(2016) 08 KAR CK 0008

In the Karnataka High Court

Case No : M.F.A. No. 25068 of 2011 (MV)

Shriram General Insurance Co. Ltd., Jaipur, Rajasthan — APPELLANT

Vs

Veerappa — RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2016) AAC 2496

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Sri. Nagaraj Kallori, Advocate, for the Appellant; Sri N.P. Vivekmehta, Advocate, for the Respondent No. 1; Notice to R.2 Dispensed with, for the Respondent No. 2

Final Decision : Allowed

Judgement

Mrs. S. Sujatha, J. - This appeal is by the insurer challenging the Judgment and award passed by the Motor Accident Claims Tribunal, Haven ("Tribunal", for short) in MVC 259/2010.

2. Briefly stated the facts are that the respondent No.1 instituted the claim petition before the Tribunal claiming compensation for the death of his brother in the road traffic accident which occurred on 2.2.2010 on account of the actionable negligence of driver of a track bearing registration No. KA-16/A-6228. The insurer resisted the claim. The Tribunal after appreciating the evidence on record, awarded total compensation of Rs. 4,26,000/-.

3. Being aggrieved, the appellant-insurer is before this Court assailing the impugned Judgment and award mainly on the quantum of compensation awarded by the Tribunal contending that the claimant being the brother of the deceased was only a legal representative and not a dependent of the deceased and that the deceased was a bachelor at the time of the accident, 50% of the income ought to have been deducted towards personal and living expenses of

the deceased. Thus, the learned counsel elaborating his arguments on these two points places reliance on the Judgment of the Apex Court in A. Manavalagan v. A. Krishnamurthy and others, reported in ILR 2004 Karnataka 3268 : (2004 AIR - Kar R 1894).

4. Per contra, Sri. N.P. Vivek Mehta, learned counsel for the respondent-claimant supports the impugned Judgment and award. It was contended by the learned counsel that the claimant was dependent on the deceased who was assisting him in the agricultural activities. It was further contended that the deceased was the sole earning member of the joint family and due to his untimely death, the claimant has lost financial and moral support. The evidence of PW-2 clearly establishes that the claimant was dependent of his deceased brother. Learned counsel would contend that the compensation awarded by the Tribunal is just, fair and reasonable and does not call for interference by this Court.

5. Having heard the rival submissions of the parties and perusing the material on record, the only question that arises for consideration before this Court is, whether the compensation awarded by the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (''Act'' for short) to the claimant-brother of the deceased Shankarappa is justifiable ?

6. It is an undisputed fact that the claimant is the brother of the deceased Shankarappa. Section 166(2) of the Act provides for seeking compensation arising out of an accident of the nature specified in Section 165(1) of the Act by any agent duly authorised by the person injured or all of any legal representatives of the deceased, as the case may be. The main content ion of the learned counsel for the appellant is that the deceased being a bachelor and the claimant being the brother, aged 52 years with an independent income, the savings of the deceased would hardly be taken as 15%. Though this defence was raised in the written statement by the insurer, inasmuch as the entitlement of compensation claimed by the brother of the deceased, no evidence was led by the insurer to prove the same. It is the cardinal principles of law that mere taking a defence in the statement of objections/written statement would not be suffice unless a direct and corroborative evidence is led by the party to prove the same. On the other hand, the claimant was examined as PW-2 and led evidence contending that he was an aged person, dependent on his deceased brother for the management of the agricultural operations. The claimant in unequivocal terms had contended that due to the untimely death of the deceased, he has lost love and affection of his brother and is totally suffering physically, mentally and economically. Thus, it is further stated that the deceased was the sole earning member of the family and the claimant was dependent on his brother. No positive material is elicited by the appellant-insurer in the cross-examination of the claimant/PW-2. In the absence of any material evidence led by the insurer on the contrary to discard the evidence of PW-2, any arguments advanced by the insurer at the appellate stage would not be of any credence. It is also discerned from the records that the accident occurred on 2.2.2010 and the monthly income

of the deceased determined by the Tribunal at Rs.4,000/- is on a lower side. Similarly, the compensation awarded under different heads is also meager compared to the date of the accident and the factual matrix of the case. In the circumstances, the contention of the learned counsel appearing for the appellant that 15% of the savings has to be taken to compute loss of dependency cannot be accepted at the belated stage, more particularly, when the said factual position was not put to test of the evidence in the claim proceedings.

7. As regards the contention of the appellant that the Tribunal grossly erred in deducting ?th of the income towards personal and living expenses of the deceased appears to have some force. It is well settled law as per the Judgment of the Apex Court in the case of Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121 : (AIR 2009 SC 3104), wherein it is held that 50% of the income has to be deducted towards the personal and living expenses of the deceased in the case of a bachelor. Thus, deducting 50% towards the personal expenses of the deceased, bachelor, loss of dependency works out to Rs.2,64,000/-. Given the circumstances, it would be just and reasonable to modify the award insofar as loss of dependency is concerned at Rs.2,64,000/- as against Rs.3,96,000/-. Considering the quantum of compensation awarded by the Tribunal under different heads, I am of the considered opinion that the arguments of the learned counsel to reduce the quantum of compensation would not be appreciable. Thus, compensation awarded by the Tribunal is modified as under:

Sl. No.

Nature of Heads

Amount (Rs.)

1

loss of dependency (deducting 50% towards personal and living expenses)

2,64,000/-

2

loss of love and affection

5,000/-

3

funeral expenses

10,000/-

4

loss of estate

10,000/-

5

transportation of dead body

5,000/-

Total

2,94,000/-

8. Thus, the total compensation awarded by the Tribunal is modified and reduced to Rs.2,94,000/- as against Rs. 4,26,000/-.

9. The appeal stands allowed to the extent indicated above.

10. The amount, in deposit, shall be transferred to the jurisdictional Tribunal for disbursement.

