courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 18/09/2026

(2011) 06 KAR CK 0086

In the Karnataka High Court

Case No : M.F.A. No. 7628 of 2008

National Insurance Company Ltd. APPELLANT

Vs

Smt. Anjali and Kum. Jeeva RESPONDENT

Date of Decision : 15-06-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163 A

Citation : (2011) 8 RCR(Civil) 200

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : B.C. Seetharama Rao, for the Appellant; K.T. Gurudevaprasad, for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—This appeal by the Insurer is directed against the judgment and award dated 23rd January 2008, passed in MVC No. 2790/2006, by the XVI Additional Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal, Metropolitan Area, Bangalore (SCCH-14), (for short, ''Tribunal'') for reduction of compensation and also to set aside the liability fastened on it, on the ground that, the compensation of Rs. 4,79,700/- awarded in favour of the claimants is excessive.

2. The facts in brief are that, the claimants are the mother and sister of the deceased Late U. Thirumal. They filed the claim petition u/s 163A of the Motor Vehicles Act, contending that, at about 8:15 A.M. on 18-03-2006, when the deceased was walking as a pedestrian, by observing all traffic norms, cautiously, at that time, all of a sudden, a Tata Mobile Vehicle bearing No. GA-01/T-5330 came in a very high speed, in a rash and negligent manner and dashed against the deceased. Due to the impact, the deceased sustained grievous injuries and succumbed to the same, on the spot.

3. It is the case of the claimants that, the deceased was aged about 22 years,

working as mason and a laundry man, earning a sum of Rs. 3,300/- per month and hale and healthy prior to the accident. It is also their case that he was contributing the entire sum towards the family requirements and on account of his untimely death, the family has become haywire and they have lost the only source of income apart from social and financial security and therefore, they have to be compensated reasonably.

4. On account of the death of the deceased, the claimants filed the claim petition u/s 163A of the Motor Vehicles Act, (the Act'' for short) before the Tribunal, seeking compensation against the Appellant/Insurer and the owner of the offending vehicle. The said claim petition had come up for consideration before the Tribunal on 23rd January 2008. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 4,75,200/- towards loss of dependency and Rs. 4,500/- towards the conventional heads, viz. loss of estate and transportation and funeral expenses, as per the second schedule to Section 163A of the Act and in all a sum of Rs. 4,79,700/-, with 6% interest per annum, from the date of petition till the date of payment. Being aggrieved by the quantum of compensation as also the liability fastened on it, the Appellant Insurer is in appeal before this Court, seeking to set aside the same.

5. I have heard learned Counsel for Appellant Insurer and learned Counsel for claimants, for quite some time.

6. The principal submission canvassed by the learned Counsel appearing for Appellant/Insurer is that, the driver of the offending vehicle did not possess a valid driving licence as on the date of accident and therefore, the Tribunal is not at all justified in fastening the liability on the insurer and hence, the same is liable to be set aside and that the liability is to be fastened on the owner of the offending vehicle. Further, he submits that the quantum of compensation awarded by Tribunal is also excessive, exorbitant and on the higher side and is liable to be reduced considerably.

7. As against this, Sri. K.T. Gurudeva Prasad, learned Counsel appearing for claimants, submits that the Tribunal, after critical evaluation of the oral and documentary evidence available on file, has awarded just and reasonable compensation and also rightly fastened liability on the insurer and hence, interference in the same is uncalled for, nor the Appellant Insurer has made out a case for such interference.

8. After hearing learned Counsel for the parties, after careful perusal of the judgment and award passed by the Tribunal and after going through the original records made available, the points that arise for my consideration in this appeal are:

I) Whether the Tribunal is justified in fastening the liability on the Appellant/ Insurer?

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/national-insurance-company-ltd-…

II) Whether the quantum of compensation awarded by Tribunal is just and reasonable?

