

(2015) 11 KAR CK 0102
In the Karnataka High Court
Case No : MFA No. 4868/2013 (MV)

The Branch Manager National Insurance Co. Ltd.	APPELLANT
Vs	
Basappa and Others	RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Citation : (2016) 1 AKR 178

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : A.N. Krishna Swamy, Advocate, for the Appellant; Shanthi Bhushan, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Manohar, J.—The appellant/Insurance Company has filed this appeal challenging the judgment and award dated 23rd February 2013 made in MVC No. 160/2012 passed by the I Additional Senior Civil Judge and Motor Accidents Claims Tribunal-V, Chitraduraga (hereinafter referred to as the Tribunal for short).

2. Respondents 1 to 3 filed the claim petition contending that son of the claimants 1 and 2 and the brother of the 3rd claimant/Rangaswamy who was working as a Cleaner in a Lorry bearing registration No. KA-16/A-4670 died in the road traffic accident that occurred on 17-10-2011. In the claim petition it was contended that on 17-10-2011 after exhibition of agricultural equipments in Krishi Mela, while he was returning from Raichur, the driver of the offending lorry drove the said lorry in a rash and negligent manner and dashed against the parked lorry bearing registration No. KA-32/6611. Due to the accident, the cleaner of the said Lorry deceased Rangaswamy sustained fatal injuries to the vital parts of the body. He was shifted to the VIMS hospital, Bellary. However, he died during the course of treatment. The claimants filed the claim petition seeking compensation of Rs. 20,00,000/- due to the death of the deceased Rangaswamy claiming that he was earning Rs. 6,000/- p.m. by working as a cleaner of the said lorry.

3. In pursuance of the notice issued by the Tribunal, respondents 1 and 2 entered appeared and filed statement of objections. In the objections statement, the first respondent contended that the deceased was not working as a cleaner in the said lorry; denied the rash and negligent driving of the said lorry by its driver and also disputed the age, occupation and earnings of the deceased. It was further contended that the offending vehicle was insured with the second respondent. Hence, the second respondent is liable to compensate the claimants, if the court holds that the deceased was working as a cleaner in the said lorry. Hence sought for dismissal of the claim petition as against the first respondent.

4. The second respondent/Insurance Company in their statement of objections denied the entire averments made in the claim petition and also contended that in view of denial of relationship by the first respondent that the deceased was a cleaner in his lorry, the deceased was an unauthorized passenger traveling in the lorry. Hence the claimants are not entitled for any compensation. Due to the negligent act of the driver of the lorry bearing registration No. KA-32/6611 who had parked the vehicle in negligent manner, the accident had occurred and there is contributory negligence on the part of both the vehicles. Further the compensation claimed is highly excessive and hence sought for dismissal of the claim petition as against the second respondent.

5. On the basis of the pleadings of the parties, the Tribunal framed necessary issues. The claimants in order to prove their claim examined the first claimant as P.W.1 and got marked the documents as Ex. P1 to Ex. P9. One of the eye witnesses to the accident was examined as P.W.2. On behalf of the respondents none of the witnesses were examined. However, with the consent of the parties, Insurance Policy was marked as Ex. R1.

6. The Tribunal after considering the oral and documentary evidence available on record and taking into consideration the copy of spot panchanama, IMV report, copy of the complaint and FIR, held that due to the rash and negligent driving of the offending lorry, the accident had occurred. The deceased was working as a cleaner in the said lorry and the claimants are none other than the father, mother and sister of the deceased and they are entitled for compensation. With regard to quantum of compensation is concerned, though the claimants claim that as a cleaner, the deceased was getting salary of Rs. 6,000/- p.m. and produced the salary certificate issued by "VARSHA AGENCY", Chitradurga, the author of the said salary certificate was not examined to prove the said document. In view of that, the Tribunal had taken the income of the deceased at Rs. 4,000/- p.m. and deducted 1/3rd towards his personal expenditure. Taking the age of the deceased as 19 years, applied the multiplier 18 and awarded a sum of Rs. 5,76,072/- towards loss of dependency and a sum of Rs. 30,000/- towards conventional heads. In all, the Tribunal had awarded compensation in a sum of Rs. 6,06,072/- which was rounded off to Rs. 6,06,100/- with interest at the rate of 6% p.a. vide its judgment and award dated 23rd February 2013. The appellant being aggrieved by the judgment and award passed by the Tribunal, filed this appeal.

