(2009) 06 KAR CK 0045

In the Karnataka High Court

Case No : Miscellaneous First Appeal No''s. 4437 and 4438 of 2006

New India Assurance Co. Ltd. APPELLANT

Vs

Sri Ravindran, S.A.K.P. and Others RESPONDENT

Date of Decision : 16-06-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2009) 06 KAR CK 0045

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : R. Jaiprakash, for the Appellant; T. Seshagiri Rao, for R2, R4, R5 and R6, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—These two appeals are by the insurer against the common judgment and consequential awards passed in MVC No. 262/2003 dated 03.12,2005 by the learned member, Motor Accident Claims Tribunal, Bangalore City. The respondents in MFA No. 4437/2006 were the petitioners in MVC No. 262/2003. The appellant was the 1st respondent in the said claim petition. Respondents 2 to 5 had fited a claim petition u/s 166 of Indian Motor Vehicle Act, 1988, contending that, on 14.07.2002 at about 3:15 p.m p.m, when A. Dhanashekaran and his brother A. Rajashekaran were travelling in a car bearing registration NO. TN-67-C-8898 from Aruppukotai to Toothukkudi, on account of the rash and negligent driving of the car by the driver, the car dashed against the parked lorry No. TN-04-E-2226 on Ettaiyapurum to Aruppulottal Road at S. Duraisamypurum junction and caused Injuries over the body of A. Dhanasbekaran and his brother A. Rajashekaran. In the said accident, A. Rajashekaran having sustained injuries, succumbed en the spot and his brother A. Dhanashekaran, having also sustained injuries, died on the way to the hospital. Feeling aggrieved, the respondents being the heirs and legal representatives of deceased A. Dhsnashekaran. filed the said petition for awarding of compensation.

2. The respondents 2 to 6 in MFA No. 4438/2006 were the petitioners in MVC No. 263/2003. They had filed the said petition claiming compensation on account of death of A. Rajashekaran, on account of the injuries sustained in the said accident.

3. The petitions were resisted by the appellant, by filing common written statement, denying all the averments made by the petitioners. It was contended that there was no negligence on the part of driver of the car and even otherwise, the compensation claimed is excessive.

4. On the basis of the pleadings, tribunal framed issues regarding negligence, entitlement and quantum of compensation. Common evidence was recorded. The widows of the said deceased persons got themselves examined is PWs 1 and 2. Ex. P-1 to Ex. P-16 were marked on behalf of the petitioners. Respondents did not lead any evidence.

5. After appreciating the evidence, the tribunal, by common judgment, has allowed both the petitions in part. It has held that, the accident occurred due to rash and negligent driving of the said car by its driver and that A. Dhanashekaran and A. Rajashekaran died on account of the Injuries sustained in the said accident and that the respondents are liable to pay the compensation to the claimants, who are the legal heirs of the said deceased persons. The tribunal has awarded compensation of Rs. 5,64,000/-, in each of the petitions.

6. Feeling aggrieved, the insurer has filed these appeals. This Court by order dated 21.04.2006 granted interim stay to the extent of 50% of the award amount, subject to a condition that, remaining 50% of the award amount with cost and interest shall be deposited with the tribunal within 5 weeks and the amount deposited by the appellant in the appeal was ordered to be transferred to the tribunal for disbursement.

7. I have heard Sri R. Jaiprakash, learned Counsel for the appellant and Sri. T. Sheshagiri Rao, learned Counsel for the respondents.

8. Though the owner of the lorry - Ravindran, S.A.K.P, was originally impleaded as the 1st respondent, the appellant filed memo dated 29.04.2006 to dispense with the notice of the appeal to the said respondent, which was taken on record and the notice was dispensed with by an order dated 17.01.2008. Thus, the appeal has been dismissed as against the said respondent.

9. The main contention of the learned Counsel for the appellant is directed against the quantum of award. It is contended that, the tribunal has erred in evaluating the monthly income of the deceased at Rs. 6000/- per month and In quantifying the loss of dependency at Rs. 5,28,000/-. It is contended that, the amount awarded is excessive. Learned Counsel pointed out that the deceased persons were the partners of M/s. Annamaial Rice Mills, Arapukotal and that after their death, their wives have cot inducted themselves as partners and therefore

there Is no loss of income due to the death of deceased persons to the respective family and It was only the loss of service of the deceased, on account of which, the amount as awarded, could not have been awarded. Reliance was placed on the decision, in the case of B. Parimala and Ors. v. Riyaz Ahmed and Ors. 2002 (2) T.A.C. 219 (Kar.)

10. On the other hand, learned Counsel for the respondents by taking me through the evidence of PWs 1 and 2 contended that, though the deceased were the partners, whatever Income they derived in the partnership business, either by way of remuneration or by way of share In the properties, is en account of effort and skill and therefore, the Income will have to be treated as the income of the deceased persons for the purpose of determining the loss of dependency. It was pointed out that, the deceased by doing business as canvassing agents and agriculturists were earning and were contributing to their respective families, Learned Counsel made submissions in support of the findings and conclusions recorded by the tribunal.

11. Since the arguments were confined by the learned Counsel for the appellant to the quantum of award, the question that arises for consideration is, whether the compensation awarded is excessive and is liable to be reduced?

