(2017) 01 KAR CK 0130

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 22446 of 2011

The Divisional Manager New India Assurance Co. Ltd. APPELLANT

Vs

Vijay RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, Section 163A

Citation : (2017) AAC 839

Hon'ble Judges : Mr. K. Somashekar, J.

Bench : Single Bench

Advocate : Sri. M.K. Soudagar, Advocate, for the Appellant; Sri. Harish S. Maigur, Advocate, for the Respondent Nos. 1 and 2; Are Served, for the Respondent Nos. 3 and 4

Final Decision : Dismissed

Judgement

Mr. K. Somashekar, J.—This appeal has been preferred by the appellant/ Insurance Company questioning the impugned judgment and award passed by the III Additional Senior Civil Judge and Additional MACT(''the Tribunal'', for short) in MVC. No. 813/2007 dated 31.12.2010 awarding compensation of Rs. 3,64,500/- with interest at 6% p.a.

2. Though the matter is listed for admission, with the consent of the learned counsel appearing for the parties, the matter is taken up for final disposal.

3. Heard the learned counsel for the appellant as well as the learned counsel for the respondents in this appeal and examined the records.

4. The learned counsel for the appellant in the course of his arguments contended that the Tribunal has passed the impugned judgment and award contrary to the law and the material on record. The claim petition has been allowed in spite of the deceased also being the tortfeasor and the claimants not entitled to maintain the claim petition under law. The Tribunal has failed to observe the principles of law laid down in the decisions reported 2009 ACJ 2020,

2010 ACJ 977 and 2010 ACJ 1068. The Tribunal erred in deducting only ?rd of the income of the deceased for his personal expenses in spite of the deceased being a bachelor at the time of the stated accident and having mother as the only dependent on him. These facts require to be re-appreciated in this appeal. Therefore, considering the grounds urged in this appeal, he has sought for setting aside the judgment and award passed by the Tribunal by allowing this appeal.

5. Per contra, the learned counsel for the claimants/respondents submitted that on 11.1.2007, when the deceased was proceedings from Honnavar by driving the vehicle bearing No. KA-22/5852 and when he came near the spot of accident on NH-17 another truck bearing No. KA-20/ A-3060 driven by its driver in excessive speed in a rash and negligent manner dashed against the vehicle driven by him as a result of which he suffered fatal injuries and died on the spot. Subsequentely, the claim petition has been filed by the claimants-respondents before the Tribunal to establish their case and got marked Exs.P1 to P7. However, the respondent has not adduced any evidence any oral evidence, but the insurance policy was got marked as Ex.R1. The Court below on going through the evidence adduced and the documents on behalf of both the parties has allowed the claim petition awarding compensation of Rs. 3,64,500/- with interest 6% from the date of filing of the petition till its realisation. In support of his contention, the learned counsel has placed reliance on the decision in Civil Ap No. 9694/13 wherein at Paragraphs 3 and 4 reads as under:

"3. We have yet another issue to be examined. As already indicated that in the instant case, claim petition was filed under Section 163-A of the Motor Vehicles Act, which was resisted by the Insurance Company contending that the same is not maintainable since the injured himself was driving the vehicle and that no disability certificate was produced. A Two-Judge Bench of this Court in National Insurance Company Limited v. Sinilha and others (2012) 2 SCC 356) examined the scope of Section 163-A of the Motor Vehicles Act and took the view that Section 163-A of the Act has been founded under "fault liability principle" Referring to another judgment of a co-equal Bench in Oriental Insurance Co. Ltd. v. Hansrabhai v. Kodala [(2001) 5 SCC 175], the learned Judges took the view that while determining whether Section 163-A of the Motor Vehicles Act, 1988 is governed by the fault or the no-fault liability principle, Sections 140 (3) and (4) are relevant.

The Bench noticed under Section 140(3), the burden of pleading and establishing whether or not wrongful act, neglect or default was committed by the person (for or on whose behalf) compensation is claimed under Section 140, would not rest on the shoulders of the claimant. The Court also noticed that Section 140(4) of the Motor Vehicles Act further reveals that a claim for compensation under Section 140 of the Act cannot he defeated because of any of the fault grounds (wrongful act, neglect or default).

4. The Division Bench is Sinitha''s case (supra), then took the view that under

Section 140 of the Act so also under Section 163-A of the Act. it is not essential for a claimant seeking compensation to plead or establish that the accident out of which the claim arises suffers from wrongful actor neglect or default of the offending vehicle. The Bench then expressed the view that the legislature designedly included the negative clause through Section 140(4) of the Motor Vehicles Act, but consciously omitted the same in the scheme of Section 163-A of the Act intentionally and purposefully.

The Court also concluded, on a conjoint reading of Sections 140 and 163-A, the legislative intent is clear, namely, that a claim for compensation reused under Section 163-A of the Act need not be based on pleadings or proof at the hands of the claimants showing absence of wrongful act, being neglect or default, but the Bench concluded that it is not sufficient to determine whether the provision falls under the fault liability principle. The court held that to decide whether then provision is governed by the fault liability principle the converse has to be established i.e. whether a claim raised there under can be defeated by the party concerned (the owner or the insurance company) by pleading and proving wrongful act, neglect or default interpreting Section 163-A of the Act, the judges in Sinitha''s case (supra) held that it is open to the owner or the insurance company, as the case may be to defeat a claim under Section 163-A of the Act by pleading and establishing through cogent evidence a fault ground (wrongful act or neglect or default). The Court concluded that Section 163 of the Act is founded under the fault liability principle, "

Therefore, in view of the ratio laid down in the said decision, there is no substance in the contentions urged by the learned counsel for the appellant calling for interference with the impugned judgment and award passed by the Tribunal, by going through the evidence of PW1 and documents got marked at Ex.P1 to P7 and exhibit R1 - Insurance Policy.

6. Keeping in view the grounds urged in this appeal as contended by the learned counsel for the appellant as well as the counsel for the claimants/respondents and also the material evidence available on record, I opine that there are no justifiable grounds urged in this appeal calling for interference with the judgment and award passed by the Tribunal. The appeal being devoid of merits, is liable to be rejected. Hence, I proceed to pass the following:

ORDER

1. The appeal filed under Section 173(1) of M.V.Act is hereby dismissed. Consequently, the judgment and award passed by the III Additional Senior Civil Judge and Additional MACT, Belgaum, in MVC. No. 813/2007 dated 31.12.2010 is hereby confirmed.

2. The amount, if any, deposited before this Court shall be transmitted to the concerned Tribunal.

