(2016) 02 KAR CK 0112

In the Karnataka High Court

Case No : M.F.A. Nos. 32273 and 32274/2013 (MV)

The Manager Shriram General Insurance Co. Ltd. APPELLANT

Vs

Kariyamma and Others RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Citation : (2016) AAC 1020

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Bhadrashetty Sangeeta, Advocate, for the Appellant; Babu H. Metagudda, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Manohar, J.—1. Sriram General Insurance Company Limited has filed these two appeals challenging the judgment and award dated 22-11-2012 passed by the Motor Accident Claims Tribunal (FTC-I), Raichur (hereinafter referred to as ''the Tribunal'' for short) in MVC Nos. 101 and 103 of 2012, with regard to quantum of compensation is concerned.

2. The claimants are the legal representatives of the deceased Nagaraj and Bheemappa who died in the road traffic accident occurred on 3-11-2011. It is contended in the claim petitions that on 3-11-2011, the deceased along with other persons were proceeding to their village in a bullock-cart on the extreme left side of road. At that time, a lorry bearing registration No. AP-28/Y-2999 driven by its driver in a rash and negligent manner came from Raichur and dashed against the bullock-cart. Due to the said impact, the bullock sustained grievous injuries and died on the spot. Out of three inmates, two died on the spot and one of the inmates seriously injured. Immediately after the accident, the deceased Nagaraj and Bheemappa were shifted to the Government Hospital. However, they succumbed to injuries.

3. Claimants in MVC No. 101/2012 contended that prior to the death of the

deceased, he was earning a sum of Rs. 10,000/- p.m. by doing milk vending and also doing coolie work. At the time of death, the deceased was aged about 24 years. Due to the negligence on the part of the driver of the offending lorry, the accident had occurred and sought for compensation of Rs. 36,00,000/-.

4. Claimants in MVC No. 103/2012 contended that the deceased was aged about 22 years as on the date of death. He was earning a sum of Rs. 10,000/- p.m., by maintaining a milk dairy and also doing agricultural work. Due to the death of the deceased, the family has lost the bread earner and sought for compensation of Rs. 35,00,000/-.

5. In pursuance of the notice issued by the Tribunal, respondents No. 1 and 2 therein filed written statement denying the entire averments made in the claim petitions and also denied the rash and negligent driving of the offending lorry. They have specifically contended that the bullock-cart suddenly came across the lorry in spite of blowing horn and hence there is no negligence on the part of the driver of the offending lorry and sought for dismissal of the claim petitions as against the owner and driver of the offending lorry.

6. The third respondent/Insurance Company filed written statement denying the rash and negligent driving of the offending lorry by its driver. Due to the negligence on the part of the bullock cart, the accident had occurred and there is 50% contributory negligence on the part of the bullock cart. Hence, sought for dismissal of the claim petitions as against the Insurance Company.

7. On the basis of the pleadings of the parties, the Tribunal framed the necessary issues. The claimants, in order to prove their case examined themselves as P.W.2 and P.W.3 and got marked the documents as Ex. P1 to Ex. P128. On behalf of the respondents, none of the witnesses were examined, however, certified copies of Driving License, RC, A & B Permit and Policy Copy were marked as Ex. R1 to Ex. R4.

8. The Tribunal after appreciating the oral and documentary evidence let in by the parties and taking into consideration spot mahazar, MVI report, copy of the complaint and charge sheet held that due to the rash and negligent driving of the lorry, the accident had occurred and Nagaraj and Bheemppa died. Hence, the legal representatives of the deceased are entitled for compensation.

9. With regard to quantum of compensation is concerned, though the claimants claim that each of the deceased were earning a sum of Rs. 10,000/- p.m. by doing milk vending business and agricultural coolie, no document has been produced to substantiate the same. The Tribunal taking into consideration the income of the deceased as Rs. 4,500/- p.m., deducting 50% thereof towards personal expenditure and adding future prospects of 30%, awarded a sum of Rs. 7,77,600/- towards loss of dependency and Rs. 40,000/- towards conventional heads. In all, a sum of Rs. 8,17,000/- with interest at 6% p.a. in respect of claimants in MVC No. 101/2012 and also awarded a sum of Rs. 7,77,600/- towards loss of dependency and Rs. 55,000/- towards conventional heads. In all,

a sum of Rs. 8,32,000/- with interest at 6% p.a. in respect of claimants in MVC No. 103/2012. The appellant-Insurance Company being aggrieved by the quantum of compensation awarded by the Tribunal taking the future prospects to an extent of 30% has filed these two appeals.

