(2014) 01 KAR CK 0111

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 554 of 2009 (MV)

National Insurance Company Limited APPELLANT

Vs

Manchaiaha H.B. RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2015) 1 ACC 572 : (2014) 6 KarLJ 135

Hon'ble Judges : B.S. Indrakala, J

Bench : Single Bench

Advocate : A.N. Krishna Swamy, Advocate for the Appellant; Nagaiah and R.D. Panchan, Advocate for the Respondent

Judgement

B.S. Indrakala, J.—Though the matter is listed for admission, with the consent of the learned Counsel for both the parties, the same is taken up for final disposal. The above appeal is preferred against the judgment and award dated 5-7-2005 passed in MVC No. 408 of 2004 on the file of Civil Judge (Senior Division) and Member, Additional MACT, Kunigal.

2. It is the case of the claimants that on 4-7-2004 while their son H.M. Ravikantha was proceeding towards Huliyurdurga from Bangalore along with his friend on his Yamaha Motorbike bearing Registration No. KA-02-EA-9198 via Magadi on the left side of the Magadi-Huliyurdurga Road at about 3 p.m., near Rajapura Gate the bus bearing Registration No. KA 03 C 9259 which was coming from the opposite direction driven by its driver in high speed in rash manner dashed against the motorbike and caused the accident; in the said accident, the rider of the motorbike who was the son of the claimants was fatally injured and died at the spot. It is further contended by the claimants that when their son met with the accident he was aged about 26 years working in the factory and earning Rs. 6,000/- p.m. besides getting Rs. 200/- per day as batta and was having total income of Rs. 10,000/- p.m. In the circumstances, they sought awarding of compensation from the owner and insurer of the said bus which was involved in

the accident.

3. On perusal of the records, it is seen that despite service of notice, both the owner as well as insured have not chosen to enter appearance. In the circumstances by considering the evidence placed on record i.e., the evidence adduced by the claimants, the Tribunal deemed it fit to award a sum of Rs. 3,03,000/- with interest at the rate of 6% p.a. from the date of petition till realisation as compensation to the claimants.

4. Aggrieved by the said passing of the judgment and award, the insurer therein through its Regional Office chose to file Misc. No. 8 of 2006 seeking setting aside of the said judgment and award which were passed ex parte.

5. To substantiate the case, the Insurance Company chose to examine one of its officials as P.W. 1 and got marked Exs. P. 1 to P. 2. On behalf of the claimant, claimant 1 was examined as R.W. 1.

6. On considering the evidence placed on record, the Tribunal deemed it fit to dismiss the said Misc. No. 8 of 2006 vide its order dated 22-11-2008.

7. Aggrieved by the said dismissal of Misc. No. 8 of 2006 and also the impugned judgment and award, respondent 2-Insurance Company in the said MVC No. 408 of 2004 through its Regional Manager has filed the above appeal inter alia contending amongst other grounds that the Tribunal erred in not affording reasonable opportunity to the appellant to contest the case; the liability of the Insurance Company is always subject to the defences available as per Section 149(2) of the Motor Vehicles Act, 1988; the principles of natural justice are not met with etc., and seeks setting aside of the impugned judgment and award.

8. On perusal of the impugned orders passed in Misc. No. 8 of 2006, it is seen that the appellant-respondent viz., National Insurance Company Limited, at Hosur was duly served and in that regard, the Tribunal has observed that according to Ex. P. 1-notice of the MVC petition was duly served on the 2nd respondent and the Court had issued notice to the respondent-Insurance Company to the address given in the cause title to the petition and it is not necessary that the Divisional Office of the Insurance Company will have to be notified and as such, by assigning proper reasons, the Tribunal deemed it fit to dismiss the Misc. No. 8 of 2006 which is proper.

9. Even otherwise on perusal of the impugned judgment, it is seen that the Tribunal by considering the evidence on record in proper perspective and by deducting 50% of the income of the deceased towards personal expenses as he was a bachelor and applying the proper multiplier, has deemed it fit to award a sum of Rs. 3,03,000/- which is just and proper. Further it is also seen that in the impugned judgment with regard to the policy issued to the vehicle, it is clearly mentioned that as on the date of accident, there was valid coverage of the policy i.e., policy was for the period from 10-7-2003 to 9-7-2004 and as the accident occurred on 4-7-2004, the 2nd respondent-Insurance Company is liable to

indemnify the owner of the vehicle.

10. In the circumstances, it is seen that neither the orders passed in Misc. No. 8 of 2006 nor the impugned judgment and award passed in MVC No. 408 of 2004 are liable to be set aside.

11. Accordingly, the above appeal is liable to be dismissed and the same is dismissed.

12. Learned Counsel for the appellant submits that the entire amount as awarded by the Tribunal is deposited before the Tribunal in Execution Case No. 41 of 2005 on the file of Civil Judge (Senior Division) and Additional Motor Accident Claims Tribunal, Anekal and seeks refund of the amount deposited in this appeal to the appellant-Insurance Company. If that is so, the amount deposited is invested in any fixed deposit in the bank, the question of the Insurance Company paying further interest may not arise and if the same is not so invested and the amount lies in the Tribunal itself, the claimant is entitled to seek the same in appropriate proceedings.

With these observations, while dismissing the above appeal, the amount in deposit is ordered to be refunded to the appellant.