

(2008) 01 KAR CK 0035
In the Karnataka High Court
Case No : M.F.A. No. 10273 of 2005

Oriental Insurance Company Ltd.

APPELLANT

Vs

Shivamma, Prabhakar, Ranganatha and Prasad

RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : AIR 2008 Kar 115 : (2008) ILR (Kar) 1561 : (2008) 4 KarLJ 121 : (2008) 1 KCCR 76 SN

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : A.M. Venkatesh, H. Krishna and B.C. Shivanna Gowda, for the Appellant; Nataraju, for R1 and R2, for the Respondent

Judgement

Ram Mohan Reddy, J.—The insurer of the offending vehicle, aggrieved by the Judgment and Award dated 30th July, 2005 in MVC 151/2004 on the file of the Court of the Judge, Small Causes and Addl. Motor Accident Claims Tribunal, Mysore, for short MACT, has preferred this appeal,

2. One Puttamari succumbed to injuries in. a motor vehicle accident that occurred on 9.6.2003, resulting in his sister-in-law and nephew by name Shivamma and Prabhakar, respectively lodging a claim for Rs. 8,06,000/- as compensation. The insurer opposed the claim as well as the relationship of the claimants with the deceased. The MACT, on adjudication of the claims, held that the claimants were legal, representatives of the deceased entitled to compensation, reckoned Rs. 100/- per day as the income of the deceased, being in the age group of 55 to 60 years, applied multiplier "8" deducted 1\2 of the income towards personal expenses of the deceased a bachelor, and awarded Rs. 1,44,000/- for loss of dependency, to which was added Rs. 10,000/- towards loss of expectation of life and Rs. 30000/- towards funeral expenses totalling to Rs. 1,57,000/- with interest at 6% per annum, by the impugned Judgment and Award.

3. Learned Counsel for the appellant contends that the MACT fell in error in not noticing the fact that the claimants, though legal representatives of the deceased Puttamari, were not dependant on the income of the deceased and at best were entitled to a nominal sum as compensation towards loss to estate and definitely, not compensation for loss of dependency. In other words, learned Counsel submits that determination of loss to estate, required the MACT to reckon the annual savings of the deceased and apply the relevant multiplier.

4. In support of the said contention, learned Counsel places reliance upon the decision of the Apex Court in Smt. Manjuri Bera v. Oriental Insurance Co. Ltd. AIR 2007 SCW 1962 and the reported, decision of a Division Bench of this court in A. Manavalagan Vs. A. Krishnamurthy and Others,

5. Per contra, learned Counsel for the respondents-claimants seeks to support the impugned Judgment and Award as being well merited, fully justified and not calling for interference. Learned Counsel "hastens to add that there is no material on record to establish the amount the deceased saved every year, from out of the income.

Before proceeding to consider the contention advanced by the learned Counsel for the appellant, it is useful to extract the relevant portions of the judgment in Manavalagan's case 2007 AIR SCW 1962 and A. Manavalagan Vs. A. Krishnamurthy and Others, .

6. In Manavalagan's case the Division Bench while summarizing the principles enunciated thus:

(i) xxxx xxxxx xxxx

(ii) xxxx xxxx xxxx

(iii) Where the claim by the legal representatives of the deceased who were not dependants of the deceased, then the basis for award of compensation is the loss to the estate, that is the loss of savings by the deceased.

A conventional sum for loss of expectation of life, is added.

(iv) The procedure for determination of loss to estate is broadly the same as the procedure for determination of the loss of dependency. Both involve ascertaining the multiplicand and capitalizing it by an appropriate multiplier. But, the significant difference is in the figure arrived at as multiplicand in cases where the claimants who are dependants claim loss of dependents, and in cases where the claimants who are not dependants claim loss to estate. The annual contribution to the family constitutes the multiplicand in the case of loss of dependency, whereas the annual savings of the deceased becomes the multiplicand in the case of loss to estate. The method of selection of multiplier is however the same in both cases.

(emphasis supplied)

7. In Manjuri Bera's case, the Apex Court held thus:

16. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act, Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation,, the quantum of which shall be not less than the liability flowing from Section 140 of the Act.

8. In the light of the aforesaid decisions, it is needless to state that the MACT in the instant case proceeded on a footing as if the claimants being sister-in-law (widow of the deceased brother) and the nephew, being majors, were dependent on the income of the deceased.

9. Indisputably, the 1st claimant in her oral testimony having stated that the deceased Puttamai used to occasionally visit the house and would partake of food and rest in her house, clearly established the feet that the claimants were not dependant upon the income of the deceased. Therefore, what the claimants are entitled to is compensation for loss to estate in addition to a conventional sum for expectation of life, to be determined in the manner as summarized in A. Manavalagan's AIR 2007 SCW 1962 case (supra) which compensation cannot be less than the liability referable to Section 140 of the Motor Vehicles Act, i.e, less than Rs. 50,000/-, as decided in A. Manavalagan Vs. A. Krishnamurthy and Others, case supra.

10. The MACT having reckoned Rs. 100/- per day as the income of the deceased and after deducting 50% towards personal expenses, and the deceased being in the age group of 58 to 60 years, it is reasonable to infer that the deceased saved at least Rs. 750/- per month. In that view of the matter, reckoning monthly savings of Rs. 750/-and applying the multiplier "8", the claimants would be entitled to Rs. 72,000/- towards loss to estate.

11. In the circumstances, the award of compensation under the conventional heads does not call for interference.

In the result, this appeal is allowed in part. The impugned judgment and award is modified entitling the claimants to Rs. 72,000/- with interest at 6% p.a. towards loss to estate in lieu of Rs. 1,44,000/- for loss of dependency in addition to the amounts awarded under the conventional heads by the MACT and in all other respects remains unaltered.

Registry is directed to transmit the amount in deposit to the MACT, forthwith.