(2011) 09 KAR CK 0137

In the Karnataka High Court

Case No : M.F.A.NO. 3606 of 2008 (MV) C/W MFA.Crob NO. 187 of 2008

The Divisional Manager, The New India Assurance Co. Ltd. APPELLANT

Vs

S.T. Raghavendra and Lakshmidevi @ Lakshmi Prabha
 Lakshmidevi @ Lakshmi Prabha and K.S. Rajeshwary Vs S.T. Raghavendra and Others RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 09 KAR CK 0137

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : A.K.Bhat, M.F.A.NO. 3606 of 2008 MV, Shri. B.M. Siddappa, MFA.Crob.NO. 187 of 2008, for the Appellant; B.M. Siddappa, Advocate for R2 and R3; Notice to R1 is held sufficient v/o. dated 10/01/2011, M.F.A.NO. 3606 of 2008 (MV), Shri. A.K. Bhat, Advocate for R2; Notice to R1 held sufficient v/o.23/09/2011, MFA.Crzob.NO. 187 OF 2008, for the Respondent

Judgement

N.K. Patil

1. The appeal by the Insurer and the cross objection by the claimants cross objectors are respectively directed against the same judgment and award dated 13th December 2007, passed in M.V.C. No. 396/2005, by the Civil Judge(Sr.Dn) and Member, Motor Accident Claims Tribunal, Holalkere, (for short, Tribunal'').

2. While the Insurer has filed the appeal seeking to set aside the liability fastened on it and for reduction of compensation, on the ground that the quantum of compensation awarded by Tribunal is on the higher side, the claimants cross objectors have filed the cross objection, seeking enhancement of compensation on the ground that, the compensation of Rs. 3,02,000/- awarded in their favour, as against their claim for Rs. 11.40 Lakhs, is inadequate and needs to be enhanced.

3. The facts in brief are that, the claimants had filed the claim petition u/s 166 of

the Motor Vehicles Act, contending that at about 6:15 P.M. on 25-06-2005, the deceased met with an accident, when he was going in front of Govt. Hospital, Holalkere, due to rash and negligent driving by the driver of Tempo bearing Registration No.KA-17/B-7799. Due to the impact, he sustained grievous injuries and later on succumbed to the same.

4. On account of the untimely death of the deceased in the road traffic accident, the claimants cross objectors filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. 11.40 lakhs against the owner and the insurer of the offending vehicle. The said claim petition had come up for consideration before the Tribunal on 13th December 2007. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 3,02,000/- under different heads, with 6% interest per annum, from the date of petition till the date of deposit and directed the Insurer to satisfy the award. Being aggrieved by the liability fastened, the Insurer is in appeal before this Court, seeking to set aside the same and the claimants have filed the cross objection, seeking enhancement of compensation.

5. I have gone through the grounds urged in the memorandum of appeal filed by the Insurer and the memorandum of cross objections filed by claimants cross objectors and also the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the insurer and the cross objectors.

6. Learned counsel for the Insurer vehemently submits that the Tribunal seriously erred in directing the Insurer to satisfy the award, instead of directing the owner of the offending vehicle to satisfy the award, for the reason that as on the date of the accident, the driver of the offending vehicle did not possess a valid transport licence to drive the transport/goods vehicle. In this connection, he drew my specific attention to the decision of the Apex Court in the case of Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, and submitted that the Apex Court has held that whenever there is a dispute regarding the holding of valid and effective driving licence by the driver of the offence vehicle, the Courts at best can direct the Insurer to pay and thereafter recover the same from the owner and driver of the offending vehicle. Therefore, he submits that the impugned judgment and award passed by Tribunal may be modified accordingly.

7. As against this, learned counsel appearing for claimants/cross objectors, inter alia, submits that the Tribunal grossly erred in assessing the income of the deceased at only Rs. 3,000/- per month. Further, he submits that the proper multiplier applicable as per the decision of the apex Court in Sarla Verma''s case (supra) is ''13'' and not ''11'' as adopted by Tribunal. He also submits that the Tribunal is not justified in awarding meagre compensation towards transportation and funeral expenses. Therefore, the impugned judgment and award is liable to be modified by enhancing the compensation.

8. Alter hearing learned counsel for the parties, after careful perusal of the

judgment and award passed by the Tribunal and after going through the original records made available, the points that arise for my consideration in the appeal and the cross objections are:

I] Whether the Tribunal is justified in fastening the liability on the Insurer?

II] Whether the quantum of compensation awarded by Tribunal is just and reasonable?

