

(2017) 03 KAR CK 0052
In the Karnataka High Court
Case No : MFA No. 68 of 2014 (MV)

Oriental Insurance Company Limited,

APPELLANT

Vs

Renuka K.

RESPONDENT

Date of Decision : 13-03-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2017) AAC 1048

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : MFA No. 68 of 2014; Sri. B.S. Umesh, Advocate, for the Appellant; Sri N.R. Ravi kumar, Advocate, for the Respondent Nos. 1 & 2.; Sri. G. Lakshmeesh Rao, Advocate, for the Respondent Nos. 3 & 4.; Notice served represented, for the Respondent No. 3; In MFA No. 702 and 3316 of 2014(MV); Sri N.R. Ravi kumar, Advocate, for the Appellant; Notice disensed V/O dated 09.01.2015, for the Respondent Nos. 1 & 2; Sri B.S. Umesh, Advocate, for the Respondent Nos. 3,

Final Decision : Allowed

Judgement

B. Manohar, J.—The Oriental Insurance Company as well as the claimants have filed these appeals challenging the judgment and award dated 16th September, 2013 in MVC. No. 613/2011 and MVC. No. 7/2012 passed by the MACT, Chickmagalur. (hereinafter referred to as "the Tribunal").

2. The Oriental Insurance Company being aggrieved by the quantum of compensation awarded by the tribunal in MVC.No.613/2011 filed MFA No. 68/2014 whereas the claimants being not satisfied with the quantum of compensation awarded in MVC. No. 613/2011 and MVC No.7/2012 have filed MFA Nos.702 and 3316 of 2014 seeking for enhancement of compensation. Hence, all the appeals are clubbed together and disposed of by this common judgment.

3. The claimants in MVC.No.613/2011 are the wife and mother of deceased C.M.

Sridhar. They filed the claim petition contending that the deceased C.M. Sridhar is the owner-cum-driver of Eicher Goods Vehicle bearing Reg.No.KA-40/4124. On 27-8-2011, after loading the poles and proceeding towards Balehonnur along with the injured Naveen, the claimant in MVC.No.7/2012, near Hakkimakki Arenoor village, a KSRTC bus bearing Reg.No.KA 40/F-660 came from opposite direction in a rash and negligent manner and dashed against the Eicher vehicle. Due to the said impact, the owner-cum-driver of the Eicher vehicle died on the spot. The claimant in MVC.No.7/2012 was shifted to the Government Hospital for treatment. Thereafter, he was shifted to M.G. Hospital, Chickmagalur. In the accident, he has sustained fracture of right leg and other injuries to the body.

4. The claimant claimed that due to the rash and negligent driving of the driver of the KSRTC bus, the accident occurred. Prior to the accident, the deceased was earning a sum of Rs.20,000/- per month. He was aged about 38 years. The family has lost the bread earner and hence sought for compensation of Rs. 20,00,000/-.

5. The claimant in MVC.No.7/2012 has sustained the following injury in the said accident:-

(a) Tenderness over the upper and middle 3rd of right thigh.

(b) Abrasion injury of about 3 x 2 cms. over the upper 3rd of anterior aspect of the right leg wound in bright red.

X-ray shows that he has sustained fracture of the shaft of right femur. Therefore, he filed the claim petition seeking compensation of Rs.10,00,000/-.

6. In response to the notice issued by the tribunal, the respondents entered appearance and filed written statement.

7. After trial, the Tribunal held that due to actionable negligence on the part of driver of the KSRTC bus, the accident occurred. The claimants are entitled for compensation. With regard to the death of C.M. Sridhar is concerned, the Tribunal taking into consideration the income of the deceased as Rs. 9,000/- p.m., deducting 3rd towards his personal expenditure, the loss of dependency works out to Rs.72,000/- p.a. As he was aged about 38 years, applying the multiplier 15, the Tribunal has awarded a sum of Rs.10,80,000/- towards loss of dependency and a sum of Rs.40,000/- towards the conventional head. In all, a sum of Rs.11,20,000/- with 6% interest.