12. PW-1 In her affidavit has stated that, her husband late A. Rajashekaran was 52 years old and he was carrying on rice business as a canvassing agent, apart from which, he had a rice mill at Aruppkottal virdunagar District, Tamil Nadu. She has stated that, being a canvassing agent, he was earning more wore then Rs. 30,000/-per month and was contribute the entire Income to the family and on account of his untimely death, herself and other family members have then put to loss. Ex. P-8 and Ex. P-13 are the Income tax returns of A. Rajasthan for the assessment years 2000 - 2001, 2001 - 2002 and 2002 - 2003. In the cross-examination, she has denied the suggestions made to her, including the one relating to the income of the deceased from his agricultural land as well as rents from the buildings and that, Ex. P-8 has been crested for the purpose of claiming more compensation. Nothing material has been elicited to disbelieve her evidence regarding the income of the said deceased.

13. PW-2, D. Jayamani, W/o. Late A. Dhanashekaran has deposed that, her husband at the time of accident was aged about 50 years and was carrying on rice mill business as a canvassing agent, apart from which, he had a rice at Aruppkottai Virdunagar District, Tamil Nadu. She has deposed that, her husband was earning more than Rs. 30000/- per month being a canvassing agent and was contributing the entire income to the family and on account of his untimely death, herself and her family members have suffered the loss. Ex. P-16 is the statement of income pertaining to M/s. Annamalai Rice Mill. She has admitted that her husband was one of the partners in M/s. Annamaiai Rice Kill and that the partnership has not been dissolved after her husband''s death. She has also admitted that herself and the widow of late A. Rajasthan have become the partners of the said rice mill. She has denied the suggestion that, her husband

was not earning any sum being a canvassing agent. Nothing material has been elicited in the cross-examination to disbelieve her evidence, regarding the income of her husband.

14. Ex.P-8 is a certificate of S.S. Prasad & Co., Chartered Accountants. It has been certified therein that, having verified the records relating to the income tax submitted by A. Rajashekaran, who was assessed to Income Tax by the Income Tax Officer, Ward 9(4), Bangalore under PAN No. AAXPR8691K, the gross income of A. Rajashekaran from his commission business and other sources for the year 1998 - 1999 upto 2001 - 2002, it has been certified as follows:

Asst Year Gross Net Income Agl. Income Income Declared 1988 - 99 Rs. 445637/- Rs. 109660/- Rs. 23500/- 1999 - 2000 Rs. 487836/- Rs. 144980/- 2000 - 01 Rs. 307474/- Rs. 160270/- 2001 - 02 Rs. 244756/- Rs. 115660/- Rs. 55155/- 2002 - 03 Rs. 309917/- Rs. 124660/- Rs. 36615/- Ex.P-13 series is the Income tax returns for the years 2000 - 2001, 2001-2002 and 2002 - 2003.

15. The tribunal has noticed that the widows of the deceased, have been inducted as partners in the firm M/s. Annamalal Rice Mills, Aruppkottai and it has head that, the question of sustaining loss towards the income from the said rice milt does not arise. However, It has held that, if a supervisor was appointed for looking after the said rice mill, he would get a minimum monthly salary of Rs. 4,500/-p.m. But the deceased being the partners, used to pay more interest. In running the rice mil! than any ordinary supervisor and hence, it has taken the notional monthly income at Rs. 6000/- and therefrom deducting 1/3rd towards personal expenses of the deceased, the contribution to the family has been arrived at Rs. 4000/-p.m or Rs. 48,000/- p.a. Noticing the age of the deceased from F.M. Report at 53 years, the multiplier applicable being "11", has assessed the loss of dependency at Rs. 5,28,000/-.

16. In the case of B. Parimala (supra), the consideration for determination of dependency from the income of the deceased partner in a firm, was considered with reference to different kinds of partner in a partnership firm. The income was categorized with regard to the status of the partner for the purpose of calculating the loss of dependency.

17. In view of the fact that the widows of the deceased have become partners of the partnership firm, what is required to be found out is, whether the said deceased persons were earning income by their initiative, zeal, exertion and business acumen, in as much as, the profits are earned not only on account of the investment of capital, but are the result of investment plus the time, skill and effort put in by the partners.

18. The statement made by PWs 1 & 2 to the effect that each of the deceased was a canvassing agent and was earning therefrom and they were contributing the said income to the family, is supported by the Income tax returns and certificate of chartered accountant. The deceased who were running rice mill, must have been also the canvassing agents and were separately earning

therefrom. Considering the experience which the deceased had, being the partners of rice mill, it could be expected that each of the deceased was earning about Rs. 6000/-per month being a canvassing agents. The record shows they were having agricultural income. Hence, the tribunal has not committed any error in reckoning the monthly income of the deceased at Rs. 6000/- and contribution to the family being at Rs. 4000/- per month and in applying the multiplier of "11" and in awarding the loss of dependency at Rs. 5,23,000/- in each case.

19. The amount awarded under the conventional heads, namely, loss of love and affection and loss of estate is on a lower side. However, the respondents have not preferred any cross-objection.

20. In view of the evidence on record, even by applying the ratio laid down in the case of B. Parimala (supra), since the deceased were earning from other sources such as commission agency and agriculture, it cannot be held that there is any excess award by the tribunal. The ground raised by the learned Counsel for the appellant is devoid of merit. Hence, I pass the following:

ORDER

1. Both the appeals are devoid of merit and shall stand dismissed. No costs.

The amount in deposit, made by the appellant, is hereby ordered to be transferred immediately to the tribunal for necessary action.