

(2013) 11 KAR CK 0312
In the Karnataka High Court
Case No : M.F.A. No. 6275 of 2010 (MV)

Sri. Chandresh @ Prakash and Master Dakshit M.C.	APPELLANT
Vs	
Sri. M. Vishwanath and Royal Sundaram Allience Insurance Co. Ltd.	RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 11 KAR CK 0312

Hon'ble Judges : N.K. Patil, J; Budihal R.B., J

Bench : Division Bench

Advocate : B.M. Mohan Kumara, for the Appellant; O. Mahesh, Advocate for R2, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the appellants-claimants is arising out of the common judgment and award dated 16/02/2010 passed in MVC No. 1311/2009, by the Judge and Member, Motor Accident Claims Tribunal, Bangalore, (hereinafter referred to as "Tribunal" for short). By its judgment and award, the Tribunal has awarded a sum of 4,72,000/- with interest at 6% p.a., from the date of petition till the date of deposit as against the claim made by the appellants for a sum of Rs. 40,00,000/-, on account of the death of the deceased Smt. Jyothi in the road traffic accident.

2. The brief facts of the case of the appellants are, that on 26.6.2008 at about 1.00 a.m., the deceased Smt. Jyothi along with her husband and son and other close relatives was traveling from Bangalore towards Sakaleshapura in a Car bearing No. KA.04.B.4056 on Bangalore-Mangalore road to attend a marriage, when they reached near Honnavalli village, Alur Taluk, Hassan District, at that time, the driver of the lorry bearing No. KA. 10.3440 came from opposite direction in a rash and negligent manner and dashed against the car. Due to which, deceased sustained injuries and succumbed to the same. It is the further case of the appellants that, deceased was aged about 22 years and she was hale

and healthy prior to the accident. She was working as House Keeping HOD in Hotel Ramanashree Star Hotel, Bangalore and earning Rs. 2,16,000/- p.a. and also doing tailoring work in free time and earning Rs. 15,000/- per month. Therefore, appellants have filed a claim petition before the Tribunal u/s 166 of M.V. Act, claiming compensation against the respondents.

3. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after hearing the learned counsel for both the parties and after appreciating the oral and documentary evidence available on file, has allowed the said petition in part and awarded the compensation of Rs. 4,72,000/- with interest at 6% p.a., from the date of petition till the date of deposit. Being aggrieved by the said judgment and Ward passed by the Tribunal, the appellants have presented this appeal, for enhancement of compensation.

4. We have heard learned counsel appearing for appellants and learned counsel appearing for Insurer.

5. The submission of the learned counsel appearing for appellants is that, due to communication gap, he could not produce the documents pertaining to deceased Smt. Jyothi, which are produced by him along with Misc. Cv. 11173/2010, as additional documents, which was allowed by this Court by separate order. Therefore, he submitted that, in view of allowing the said Misc. Cv. application, impugned judgment and award passed by the Tribunal may be set aside and the matter may be remitted back to the Tribunal for reconsideration afresh.

6. As against this, learned counsel for the Insurer fairly submitted that, in the light of the submissions made by learned counsel for the appellants, this appeal may be disposed off and the matter may be remitted back to the Tribunal for reconsideration, with a direction to pass appropriate order in accordance with law, after affording opportunity to him and also permitting him to file objections to the application to be filed by the appellants for production of additional oral and documentary evidence.

7. After hearing the learned counsel for both the parties, after careful perusal of the impugned judgment and award passed by the Tribunal, it emerges that, the occurrence of the accident and the resultant death of the deceased Smt. Jyothi are not in dispute. It is also not in dispute that, appellants are the husband and minor son of the deceased. It is the submission of the learned counsel for the appellants that, due to communication gap between the appellants and his counsel, they could not produce Annexures-D to F i.e. letter of the counsel, statement of Accounts of the deceased issued by Axis Bank which are produced by the appellants along with Misc. Cv. filed for additional documents as Annexures-D to F, which has been allowed by a separate order. Further, it emerges that, the appellants were not in a position to examine the employer of the deceased who has issued the salary certificate and other documents to show that she was working as House Keeping and getting substantial salary before the Tribunal. The documents which are now produced by the appellants as additional

documents have not been produced by them before the Tribunal when the matter was taken up for consideration. Therefore, in view of allowing the Misc. Cvl. filed by the appellants for production of additional documents, we are of the considered view that matter requires reconsideration by the Tribunal afresh.

8. Having regard to the facts and circumstances of the case as stated above and in the light of the submissions made by learned counsel for both the parties, without expressing any opinion on the merits and demerits of this case, it would be appropriate to direct the Tribunal to reconsider the matter afresh and pass orders in accordance with law. For the foregoing reasons, the appeal filed by the appellants is allowed.

The impugned judgment and award dated 16/02/2010 passed in MVC No. 1311/2009, by the Judge and Member, Motor Accident Claims Tribunal, Bangalore, is hereby set aside and the matter stands remitted back to the Tribunal for reconsideration afresh, with a direction to pass appropriate order, in accordance with law, after affording reasonable opportunity of hearing to the appellants and insurer, personally or through their counsel and dispose of the same, as expeditiously as possible, at any rate, within a period of six months from the date of appearance of the parties before the Tribunal.

The appellants and Insurer are permitted to file necessary applications before the Tribunal to lead additional evidence both oral and documentary, within four weeks from the date of receipt of a copy of this judgment.

In the event, if such applications are filed by the parties, within the time stipulated above, the Tribunal is directed to receive the same and proceed further and dispose of the same, as expeditiously as possible, in terms of the above directions issued by this Court.

The appellants and Insurer are directed to appear before the Tribunal either personally or through their counsel on 25th November 2013 at 11.00 a.m. to take further dates of hearing.

Registry is directed to return the entire original records to the jurisdictional Tribunal forthwith.

If the learned counsel for the appellants files a memo for return of the certified copy of the documents produced by him along with Misc. Cvl. 11173/2010, Registry is directed to return the same, forthwith. Ordered accordingly.