(2016) 02 KAR CK 0359

In the Karnataka High Court

Case No : M.F.A. No. 8590 of 2011 (MV) and M.F.A. Crob. No. 163 of 2014

New India Assurance Co. and Others — APPELLANT

Vs

Syed Ammar Pasha and Others — RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, Section 149(2), Section 166, Section 39, Section 56

Citation : (2016) 02 KAR CK 0359

Hon'ble Judges : N.K. Patil and Rathnakala, JJ.

Bench : Division Bench

Advocate : R. Jai Prakash, Advocate, for the Appellant; B.R. Ananda, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

N.K. Patil, J.—1. The appeal by the Insurer and the cross objection by the Cross objectors/claimants respectively are directed against the same impugned judgment and award dated 16/03/2011, passed in MVC No. 5834/2009, by the VIII Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal-V, Bangalore City, (hereinafter referred to as ''Tribunal'' for short).

2. The Tribunal, by its judgment and award has awarded a sum of Rs. 4,65,000/- under different heads with interest at 6% per annum from the date of petition, as against the claim of the appellants for a sum of Rs. 25,00,000/-, on account of the death of the deceased Sri. Maruthi @ Maruthi Lamani, in the road traffic accident.

3. Aggrieved by the said judgment and award of the Tribunal, Insurer has preferred an appeal on the ground that, the Tribunal has erred in directing the insurer to indemnify the award amount on the ground that, the owner of the offending vehicle was not having effective fitness certificate and whereas, the cross objectors/claimants have filed cross objection seeking enhancement of compensation, on the ground that, compensation awarded by the Tribunal

towards loss of dependency and towards conventional heads is on the lower side and is liable to be enhanced.

4. In brief, the facts of the case are:

"The claimants are the wife, children and mother of the deceased Sri. Maruthi @ Maruthi Lamani @ Maruti Bhimai Lambani. They filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the owner and insurer of the offending vehicle on account of the death of the deceased in the road traffic accident, contending that on 19.4.2009 at about 8.00 p.m. deceased was proceeding on a Motor cycle bearing Reg. No. KA.08.J.3441 with one relative Pandu, and when he came near Andhra Sudheer Hotel on Kolar Bangalore NH4 road, at that time, one lorry bearing Reg. No. CNG 9319 was parked on mud footpath infront of Andhra Sudheer hotel facing towards Bangalore side by seeing the lorry was parked, deceased took his vehicle towards the back of the lorry to park his vehicle, at that time, driver of the said lorry took the said lorry in the reverse direction at high speed in a rash and negligent manner without giving any signals or indication without observing the motor cycle of the deceased, dashed against the motor cycle of the deceased. Due to which, deceased was knocked down and sustained grievous injuries and he succumbed to the same on the spot."

5. It is the further case of the claimants/cross objectors that, deceased was aged about 36 years, hale and healthy prior to the accident and working as Cooli at Byanna Stone Crusher, Narasapura and getting salary of Rs. 7,500/- per month and looking after the welfare of the family and the untimely death of the deceased has affected the social and financial condition of the family, as the claimants have lost their earning member, apart from mental shock and agony.

6. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petition in part and awarded the compensation of Rs. 4,65,000/- under different heads with interest at 6% p.a., from the date of petition till the date of deposit and directed the Insurer to indemnify the same.

7. Being aggrieved by the said judgment and award passed by the Tribunal, the Insurer and the Cross objectors/claimants have filed the appeal and the cross objection, seeking appropriate reliefs as stated supra.

8. We have gone through the grounds urged by the Insurer in the memorandum of appeal.

9. The specific ground taken by the Insurer in the memorandum of appeal is, Section 56 of the M.V. Act, 1988, specifically deals with the fitness certificate in respect of the transport vehicle and as per the said Section, transport vehicle shall not be deemed to be validly registered for the purpose of Section 39 unless it carries certificate of fitness in such Form containing such particulars and

information as may be prescribed by Central Government issued by the prescribed authority or by an authorized testing station mentioned in Sub Section 2 of Section 56 to the effect that the vehicle complies for the time being with all the requirement of the Act and rules made therein and if there is no fitness certificate, the vehicle deemed to be not validly registered. It is further contended that, Section 39 of the Act specifically states that no person shall drive any motor vehicle and no owner of motor vehicle shall goes or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with Chapter-4 of the M.V. Act. But this aspect of the matter has not been looked into or considered or appreciated and the reasoning given in its judgment is contrary to MV Act. Therefore, fastening entire liability on the Insurer and directing Insurer to indemnify the award amount cannot be sustained and is liable to be set aside.

10. As against this, learned counsel appearing for the cross objectors/claimants submitted that, reasoning given by the Tribunal in its judgment for holding that fitness certificate is not mandatory and that ground taken by the Insurer is not covered under Section 149(2) of the M.V. Act. To substantiate the said submission, he quick to point out and submitted placing reliance on the judgment of this Court dated 18th September 2007 in M.F.A. No. 6621/2006 C.W. M.F.A. Crob No. 304/2006 (The New India Assurance Co., Ltd. v. N. Srinivas Murthy and others) that, the Division Bench of this Court has considered this aspect of the matter and held that that is not a reason to deny the compensation to the claimants. He further placing reliance on para-3 of the judgment dated 8th January 2014 passed in M.F.A. No. 24307/2010 (The Divisional Manager, National Insurance Co., Ltd.,) v. Parvati and others) and connected matters submitted that, the specific ground taken by the Insurer cannot be sustained and is liable to be set aside confirming the reasoning given by the Tribunal. Further, he submits that, the Tribunal has erred in not awarding reasonable compensation towards loss of dependency as the accident is of the year 2009, deceased was aged about 36 years and working as coolie at Byanna Stone Crusher, Narasapura and therefore, income of the deceased may be re-assessed between Rs. 5,500/- to Rs. 6,000/- per month, after deducting 1/4th towards personal and living expenses, applying multiplier of ''15'' reasonable compensation may be awarded towards loss of dependency. Further, he submits that, the Tribunal has erred in not awarding reasonable compensation towards conventional heads and what is awarded is inadequate and it requires to be enhanced reasonably in the light of the judgment of the Apex Court and this Court. Therefore, he submitted that, the impugned judgment and award is liable to be modified by enhancing reasonable compensation.

