
(1997) 04 KAR CK 0023

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1754 of 1994

New India Assurance Company Limited, Bhadravati Branch,
Shimoga District

APPELLANT

Vs

Mutha Mohammed and Others

RESPONDENT

Date of Decision : 07-04-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (1997) 7 KarLJ 667

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. This appeal along with the application for permission to withdraw the amount deposited by the appellant, moved by the respondents, had been listed and the respondent's Counsel prayed that the respondents may be allowed to withdraw the amount. At that stage appellant Counsel submitted that in case the appeal is allowed there may be question of refunding and taking back the same from the respondents creating complications if in this case respondent is allowed to withdraw the amount so deposited. Later it was jointly requested that the appeal may be heard on the merits, so that there may not be multiplicity of proceedings and having accepted their joint request, I have heard Sri O. Mahesh, learned Counsel for the appellant Insurance Company and Ms. Sowmya holding brief for R.B. Deshpande, learned Counsel for the respondents 1 and 2 that is the claimants.

2. This appeal arises from the judgment and award dated March 31, 1994 delivered by Sri Jawad Rahim, Additional District Judge, MACT, Shimoga in MVC. No. 36 of 1991 whereby the Motor Accident Claims Tribunal awarded compensation in total to the tune of Rs. 50,000/- interest at the rate of 6% p.a. from the date of petition till the recovery. Allocation of the compensation had been made under following heads.-

(a) towards loss to the estate and expectation of life of the deceased Rs. 30,000/-.

(b) towards loss of love, affection etc., Rs. 15,000/-.

(c) towards funeral and other ceremonies Rs. 5,000/-.

The total Rs. 50,000/-.

3. The Tribunal held that the claimants who are the father and the mother of the deceased shall be entitled to get this amount as compensation in total with the interest at 6% p.a. as mentioned earlier.

4. The facts of the case in a nutshell are that on the date of accident on 19-11-1990 at about 10 a.m. Ziaulla Rehman, a boy aged about 13 years, as found by the Tribunal as well, was proceeding on Shimoga-Holehonnur by-pass road in Holehonnur town keeping to the left margin of the road. That, at that time, a tractor and a trailer bearing No. MES 5117 and 5118 driven by the respondent 2 in rash and negligent manner came from behind and dashed against the boy. As a result of the impact, the boy fell down and the wheel of the tractor ran over the head and other parts of the body of Ziaulla Rehman resulting in his death. The claimants with these facts alleged in claim petition has filed the petition and further alleged that the accident did take place due to rash and negligent driving of the tractor and the trailer by the 2nd respondent. The claimant claim the compensation to the tune of Rs. 2,05,000/-.

5. Notice having been served on the respondents including the Insurance company, respondents 1 and 2 did not appear nor have they filed any written statement, instead they remained absent. The Insurance Company filed the written statement and had taken the plea that the second respondent driving the vehicle did not have valid driving licence. It was contended to be the violation of terms of policy and was asserted as such Insurance Company was not liable to pay the compensation or indemnify the liability of respondents 1 and 2. It has also denied the allegations of rash and negligent driving of the vehicle by the second respondent and made an effort to allege that the accident has been caused due to fault of the boy and sought the dismissal of the claimant petition.

6. On the basis of the plea of the parties the Tribunal framed the following issues:-

(1) Whether petitioners prove that the accident in question was, as result of rash and negligent driving of Tractor bearing No. MES 5117 and 5118 by the second respondent?

(2) Whether the petitioner is entitled to any compensation? If so, from whom and how much amount?

(3) To what order?

7. The oral and documentary evidence was produced in the case and after taking into consideration, the Motor Accident Claims Tribunal held as the following:

(i) That the petitioners were the parents i.e., father and mother of the deceased

Ziaulla Rehman is established;

(ii) That on the day and time and at the place the accident in question did occur on account of the rash and negligent driving by the second respondent of Tractor and Trailer bearing No. MES 5117 and 5118;

(iii) That the victim Ziaulla Rehman got head injuries and died as a result. The Tribunal however held that the petitioner-claimants were entitled to compensation to the tune of Rs. 50,000/- as per the details given above and that respondents 1, 2 and 3 have been held to be jointly and severally liable to pay and further ordered respondent 3 Insurance company has to discharge and pay of that amount.

8. Feeling aggrieved, from the judgment and award given by Tribunal/Additional District Judge, Shimoga, the Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988.

