(2015) 02 KAR CK 0245

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 21557/2008 (MV)

New India Assurance Company Limited — APPELLANT

Vs

Renuka and Others — RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 02 KAR CK 0245

Hon'ble Judges : P.D. Waingankar, J.

Bench : Single Bench

Advocate : G.N. Raichur, for the Appellant; Sachin S. Magadum, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.D. Waingankar, J.—This appeal by the appellant Insurance Company is against the quantum of compensation awarded in MVC No. 549/2005 on the file of Fast Track Court-II and MACT-IX, Bagalkot by judgment and award dated 25.09.2008.

2. One Arjunappa Narahatti died in a motor accident that occurred on 16.08.2005 a passenger Tempo bearing registration No. KA-29/2117 wherein he was travelling went and dashed against the road side tree on account of rash and negligent driving of its driver.

3. The claimant''s wife and children filed a claim petition under Section 166 of the MV Act claiming compensation of Rs. 30,00,000/- from owner and insurer of the Tempo.

4. The claim petition was opposed by the appellant-Insurance Company. It came up for consideration before the Tribunal. The Tribunal upon going through the material placed on record, the avocation, the salary that he was drawing, age of his superannuation determined and awarded a total compensation of Rs. 13,54,400/- from the respondent-New India Insurance Company Ltd.,. Aggrieved by the quantum of compensation awarded by the Tribunal, this appeal is

preferred by the Insurance Company.

5. Heard both the learned counsel appearing for the appellant -Insurance Company and the respondent claimant. Perused the records including the judgment and award passed by the Tribunal.

6. The submission of the learned counsel appearing for the appellant Insurance Company is that the deceased was a teacher about to retire in another 2 years and in that event, the Tribunal ought to have adopted split multiplier and determined the compensation. To buttress his arguments, the learned counsel placed reliance on the following decisions:

"1. Union of India and others Vs. K.S. Lakshmi Kumar and Others, .

2. Unreported decision of this Court (Dharwad Bench) in MFA No. 20781/2013 dated 11.10.2013 in the case of ICICI Lombard General Insurance Co. Ltd., v. Gangawwa W/o. Rudrappa Chapali.

3. Unreported decision of this Court (Dharwad Bench) in MFA No. 20229/2009 dated 20.09.2011 in the case of National Insurance Co. Ltd., v. Smt. Shantamma @ Shantawwa and four others."

7. Per contra, learned counsel appearing for the respondent-claimants would submit that the practice of application of split multiplier has not been approved by the Hon''ble Supreme Court in the case of K.R. Madhusudhan and others v. Administrative Officer and another. He placed reliance on the following decisions in support of his arguments:

"1. Unreported decision of Division Bench decision of this Court (Dharwad Bench) in MFA No. 20634/2011 and connected cases dated 29.10.2010 in the case of Divisional Manager, National Insurance Co. Ltd., v. Ningavva W/o. Sabu Madiwal and another.

2. Unreported Single Bench decision of this Court (Dharwad Bench) dated 14.11.2014 in MFA No. 21293/2011 in the case of Smt. Annapurna and another v. Sri. Raju B. Patil and another."

8. In view of the contention taken by the learned counsel appearing for the parties, the only question that arises for my consideration is:

"Whether the Tribunal is justified in not adopting the split multiplier while awarding compensation?'' 9. Admittedly, the claimants have not preferred appeal against the judgment and award. However, the appeal is preferred by the Insurance Company both challenging the quantum of compensation awarded and also non-application of split multiplier while determining the compensation. The fact that the deceased Arjunappa died while travelling in a passenger Tempo on 16.08.2005 insured by the appellant, met with an accident on account of rash and negligent driving of the Tempo driver is not in dispute. It is also not in dispute that respondents No. 1 to 4 are the legal heirs of the deceased being the wife and children. Deceased Arjunappa was working as a Head Master in Vijaya

Vidya Vardaka High School, Batakurki and was drawing a salary of Rs. 15,050/- as evident from Ex. P9-pay certificate. From Ex. P10, it is evident that he was appointed on 13.08.1979. He was aged 56 years at the time of his death and he had another two years of service. Having regard to the age of the deceased as 56 years at the time of his death, the Tribunal adopted ''11'' multiplier. After deducting 1/3rd of his salary towards his personal and living expenses had he been alive, the Tribunal determined the loss of dependency at Rs. 13,24,400/-. In addition to that the Tribunal awarded a sum of Rs. 10,000/- towards loss of consortium, Rs. 10,000/- towards funeral and transportation of dead body and Rs. 10,000/- for loss of love and affection. Thus, the Tribunal awarded a total compensation of Rs. 13,54,400/-.

10. The argument of the learned counsel for the Insurance Company is that the determination of the compensation towards loss of dependency by the Tribunal by taking the income of deceased at Rs. 15,050/- per month and adopting ''11'' multiplier is not correct. His submission is that since the deceased had only two years of service, the Tribunal ought to have taken the income at Rs. 15,050/- per month for two years and before the 2 years period of superannuation and after the period of superannuation his pensionary income i.e. 50% of Rs. 15,050/- ought to have been taken to determine the loss of dependency. In other words, the submission is that split multiplier method should have been employed.

11. I have perused the decision cited by both the learned counsels. The latest decision is that of the Division Bench of this Court (Dharwad Bench) in MFA No. 20634/2011 in the case of the Divisional Manager, National Insurance Company V. Ningavva and another rendered on 29.10.2014 wherein referring to the decision of the Apex Court in case of K.R. Madhusudhan and others v Administrative Officer and another in para 6 it is observed as under:

"6. In view of the considered view taken by the Apex Court in Madhusudhan''s case (supra), we find it hard to accept the submission urged on behalf of the Insurance Company that the Tribunal has erred in not applying the split multiplier method." 12. In view of the Division Bench decision of this Court, I am unable to accept the submission made by the learned counsel appearing for the Insurance Company. The appeal is bereft of merit. Hence, I proceed to pass the following.

ORDER

The appeal is hereby dismissed.

The amount in deposit shall be transmitted to the Tribunal.