
(2003) 10 KAR CK 0023
In the Karnataka High Court
Case No : M.F.A. No's. 3239 and 3240 of 1998

New India Assurance Co. Ltd.

APPELLANT

Vs

Vibhuti and Others

RESPONDENT

Date of Decision : 31-10-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 149 (2), 170

Citation : (2004) ACJ 769

Hon'ble Judges : Tirath S. Thakur, J;S. Abdul Nazeer, J

Bench : Division Bench

Advocate : S.V. Angadi, for the Appellant; F.V. Patil and Hemanth Chandangoudar, for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J.—These two appeals and the accompanying cross-objections arise out of the judgment and award made by the M.A.C.T., Ranebennur, whereby M.V.C. Nos. 294 and 295 of 1995 have been allowed in part and total amount of Rs. 5,98,520 with interest at the rate of 6 per cent per annum awarded as compensation in the M.V.C. No. 294 of 1995 and a sum of Rs. 25,000 with interest at 6 per cent per annum granted in M.V.C. No. 295 of 1995. While the insurance company has assailed the awards in M.F.A. Nos. 3239 and 3240 of 1998, the respondents-claimants have in M.F.A. No. 3239 of 1998 filed cross-objections praying for a suitable enhancement of the compensation awarded in their favour.

2. On 7.1.1992, the deceased Milind Padhye accompanied by his wife and two minor daughters was travelling in an Ambassador car bearing registration No. MH 10-A 18 from Miraj to Bangalore. The car in question was registered as a taxi and was owned by the respondent Dutta Distributor Pvt. Ltd. It was being driven by Milind Goswamy, one of the Directors of the said company. When the car reached a place near Motebennur at 7.30 p.m., it dashed against a roadside tree resulting in grievous injuries to two of its occupants, namely, Milind Padhye and

his minor daughter Nitanta. The injured were shifted to Haveri General Hospital from where they were transferred to C.G. Hospital, Davanagere, where both of them succumbed to the injuries. M.V.C. No. 294 of 1995 was in due course filed by the widow of the deceased Milind Padhye, his surviving daughter and the parents of the deceased for payment of compensation on account of his death. In M.V.C. No. 295 of 1995 filed by the widow of the deceased compensation was separately claimed in connection with the death of Nitanta, minor daughter of the claimant. The case of the claimants in both the petitions was that the accident in question had occurred entirely due to rash and negligent driving of the car by Milind Goswamy which entitled the claimants to payment of compensation. The claims were opposed by the respondents on several grounds. While owner of the car involved in the accident admitted the occurrence of the accident, it denied the allegation that the same had taken place on account of the rash and negligent driving of the driver of the vehicle. The objections alleged that the accident had occurred on account of the bursting of one of the tyres which inevitably resulted in the vehicle striking against a roadside tree. The insurance company on the other hand, admitted the existence of an insurance policy but asserted that the driver of the vehicle did not have a proper driving licence. It was alleged that Milind Goswamy, was not authorised to drive a passenger vehicle and inasmuch as a person not duly qualified to drive the vehicle was on the wheel at the time of the accident, the policy conditions had been violated and the company is absolved of the obligation to pay any compensation. It was also alleged that the deceased were travelling as gratuitous passengers in the car qua whom the company was not liable under the policy.

3. The Tribunal framed three issues in each one of the two claim petitions on the above pleadings and clubbed the two cases for a common trial and disposal. By the judgment impugned in these appeals, the Tribunal has answered the said issues in the affirmative. It has come to the conclusion that the accident in question had indeed taken place on account of the rash and negligent driving of the car by Milind Goswamy entitling the claimants to the payment of a suitable amount of compensation. On the question of quantum of compensation, the Tribunal has determined the loss of dependency by taking the gross income of the deceased at Rs. 4,708 per month and deducting 1/3rd of the said amount towards his personal expenses. It has taken the contribution of the deceased towards the family at Rs. 3,139 per month or Rs. 37,668 per annum and quantified the loss of dependency by applying a multiplier of 15 taking the age of the deceased to be 28 years on the date of the accident. The compensation amount determined on account of loss of dependency has come to Rs. 37,668 x 15 = Rs. 5,65,020. To that amount, the Tribunal has added a sum of Rs. 20,000 towards loss of consortium to the widow and a sum of Rs. 10,000 for loss to the estate. In addition, the Tribunal has awarded a sum of Rs. 2,000 for funeral expenses. A further sum of Rs. 1,500 has been awarded towards transportation of the body taking the total to Rs. 5,98,520 made recoverable from the insurance company with interest at the rate of 6 per cent per annum from the date of the

