

(2017) 06 KAR CK 0128
In the Karnataka High Court
Case No : 201694 of 2015 (MV)

RELIANCE GENERAL INSURANCE CO. LTD.	APPELLANT
Vs	
M/S. DRS DILIP ROAD LINES PVT. LTD., & ORS.	RESPONDENT

Date of Decision : 29-06-2017

Acts Referred:

Citation : (2017) 06 KAR CK 0128

Hon'ble Judges : B. A. Patil

Bench : SINGLE BENCH

Advocate : RAHUL R. ASTURE, S.S. MAMADAPUR

Final Decision : Allowed

Judgement

1. Though this appeal was posted for Orders, for having heard the case on merits, with the consent of the learned counsels appearing for the parties, it is taken up for final disposal.
2. This appeal is by the insurance - company assailing the judgment and award passed by the learned M.A.C.T.No.VII Vijayapura in MVC No.512/2014 dated : 24.8.2015.
3. Brief facts leading to the case are that on 5.12.2013 at about 2.50 p.m., Mohini D/o Ishwar Rathod, the daughter of petitioner no.1 along with her friend were travelling in TVS motor cycle towards Sayyadbukhari Darga Road at Solapur, at that time, one Eicher Container No. HR-55/N-4284 came from opposite direction, driven by its driver in rash and negligent manner and dashed against the said TVS motor cycle, on which the deceased was proceeding. In the said accident, both riders fell down and the deceased sustained severe injuries and she was shifted to private hospital for treatment and there she succumbed to the accidental injuries and as such the parents and sisters filed the claim petition claiming compensation.
4. After notice, respondent no.1 remained absent and he was placed ex-parte.

Respondent no.2 filed his written statement contending that, the accident occurred because of the rash and negligent act of the deceased herself and not due to the negligent act of the driver and as such the liability is not there on the insurance company.

5. After considering the pleadings of the parties, the tribunal framed the following issues :-

i. Whether petitioners prove that the death of Mohini D/o Ishwar Rathod, was in the road traffic accident due to the negligent driving of the driver of Container bearing No.HR-55/N-4284 on the alleged date, time and place as asserted ?

ii. Whether petitioners prove that they are entitled for the compensation ? If so, what an extent and from whom they are entitled ?

iii. What order or award ?

6. In order to prove the case of the petitioners, petitioner no.2 came to be examined as P.W.2 and got marked Ex.P-1 to 9 and on behalf of the respondents, nobody got examined and after hearing the parties, the tribunal answered Issue No.1 in the Affirmative, Issue No.2 in partly affirmative and awarded the compensation of Rs.10,39,000/-.

7. The main grounds urged by the learned counsel for the appellant - insurance company is that though the deceased was bachelor and she was not an earning member, the tribunal by taking the notional income of the deceased at Rs.6,000/- per month, instead of deducting 50% of the said income towards the personal expenses of the deceased by deducting 1/4th of the income has awarded an amount of Rs.9,72,000/- towards loss of future dependency without considering the facts as laid down by the Hon'ble Apex Court, thereby the impugned judgment and award is liable to be set-aside. He would also further contend that though the dependency was not there on other petitioners, the tribunal has awarded the compensation. On these grounds, he prayed for allowing the appeal by setting aside the impugned judgment and award.

8. Per contra, learned counsel for the respondents no.2 to 5 by substantiating the judgment and award submits that the tribunal after considering the facts and circumstances of the case has rightly awarded just compensation and the appellant has not made out any good grounds so as to interfere with the said order and he requests to dismiss the same.

9. I have perused the judgment and award of the tribunal. The accident is not in dispute so also the involvement of the offending vehicle insured with the appellant - insurance company. As could be seen from the judgment and award of the tribunal, tribunal has taken the income of the deceased at the rate of Rs.6,000/- per month as no documents have been produced to show that the deceased was earning Rs.10,000/- per month and thereafter after deducting 1/4th of the income towards the personal expenses and after applying the multiplier of 18, has awarded Rs.9,72,000/-. But, admittedly, the deceased was a

bachelor. Under such circumstances, the tribunal ought to have deducted 1/2 of the income towards the personal expenses. If that is adopted, then under such circumstances, the claimants / respondents no.2 to 5 are entitled to an amount of Rs.6,48,000/- towards loss of future dependency. On perusal of the judgment and award, the compensation awarded under loss of love and affection, towards medical expenses and funeral expenses appears to be just and proper. In that view of the matter, it does not require any interference at the hands of this Court.

10. In view of the above said apportionment and re-calculation, the respondents no.2 to 5 are entitled to Rs.7,15,000/-. Accordingly, the judgment and award passed by the tribunal has been modified as stated above and it is made clear that the appellant - insurance company has to deposit the above said amount within six weeks from the date of receipt of copy of the judgment with 6% p.a., interest and same shall be distributed to the claimants as per the award of the claimant.

Accordingly, the appeal is partly allowed. The registry is directed to draw the Award and the amount in deposit be transferred forthwith to the jurisdictional tribunal.