
(2015) 07 KAR CK 0373

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 23106/2012 (MV)

The New India Assurance Co. Ltd.

APPELLANT

Vs

Mallikarjun

RESPONDENT

Date of Decision : 20-07-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 07 KAR CK 0373

Hon'ble Judges : Ravi V. Malimath, J;G. Narendra, J

Bench : Division Bench

Advocate : Ravindra R. Mane, for the Appellant; V.S. Kalasurmth, Advocate for Space Law Associates, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Ravi V. Malimath, J—It is the case of claimant that on 17.09.2008 at about 1.00 a.m. when the claimant was travelling in a Tata Indica Car bearing Reg. No. KA 25/C-872 from Ankola to Hubli, near Mavalli cross a lorry bearing Reg. No. MH 09/L-6003 came and dashed against him. He sustained grievous injuries. He was admitted to hospital. He incurred huge medical expenses. He filed the instant claim petition under Section 166 of the Motor Vehicles Act seeking compensation for the injuries sustained. During the pendency of the petition he died. His only surviving heir, his wife, was impleaded as a legal representative. She prosecuted the petition claiming compensation on the death of her husband. The Tribunal awarded Rs. 16,66,571/- along with 9% interest per annum. Questioning the liability and quantum saddled on the insurer, the present appeal is filed.

2. Sri Ravindra Mane, learned counsel appearing for appellant contends that the impugned order is bad in law and liable to be set aside. That, firstly, there is no nexus with the accident and the death. The accident took place on 17.09.2008. He died on 29.07.2010 almost one year 10 months after the accident. That the claimants have miserably failed to prove the nexus with the accident and the death. Hence, he pleads that the Tribunal committed an error in holding that the

death was due to the accident.

3. On the other hand, learned counsel for claimant supports the impugned order.

4. Heard learned counsels and examined the records.

5. The Doctor, P.W.2 has narrated the injuries sustained by the deceased as follows-

"On examination - He was conscious, coherent his BP was 150/90 mm of Hg, his Pulse was 80/Min, his injuries were-

- A large CLW over Rt. of scalp of size 15 x 10 cms extending from Lip to Parietal area.

- CLW over chin exposing mandible.

- Abrasion with deformity of R1. Arm with Wrist drop.

- Multiple small abrasions over face.

- Rt. Hip abducted with shortening of Rt. Leg.

- His chest, abdomen, pine and other extremities were normal.

- The X-rays taken showed and diagnosed as:

- Fracture Rt. Humerus with Wrist drop.

- Dislocated Rt. Hip with fracture Acetabulum Rt.

- Multiple CLW exposing skull on Rt. Side & Mandible."

6. The same would indicate the injuries on the vital parts of the body namely the parietal area as well as the skull. Furthermore, in his cross-examination on a specific question being asked by the insurer, he has answered thus-

"According to varicosity means dilatation of the veins. By this blood stasis in the leg and causing swelling of the leg and can result thrombo - embolic episodes. By this there is chance of sudden death due to pulmonary embolism. Now I am producing entire case sheet of patient Mallikarjun Kuravatti which is marked as Exhibit 344 what are stated in the examination chief affidavit are true and correct."

7. Therefore, it is apparent that the evidence of the Doctor is clear and cogent. He has narrated that due to the injuries sustained there is every chance of sudden death due to the same. The Tribunal, on considering the same, rightly held that the death is relatable to the accident. Under these circumstances and based on the aforesaid evidence, we have no hesitation to hold that the death was due to the injuries sustained, even though he died almost one year ten months thereafter. The evidence of the Doctor being clear and cogent, the same requires to be accepted. In fact, that is the evidence extracted by the insurer themselves from the Doctor. Therefore, to disbelieve the evidence of the Doctor

would be highly inappropriate. Hence, we hold that the death occurred due to the injuries sustained in the accident.

8. The second contention is that the petition having been filed for injuries cannot be pursued by the legal representatives and the claim ought to be a restrictive claim. In support of his submission the insurer relies on the judgment reported in Kannamma Vs. Deputy General Manager, (1991) 1 ACC 421 : (1991) ACJ 707 : (1990) ILR (Kar) 4300 : (1990) 3 KarLJ 605 as well as the judgment of the Full Bench reported in Uttam Kumar (Deceased) Vs. Madhav and Another, (2002) ACJ 1828 : (2002) ILR (Kar) 1864 : (2002) 3 KarLJ 337 He, therefore contends that the L.Rs. can only prosecute the matter so far as "loss to the estate" is concerned, and on no other head. Hence, he pleads that the compensation be reduced to that extent.

9. By reading both the judgments, it would indicate that if the claim petition is filed on the ground of claiming compensation based on injuries concerned, it is in that event alone that the L.Rs. can be brought on record and compensation could be granted on the head of "loss to estate" only, which means other heads of pain and suffering, loss of amenities, loss of income during laid-up period, loss of future income and matters of identical nature cannot be granted to the L.Rs. of the deceased. Such a compensation cannot be granted to them in a petition wherein compensation is sought for on the grounds of injury. However, the law is well settled that when a claimant, who has filed a petition seeking compensation for loss of injuries, dies, his L.Rs. are permitted to be brought on record and they can prosecute the petition based on the death of a person. On the death of the person, all the heads of compensation require to be granted. It is a secondary question whether the death would be relatable to the accident or not. That is the subject matter on the merits of the claim. So far as maintaining the petition by the L.Rs., who have been brought on record in a petition claiming injuries is concerned, the law is well settled and the same need not detain us further. Therefore, we have no hesitation to hold that the said judgments would not be applicable to the facts of the case herein.

10. In the present case, the L.Rs. have been brought on record at the earliest point of time, namely even before the evidence was led in. The claim was contested on the ground of death. Therefore, such a contention requires to be rejected.

11. The further contention is that the only legal representative being the wife, 1/3rd has been disallowed, but the deduction should be 50%. The deceased was aged 61 years at the time of accident. The appropriate multiplier should be "7". The contention of the insurer on both these fronts is accepted. Hence, the deduction is to be held at 50% and the multiplier at "7". Hence, loss of dependency would be worked out as under-

Rs. 15,000/- x 50% x 12 x 7 = Rs. 6,30,000/-

12. The impugned award towards reimbursement of medical expenses is

appropriate. Rs. 25,000/- is granted towards funeral expenses and Rs. 1,00,000/- is granted towards loss of consortium. A sum of Rs. 15,000/- is granted towards litigation expenses. Hence, compensation is modified as follows-

13. In the result, we pass the following:

ORDER

i) The appeal is allowed in part. The judgment and award dated 28.02.2012 passed in M.V.C. No. 276/2008 on the file of the Fast Track Court and Additional M.A.C.T., Gadag, is modified in the aforesaid terms.

ii) The compensation is reduced to Rs. 7,70,000/- and shall carry interest at the rate of 9% p.a. from the date of claim petition till the date of disbursal which shall be paid within a period of eight weeks from the date of receipt of a copy of this order.

iii) The amount in deposit, to be transmitted to the Tribunal for necessary orders.

Ordered accordingly.