claim petition till payment. In the connected M.V.C. No. 295 of 1995 arising out of the death of the minor daughter of the claimant, in the said petition, the Tribunal has awarded a sum of Rs. 25,000 towards general damages and made the same payable with interest at the rate of 6 per cent per annum.

4. We have heard learned counsel for the parties and perused the record.

5. The insurance company did not apply for or secure the permission of the Claims Tribunal to defend the claim petitions on grounds other than those open to it u/s 149(2) of the Act. In the absence of any such permission, the present appeals insofar as the same challenge the findings of the Tribunal touching the genesis of the accident and the quantum of compensation are not maintainable. The legal position is fairly well settled by decisions of the Apex Court that unless the defences open to the insurance company u/s 149(2) are enlarged in terms of Section 170 of the Act, the insurance company is not entitled to set up any defence dehors Section 149(2) nor can it challenge the findings recorded by the Tribunal in appeal. That being so, we are not called upon to examine the correctness of the Tribunal's finding that the accident in question had taken place on account of the rash and negligent driving of the vehicle involved in the accident by its driver. In fairness to learned counsel for the appellant, we must say that he did not make any serious attempt to question the correctness of the finding recorded by the Tribunal insofar as the same holds that the accident had occurred on account of the rash and negligent driving of the driver.

6. The only question that was debated at the Bar at some length was whether there was any violation of the terms of the policy so as to absolve the insurance company of any liability to pay the amount of compensation determined by the Tribunal. The violation alleged by the insurance company was limited to the vehicle involved in the accident being registered as a taxi and the driver in charge of the vehicle at the time of the accident not being qualified to drive the same. It was contended that Milind Goswamy who was driving the vehicle at the time of accident did not have a valid driving licence to drive a transport vehicle like the taxi involved in the accident in the instant case. A similar argument had been advanced before the Tribunal also who repelled the same on the authority of the decisions of the High Courts of Allahabad and Madras in *Sanjay Gupta v. Oriental Insurance Co. Ltd.*, 1997 ACJ 216 and *Dhanaraj and Another Vs. Rubia and Another*, .

7. In *Sanjay Gupta's* case 1997 ACJ 216, the fact situation was similar to the one before us. The vehicle involved in the accident in that case was also registered as a taxi. At the time of the occurrence of the accident, the vehicle was being driven by Parag Gupta, the younger brother of the owner ostensibly for his own purpose and not for hire or reward. The accident had resulted in extensive damage to the vehicle because of which it was declared to be a case of total loss. In a claim petition filed for payment of compensation for the damage suffered by the car in the accident, one of the questions that arose for consideration was whether there was any violation of the conditions of the

insurance policy inasmuch as Parag Gupta did not possess a driving licence that would qualify him to drive a transport vehicle like a registered taxi or motor cab. Upon difference of opinion between Mathur and Mehrotra, JJ., the matter was referred to R.A. Sharma, J., to resolve the difference arising out of the following three questions formulated by the Division Bench:

"(1) If a vehicle which is registered as a taxi meets an accident, whether the insurance company can disown its liability to compensate for the loss, if the driver driving the vehicle did not possess a driving licence which entitled him to drive a transport vehicle (taxi)?

(2) Whether there is any embargo under the provisions of the Motor Vehicles Act, 1988, prohibiting driving of a transport vehicle (taxi) for private use by a person having a valid licence to drive a motor vehicle other than transport vehicle?