9. I have heard Sri O. Mahesh, appearing learned Counsel for the appellant and Ms. Sowmya, holding brief for Sri R.B. Deshpande, learned Counsel for the respondents. Much emphasis was laid in course of arguments on the question of the quantum of compensation. Learned Counsel for the appellant contended that the compensation to the tune of Rs. 50,000/- which has been awarded is excessive. Sri O. Mahesh contended that in case of infant boy there is no question of compensation being awarded towards loss of estate or under the head pecuniary loss to the claimants. He said generally compensation that is awarded under every head may be just but so far as under the head "loss of expectation of life" and "estate" is unwarranted and in every case it is excessive. In order to give strength to his contention Sri O. Mahesh made reference to the Division Bench decision of this Court in Managing Director, K.S.R.T.C. v Annappa Vaidya, ILR 1985 Kar. 2979. Sri O. Mahesh submitted that the boy being an infant and award in such case according to the law for loss of estate or prospective pecuniary loss should not have been made, because of uncertainties of life and retribute of the future life. Sri O. Mahesh contended that in this view of the matter the compensation which has been awarded to the tune of Rs. 30,000/- towards the loss of expectation of life is unwarranted and against the principles of law. He further contended that there is no evidence on record that the boy was earning and contributing towards family income and invited my attention to certain observations of the learned Judge in his judgment. He contended that there is no evidence in regard to the question of pecuniary loss. Sri O. Mahesh further contended that there is no evidence in regard to the question of pecuniary loss. Sri O. Mahesh further contended that there is no record that he was in service or engaged in or helping the business of the father claimant, and therefore pecuniary loss under the head loss of estate or expectations of life is illegal. Sri Mahesh further contended that the sum of Rs. 15,000/- which has been awarded under the head of loss of love and affection is also excessive. It should not have been more than Rs. 5,000/-. Sri Mahesh further contended sum of Rs. 5,000/- which has been awarded towards funeral

and other ceremonies is also excessive. The learned Counsel for the appellant further made an effort to challenge the finding of Issue No. 1 and submitted that really compensation appears to have been wrongly or excessively awarded as the boy was sitting on the front of the mudguard of the tractor and fell down and he died, therefore, the insurance company is not liable. Sri O. Mahesh contended that the boy deceased was not only duly authorised passenger on the tractor, as tractor-trailer is not meant for carrying passengers.

10. These contentions of the learned Counsel for the appellant Sri Mahesh have been contested by Ms. Sowmya, holding brief for R.B. Deshpande, Counsel for the respondents 1 and 2.

11. Learned Counsel for the respondents contended that every principle of English Law cannot be applied to Indian conditions and we must look to the Indian Communities in its social and economic context. In rural and urban India, children crossing the age of 8 to 10 be, either male or female render some service to the family at times and therefore parents also have expectations in life. Learned Counsel contended that expectations of life of the parent are not illusory but based on reality and they work for that. The expectation of life and prospects of life have definitely to be considered, in the context of Indian social and economic conditions of life. Even parents can expect their children to go high up, as children of farmers have attended high positions in the Indian Democracy including high offices of Prime Minister and Deputy Prime Minister and there are examples in the Indian history even now. Learned Counsel also contended that Rs. 30,000/- which has been awarded towards expectations of life and loss of estate cannot be said to be excessive in any manner to ailing parents, parents who have suffered loss of their only son. Learned Counsel contended that the appellants have challenged the compensation awarded for loss of life and had offered to pay the sums to the tune of Rs. 15,000/-. Respondents Counsel contended that both parents i.e., father and mother have suffered the loss of love and affection of the boy who died at the age of 13 in the accident. Pain and suffering and ailment of heart has subjected to both of them and really the compensation should have been awarded equally to both of them and it should have been more than Rs. 15,000/- but the claimants have not filed any appeal and as there is no prayer seeking any enhancement. But this contention has been made, the learned Counsel urged to impress upon and to make the Court realise that the compensation which has been awarded for loss of love and affection is not excessive. Learned Counsel for the respondent further contended that as regards the funeral and other expenses, there is evidence on record to which learned Counsel invited my attention to various ceremonies that had taken place including 48th day from the day of his death. Parents had to bear those expenses at this juncture of death of their son which has been caused due to the negligent driving of the tractor and trailer. So the sum of Rs. 5,000/- is not excessive and the order does not call for modification. In the alternative learned Counsel for the claimants contended that if sum is to be reduced from Rs. 30,000/- in regard to loss of expectation of life, this Court may be requested to

consider the question why should not another sum for loss of love and affection be awarded to one of the two parents i.e., father and mother separately at least it at the rate of Rs. 10,000/- or more. Then also the figure will remain as Rs. 50,000/- in total. Learned Counsel contended that in this view of the matter, the appeal may be dismissed and the award as passed by the Tribunal may be maintained.

12. I have applied my mind to the contentions made by the learned Counsel for the parties. The principles of law have to be applied taking realities of life as well and the conditions prevailing in the country - psychological, social, economic and others. When I so hold I find support from the observations of the Division Bench itself which has been cited by Sri O. Mahesh, learned Counsel for the appellant. In the case of Anna Vaidya, supra, the Division Bench has been pleased to observe as under:-

"Cases of death of adolescent children however, are somewhat different and are representative of the class of cases where awards are for pecuniary losses which are purely prospective. Parents would have incurred the costs of upbringing of children and of training them. They are on the verge of reaping some financial return from a grateful and a dutiful child though not at the moment of death yet receiving any benefit. In these cases the possibility of prospective pecuniary gains is not unreasonable and is, therefore, compensatable".

