

(2013) 09 KAR CK 0246
In the Karnataka High Court
Case No : M.F.A.No. 3242 of 2013 (MV)

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Nilambar Mishra and Nilam Mishra

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 09 KAR CK 0246

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

Bench : Single Bench

Advocate : M. Sowri Raju, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the Insurer is directed against the impugned judgment and award dated 2nd January 2013, passed in MVC No. 7223/2011, by the 19th Additional Civil Judge and Motor Accident Claims Tribunal, Bangalore, (for short, "Tribunal"), for reduction of compensation on the ground that, the compensation of Rs. 5,09,000/- awarded in favour of the claimants as against their claim for Rs. 20.00 Lakhs, is excessive and on the higher side. The facts in brief are that, claimants are the parents of the deceased late Sourab Kumar. They filed the claim petition u/s 166 of the Motor Vehicles Act, contending that at about 11:50 P.M., on 12-03-2011, when the deceased was riding pillion on Motor Cycle bearing Registration No. KA-01/ES-2275, he met with an accident, on account of rash and negligent riding by the rider of the said Motor cycle, when he dashed against the road side stone. Due to the impact, the deceased fell down and sustained injuries and was immediately shifted to Mallya Hospital. But, unfortunately, he died in spite of the best medication.

2. It is the case of the claimants that, the deceased was hale and healthy prior to the date of accident, which resulted in his death and on account of his untimely death, they have lost the only source of income, love and affection, inspiration and are also deprived of seeing his progress apart from losing the social and

financial security permanently and therefore, they have to be compensated reasonably.

3. On account of the death of the deceased, the claimants filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. 26.00 lakhs against the owner and the insurer of the offending vehicle. The said claim petition had come up for consideration before the Tribunal on 2nd January, 2013. The Tribunal, after considering the relevant material available on file, after appreciation of the oral and documentary evidence, allowed the claim petition, awarding a sum of Rs. 5,09,000/- under different heads, with 8% interest per annum, from the date of petition till the date of deposit. Being aggrieved by the quantum of compensation awarded by the Tribunal, the Insurer is in appeal before this Court, seeking reduction of the same.

4. I have heard the learned counsel appearing for Insurer, for considerable length of time.

5. Shri. M. Sowri Raju, learned counsel appearing for appellant/Insurer vehemently submitted that the compensation awarded by Tribunal is on the higher side and the same is liable to be reduced substantially for the reason that the claimants are the parents of deceased and the Tribunal grossly erred in adopting the multiplier of 17, considering the age of the instead of taking the age of the age of the younger parent of the deceased, as held by the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Further, he submitted that rate of interest at 8% awarded by Tribunal on the compensation awarded by it is also on the higher side and is liable to be reduced to 6%, in the interest of justice and equity. Therefore, he submitted that the impugned judgment and award passed by Tribunal is liable to be modified accordingly.

6. After hearing the learned counsel for the appellant/Insurer and after re-appreciation of the oral and documentary evidence available on file, I do not find any error or material irregularity as such committed by the Tribunal in awarding the compensation in favour of the claimants, on account of the untimely death of the deceased in the road traffic accident. Having regard to the facts and circumstances of the case and also having regard to the fact that the claimants are parents of the deceased and are fully dependent on the income of the deceased, etc. Occurrence of accident and the resultant death of deceased are not disputed. Further, it is not disputed that the deceased was aged about 28 years and working at Ishran Railways. After critical evaluation of the entire material available on file, it can be seen that, in fact, as per the ratio of law laid down by the Apex Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, , the claimants are entitled to additional 30% towards future prospects of the deceased. If the same is added, then, the submission of the learned counsel appearing for appellant cannot be accepted. Therefore, having regard to the peculiar facts and circumstances of the case and also the fact that the deceased was the only earning member in the family, I am of the view that

the compensation awarded by Tribunal towards loss of dependency as also under conventional heads is just and proper and it does not call for interference nor the appellant has made out a case for such interference. Hence, appeal is liable to be dismissed.

7. Further, so far as the specific submission of the learned counsel appearing for Insurer that the Tribunal grossly erred in awarding rate of interest at 8% is concerned, it can be seen that the occurrence of accident is 2011. Therefore, in view of the decision of the Hon"ble Apex Court in catena of decision and having regard to the year of accident, I am of the firm opinion that the rate of interest awarded by Tribunal at 8% is just and proper and I decline to interfere in the same. For the reasons stated above, the appeal filed by the appellant is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.

In view of disposal of appeal, I.A.I/2013 filed for stay does not survive for consideration and is accordingly, dismissed as having become infructuous.

The amount, if any, in deposit by the Insurer shall be transmitted to the jurisdictional Tribunal, forthwith.

Office to draw award, accordingly.