(3) Whether on the facts and circumstances of the present case, the action of the insurance company in repudiating the claim of the petitioner was justified in law?"

8. Sharma, J., concurred with the view taken by Mehrotra, J., and held that a taxi (motor cab) could also be driven by a person holding a driving licence to drive motor car and that inasmuch as the taxi was at the time of the accident being driven by a person who did not have the licence to drive a transport vehicle the same did not constitute a violation of any condition of the policy. In arriving at that conclusion, the court took note of Sub-section (3) added to Section 3 of Motor Vehicles Act in the year 1969 by which it was provided that driving of motor cab by a person holding a driving licence to drive a motor car if he has hired it for his own use was permissible. The reason for inserting Sub-section (3) in Section 3 of the old Act was as follows:

"Clause 3. Under the existing law, a person possessing a driving licence for a private car cannot drive a taxicab even for his own use. In foreign countries, however, it is possible to hire and drive a taxicab on the payment of moderate charges. This clause seeks to introduce a similar facility in India, particularly for the purposes of promotion of tourism."

9. The amended Motor Vehicles Act as it stands today incorporates the above provision though in a slightly altered form. Section 3 of the amended Act forbids any person from driving a motor vehicle in a public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle, but specifically permits driving of a motor cab hired for his own use or rented under any scheme made u/s 75(2) by a person who holds the driving licence to drive a motor car. The net effect of the provision as it now stands in the 1988 Act is that driving of a motor cab hired by an individual who holds a licence to drive a motor car is permissible. In the light of the said provision and the fact that the Motor Vehicles Act does not place any embargo upon driving of a transport vehicle (motor cab-taxi) for private use by a person holding a valid driving licence to drive a motor car, the inference is inevitable that the driving of a motor cab for private use by a person who holds a valid driving licence to drive a motor car is

not legally impermissible.

10. The vehicle involved in the accident in the instant case was admittedly a taxi. It is also common ground that the vehicle was not being used for hire or reward at the time the same met with an accident. The deceased Milind Padhye was it appears a family friend of the driver of the vehicle Milind Goswamy and the two were driving together to Bangalore on their way to Tirupathi on a pilgrimage. It was therefore evident that the occupants of the vehicle were at the time of the accident not being carried in the same for hire or reward. The vehicle was indeed being used for private purpose and driven by the Director of the company which owned the same. The fact that the driver held a valid driving licence to drive a motor car was not in dispute at any stage. In the circumstances, the view taken by the Tribunal that the licence held by the driver was sufficient to entitle him to drive the vehicle is perfectly justified. The only violation alleged by the insurance company in support of its stand thus disappears rendering the insurance company liable to make the payment of the amount determined by the Tribunal.

11. It was then contended on behalf of the insurance company that if the vehicle in question was being used for a private purpose, the occupants must be treated to be gratuitous passengers, the liability qua whom may not be covered by the policy. We have no hesitation in rejecting that contention keeping in view the fact that the policy in question is a comprehensive policy and covers the liability of all those being carried in or upon or entering or mounting or alighting from the motor vehicle. IMT 12 contained in the policy which specifies the legal liability of the company towards the passengers reads as under:

"IMT 12. Legal liability to passengers excluding liability for accidents to employees of the insured arising out of and in the course of their employment:

In consideration of an additional premium of Rs. ..., and notwithstanding anything to the contrary contained in Section II-1 (c) but subject otherwise to the terms exceptions, conditions and limitations of this policy the company will indemnify the insured against liability at law for compensation (including legal costs of any claimant) for death of or bodily injury to any person other than a person excluded u/s II-1 (b) being carried in or upon or entering or mounting or alighting from the motor vehicle but such indemnity is as stipulated in the Motor Vehicles Act, 1988, in respect of any number of claims in connection with the motor vehicle arising out of one cause:

Provided always that in the event of an accident occurring whilst the motor vehicle is carrying more than the number of persons mentioned in the schedule hereto as being the licensed carrying capacity of that vehicle in addition to the conductor if any then the insured shall repay to the company rateable proportion of the total amount which would be payable by the company by reason of this endorsement not more than the said number of persons were carried in the motor vehicle."

