(2014) 11 KAR CK 0226

In the Karnataka High Court

Case No : M.F.A No. 21860/2009 (MV)

The New India Assurance Company Ltd. — APPELLANT

Vs

Nazir — RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 11 KAR CK 0226

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

Bench : Single Bench

Advocate : Ravi G. Sabhahit, Advocate for the Appellant

Judgement

K.N. Phaneendra, J.—The appellant who is the respondent No. 2 before the trial Court in M.V.C. No. 295/07 challenged the judgment and award passed by the Civil Judge (Sr. Dn.), Khanapur and Addl. MACT, Khanapur dated 28.02.2009 in awarding compensation of Rs. 3,52,000/- in total in favour of the claimants, who are arrayed as respondent Nos. 1 and 2 herein. The Insurance Company has challenged the above said judgment and award on the following grounds.

"1. The Court below failed to appreciate the fact that the deceased was a bachelor and hence 50% should have been deducted from the earnings of the deceased but the trial Court has committed an error in deducting only 1/3 from the earnings of the deceased while calculating the loss of dependency.

2. The trial Court has erred in fixing the earnings of the deceased at Rs. 3,000/- per month in the absence of proof of any income.

3. The Court below has erred in awarding compensation of Rs. 10,000/- towards mental agony, pain and sufferings.

4. The Court below has erred in awarding a sum of Rs. 10,000/- each towards loss of love and affection, funeral expenses and conveyance.

5. The Court below has failed to appreciate the fact that the accident was

occurred due to the negligence of the deceased and he was not holding any driving licence. Since the accident occurred due to the negligence of the deceased, the Tribunal has failed to hold contributory negligence."

2. Though the respondents are served, they remained absent before the Court and this Court held service on respondent Nos. 1 and 2 as sufficient. Respondent No. 3 though served remained unrepresented.

3. I have heard arguments of learned counsel for the appellant and perused the records. I would like to retain the ranking of the parties as per their ranking before the trial Court in order to avoid confusion.

4. The claimants, Sri Nazir and Smt. Rabiyabi have filed a claim petition under Section 166 of the M.V. Act claiming compensation for the untimely death of their son by name Shabbir in a road traffic accident occurred on 06.01.2007 at "T" Junction near SGPDA Market, Margoa while he was riding his scooter along with one Dipesh as pillion rider. The claim petition was contested by the respondents, particularly by the Insurance Company, i.e., the appellant herein. The trial Court after due contest awarded compensation of Rs. 3,52,000/- on several heads as per the table shown below.

So far as other heads are concerned, i.e., towards mental agony, pain & suffering, loss of love and affection, funeral expenses, conveyance and transportation expenses, I do not find any exorbitant award has been made by the trial Court though the Insurance Company has challenged those meager amounts awarded in favour of the claimants. Therefore, I do not find any grounds to interfere with the awarding of compensation amount in favour of the claimants.

5. The strong contention of the learned Counsel for the appellant is that the deceased being a bachelor the trial Court ought to have deducted 50% of his income and also the trial Court has erred in taking Rs. 3,000/- as income per month. The trial Court has observed that the deceased was at the time of his death said to be working as a Conductor in a private bus and earning Rs. 5,000/- per month. Though the respondent No. 2 objected the same, the trial Court considering the status of the deceased and also the amount which is absolutely required to run the family, taken his income notionally at Rs. 100/- per day and calculated it at the rate of Rs. 3,000/- per month. Even assuming that no material is produced by the claimants to show income of the deceased, taking of Rs. 3,000/- per month, in my opinion, is not an exorbitant amount as taken by the trial Court. Therefore, I do not find any strong reason to differ from the opinion of the trial Court. Now coming to the deduction point, as contended by the learned counsel for the appellant in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the Supreme Court has categorically held that if the deceased is a bachelor the deduction should be at the rate of 50% from his income. However, after considering Sarla Verma''s case the Supreme Court in its subsequent decisions taken different view that, depending upon the

facts and circumstances of the each case the Court has to take into consideration whether 30% is to be deducted or 50% is to be deducted. In this background it is worth to note here the decision of the Apex Court reported in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, , the Supreme Court even after considering the earlier decision has held that:

"In regard to bachelors, normally, 50% is deducted as personal and living expenses. It is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family members. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one third and contribution to the family will be taken as two third."

6. Having come to such conclusion the Court has held that, in the facts and circumstances of the case as applicable, therefore ordered to deduct 1/3 only.

7. In another ruling reported in Radhakrishna and Another Vs. Gokul and Others, , the Apex Court further dwell upon the same legal aspect where 1/3 is to be deducted as personal expenses, so far as the bachelor is concerned, in the said case the deceased was aged 19 years and he had potential to earn and ultimately the Court has come to the conclusion that, the parents who lost their lonely son, in such case 50% should not have been deducted and in such a case 1/3 has to be deducted. At paragraph No. 14 it is categorically stated that:

"In the present case, the accident occurred on 20.1.2003. The deceased was 19 years old and was a student of Engineering course. The Tribunal determined the compensation by taking his annual income to be Rs. 15,000/- and deducted 1/3rd for personal expenses. In Aravind Kumar Mishra''s case, 2010 ACJ 2867 (SC), the Bench proceeded on the assumption that after completion of the Engineering course, the appellant could have been appointed as Assistant Engineer and earn Rs. 60,000/- per annum. However, keeping in view the degree of disability, his estimated earning was taken as Rs. 42,000/- per annum and accordingly the amount of compensation was awarded. By applying the same yardstick and having regard to the age of the parents of the deceased, i.e., 45 and 42 respectively, we feel that ends of justice will be served by awarding Rs. 7,00,000/- to the appellants"

8. Therefore, by relying upon the above two decisions it is clear that depending upon the facts and circumstances of each and every case the Court has to take decision that whether 50% to be deducted from the income or 30% has to be taken into consideration. In this case, considering the age of the appellants being 45 and 42 years respectively and they have lost their lonely son, the Court has taken a magnanimous view and deducted 1/3 out of the income of the deceased. Applying the above said principles so far as the facts and circumstances of this case, it is undisputed fact that the claimants are the father and mother of the deceased and their age was 58 and 50 years. They are in their evening of their life. It is not available in the records that any other person is there to take care of them. Therefore, on the basis of the facts and circumstances of this case, I am of the opinion that the deduction made by the trial Court deducting 1/3 as the deduction out of the income of the deceased, is proper and correct and does not require any interference at the hands of this Court.

9. Last but not the least, the Insurance Company has also taken up the contention that it is not liable to pay compensation because there was contributory negligence by the two vehicles but the learned counsel failed to convince me so far as this aspect is concerned because of the simple reason, the respondent Insurance Company has not made any effort to lead evidence before the trial Court. On the other hand, the cargo truck bearing reg. No. GA-02/T-8546 which caused the accident due to rash and negligent driving by its and the driver of the said vehicle was charge sheeted and no effort has been made by the Insurance Company or the owner of the said vehicle to lodge any complaint against the deceased who was riding his scooter and no investigation has been done and charge sheet was filed. Therefore, in the absence of any material on record to show that there was negligence on the part of the deceased merely because the Insurance Company takes up that contention, that cannot be taken into consideration, without there being a proof. Under the above said circumstances, I also do not find any strong reasons to interfere with the observations made by the trial Court so far as this issue is concerned. Hence, overall looking into the judgment of the trial Court, which is based on found reasons and also based on facts and law, therefore, it does not call for any interference. Accordingly, the appeal is dismissed.

10. The amount, which is in deposit before this Court is ordered to be transmitted to the trial Court for disbursement.

