(2016) 03 KAR CK 0322

In the Karnataka High Court

Case No : MFA No. 24075 of 2009

National Insurance Company Ltd. APPELLANT

Vs

Manabasappa and others RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 1468

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Sri Rajashekhar S. Arani, Advocate, for the Appellant; Sri Mahesh Wodeyar, Advocate, Sri Mahabaleshwar, Hasinal, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Manohar, J.—The appellant - Insurance Company being aggrieved by the judgment and award dated 30-5-2009 made in MVC No. 198/2008 by the III Addl. Civil Judge (Sr. Dn.) and Member Addl. MACT, Hubli (for short ''Tribunal'') has filed this appeal.

2. The main contention of the appellant is that the quantum of compensation awarded by the Tribunal is contrary to law. Claimants are not the dependents of the deceased, Bheemavva. They are the major sons of the deceased. Hence, the compensation awarded towards loss of dependency is contrary to law. Though the appellant has challenged the quantum as well as liability fastened on it to compensate the claimants, the driver of the offending vehicle was having driving license in respect of light motor vehicles from the year, 1991 before the amendment came into force in the year 2001 and hence he is entitled to drive the light goods vehicle. Therefore, the appellant has not pressed the prayer insofar as the liability is concerned.

3. In a road traffic accident that occurred on 30-4-2007, the mother of the claimants was proceeding as a pillion rider on a motor bike bearing Regn. No.

KA-25/Y-1615. When the said motor bike came near Devikoppa forest bungalow, a Indica Car bearing Regn. No. KA-37/5495 driven by its driver in a rash and negligent manner, dashed against the motor bike. Due to that, the rider and pillion rider fell down from the motor bike. The pillion rider, Bheemavva sustained grievous injuries and subsequently she succumbed to the injuries. The claimants claimed that they are the dependants of the deceased. The deceased was earning a sum of Rs. 4,500/- p.m. Hence, the claimants sought for compensation of Rs. 10,20,000/-.

4. After trial, the Tribunal held that due to actionable negligence on the part of the driver of Indica Car, the accident had occurred. Claimants are the children of the deceased. Hence, they are entitled for compensation. Taking into consideration the income of the deceased as Rs. 3,000/- p.m., deducting ?rd towards her personal expenditure and applying the multiplier 10 since the deceased was aged about 60 years, the Tribunal has awarded a sum of Rs. 2,40,000/- towards loss of dependency and a sum of Rs. 20,000/- towards conventional heads. In all, a sum of Rs. 2,60,000/- has been awarded by the Tribunal with interest at 6% p.a. Since the driver of the Indica car was having effective driving license as on the date of accident, the liability has been fastened on the Insurance Company to compensate the claimants. Being aggrieved by the judgment and award passed by the Tribunal, the appellant-Insurance Company has filed this appeal.

5. I have carefully considered the arguments addressed by the learned Advocates appearing for the parties and perused the judgment and award.

6. The records clearly disclose that the driver of Indica Car was having light motor vehicle driving license from the year 1991 before the amendment came into force. Hence, the driver is entitled for driving the light goods vehicle. Therefore, the insurer is liable to pay the compensation.

7. With regard to the quantum of compensation is concerned, claimants are not the dependents of the deceased. They are the major sons and they are earning independently. They are, at the most, entitled to compensation towards loss of estate and cannot claim as dependants. The learned Advocate appearing for the claimants has not disputed the said fact. Claimants are having their independent families. Hence, they cannot be dependants upon the deceased.

8. The Tribunal while awarding the compensation has taken the income of the deceased as Rs. 3,000/- p.m. which is on the lower side. The accident had occurred in the year 2007. Even a daily wage employee would earn a sum of Rs. 4,500/- p.m. In the absence of necessary document to establish the income, the income has to be taken as Rs. 4,500/- p.m. in this case also. Further, claimants are not dependants on the deceased. Hence, the income of the deceased has to be taken to an extent of ?rd and applying the multiplier and awarded compensation towards loss of estate. Taking into consideration the income of the deceased as Rs. 4,500/- p.m., taking into consideration ?rd i.e. Rs. 1,500/- p.m.

and applying the multiplier 9 since the deceased was aged about 60 years, the claimants are entitled to compensation of Rs. 1,62,000/- towards loss of estate as against Rs. 2,40,000/- towards loss of dependency awarded by the Tribunal. Further, claimants are entitled to another sum of Rs. 20,000/- towards conventional heads. In all, claimants are entitled to compensation of Rs. 1,82,000/- as against Rs. 2,60,000/- awarded by the Tribunal. Accordingly, I pass the following :

ORDER

9. The appeal is allowed in part. The judgment and award dated 30-5-2009 passed in M.V.C. No. 198/2008 on the file of the III Addl. Civil Judge (Sr. Dn.) and Member Addl. MACT, Hubli, is modified. Claimants are entitled to compensation of Rs. 1,82,000/- as against Rs. 2,60,000/- awarded by the Tribunal with interest at 6% p.a.

10. The amount in deposit made before this Court is directed to be transferred to the concerned Tribunal.

11. The excess amount is directed to be refunded to the appellant-Insurance Company.