10. Smt. Sangeetha Bhadrashetty, learned counsel appearing for the appellant-Insurance Company contended that the judgment and award passed by the Tribunal adding future prospects of 30% is contrary to law. The deceased was not having fixed income as he was running milk dairy and doing agricultural coolie and also no document has been produced to establish the same. In view of the judgment of Hon''ble Supreme Court in RESHMA KUMARI AND OTHERS v. MADAN MOHAN AND ANOTHER reported in , 2013 ACJ 1253, future prospects cannot be awarded and sought for setting aside that portion of the award. Further, the multiplier of 18 awarded is also contrary to law.

11. On the other hand, Sri. Babu H Metagudda, learned counsel appearing for the claimants argued in support of the judgment and award passed by the Tribunal and contended that in view of the law laid by the Hon''ble Supreme Court in SANTOSH DEVI v. NATIONAL INSURANCE COMPANY LIMITED reported in , (2012) 6 SCC 421, the claimants are entitled to future prospects. Further, income of Rs. 4,500/- p.m. taken by the Tribunal is on the lower side. The accident occurred in the year 2011 and the Tribunal ought to have taken the income of Rs. 6,000/- p.m. and sought for enhancement of compensation.

12. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award and oral and documentary evidence.

13. The records clearly disclose that due to the rash and negligent driving of the offending vehicle, Nagaraj and Bheemappa died in the road traffic accident occurred on 3-11-2011. The finding of the Tribunal with regard to actionable negligence on the part of the driver of the offending lorry has become final. The dispute is only with regard to quantum of compensation. The appellant-Insurance Company mainly contended that awarding future prospects to an extent of 30% to the claimants and applying multiplier 18 is contrary to law. The specific case of the appellant-Insurance Company is that the deceased was not getting the fixed salary as he was doing agricultural coolie and milk vending business. In the absence of fixed salary, 30% future prospects awarded by the Tribunal is contrary to law. On the other hand, Sri. Babu H Metagudda, learned counsel appearing for the claimants contended that the awarding future prospects is in accordance with law.

14. The records further disclose that the deceased were not having fixed income though the claimants claim that the deceased were earning a sum of Rs. 10,000/- p.m., no document has been produced to establish the same. In the absence of any documents, the Tribunal had taken the income of deceased at Rs. 4,500/- p.m., adding 30% towards future prospects and applying the multiplier

of 18, the Tribunal has awarded compensation. In my opinion, the judgment and award passed by the Tribunal cannot be sustained. The three judges Bench of the Hon''ble Supreme Court in RESHMA KUMARI case (Supra) at paragraph 30, has held that "in the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate." Hence, the claimants are not entitled for future prospects. However, income of Rs. 4,500/- p.m. taken by the Tribunal is on the lower side. The accident occurred in the year 2011. Even the daily wager working in the Government Departments would earn more than Rs. 6,000/-. Even in Lok Adalath, the income of the person for the year 2011 would be taken at Rs. 6,000/-, in the absence of any proof. In the instant case, taking into consideration the income of the deceased at Rs. 6,000/- p.m., deducting 50% towards personal expenditure, since the deceased were bachelors and applying the multiplier 18 as per the judgment of the Hon''ble Supreme Court in MUNNA LAL JAIN AND ANOTHER v. VIPIN KUMAR SHARMA AND OTHERS, the claimants are entitled to a sum of Rs. 6,48,000/- towards loss of dependency. Further, the claimants are entitled to a sum of Rs. 25,000/- towards funeral expenses; Rs. 10,000/- towards loss of estate and Rs. 10,000/- towards loss of love and affection. In all, the claimants in MVC No. 101/2012 are entitled to a sum of Rs. 6,93,000/- with interest at 6% p.a. as against Rs. 8,17,600/- and the claimants in MVC No. 103/2012 are entitled to a sum of Rs. 6,93,000/- with interest at 6% p.a. as against Rs. 8,32,600/-. Accordingly, I pass the following:

ORDER

Both the appeals are allowed in part. The judgment and awards dated 22-05-2012 made in MVC Nos. 101/2012 and 103/2012 passed by the MACT, Raichur is modified. The claimants in MVC Nos. 101/2012 and 103/2012 are entitled to compensation of Rs. 6,93,000/- each, with interest at 6% p.a.

The amount in deposit is directed to transferred to the Motor Accident Claims Tribunal (FTC-I) at Raichur.