Re-Point II: It is seen that the occurrence of accident and the resultant death of the deceased are not in dispute. In this case, the grievance of the Insurer is that, the driver of the offending vehicle did not possess a valid driving licence as on the date of accident and therefore fastening liability on it is not justifiable. The claim petition is filed u/s 163A of the Act. The Tribunal, coming to the conclusion that the claimants have filed the claim petition u/s 163A of the Act, and hence need not prove the accident and also observing that, as per Ex.P3, sketch, the driver of the offending vehicle was at fault in causing the accident, and also that there was no rebuttal evidence with regard to the contributory negligence, awarded the compensation and fastened the same on the Insurer. I do not find any error or illegality in the said judgment, as the same is in consonance with the judgment of the Apex Court. In this regard, it is worthwhile to refer to the decision of the Hon''ble Apex Court in the case of Kusum Lata and Ors. v. Satbir and Ors. reported in 2011 ACJ 926, wherein, the Apex Court, relying on various judgments including Sarla Verma''s case, has held that, if there is any dispute with regard to the licence of the driver of the offending vehicle, then, the Insurance Company may be directed to pay the compensation amount to the claimant/s and then recover from the owner of the said vehicle. The relevant paragraph is extracted as below:

13. In respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the insurance company has to pan and then man recover it from the owner of vehicle. This Court is affirming that direction in view of the principles laid down by a three-Judge Bench of this Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others,

(emphasis supplied)

After noting the submission of the learned Counsel for the parties and after carefully going through the aforesaid judgment, I am of the considered view that there is no dispute or second thought regarding the settled position that the Insurer has to satisfy the award and thereafter is entitled to recover it from the owner of the offending vehicle. Therefore, I hold that the Tribunal is highly justified in fastening the liability on the Insurer.

Re-Point II: Notably, the claim petition is filed u/s 163A of the Act. In such a situation, as things stand today, the compensation has to be awarded as per the II Schedule to the said Act. The Tribunal has rightly adopted the said schedule but has erred in assessing the monthly income of the deceased at Rs. 3,300/- or Rs. 39,600/- per annum. The same is on the lower side and needs to be re-assessed. Having regard to the age, avocation and the year of accident, I re-assess the income of the deceased at Rs. 40,000/- per annum. The claimants have stated that the deceased was aged about 22 years. But, the Tribunal, disbelieving the same, but after critical evaluation of oral and documentary

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/national-insurance-company-ltd-...

evidence, particularly, Ex.P11, Transfer Certificate, wherein the date of birth of the deceased is mentioned as 01/12/1980, has assessed the age of the deceased as 26 years. The same is just and proper and I accept the same. Accordingly, If his age is taken as 26 years, then the multiplier for the age group of 25-30 years, is ''18''. Thus, as per the II schedule of the said Act, the compensation towards loss of dependency would be Rs. 6,80,000/- and after deducting 1/3rd (i.e. approximately Rs. 2,26,000/-) from it, towards the personal and living expenses of the deceased, then, the actual loss of dependency works out to Rs. 4,54,000/- as against Rs. 4,75,200/- awarded by Tribunal.

9. However, the Tribunal has rightly awarded compensation of Rs. 2,000/- towards loss of estate and Rs. 2,500/- towards funeral and obsequies expenses, as per the said schedule to the Act. Therefore, it does not call for interference.

Thus, the claimants would be entitled to a total compensation of Rs. 4,58,500/- as against Rs. 4,79,700/-awarded by Tribunal and there would reduction of compensation amount by a sum of Rs. 21,200/-.

10. In the light of the facts and circumstances of the case, as stated above, the appeal filed by Appellant Insurer is allowed in part. The impugned judgment and award dated 23rd January 2008 passed in MVC No. 2790/2006, by the XVI Additional Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal, Metropolitan Area, Bangalore (SCCH-14), is hereby modified, reducing the compensation by a sum of Rs. 21,200/-.

The apportionment and the manner of disbursement of compensation ordered by Tribunal gets proportionately reduced.

The Insurance Company is directed to deposit the remaining compensation, with interest thereon at 6% per annum, within three weeks from the date of receipt of copy of the judgment and award.

It is made clear that, the Insurer is at liberty to recover the compensation paid by it from the owner of the offending vehicle, if it so desires.

The amount, if any, in deposit by the Insurer shall be transmitted to the jurisdictional Tribunal, forthwith.

Office to draw award, accordingly.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/national-insurance-company-ltd-…