Re-Point I] : It is seen that the occurrence of accident and the resultant death of the deceased in the road traffic accident are not in dispute. In this case, the grievance of the Insurer is that, as on the date of accident, the driver of the offending vehicle did not possess a valid driving licence to drive a transport vehicle and therefore fastening liability on the Insurer is not justifiable nor the same is permissible. To substantiate the said submission, he drew my specific attention to paragraph 18 of the judgment of the Hon''ble Apex Court, reported in Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, , wherein it is held that, if there is any dispute regarding the validity of the driving licence, then, the Insurer may be directed to satisfy the award with liberty reserved to it to recover the same from the owner and driver of the offending vehicle.

9. Further, it can be seen that, in this regard, the Hon''ble Apex Court, in the case of Kusum Lata and others Vs. Satbir and others reported in 2011 ACJ 926, relying upon various judgments including Sarla Verma''s case, has held that, if there is any dispute with regard to the validity of the licence of the driver of the offending vehicle, then, the Insurance Company may be directed to pay the compensation amount to the claimant/s and then recover the same from the owner of the said vehicle. The relevant paragraph is extracted as below:

13. In respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the insurance company has to pay and then may recover it from the owner of vehicle. This court is affirming that direction in view of the principles laid down by a three-Judge Bench of this court in the case of National Insurance Co. Ltd. v. Swaran Singh, 2004 ACJ 1 (SC).

(emphasis supplied)

After noting the submission of the learned counsel for the parties and after carefully going through the aforesaid judgment, I am of the considered view that there is no dispute, quarrel or second thought regarding the settled position that the Insurer has to satisfy the award and thereafter it is entitled to recover the same from the owner of the offending vehicle. Therefore, I am of the considered view that, Tribunal is not justified in fastening the liability on the Insurer, on the other hand, it ought to have directed the insurer to satisfy the award and thereafter recover it from the owner.

Re-Point II] : So far as the quantum of compensation awarded by Tribunal is concerned, I am of the view that the Tribunal erred in assessing the monthly income of the deceased at Rs. 3,000/-. It is stated that the deceased was aged about 50 years and earning a sum of Rs. 7,500/-per month and contributing the entire sum towards the family requirements. But having regard to the age, avocation and the year of accident being 2005, I am of the view that the income claimed by claimants cross objectors may be on the higher side, and having regard to the facts and circumstances of the case and other relevant aspects, I re-assess the monthly income of the deceased at Rs. 3,500/-. Further, as rightly pointed out by the learned counsel for cross objectors, as per the decision of the Hon''ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,), the proper multiplier applicable is ''13''. The dependents are wife and major daughter. Therefore, I deduct l/3rd (i.e. Rs. 1,166/-) towards the personal expenses of the deceased. Accordingly, I re-determine the compensation towards loss of dependency at Rs. 3,64,104/- (i.e. Rs. 2,334/- x 12 x ''13'') as against Rs. 2,64,000/- awarded by Tribunal.

10. Further, having regard to the facts and circumstances of the case, I award a sum of Rs. 45,000/-towards conventional heads, viz. loss of consortium, loss of estate, loss of love and affection and transportation and funeral expenses, as against Rs. 38,000/- awarded by Tribunal towards conventional heads. Thus, the claimants cross objectors would be entitled to a total compensation of Rs. 4,09,104/- (rounded off to Rs. 4,09,100/-) as against Rs. 3,02,000/- awarded by Tribunal and there would be an enhancement of compensation of Rs. 1,07,100/-.

11. In the light of the facts and circumstances of the case, as stated above, the appeal filed by Insurer and the cross objections filed by the claimants cross objectors are allowed in part;

The impugned judgment and award dated 13th December 2007, passed in M.V.C. No. 396/2005, by the Civil Judge(Sr.Dn) and Member, Motor Accident Claims Tribunal, Holalkere, is hereby modified, awarding a total compensation of a sum of Rs. 4,09,100/- as against Rs. 3,02,000/-, with interest at 6% per annum, from the date of petition till the date of realization. (Enhancement being a sum of Rs. 1,07,100/-)

The Insurance Company is directed to deposit the entire compensation, with interest thereon at 6% per annum, from the dated of petition till the date of realization, within three weeks from the date of receipt of copy of the judgment and award.

Immediately on such deposit by the Insurance Company, 50% of it is directed to be deposited in the name of the first cross objector, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of five years, renewable for another five years, with liberty reserved to her to withdraw the periodical interest.

Remaining 50% of the deposited amount shall be released in favour of the first cross objector, immediately.

It is made clear that, the Insurer is at liberty to recover the compensation paid by it from the owner of the offending vehicle, Tempo bearing Registration

No.KA-17/B-7799, if it so desires.

The amount in deposit by the Insurer is directed to be transmitted to the jurisdictional Tribunal, forthwith.

Office to draw award, accordingly.

Shri. A.K. Bhat, learned counsel is permitted to file vakalath on behalf of the Insurer in MFA.Crob.187/2008, within four weeks from today.

