(2015) 09 KAR CK 0127

In the Karnataka High Court

Case No : MFA Crob. No. 885/2013 (MV) and MFA No. 21976/2013

Padmavathi and Others APPELLANT

Vs

Mohammadrasul and Others RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 2(21)

Citation : (2015) 09 KAR CK 0127

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : Geetha K.M., Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

S. Sujatha, J.—The insurance company as well as the claimants are before this Court challenging the award passed by the MACT, Belgaum in MVC No. 1578/2011.

2. Heard the learned counsel appearing for the parties.

3. The brief facts are:

"On 15.04.2011 at about 10.45 hours, the deceased Subhash S/o. Laxman Taragaonkar was proceeding on his Scooter No. CND-747 after filling petrol to the vehicle at Malagi Petrol Pump towards Nityan and Circle by riding the Scooter in a moderate speed on left side of the Road by following traffic rules. When the deceased came near Gandhi Nagar Cross Belguam, one Tata ACE Mini Goods Vehicle bearing registration No. KA-22/T-207 came in a rash and negligent manner and rammed the Scooter on which the deceased was riding. Due to this heavy impact, the deceased fell down and sustained grievous injuries to head, left shoulder and other vital organs of the body. It appears immediately after the accident, the deceased was first shifted to District Hospital, Belgaum and after first aid treatment, he was admitted to BHS Lake view Hospital, Belgaum as an inpatient from 16.04.2011 to 18.05.2011 for further treatment. During this period, the deceased has undergone major surgeries and after discharge, during the course of follow up treatment, the deceased succumbed to the said injuries on the very next day i.e., on 19.05.2011."

4. It transpires that on these grounds, the claim petition was filed by the wife and the son seeking compensation of Rs. 25,00,000/- with interest at 18% p.a., which was resisted by the insurance company denying the material averments made in the claim petition. The Tribunal after evaluating the evidence on record, awarded the compensation of Rs. 10,82,000/- with interest at the rate of 8% p.a. from the date of petition till the date of realization. Being dissatisfied by this judgment and award, both the insurance company as well as the claimants are before this Court.

5. The insurance company is disputing the liability and the quantum on the ground that the driver of the offending vehicle had no valid licence at the time of occurrence of the accident. The driver had only licence to drive the autorickshaw Cab, as such the insurance company is not liable to make the compensation awarded by the Tribunal for the breach of terms of the insurance policy. Further, it is contended that the licence does not disclose that the driver was authorised to drive the ''Light Motor Vehicle'', since the same is not disclosed in the licence issued to the driver of the offending vehicle. The Officer of RTO, Belgaum was examined who deposed that the accused was not holding valid licence to drive the Light Goods Vehicle which he was driving at the time of occurrence of the accident. Further it is contended that the deceased was aged about 63 years as per the post mortem report. The appropriate multiplier ought to have been applied by the Tribunal is ''7''. But the Tribunal had applied the multiplier of ''9'', which is contrary to the judgment of the Apex Court in Sarala Verma''s case. It is also contended that the deceased was working as goldsmith and no evidence was produced before the Tribunal to establish that he was earning a monthly salary of Rs. 10,000/-, which the Tribunal determined is contrary to the evidence available on record to this effect.

6. On the contrary, the learned counsel appearing for the claimants argued that the driver of the offending vehicle had a valid licence at the time of occurrence of the accident as per Ex. R5 which clearly reveals that the driver was authorised to drive the transport vehicle from 15.10.2003 to 14.10.2006 and thereafter, it was renewed from 20.01.2010 to 19.01.2013. Accordingly, at the time of the occurrence of the accident i.e., on 15.04.2011, the driver had a valid and effective driving licence. Though the offending vehicle is the Tata ACE Mini Goods Vehicle i.e., Light goods vehicle, in view of the licence which was valid to drive the transport vehicle, the same cannot be termed as invalid licence to drive the Tata ACE i.e., Light Goods Vehicle as the same falls within the definition of the Light Motor Vehicle as defined under Section 2(21) of the Motor Vehicles Act. Learned counsel further contended that the Tribunal has taken into consideration the income tax returns filed by the claimants for the assessment year 2010-2011 which clearly indicates the gross income of the deceased at Rs. 1,68,182/- and in

view of this clinching evidence which clearly determines the monthly income had arrived at the income of Rs. 10,000/- which cannot be excessive as contended by the learned counsel for the insurer. It is further contended that the licence produced by the respondents was valid and the same is fortified by the evidence led by the RTO himself, wherein the RTO - RW2 has clearly admitted that Autorickshaw Cab comes under the definition of the Light Motor Vehicle Act. It is the case of the claimant that the Tribunal has awarded a meager sum towards the conventional heads, which necessarily calls for interference by this Court.

7. Considering the rival submissions of the parties, I have examined Ex. R5, the licence of the driver of the offending vehicle. It clearly reveals that the driver had the licence to drive the transport vehicle from 15.10.2003 to 14.10.2006 and further, it was renewed from 20.01.2010 to 19.01.2013. The Light Motor Vehicle is defined under Section 2(21) of the Motor Vehicle Act, 1988, which reads as under:

"Light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms."

8. Admittedly, Tata ACE vehicle, which was involved in the accident is a Light Motor Vehicle as per the evidence of RTO - RW2. It is stated by RW.2 in his cross-examination that the offending vehicle No. KA.22/B.4757 comes within the definition of ''Light Motor Vehicle,'' the driver had the effective licence to drive the Light Motor Vehicle. In view of this evidence coupled with Ex. R5, it would be clear that the driver of the offending vehicle had the valid licence and the defence now raised by the insurance company to escape from the liability of indemnifying the owner of the vehicle on the ground of breach of insurance policy is not worthy of acceptance. As regards the determination of income by the Tribunal, this Court do not find any fault as the same is being arrived based on the income tax returns filed by the deceased which clearly establishes the income of the deceased as Rs. 1,68,182/- p.a. Even taking this into consideration, the Tribunal has arrived at Rs. 10,000/- per month, which is not exorbitant. The Tribunal has deducted 1/3rd towards ''personal and living expenses'' of the deceased as the dependants are two, applying the law enunciated by the Apex Court in the case of Sarla Verma''s and others.

9. As regards applying the multiplier, it appears that the Tribunal has considered the age of the deceased as 56 years and adopted the multiplier of ''9'', which is not correct in view of the post mortem report which indicates the age of the deceased as 63 years. If the same is taken into consideration, the proper multiplier would be ''7''. Applying the multiplier of ''7'', loss of dependency'' works to Rs. 5,60,000/-.

10. However, it is noticed that the deceased has left the wife and the only son. The amount of compensation awarded towards loss of consortium'' and loss of love and affection'' at Rs. 20,000/- each is a meager sum. In the circumstances,

it would be appropriate to enhance the same to Rs. 30,000/- under each of the heads.

11. It appears that the compensation awarded by the Tribunal under other conventional heads is just and proper in the circumstances of the case.

12. Therefore, the claimants are entitled for enhanced compensation as under:

13. Accordingly, MFA Crob No. 885/2013 filed by the claimants and MFA No. 21976/2013 filed by the insurance company are disposed of. The judgment and award passed by the Tribunal is modified reducing the compensation from Rs. 10,85,000/- to Rs. 9,72,200/-. The amount deposited by the insurer shall be transmitted to the Tribunal concerned. The claimants are entitled to the interest at the rate of 8% p.a. from the date filing the claim petition till deposit.