

(2019) 01 KAR CK 0007
In the Karnataka High Court
Case No : M.F.A. No. 8807 Of 2009 (MV)

Oriental Insurance And Ors

APPELLANT

Vs

Smt. Chinnathai And Ors

RESPONDENT

Date of Decision : 10-01-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173(1)

Citation : (2019) 01 KAR CK 0007

Hon'ble Judges : N.K. Sudhindrarao, J

Bench : Single Bench

Advocate : O. Mahesh, Prabhu Gowda Tumbige

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and award passed by the learned Member, Civil Judge (Sr.Dn) & MACT, Madikeri, on 27.06.2009 in MVC No.61/2003, wherein a claim was adjudicated by partly allowing the said petition. The claimants therein said to be the parents of deceased Mohan were awarded with compensation of Rs.3,49,000/- together with interest @ 6% per annum, by fixing the joint and several liability on respondent Nos.1 to 3.

2. In order to avoid confusion and overlapping, the parties, hereinafter are referred in accordance to their respective rankings held before the Tribunal.

3. The proceedings before the Tribunal came to be initiated because of a road traffic accident which occurred on 03.01.2003 at 07.30 am, Mohan son of the claimants was traveling as loader from Kushalnagar to Kudlur Industrial Area, in tractor and trailor bearing Reg.No.KA-12 / T-2682 and KA-12 / T-2683, respondent No.1 therein said to be the driver of the said vehicle drove the same in rash and negligent manner and accident took place on a public road, as a result, Mohan fell down on the ground and sustained grievous injuries, he could not recovered and succumbed to injuries.

The claimants filed a claim petition. The learned Member, MACT, Madikeri

adjudicated the matter by partly allowing the claim petition by granting compensation as stated above.

4. It is submitted that the deceased, during his life time, was said to be a coolie, earning monthly income of Rs.2,500/- as reflected in the claim petition. Learned Member applied the following data to assess the compensation.

5. The monthly income is considered at Rs.3,000/-per month, as the deceased was a bachelor at the time of his death, 50% of income was deducted towards his personal living expenses and since the deceased was aged 18 years, applying the multiplier 18, calculated the loss of dependency at $\text{Rs.}3000/2=1500 \times 12 \times 18 = \text{Rs.}3,24,000/-$, under the head loss of love and affection awarded Rs.10,000/-, under the head loss of estate awarded Rs.10,000/- and towards transportation of dead body awarded compensation of Rs.5,000/- and in all awarded total compensation of Rs.3,49,000/-.

6. Being aggrieved by the liability fastened on the insurer, the insurer is before this Court.

7. In the circumstances, two witnesses were examined on behalf of the claimants as PW-1 and PW-2 i.e., the first claimant as PW.1 and an eye witness to the accident - G.M.Basavaraju as PW-2 and got marked the documents as per Ex.P.1 to P.7. On the other hand, one witness was examined as RW-1 and copy of the policy was marked as Ex.R.1 on behalf of the respondent-insurer.

8. Learned counsel Sri O.Mahesh, for the appellant-insurer would submit that there was no privity of contract between the deceased and the owner of the vehicle. He was not employed the deceased and he was a gratuitous traveler. It was further submitted that there is no jural relationship between the owner of the vehicle or any such person. It is also submitted that in the absence of Jural relationship, granting of compensation by the Tribunal is out of bounce. Thus, the tenor of submission of the learned counsel for the insurer - appellant is on the lines that a claim petition is to be filed under Workmen Compensation Act and it appears to have forgotten that the petition is filed under Section 166 of the Motor Vehicles Act and the concept of relationship of employer and employee, privity of contract and other aspects are totally out of bounce.

9. It is further contended that the respondent No.2 before the Tribunal is said to have sold the vehicle to one K.A.Hameed son of Ahamed of Santicoppa. It is further stated that the name of the respondent No.2 is stood in the records in respect of the vehicle.

10. The matter for adjudication before the Tribunal was, whether there was a Motor accident and whether the insured vehicle was involved in the accident and whether the deceased was the employee under T.N.Goutham as per the averments made in Col.No.5 of the claim petition or under the owner of the vehicle-respondent No.2 T.M.Madaiah or anybody.

