

(2015) 04 KAR CK 0016

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 20790 and 20791/2013 (MV)

New India Assurance Co. Ltd. and Others

APPELLANT

Vs

Shantamma and Others

RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:

Citation : (2015) 04 KAR CK 0016

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : R.R. Mane, Advocate, for the Appellant; M.M. Hiremath, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—The appellant - Insurance Company filed these appeals, being aggrieved by the judgment and award dated 31.10.2012 passed by the Principal Senior Civil Judge and AMACT, Ranebennur (hereinafter referred to as "the Tribunal", for short) in MVC Nos. 223/2011 & 224/2011.

2. The common judgment and award passed by the Tribunal is challenged in these two appeals and the common question of law and facts are involved in these two appeals. Hence both the appeals are clubbed together and disposed of by this common judgment.

3. The respondents in these two appeals had filed the claim petitions contending that, Mallappa @ Malleshappa Jogihalli, son of the claimants in MVC No. 223/2011 and Hampesha @ Anup Banakar, son of the claimants in MVC No. 224/2011 were proceeding in a motorcycle bearing registration No. KA-15/A-707 from Balambeedu to Kodiyalhospete. When they came near Kusgur village, a lorry bearing registration No. KA.07/2529 driven by its driver in a rash and negligent manner dashed against the motorcycle in which Mallappa and Hampesha were travelling. Due to the impact, both the persons sustained grievous fatal injuries and died on the spot. Hence the claim petitions were filed

seeking compensation.

4. MVC No. 223/2011 was filed by the mother and sister of the deceased Mallappa. In the claim petition, it was contended that the deceased was working as a JCB operator and was getting the salary of Rs. 7,500/- p.m. At the time of accident, the deceased was aged about 24 years and on account of his death, the family had lost the bread earner, and sought for compensation.

5. MVC No. 224/2011 was filed by the father, mother and sisters of the deceased Hampesha. In the claim petition it was contended that the deceased Hampesha was working as a supervisor in Renuka Electrical and General Agency and was getting a salary of Rs. 8,000/- p.m. At the time of accident the deceased was aged about 25 years. The accident occurred due to the rash and negligent driving of the lorry bearing registration No. KA.07/2529 by its driver. Hence it was contended that the claimants are entitled for compensation.

6. In pursuance of the notice issued by the Tribunal, the owner of the vehicle entered appearance and filed the statement of objections and contended that the vehicle is covered by Insurance policy. If the court comes to the conclusion that the claimants are entitled for compensation, the Insurer has to compensate the claimants and sought for dismissal of the claim petitions as against the owner of the offending vehicle.

7. The Insurance Company in both the claim petitions filed statement of objections denying their liability and also contended that the driver of the offending vehicle did not possess the valid and effective driving license as on the date of accident. Hence, the Insurer is not liable to compensate the claimants and sought for dismissal of the claim petitions.

8. The Tribunal after considering the oral and documentary evidence adduced by the parties, taking into consideration the Police records held that due to the rash and negligent driving of the offending lorry by its driver, the accident had occurred and the claimants are entitled for compensation. With regard to quantum of compensation is concerned, though the claimants have produced the salary certificate of the deceased and also examined the author of the salary certificate, the Tribunal disbelieved said evidence on the ground that the author of the salary certificate is the close relative of the deceased. Hence, his evidence cannot be believed. The Tribunal taking the income of the deceased at Rs. 5,000/- and deducting 50% towards personal expenditure awarded a sum of Rs. 5,40,000/- towards loss of dependency and Rs. 45,000/- towards conventional heads, in all a sum of Rs. 5,85,000/- in respect of the claimants in MVC No. 223/2011 and awarded a sum of Rs. 5,40,000/- towards loss of dependency and Rs. 50,000/- towards conventional heads. In all, awarded a sum of Rs. 5,95,000/- to the claimants in MVC No. 224/2011. Since the driver of the offending lorry was possessing the valid and effective driving license, the Tribunal fixed the liability on the Insurance Company to compensate the claimants. Being aggrieved by the said judgment and award, the appellant-Insurance Company

has filed these two appeals.

9. Sri Ravindra R. Mane, learned counsel appearing for the appellant-Insurance Company contended that the judgment and award passed by the Tribunal is contrary to law. While awarding the compensation, the Tribunal ought to have taken the age of the mother of the deceased instead of taking the age of the deceased. Income of Rs. 5,000/- taken by the Tribunal is on the higher side and sought for setting aside the judgment and award by allowing these two appeals.

10. On the other hand, Sri M.M. Hiremath, learned counsel appearing for the claimants argued in support of the judgment and award passed by the Tribunal and sought for dismissal of the appeals.

11. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the impugned judgment and award and other relevant records.

12. The records clearly disclose that due to the rash and negligent driving of the offending lorry bearing registration No. KA-07/2529, sons of the claimants died in the road traffic accident on 08-02-2011. The actionable negligence is on the part of the driver of the offending vehicle and has become final. The Insurance Company has not challenged that part of the finding of the Tribunal. The dispute is only with regard to the quantum of compensation. Though the claimants have contended that the deceased were working as JCB Operator and Supervisor and getting income of Rs. 8,000/- p.m. and Rs. 8,500/- p.m. respectively, though the salary certificates of the deceased have been produced as Ex. P9 and Ex. P12, since the person who issued salary certificates is a close relative of the deceased, the Tribunal disbelieved the same and taken the income of the deceased at Rs. 5,000/- p.m. The Tribunal applied the multiplier of 18 since the deceased were aged about 24 and 25 years respectively and awarded compensation. The main contention of the appellant-Insurance Company is that applying multiplier 18 by the Tribunal is contrary to law. While awarding compensation, the Tribunal ought to have taken the age of the mother of the deceased instead of taking the age of the deceased. Hence, sought for setting aside the judgment and award passed by the Tribunal.

13. Sri M.M. Hiremath, learned counsel appearing for the claimants contended that though salary certificates have been produced by the claimants which shows that the deceased were getting a salary of Rs. 8,000/- and Rs. 8,500/- respectively, the Tribunal disbelieved the same on the ground that the author of the salary certificate was a close relative of the deceased and taken the income of the deceased at Rs. 5,000/- p.m., which is contrary to law. There is no bar for any relative to appoint the claimant/deceased and issue salary certificate and there is no such prohibition in the Act. Income of Rs. 5,000/- taken by the Tribunal is on the lower side.

14. Admittedly, the accident occurred in the year 2011. The deceased were aged about 24 and 25 years. At that prime age, it is not difficult for them to earn Rs.

8,000/- p.m. Hence, I am of the view that the monthly income of Rs. 5,000/- taken by the Tribunal is on the lower side. When the claimants have produced the salary certificates of the deceased and also examined the author of the salary certificates as P.W. 3, disbelieving the said evidence appears to be contrary to law.

15. Taking into consideration the facts that the deceased were aged about 24 and 25 years respectively and the accident occurred in the year 2011, even though the Tribunal has taken the multiplier 18, I am of the opinion that in the facts and circumstances of the case, this Court need not interfere with the said judgment and award, since the compensation awarded by the Tribunal is just and fair compensation. Accordingly, I pass the following:

Both the appeals are dismissed.

The amount in deposit be transferred to the Motor Accidents Claims Tribunal, Ranebennur.