(2015) 11 KAR CK 0019

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 6792 of 2011 (MV) and 12026 of 2011

The Oriental Insurance Co. Ltd. and Others APPELLANT

Vs

Raja Murthy and Others RESPONDENT

Date of Decision : 07-11-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 11 KAR CK 0019

Hon'ble Judges : P.D. Waingankar, J.

Bench : Single Bench

Advocate : B.C. Seetharama Rao, Advocate, for the Appellant; Bhanu H.M., Advocate, for the Respondent

Judgement

P.D. Waingankar, J.—These two appeals are arising out of the judgment and award dated 28.02.2011 in MVC No. 8278/2008 on the file of the VI Additional Judge, Court of Small Causes and MACT at Bengaluru City.

2. On 20.09.2008 at about 1.30 a.m. deceased ?Suresh R. was proceeding on his vehicle bearing reg. No. KA-01-EJ-218. When he reached near Navyashree Hotel, Bangalore, a tempo bearing registration No. KA-03-B-7045 came in a rash and negligent manner from the opposite direction and dashed against him. As a result of the accident, he sustained grievous injuries and while shifting him to the hospital he succumbed to the injuries. His wife and children filed a claim petition under Section 166 of the IMV Act claiming compensation from the owner and Insurer of the Tempo which caused the accident in MVC No. 8278/2008. The claim petition was opposed by the Insurer of the Tempo contending that there is a violation of the policy conditions, since the owner of the Tempo had no valid and effective driving licence to drive the Tempo and hence the Insurance Company sought for dismissal of the claim petition as against the Insurer. The claim petition came up for consideration before the Tribunal before whom the claimant got himself examined as P.W. 1 and relied upon as many as 11 documents marked as Exs. P1 to P11. On behalf of the respondents, Smt.

Mumtaz Sheerin, the Officer of the Insurance Company was examined as RW-1 apart from marking Exs. R1 to R3.

3. The Tribunal upon hearing the submission of the learned counsel appearing for the parties and on appreciation of evidence determined the total compensation, for which the claimants were entitled to Rs. 3,76,000/-. However, the Tribunal ordered the Insurance Company to pay the compensation and to recover the same from the owner of the Tempo.

4. Aggrieved by the liability fastened on the Insurance Company to pay the compensation and to recover the same from the owner of the Tempo, the Insurance Company preferred MFA No. 6792/2011, whereas, the claimants have preferred MFA No. 12026/2011 being dissatisfied with the quantum of compensation awarded by the Tribunal.

5. Since both the appeals are arising out of the same judgment and award, I have heard the learned counsel for the parties in both the appeals. Perused the records.

6. The points that arise for my determination are as under:

"1. Whether the compensation awarded by the Tribunal is just and reasonable?

2. Whether the Tribunal is justified in directing the Insurance Company to pay the compensation and recover the same from the owner?"

7. On hearing the submission and on perusal of the records, it is evident that the accident as such is not in dispute. It is also not in dispute that the accident occurred due to rash and negligent driving of the Tempo by its driver. However, the quantum of compensation determined by the Tribunal is challenged by the claimants. The deceased was aged about 23 years. He was a Bachelor. Though the claimants have stated that the deceased was an Electrician, no documents have been produced to substantiate the same. In the absence of any material to speak about the avocation of the deceased and that the accident occurred in the year 2008, I am inclined to take his monthly income at Rs. 4,500/- by treating him as a coolie. Since he was a Bachelor, the age of the youngest parents has to be taken into consideration while selecting the multiplier. The age of the mother is shown as 45 years. The appropriate multiplier is ''14''. If 50% of the income is deducted towards the personal and living expenses of the deceased, the total compensation towards loss of dependency comes to Rs. 3,78,000/- (2250 x 12 x 14) as against Rs. 3,36,000/- awarded by the Tribunal. In addition to that, the claimants are entitled for a sum of Rs. 50,000/- towards loss of love and affection at the rate of Rs. 25,000/- each. Rs. 25,000/- is awarded towards loss of Estate and Rs. 25,000/- towards Transportation of the dead body and funeral expenses. Thus, the claimants are entitled for total compensation of Rs. 4,78,000/- as against Rs. 3,76,000/- awarded by the Tribunal. There shall be an enhancement of compensation of Rs. 1,02,000/-.

8. So far as the liability fastened on the Insurance Company to pay the

compensation is concerned, the contention of the learned counsel for the appellant -Insurance Company is that the driver of the vehicle had no effective and valid driving licence as on the date of accident and the owner of the Tempo has permitted such a person to drive the vehicle and thereby the accident occurred. In other words, the owner of the Tempo has committed a breach of policy conditions which has not been seriously disputed by the learned counsel for the claimants. As such, the Insurance Company cannot be held liable to indemnify the owner. However, the Tribunal having held that the Insurance Company is not liable to pay the compensation, ordered the Insurance Company to deposit the compensation and thereafter to recover the same from the owner of the Tempo. It has been held by the Division Bench of this Court in a decision reported in ILR 2012 KAR 5241 in the case of ORIENTAL INSURANCE COMPANY LIMITED V. K.C. Subramanyan and Another that the Tribunal has no power to order pay and recovery. In view of the law laid down by the Division Bench of this Court and in the aforesaid decision, the order passed by the Tribunal directing the Insurance Company to pay and thereafter recover the compensation amount from the owner of the Tempo is not sustainable in law. It is liable to be set aside.

9. For the reasons stated above:

"1. MFA No. 6792/2011 filed by the Oriental Insurance Company Limited is hereby allowed. The award to the extent directing the Insurance Company to pay and recover is set aside.

2. MFA No. 12026/2011 filed by the claimants is partly allowed awarding an enhanced compensation of Rs. 1,02,000/- over and above the compensation awarded by the Tribunal together with interest at the rate of 8% p.a. on the enhanced compensation from the date of the petition till the date of realisation from the respondent No. 1 - owner of the Tempo.

3. Respondent No. 1 - owner of the Tempo is directed to deposit the entire compensation awarded within one month from the date of receipt of the copy of the order.

4. The apportionment and investment of the enhancement of the compensation amount shall be in the same proportion as ordered by the Tribunal.

5. The claim petition filed as against the Oriental Insurance Company Limited stands dismissed."

The amount in deposit by the Insurance Company shall be refunded to the Insurance Company.