11. Here, it is just a road traffic accident, where the victim sustained injuries,

which proved to be fatal enough to take away his life. Under such circumstances, the matter was not adjudicated before the Commissioner for Workmen Compensation Act. Further even as a worker, for a road traffic accident, he has option either under Section 166 of the Act for compensation before the MACT or before the Commissioner under Workmen Compensation Act. Of course, he cannot invoke the jurisdiction under both the forums, attributing the employer-employee relationship and ousting of jurisdiction of a Motor Accidents Claims Tribunal. Thus the submissions made as if, compensation is not permissible under the Motor Vehicles Act. It is further contended that the owner of the vehicle invariably must be the employer. This submission also holds no water for the very reason that the employer-employee relationship gives a cause of action under the Workmen Compensation Act for any injury suffered by a workman, out of and in the course of employment and if it leads to death, the claimants are entitled for compensation for death caused out of and in the course of employment. But, if in case of injury or death of a workman out of and in the course of employment and the cause of injury is a road traffic accident, he cannot be directed to go and stand exclusively before the Commissioner for Workmen Compensation Act and that the doors of Motor Vehicles Act shut forever for him. As such, the said analogy is not accepted by Section 166 of the M.V.Act. In the circumstances, the insurer who has collected the premium is liable to make good the liability which is not disputed, whether the victim is an employee or un-employee or a self employee. In the context and circumstances, I find that the learned Member was right in holding the liability of the insurer to compensate the claimants, by allowing the petition in part.

12. The next point is, compensation awarded by the Tribunal. The monthly income of the deceased was considered at Rs.3,000/-, when column No.6 of the claim petition mentions it as Rs.2500/- per month. Learned Counsel for the appellant-insurer Sri O.Mahesh, would submit that the Tribunal over stretched the jurisdiction in considering the monthly income at Rs.3,000/-, which in fact never the case of claimants. The better assessor of compensation always is the Tribunal and Courts, because income has to be assessed on the basis of the factors of absolute necessity, considering the date of accident and minimum requirement for hand to mouth; totally a just and fair compensation.

13. Next question would be what happened if the compensation sought is low, the Court or the Tribunal cannot rely on the compensation claimed by a claimants, as it does not come under the doctrine of estoppel. But on the contextual examination of the matter, I find that even a member fails to arrive at a just compensation as I find Rs.3,000/- per month is insufficient and may not be sufficient for leading life of two persons parallel with the prices of necessities of food, clothing and shelter, it should invariably taken at Rs.4,000/- per month. Further, the deceased was said to be a coolie and earning for himself. He may not be entitled for 50% towards future prospects, considering the age of the deceased being 18 years, 40% of the future prospects may be awarded. Thus, the monthly income after adding future prospects @ 40% would be Rs.5,600/-.

Admittedly, the deceased was a bachelor at the time of accident and as such 50% of the income is to be deducted towards his personal and living expenses and after deducting the same, the amount remains for consideration is $\text{Rs.}4000+1600=5600-2800=\text{Rs.}2800/-$ per month. Admittedly the deceased was aged 18 years and appropriate multiplier applicable is 18. Accordingly, the claimants are entitled for compensation under the head loss of dependency is $\text{Rs.}2800 \times 12 \times 18 = \text{Rs.}6,04,000/-$. In addition to it, since the deceased was a bachelor, the claimants are entitled for compensation of $\text{Rs.}30,000/-$ under conventional heads. Accordingly, the claimants are entitled for compensation of $\text{Rs.}6,34,000/-$ as against $\text{Rs.}3,49,000/-$.

14. As state supra, this appeal is preferred by the insurance company. The claimants have not come before the Court either by way of appeal or even after receipt of notice, they failed to resist the appeal before this Court. However, in the circumstances, I find it is the absolute duty on the part of the Court to go through the material in detail and to dispose of the case in accordance with law. As a result, I find that the claimants are entitled for compensation of $\text{Rs.}6,34,000/-$ which amounts to an enhancement of $\text{Rs.}2,85,000/-$. I am of the sincere and firm view that though the claimants have not preferred appeal, still they are entitled for enhancement, despite regard being had to the fact that the appeal preferred by the insurance company is liable to be dismissed. In the result, I find that the learned member erred in under assessing the compensation. Hence, the following:

O R D E R

- (a) The appeal preferred by the insurer stands dismissed.
- (b) The judgment and award passed by the Civil Judge (Sr.Dn) and MACT, Madikeri on 27.06.2009 in MVC No.61/2003 is modified by enhancing the compensation at $\text{Rs.}2,85,000/-$ with interest @ 6% p.a. from the date of petition till the date of realization.
- (c) The appellant/insurer shall deposit the award amount including enhanced compensation with interest @ 6% per annum from the date of petition till realization, within 30 days from the date of receipt of certified copy of this order.
- (d) Since the claimants have not represented by any counsel before this Court, the District Legal Services Authority, Madikeri is entrusted with the responsibility of ensuring that the compensation reaches to the claimants.
- (e) Office to send a copy of this Order to the District Legal Services Authority, Madikeri.
- (f) Amount in deposit, if any, shall be transmitted to the Tribunal, for disbursal along with LCR.