13. A reading of this passage clearly reveals that accident of those children who are of the age which may be said to have crossed the earlier uncertainties of the life of the childhood and in this case there is possibility of prospective future gains those cases are well fit for being compensated. The Division Bench further observed:

"We, venture to think, however, that there are some special distinctions that must be noticed in Indian Conditions. The loss of the parents may not be limited to prospective pecuniary, losses in terms of money contribution, dependency consists not only of financial contributions, either present or prospective, but also of the value of goods and services. It will be unrealistic to think, particularly in the context of Indian life that adolescent children would not be in a position to contribute some services to the family. In the conditions of rural life boys and girls offer services to the family in many ways and are even known to take care of a small time family business or avocation. How these services should be sounded in terms of money would again turn upon the facts of a particular case. This loss of services is not merely prospective. It is both present and prospective. Prospectively in later life, the services which Indian parents look forward to from a grown up son, apart from those merely of emotional content, are so varied and diverse that they can hardly be exhaustively enumerated. It appears to us that it may not also be permissible to think in terms of setting off the value of these services against the expenses of food, shelter and raiment of the children. These expenses are liable to be set off not against the value of their services but against the joys and other rewards of family life and the many, many ways in

which children enliven, and bring meaning to a home as they alone could do".

14. Keeping this basic principle in view, we may well examine the services of the children, particularly the children growing up which they may rendered to the family. The conditions in India are different from those in foreign land, parental love and affection of the children and services rendered by the children to the ailing father suffering from bodily pain and otherwise also do count. Female children help in the family affairs to their mother, according to their age and capacity. It can be realised by everybody the children of aged 10-13 or 14, in Indian conditions to do render good services to the family even in the business or avocation of the father. To what quantum they render is a different matter. But we can see the children rendering services to the parents in their own business or avocation. We cannot shut our eyes to the reality of our Indian life in which they render services, they learn something and as well as render service and assistance to parents which has also got worth of his own even economic in a sense and parents expect from those children not emotionally. Simply, instead that service renders contribution in augmentation of parents income and service rendered with likelihood of assistance in augmentation of income. The parents can be said to suffer loss of substantial nature when that child dies particularly on account of some accident caused due to the negligence, rashness of the driving of the motor vehicle. The realities of the life have to be kept in view in order to do justice in such cases. The learned Counsel for appellant cannot be heard to say the father or mother has, not stated in the witness box what type of services were rendered by the boy to the father. So no compensation should be awarded. The learned Counsel appearing for the Insurance Company could have put the question to the witnesses whether or not the boy was rendering any help or helping for performance, jobs, business or in the performance of the family obligation. The learned Counsel for the appellant does not appear to have put such question seeking clarification. Taking note of the conditions prevailing in India, where children work and help in the avocations of the parents in rural and urban areas, and when children, specially female children in particular render services at home, it cannot be said that no compensation could be awarded for the loss of dependency or for the loss of expectations of life of adolescent child or a child who has crossed the age 8 or 10 may it be that children aged about 4 or 5 years may not render much help since they are in their childhood stage. After looking to the matter on various angles the compensation awarded by the Tribunal calls for no interference in my opinion. What a pain and suffering each of them would have suffered after losing their son, I think both the parents should have been compensated separately, might be that they may not be fully compensated in terms of money. In this case the sum of Rs. 15,000/- which has been awarded for such a loss should have been awarded as Rs. 15,000/- to each of the parent for loss of love and affection i.e., in case of both the parents the compensation would have been Rs. 20,000/- or Rs. 30,000/-. P.W. 1 in his evidence has stated that he had spent Rs. 5,000/- for the funeral of his son. In course of cross-examination questions were put to him and P.W. 1 again states

that, "it is not true that I have not spent Rs. 5,000/- for cremation or other ceremonies". Under our Constitution and Democratic set up every one has got fundamental right of faith in religious rituals and customs. In my opinion when the Tribunal has awarded Rs. 5,000/- under this head it did not commit any error or mistake and the sum of Rs. 5,000/- cannot be said to be excessive.

15. Having overall view of the matter in my opinion the total compensation of Rs. 50,000/- which has been awarded with the bifurcation as indicated in the judgment of the Tribunal cannot be said to be excessive because either parents having not been awarded any sum for loss of love and affection, in my opinion, it would be just and proper to dismiss the appeal and to maintain the amount of compensation that has been awarded by the learned Tribunal (District Judge) in total to the tune of Rs. 50,000/-. If any cross-appeal would have been filed I might have modified the order by awarding Rs. 25,000/- for each parent for loss of estate instead of Rs. 30,000/- in total which has been awarded. In such circumstances, I think it proper that award given by the MACT for Rs. 50,000/- in total to the claimants is justified. The interest that has been awarded at the rate of 6 per cent is maintained. The appeal being devoid of merits is dismissed with costs. The amount i.e., what remains as balance, as not already paid or deposited may be deposited before the Tribunal within a period of 4 weeks from today before the Tribunal and it will be open to the appellants to withdraw that amount and the Tribunal will disburse the amount along with interest accrued thereon.