8. So far as the claimant in MVC.No.7/2012 is concerned, in the accident he has sustained the fracture of the shaft of the right femur. He has undergone surgery to subtrochanter and CRIF with PFN and screw was done on 2-9-2011. The doctor who treated the claimant has assessed the disability to an extent of 14% to the particular limb. Though the claimant claimed that he was earning Rs.250/- per day, the Tribunal has taken into consideration Rs.6,000/- per month, applying the multiplier 18, taking the disability to an extent of 3.5% awarded a sum of Rs.45,360/- towards the future loss of income, Rs.25,000/- towards

medical expenditure, Rs.18,000/- towards loss of income during treatment, Rs.33,000/- towards pain and sufferings, Rs.4,750/- towards attendant charges, special diet, conveyance and other incidental expenses. In all the Tribunal awarded a sum of Rs.1,26,110/- with 6% interest.

9. The Insurance Company being aggrieved by the quantum of compensation in MVC. No. 613/2011 filed MFA. No. 68/2014, whereas the claimants being not satisfied with the quantum of compensation filed MFA. No.702/2014 and MFA. No. 3316/2014 respectively.

10. I heard Sri. Umesh B.S., learned counsel for the Insurance Company and Sri. N.R. Ravi Kumar learned counsel for the claimants and perused the judgment and award, oral and documentary evidence.

11. The main contention of the appellant, Insurance Company is that the exorbitant quantum of compensation awarded by the Tribunal in MVC.No.613/2011. The claimants have not produced any document to show that the deceased was a businessman and owner of Eicher vehicle and earning Rs.9,000/- p.m. However, in the claim petition itself, the claimants have clearly mentioned that the deceased Sridhar was a businessman and was owning the Eicher vehicle and himself was driving the said vehicle. Further, he died in the road traffic accident that occurred on 27-8-2011. The accident occurred in the year 2011. The income of Rs.9,000/- p.m. taken by the tribunal is in accordance with law. Even drivers working in KSRTC bus would earn much more than Rs. 9,000/- p.m. The driving licence of the deceased produced by the claimants shows that he was driving the Eicher vehicle. In the evidence as well as the claim petition, the claimants have clearly mentioned that the deceased Sridhar was the owner of Eicher vehicle. Hence, the monthly income of Rs. 9,000/- taken by the Tribunal is in accordance with law. Hence, the claim petition filed by the Insurance Company is liable to be dismissed.

12. Insofar as the claim petition filed by the claimant in MVC. No. 613/2011 is concerned, the tribunal taking the income of the deceased as Rs.9,000/- p.m., applying the multiplier 15, deducting 25% towards personal expenditure, awarded a sum of Rs.10,80,000/- towards loss of dependency. The Tribunal has awarded a sum of Rs.20,000/- towards consortium to the first claimant, which is too meager. At the young age he has lost his husband. Hence, it is appropriate to award a sum of Rs.50,000/- towards consortium to the first claimant and Rs.20,000/- towards loss of love and affection to the second claimant. Further, the claimants are entitled to Rs.30,000/- towards conventional heads. In all, the claimants are entitled for a sum of Rs.11,80,000/- as against Rs.11,20,000/- with 6% interest per annum.

13. So far as the claimant in MVC.7/2012 is concerned, the claimant has sustained a comminuted fracture of the right femur at the subtrochanter and undergone surgery. The external fixation has been made. The doctor assessed the extent of disability at 14% to the particular limb. He has to lead the

remaining life with that disability of 14% to the particular limb. The femur is the weight bearing limb. A sum of Rs.1,26,000/- awarded by the Tribunal is too meager. Hence, it is appropriate to award another sum of Rs.50,000/- in addition to Rs.1,26,110/- awarded by the Tribunal. Accordingly, I pass the following order:

ORDER

- i. MFA.No.68/2014 filed by the Insurance Company is dismissed.
- ii. MFA.No.702/2014 & MFA No.3316/2014 filed by the claimants are allowed in part. The claimant in MFA No.702/2014 is entitled to compensation of Rs.11,80,000/- as against Rs.11,20,000/- awarded by the Tribunal with 6% interest per annum.

Further, the claimant in MFA.No.3316/2014 is entitled to enhanced compensation of Rs.50,000/- with 6% interest per annum.