11. After hearing the learned counsel for the parties and after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, the point that arises for our consideration are:

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

12. The occurrence of the accident and the resultant death of the deceased are not in dispute. It is the case of the claimants/cross objectors that deceased was aged about 36 years, working as Coolie at Byanna Stone Crusher, only earning member in the family and on account of his untimely death, claimant No. 1 has lost her husband, claimant Nos. 2 and 4 are deprived of the love and affection, guidance and security of their father and claimant No. 3 has lost the love and affection of her son and his death has affected both social and economic condition of the family apart from mental shock and agony and their future life has become jeopardized and it has to be compensated reasonably. Having regard to the age, occupation and the year of accident, we assess the income of the deceased at Rs. 5,500/- per month instead of Rs. 3,500/- per month to meet the ends of justice. Out of which, if 1/4th (Rs. 1,375/-) is deducted towards the personal and living expenses of the deceased since claimants are four in numbers, his net contribution to the family comes to Rs. 4,125/- per month. The proper multiplier applicable taking the age of the deceased as 36 years is ''15'' as rightly adopted by the Tribunal. Therefore, we redetermine the loss of dependency at Rs. 7,42,500/- (Rs. 4,125 x 12 x 15) instead of Rs. 4,20,000/- awarded by the Tribunal and accordingly, it is awarded.

13. Having regard to the facts and circumstances of the case as stated above and in the light of the law laid down by the Apex Court and this Court, we deem it fit to award a sum of Rs. 1,00,000/- towards loss of consortium, Rs. 1,00,000/- towards loss of love and affection at the rate of Rs. 25,000/- to the each of the claimant Nos. 1 to 4, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses. In all, the claimants are entitled to a total compensation of Rs. 9,92,500/- instead of Rs. 4,65,000/- as awarded by the Tribunal.

There would be an enhancement of compensation of Rs. 5,27,500/- with interest at 6% p.a., from the date of petition till its realization.

14. Regarding the specific ground taken by the Insurer in paras 5 and 6 of the memorandum of appeal is concerned, the Tribunal has considered the said aspect of the matter in its judgment and by assigning cogent and valid reasons has negatived the said stand taken by the Insurer placing reliance on Section 149 Sub-Clause 2 of M.V. Act. As rightly pointed out by the learned counsel appearing for Cross objectors/claimants, accepting the said grounds taken by the Insurer in the memorandum of appeal is not justifiable in view of the law laid down by this Court dated 18th January 2014 in M.F.A. No. 24307/2010 (The Divisional Manager, National Insurance Co., Ltd. v. Parvati and others) and connected matters and dated 18th September 2007 passed in M.F.A. No. 6621/2006 C.W. M.F.A. Crob. No. 304/2006 (The New India Assurance Co., Ltd., v. N. Srinivasa Murthy and others) and in view of the Section 149 Sub Clause 2 of M.V. Act, is not justifiable. Therefore, we do not find any good grounds to entertain the said contention and hence, the said ground is rejected.

15. For the foregoing reasons, the appeal filed by the Insurer is dismissed as devoid of merits and the Cross objection filed by the cross objectors/claimants is allowed in part. The impugned judgment and award dated 16/03/2011, passed in MVC No. 5834/2009, by the VIII Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal-V, Bangalore City, is hereby modified, awarding a sum of Rs. 5,27,500/- with interest at 6% p.a., from the date of petition till its realization in addition to the compensation awarded by the Tribunal.

The Insurer is directed to deposit the enhanced compensation of Rs. 5,27,500/- with interest at 6% p.a., from the date of petition till the date of realization, within a period of three weeks from the date of receipt of a copy of this judgment.

Immediately, on such deposit by the Insurer, out of the enhanced compensation of Rs. 5,27,500/-, a sum of Rs. 1,00,000/- with proportionate interest shall be invested in the Fixed Deposit in the name of claimant No. 1, wife of the deceased in any Nationalized or Scheduled or Grameena Bank, for a period of 10 years and renewable by another 05 years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

A sum of Rs. 1,00,000/- with proportionate interest shall be invested in the Fixed Deposit in the names of each of the claimant Nos. 2 and 4 in any Nationalized or Scheduled or Grameena Bank, till they attain 30 years, with liberty reserved to claimant No. 1 to withdraw the interest accrued on it, periodically, for their welfare till they attain 21 years and from 22 years to 30 years, they are at liberty to withdraw the interest accrued on it, periodically.

A sum of Rs. 1,00,000/- with proportionate interest shall be invested in the Fixed Deposit in the name of claimant No. 3, mother of the deceased in any Nationalized or Scheduled or Grameena Bank, for a period of 05 years and renewable by another 05 years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

Remaining sum of Rs. 1,27,500/- with proportionate interest shall be released in favour of the claimant Nos. 1 and 4 in equal proportion immediately.

The amount deposited by the Insurer shall be transmitted to the jurisdictional Tribunal, immediately.

Draw the award, accordingly.