7. Sri. A.N. Krishnaswamy, learned counsel for appellant contended that the judgment and award passed by the Tribunal is contrary to law. Even though the owner of the vehicle denied the relationship of the claimants with the deceased and that he was working as a cleaner in his lorry, the Tribunal held that the deceased was working as a coolie in the said lorry which is contrary to law. At the time of death, the deceased was aged about 19 years and he was a bachelor. Hence, deducting 1/3rd towards his personal expenditure is contrary to law. Further, while awarding the compensation, the Tribunal applied the multiplier 18 which is contrary to the law laid down by the Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Hence, sought for setting aside the judgment and award passed by the Tribunal by allowing this appeal.

8. On the other hand, Sri. Shanthi Bhushan, learned counsel appearing for respondents 1 to 3 argued in support of the judgment and award passed by the Tribunal and sought for dismissal of the appeal.

9. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award and other relevant records.

10. The records clearly disclose that the deceased Rangaswamy was working as a cleaner in the lorry bearing registration No. KA-16/A-4670. After completion of Krishni Mela, the deceased was returning along with agricultural equipments from Raichur to Chitradurga. Due to the rash and negligent driving of the said lorry by its driver, the vehicle dashed against the parked lorry on Bellary- Siraguppa Road. In view of that, the deceased sustained grievous injuries and died while taking treatment. The finding of the Tribunal with regard to actionable negligence on the part of the driver of the offending lorry is not been challenged by the appellant. The only dispute is with regard to the quantum of compensation and application of multiplier 18 and 1/3rd deduction towards personal expenditure of the deceased.

11. Though the claimants claim that the deceased was getting salary of Rs. 6,000/- p.m. and batta of Rs. 100/- per day working as a cleaner in the offending lorry, no document has been produced to substantiate the said contention. Though the salary certificate Ex. P9 has been produced, the person who issued the said salary certificate has not been examined to prove the same. In the absence of the same, the Tribunal had taken the income of the deceased as Rs. 4,000/- p.m. and deducted 1/3rd towards his personal expenditure. Taking into consideration the age of the deceased as 19 years, the Tribunal had applied the multiplier 18 and awarded compensation. The main contention of the appellant is that at the time of death, the deceased was a bachelor; the Tribunal ought to have deducted 50% instead of 1/3rd towards his personal expenditure. Further, in view of the law laid down by the Hon''ble Supreme Court in SARALA VERMA case referred to above, the age of the younger parent ought to have been considered to apply the multiplier. Admittedly, the accident occurred on 17-10-2011. Usually, the cleaner working the lorry earns more than Rs. 6,000/-

p.m. during 2011. Though the author of the salary certificate was not examined to prove the said salary certificate, the Tribunal ought to have taken into consideration the reasonable income. If the income of the deceased is taken at Rs. 5,250/- p.m. deducting 50% out of it, it would come to Rs. 2,625/- p.m. Hence, I feel that there is no infirmity in deducting 1/3rd towards his personal expenditure. Further, applying the multiplier of 18 taking into consideration the age of the deceased is contrary to the law laid by the Hon'ble Supreme Court in the case referred to above. The Tribunal ought to have taken the age of the younger parent for applying the multiplier. Taking into consideration the age of the mother of the deceased who was aged about 45 years at the time of the accident, the appropriate multiplier to be adopted is 14. Hence, the claimants are entitled to compensation of Rs. 4,48,056/- ($2667 \times 12 \times 14$) as against Rs. 5,76,072/- towards loss of dependency. Further, Rs. 30,000/- awarded towards conventional heads is on the lower side. The aged parents have lost their loving son and the bread earner of the family. Hence they are entitled to a sum of Rs. 75,000/- towards conventional heads. In all, the claimants are entitled to 5,23,056/- which is rounded off to Rs. 5,23,100/- as against Rs. 6,06,100/- awarded by the Tribunal with interest at the rate of 6% p.a. Accordingly, I pass the following:--

"ORDER

The appeal is allowed in part. The judgment and award dated 23rd February 2013 made in MVC No. 160/2012 is modified. The claimants are entitled for compensation of Rs. 5,23,100/- as against Rs. 6,06,100/- awarded by the Tribunal with interest at the rate of 6% p.a."

The apportionment and deposit in the Nationalized Bank be made as per the order of the Tribunal.

The amount in deposit is directed to be transferred to the Motor Accidents Claims Tribunal-V, Chitradurga, forthwith.