12. It is evident from a plain reading of the above that the liability of the

insurance company to pay compensation on account of death or bodily injury to any person who was travelling by the vehicle in question did not depend upon whether the person concerned was a gratuitous passenger or had paid fare for the journey being performed by him. Since the policy is comprehensive in nature, it covered the liability qua any person travelling in the vehicle. What is important is whether the person was killed or injured while travelling in or upon or entering or mounting or alighting from the motor vehicle and not whether he had or had not paid any fare for such travel. In the totality of the above circumstances, therefore, we do not see any reason to interfere with the finding recorded by the Tribunal as regards the liability of the insurance company is concerned.

13. That brings us to cross-objections filed by the claimants in M.F.A. No. 3239 of 1998. It was feebly argued by counsel appearing for claimants-cross-objectors that the Tribunal had committed an error in deducting 1/3rd of the gross income of the deceased towards his expenses and in applying a multiple of 15 while determining the loss of dependency. We do not see any merit in that contention. It is fairly well settled that while determining the multiplicand, a suitable amount has to be deducted for the personal expenses of the deceased out of his gross income. What is relevant for purposes of determining the loss of dependency is the contribution which the deceased would have made towards the family and its maintenance. The deduction towards personal expenses generally is 1/3rd of the gross income of the deceased. In certain situations, where the number of dependants is large, the courts adopt the unit method also which marginally brings down the percentage of deduction on the assumption that since the number of dependants was large, the deceased would have contributed a larger share out of his income to sustain the family and chosen to lead a frugal life for himself. The claimants in the instant case are the parents, the widow and minor child of the deceased. The deceased was working as the Area Manager in Fulford (India) Limited. Looking to his social position and the nature of his job, it will be reasonable to assume that 1/3rd of the gross income which he was earning would be spent on his personal expenses leaving the balance 2/3rd only towards his contribution for the family. We do not therefore see any error in the deduction of 1/3rd gross income towards his personal expenses. Insofar as the multiplier is concerned, the same is chosen by reference to the age of the dependants-claimants where the claimants are older in age to the deceased. In cases where the claimants are younger than the deceased, the multiplier is chosen by reference to the age of the deceased. In the instant case, two of the claimants were elder to the deceased while the remaining two were younger in age. If the age of the deceased was taken as the basis for the choice of the multiple, the correct multiplier applicable may be 16 having regard to the Division Bench decision of this court in Gulam Khader and Another Vs. United India Insurance Company Limited and Another, and the Full Bench decision of this court in V.S. Gowdar Vs. The Oriental Insurance Company Limited and Another, . If, however, the age of the parents is made a basis for the choice of the multiple, the

multiplier would be much lower. The Tribunal has on a consideration of these aspects applied a multiplier of 15 which in our opinion is just and proper. We do not find any compelling reason to alter the multiplier chosen by the Claims Tribunal while calculating the amount of compensation.

14. The only other aspect that needs to be examined is whether the rate of interest should in the facts and circumstances of the case be raised from 6 per cent to 12 per cent as claimed by the claimants-cross-objectors. It is not in dispute that the insurance company has deposited the entire award amount pursuant to a direction issued by this court. In claims arising out of death cases, the decisions of this court had during the relevant period favoured award of interest at the rate of 6 per cent per annum though the subsequent decisions have diluted the distinction between death and injury cases for purposes of grant of interest. In the circumstances, we do not consider it a fit case in which the rate of interest awarded by the Claims Tribunal may deserve to be enhanced.

15. In the result, these appeals as also the cross-objections fail and are hereby dismissed but in the circumstances without any orders as to costs.

16. The statutory deposits lying in this court shall stand transferred to the Tribunal for disbursement in accordance with law.