. His wife and three children filed MVC No. 1107/2002 claiming compensation, which came to be allowed in part. The

claimants are awarded compensation of Rs. 17,63,447/-. As aforementioned, MFA No. 25853/2011 is filed by the claimants for enhancement of compensation and other two appeals are filed by the Insurance Companies questioning the liability to pay compensation and they also sought for reduction of the compensation awarded by the Tribunal.

3. The deceased Appasaheb was the Managing Director of the Construction Company namely Khanagavi Construction Company. Only two Directors were there in the Company including the deceased, the second Director was his wife. Practically, the income derived from the said Company belonged to the family and it was for the benefit of the family of the deceased. The Tribunal has assessed the income of the deceased at Rs. 1,75,226/- per year. Based on which, an amount of Rs. 17,08,447/- was awarded under the head of ''loss of dependency''. We find that the Tribunal is not justified in taking the annual income of the deceased at Rs. 1,75,226/-. The tax paid receipts as well as the certificates issued by the Chartered Accountant, Exhibits P-19 and P-20, reveal the actual personal income as well as the income from the Company of the deceased. The average personal income of the deceased from 1998-2003 was approximately about Rs. 1,75,000/- per year. The Tribunal has taken only the said income as the basis for quantifying the compensation. It has ignored the income earned from the Company while coming to the conclusion. As aforementioned, the Company has got only two Directors including the deceased and the wife of the deceased. After the demise of the deceased, the Company is closed in the year 2006. Practically, the income earned by the Company was for the benefit of the family of the deceased. The average income of the Company from 1998 till 2003 was more than Rs. 10 lakhs per year. After deducting the expenses of the Company, the Company may be getting net income of Rs. 7 to 8 lakhs per annum. Apart from the above, the deceased was owning agricultural lands. The Tribunal has assessed the income of the deceased from the agricultural lands at Rs. 2,400/- per month i.e., Rs. 28,800/- per annum and that may be the correct approach in as much as the income may not reduce even after the death of one of the family members.

4. Keeping in mind the personal income of the deceased as well as the income which he would get from the Company as well as the agricultural income, we may safely conclude that the deceased was getting an income of more than Rs. 4 lakhs per year or atleast Rs. 4 lakhs.

4.1 The Tribunal has rightly deducted 1/4th amount towards personal expenses of the deceased and has rightly adopted multiplier ''13'', having regard to the age of the deceased. Based on these facts and figures, the claimants are entitled to Rs. 39,00,000/- towards loss of dependency''. In addition to the same, the claimants shall be awarded Rs. 80,000/- under the four conventional heads. Thus, the claimants are entitled to Rs. 39,80,000/- as compensation.

5. Now, coming to the aspect of liability, we find considerable force in the arguments advanced by Smt. Preeti Shashank, learned Counsel appearing for the

Oriental Insurance Company, who is the insurer of the Car bearing Registration No. KA-25/P-6336. The National Insurance Company Ltd., was the insurer of the lorry bearing Registration No. HR-38/D-3505. Ex. P30 is the Mahazar of the scene of offence. We have meticulously gone through Ex. P30 Mahazar along with the evidence on record. PWs. 2 & 3 are the eyewitnesses to the incident in question. Both of them have deposed categorically that the lorry was going ahead of the Car involved in the accident The lorry stopped suddenly by colliding against another ongoing vehicle i.e., TATA 1210 bearing Registration No. KA-25/770. Since the lorry suddenly stopped, the driver of the Car in which the deceased was travelling dashed against the said lorry. Therefore, the driver of the lorry as well as the driver of the car were responsible for the death of the deceased.'' The Tribunal has concluded that the driver of the car, in which the deceased was travelling was responsible to an extent of 60% for causing the accident and the remaining 40% negligence is foisted on the driver of the lorry.

5.1 On going through the material on record, we find that the Tribunal ought to have concluded vice-versa in as much as the driver of the lorry should be held responsible to an extent of 60% for the accident, whereas the driver of the Car should be held responsible to an extent of 40%. Had the driver of the lorry not stopped the lorry suddenly by dashing against the on going vehicle, the Car would not have met with an accident. So, also the driver of the Car also should have been more careful to drive the car by keeping sufficient distance in between lorry and the car. In this view of the matter, we are of the opinion that the driver of the lorry is responsible to an extent of 60% and the driver of the Car is responsible to an extent of 40% for the accident. Thus, the Insurance Companies will have to share the liability to pay compensation.

6. Smt. Preeti Shashank, learned Counsel appearing for the Oriental Insurance Company further submitted that the Insurance Company is not liable to pay compensation, as the insurance policy does not disclose the payment of extra premium in order to cover the owners'' risk. Such submission cannot be accepted. The Insurance Policy Ex. R6 clearly reveals that it is a comprehensive policy.

6.1 Learned Counsel for the Oriental Insurance Company has relied upon the following judgments reported in (1) The Oriental Insurance Company Limited Vs. Meena Variyal and Others, and (2) Dhanraj Vs. New India Assurance Co. Ltd. and Another, and submits that the insurer is not liable to indemnify the owner of the Car.

7. The facts in the matter on hand and the cases referred to above are totally different. In those two cases, the owner of the vehicle was the sufferer. In the matter on hand, the Managing Director of the Company was the victim. The Company was the owner of the vehicle. Therefore, the dictum laid down by the Hon''ble Apex Court in the aforementioned judgments may not be applicable to the case on hand.

8. Admittedly, the car belongs to the Company. The Company is represented by the Managing Director. Therefore, the Managing Director cannot be treated as the owner of the Car. He is a third party in so far as the accident is concerned. He is neither owner nor driver of the vehicle. Therefore, it is clear case where the insurance Company is liable to indemnify the owner of the vehicle.

9. It is relevant to note that the Hon''ble Apex Court in the latest judgment in the case of National Insurance Company Ltd. Vs. Balakrishnan and Another, , has held that the insurer of the Car is liable to indemnify the owner of the Car in the cases of comprehensive policies. The Hon''ble Apex Court in the aforesaid decision has further observed at paragraphs 21 and 22 thus-

"21. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a Car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

22. In view of the aforesaid legal position, the question that emerges for consideration is whether in the case at hand, the policy is an "Act Policy" or "Comprehensive/Package Policy". There has been no discussion either by the Tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a "comprehensive policy" but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a "package policy" to cover the liability of an occupant in a car."

(Emphasis supplied)

10. In view of the above said decision, the Oriental Insurance Company, who is the insurer of the Car is liable to pay 40% of the compensation. Hence, we pass the following:

ORDER

(a) MFA No. 25658/2011 filed by the National Insurance Company stands dismissed.

(b) MFA No. 25853/2011 filed by the claimants praying for enhancement of compensation is allowed in part. The compensation is enhanced from Rs. 17,63,447/- to Rs. 39,80,000/-.

(c) The Oriental Insurance Company is liable to pay 40% of the liability and the National Insurance Company Ltd., is liable to pay the remaining 60% of the liability. MFA No. 25658/2011 filed by the Oriental Insurance Company Ltd., is allowed in part to the said extent.

(d) The apportionment and other terms relating to deposit in the Bank and the rate of interest shall remain as per the order of the Tribunal.