(2017) 01 KAR CK 0211

In the Karnataka High Court

Case No : 2476 of 2016 (MV)

THE MANAGER RELIANCE GENERAL INSURANCE CO.LTD. — APPELLANT

Vs

SMT.SHALINI M W/O LATE SRI.MOHAN, & ORS. — RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:
Motor Vehicles Act, 1988, Section 173(1), Section 173(1) - Appeals

Citation : (2017) 01 KAR CK 0211

Hon'ble Judges : S.Abdul Nazeer, K.S.Mudagal

Bench : DIVISION BENCH

Advocate : PRADEEP B, A.S.GIRISH

Final Decision : Dismissed

Judgement

1. The Manager of Reliance General Insurance Company Limited has filed this appeal under Section 173(1) of the Motor Vehicles Act, 1988 challenging the judgment and award passed in MVC No.1123/2015 dated 22.02.2016 on the file of the Motor Vehicles Accident Claims Tribunal, Bengaluru (for short "the Tribunal").

2. Respondent No.1 is the wife of Sri.Mohan and 2nd respondent is his mother. Sri.Mohan died in the motor vehicle accident occurred on 19.02.2015. Therefore, respondent Nos.1 and 2 filed the aforesaid claim petition seeking compensation in a total sum of Rs.30.00 lakhs on account of death of Sri.Mohan.

3. The appellant - insurer has filed the objections. On the basis of the pleadings of the parties, the Tribunal has framed the following issues:

1. Whether petitioners prove that they are the Legal Representatives of the deceased - Mohan, son of Shivalinga Chari?

2. Whether the petitioners prove that, deceased succumbed to the injuries sustained in RTA arising out of accident alleged to have been taken place on

19.02.2015 at about 3.40 p.m. on Vaddarapaalya Main Road junction, Jambusavari dinne, Bengaluru, was due to rash and negligent driving of Tata 709 LGV bearing Reg.No.KA-01-AD-7946?

3.Whether the petitioners are entitled for compensation as claimed? If so, to what extent?

4. What order or Award?

4. The parties have let in evidence and have marked the documents in their evidence. On appreciation of the materials on record, the Tribunal has answered issue Nos.1 and 2 in the affirmative and in favour of the claimants / respondents. While answering the third issue, the Tribunal has awarded total compensation of Rs.16,06,000/- with interest at 6% per annum from the date of petition till the date of deposit.

5. The contention of the learned counsel for the appellant - insurer is that the claimants have not established that the employment of the deceased was permanent in nature. Therefore, the Tribunal was not justified in adding 50% of the income towards his future prospectus while computing loss of dependency.

6. On the other hand, learned counsel appearing for respondent Nos.1 and 2 submits that the deceased was working as a Carpenter and was earning more than Rs.500/- per day and had the bright future. The Tribunal has taken his income only at Rs.7,500/- per month, which is on a lower side. It is argued that the compensation awarded under other heads is also on the lower side.

7. We have carefully considered the arguments of the learned counsel made at the Bar and perused the materials on record.

8. There is no dispute as to the occurrence of the accident and the liability of the appellant - insurance company for payment of compensation.

9. It is evident from the materials on record that the deceased was working as a Carpenter. The accident had occurred on 19.02.2015. We are of the view that the Tribunal ought to have notionally fixed the income of the deceased at Rs.300/- per day. Having regard to the nature of employment of the deceased, question of granting compensation towards loss of future prospectus does not arise. The deceased was aged 27 years and the multiplier applicable to the case is ''17''. 1/3rd of his income has to be deducted towards personal expenses. By taking his income at Rs.9,000/- per month with the application of multiplier ''17'' and after deducting 1/3rd of his income towards personal expenses, the compensation towards loss of dependency comes to Rs.12,24,000/-.

10. We are also of the view that the first respondent is entitled for a sum of Rs.1,00,000/- towards loss of consortium. The claimants are entitled for total sum of Rs.50,000/- under the other heads. Thus, the compensation is re-assessed as under:

(i) Loss of dependency Rs. 12,24,000/-

(ii) Loss of consortium Rs. 1,00,000/-

(iii) Funeral and other expenses of dead bodyRs. 50,000/-

Total Rs.13,74,000/-

11. The claimants are entitled for interest at 6% per annum on the aforesaid amount from the date of petition till the date of deposit.

12. In the result, appeal succeeds and it is accordingly allowed in part. The respondents/claimants are entitled for a total compensation of Rs.13,74,000/- as against the award of Rs.16,06,000/- by the Tribunal. The aforesaid sum of Rs.13,74,000/- shall carry interest @ 6% per annum from the date of petition till the date of deposit.

13. The aforesaid award amount shall be apportioned between the claimants / respondent Nos.1 and 2 in equal proportion. They are entitled for withdrawal of 50% of the amount with accrued interest thereon out of their respective shares. The balance amount shall be invested in their respective names in a Fixed Deposit in any Branch of Life Insurance Corporation of India as per their choice for a period of three years. However, they are permitted to withdraw half yearly interest. The amount in deposit shall be transferred to the Tribunal forthwith.

14. In view of the disposal of the appeal as above, I.A.No.1/2016 does not survive for consideration. It is accordingly dismissed. No costs.