(2014) 11 KAR CK 0064

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 10724/2013 (MV-D)

New India Assurance Co. Ltd. APPELLANT

Vs

Velumurugan V. RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 14(2)(a)

Citation : (2016) ACJ 475 : (2015) 1 AKR 848 : (2015) ILR 393

Hon'ble Judges : Ravi V. Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : R. Jaiprakash, Advocate for the Appellant; M.V. Murthy, Advocate for the Respondent

Judgement

K.L. Manjunath, J.—The Insurance Company has filed this appeal aggrieved by the Judgment and Award passed by the MACT., Bangalore on 14.8.2013 in MVC No. 6424/2011.

2. Heard the learned Counsel for the parties.

3. The appellant-Insurance Company has filed this appeal questioning the liability saddling on it and also to reduce the quantum of compensation granted by the Tribunal.

4. The admitted facts are that the petitioner/second respondent is the mother of one Nagarjuna, who died in the road traffic accident that occurred on 25.7.2011 at about 3.50 p.m. He was aged about 30 years. The accident occurred due to rash and negligent driving of the driver of the tanker bearing registration No. KA-40 7499 which dashed against the motor cycle. He was immediately shifted to Command Hospital, where he was declared dead. He was aged about 30 years and working as Office Administrator at Radical Net Works, Frazer Town, Bangalore and drawing a salary of Rs. 8,000/- per month. He was a M.Com., graduate. In addition to that he was also a graduate in Library Science. The Insurance Company contended that since the lorry driver did not possess the

special endorsement required for transportation of hazardous goods, the liability cannot be fastened on it and also contended that the claim made by the claimant is on the excessive side.

5. The Tribunal considering the evidence let-in by the parties came to the conclusion that when the accident occurred, the tanker was not carrying on any hazardous or combustible materials. Since it was an empty tank even the person who have travelling in heavy goods vehicle (HGV) could have driven the vehicle, accordingly fastened the liability on the Insurance Company. The Tribunal considering the income of the deceased at Rs. 8,000/- per month, considering his age, added 50% of his income towards future prospectus, thereafter deducting 1/3rd towards his personal expenses and applying the multiplier applicable to the age of the deceased and not the age of his mother and awarded a total compensation of Rs. 16,77,000/-. Therefore, the present appeal is filed.

6. Mr. R. Jaiprakash, learned Counsel for the appellant-Insurance Company contends that even though when the accident occurred, the tanker did not possess or carrying on any hazardous or combustible material since it is registered as a petrol tanker, the special endorsement was required to be made in the driving licence. In the absence of the same, the Tribunal has committed an error in fixing the liability. He further contends that deducting 1/3rd towards the personal expenses of the deceased and applying the multiplier of 17 is an error committed by the Tribunal. On these grounds, he requests the Court to allow the appeal.

7. Per contra, Sri G.V. Murthy, learned Counsel for the claimant submits that since the tanker was not carrying on any hazardous or combustible material since the driver had valid driving licence to drive HGV, the liability fastened by the Tribunal is truthful and appeal has to be dismissed.

8. So far as the quantum of compensation awarded by the Tribunal is concerned, he requests the Court to reconsider the evidence and award the same in accordance with law.

9. Having heard the learned Counsel for the parties, we have to consider the following points:-

"(1) Whether the liability saddled on the appellant-Insurance Company by the Tribunal required to be interfered with?

(2) Whether the compensation awarded by the Tribunal is liable to be interfered with?"

10. So far as point No. 1 is concerned, the appellant is not disputing the driver possessing a valid licence to drive a HGV. The contention of the appellant is that since the vehicle in question is registered as petrol tanker, special endorsement was required to be obtained by the driver to drive a petrol tanker. Admittedly, when the accident occurred, it was an empty tank. In the cross-examination of RW. 1, he has admitted as hereunder:-

"When the accident occurred, there was no petroleum product in the tanker."

Therefore, it is clear that when the accident occurred, it was an empty tanker. In order to drive an empty tanker, no endorsement is required by a driver to drive such vehicle since it was not carrying on any hazardous or combustible material. In order to consider the questions involved in this appeal, we have to consider the provisions under Section 14(2)(a) of the Motor Vehicles Act, 1988, which reads as hereunder:-

"14(2)(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

[Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and]"

Proviso to Section 14(2)(a) clearly indicates that special licence is required to drive a vehicle, which is carrying on goods of dangerous or hazardous nature and such licence will be effective for a period of one year and thereafter the driver has to undergo one day refresher course of the prescribed syllabus. Therefore, it is clear that the special licence to be granted under this proviso will be valid for one year and thereafter it will be renewed subject to the driver undergoing one day refresher course, which indicates that in order to grant such special licence, the driver has to undergo a course which is meant for safety measure. Safety measure is required when the vehicle is carrying on combustible, dangerous or hazardous nature goods. In other words, if a tanker is not carrying on goods of dangerous or hazardous nature, there is no necessity to obtain such special licence to drive an empty tanker. Therefore, the arguments of Sri R. Jaiprakash that the driver did not possess an endorsement is not acceptable. Accordingly, we hold that in order to drive empty tanker, no such licence is required because the vehicle did not carry any dangerous or hazardous nature goods. Accordingly, point No. 1 is answered in negative.

11. Point No. 2: Admittedly, the deceased is a M.Com., graduate. He had also possessed a degree in Library Science. He was getting a salary of Rs. 8,000/- per month. He was aged about 30 years. Therefore, we have to consider the future prospectus of the deceased. According to us, the Tribunal has justified in arriving at his income at Rs. 12,000/- per month. But however, the Tribunal has committed an error in deducting 1/3rd towards his personal expenses when the deceased was unmarried person. Therefore, taking the annual income at Rs. 72,000/- (6000 x 12) is proper since the claimant is the mother of the deceased.

12. That the Tribunal has also committed an error in applying the multiplier considering the age of the deceased without taking into account the age of the mother, when the claimant was 52 years, the proper multiplier to be applied would be 11. Therefore, Rs. 72,000/- x 11 comes to Rs. 7,92,000/- under the head of loss of dependency. Since the deceased has her only son, considering the

age of mother and the deceased we have inclined to award an amount of Rs. 2,00,000/- under the conventional heads like loss of consortium, loss of love and affection, transportation of dead body, funeral expenses etc., Thus, in all the claimant is entitled for a total compensation of Rs. 9,92,000/-, with interest at 9% per annum from the date of petition till the date of payment.

13. In the result, the appeal is allowed in part. The compensation awarded by the Tribunal is hereby modified holding that as against Rs. 16,77,000/-, the respondent-claimant is entitled for compensation of Rs. 9,92,000/- with interest at 9% per annum from the date of petition till the date of payment. Out of the compensation awarded, 50% of the total compensation amount is ordered to be deposited in the name of the respondent-claimant for a period of five years in any Nationalised Bank and she is entitled to draw the periodical interest.

The amount in deposit is ordered to be transferred to the Tribunal for payment.