

(2012) 01 KAR CK 0176

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 6363 of 2007 (MV)

The Oriental Insurance Co. Ltd.,

APPELLANT

Vs

Smt. Lakshmamma and Others

RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 01 KAR CK 0176

Hon'ble Judges : K. Bhakthavatsala, J;K Govindarajulu, J

Bench : Division Bench

Advocate : M Sowri Raju, for the Appellant; N Surendra Kumar, for R-1 to R-4, R-2 and 3 are minors, rep. by R-1, for the Respondent

Final Decision : Dismissed

Judgement

Dr. K. Bhakthavatsala, J.—The appellant/Insurance Company is before this Court contending that the Tribunal erred in holding that the deceased was carrying vegetable bags in the lorry at the time of accident and therefore the Insurance Company is liable to indemnify the owner of the lorry. He also submits that the Tribunal erred in awarding huge compensation of Rs. . 20,000/- each towards loss of consortium, loss of love and affection and loss of estate.

2. Learned Counsel for the respondents/claimants submits that the Tribunal, on proper appreciation of evidence on record, has rightly reached the conclusion that the claimants proved that the deceased was travelling with vegetable bags at the time of accident and therefore the Insurance Company was liable to indemnify the owner. He further submits that the compensation awarded by the Tribunal cannot be said on the higher side. He prays that the Appeal may be dismissed.

3. We have perused the LCR

4. The claimants are wife, two minor daughters (aged about 4 years and 11 years) and mother of the deceased-Narayanagowda. They filed a claim petition u/

s 166 of the Motor Vehicles Act, 188, seeking compensation of Rs. 29,25,000/- pleading that the deceased was an agriculturist cum milk and vegetable vendor and earning Rs. 60,000/- per month. It is further pleaded that on 5.9.2005 when the deceased was carrying 10 bags of vegetables in the lorry bearing registration No. KA 01/B 4404 from Kadaballi, Nagamangala Taluk to Mangalore for sale, due to rash and negligent driving of the lorry, it went and dashed against a stationary lorry bearing registration No. KA 18-3584 near Manjushree Jewellery shop at Sakaleshpur Town. The claim petition was filed against the owner and insurer of the lorry. In spite of service of notice on the owner of the lorry, he remained absent. The Insurance Company filed written statement denying the averments of the claim petition and also contended that the deceased was not travelling with goods at the time of accident.

5. The Tribunal framed as many as six issues. In support of the case of the claimants, wife of the deceased-Narayanagowda was examined as P.W1 besides examining brother of the deceased as P.W2 and got marked Exs.P1 to P25. In rebuttal, the Insurance Company examined its Administrative Officer-Sri Srishala as R.W1 and got marked copies of FIR and mahazar as Exs.R1 and 2. The Tribunal, on appreciation of evidence on record, answered issue No. 1 on the point of negligence in the affirmative, issue No. 3 on the point whether the Insurance Company proves that the deceased was travelling in the goods in question as a gratuitous passenger was answered in the negative. Further, issue No. 4 on the point whether the claim petition was bad for mis-joinder and non-joinder of owner and insurer of the lorry bearing registration No. KA 18/3584 was also answered in the negative in favour of the claimants. The Tribunal has reached the conclusion that the deceased was travelling in the vehicle along with vegetable hags and the accident occurred solely due to rash and negligent: driving of the lorry by its driver, and awarded compensation of 74,49,000/- holding that the Insurance Company is liable to indemnify the owner of the lorry in question. This is impugned in this Appeal by the Insurance Company.

6. The bone of contention of the learned Counsel for the appellant/Insurance Company is that the complaint was lodged by cleaner of other stationary lorry and in that complaint there is no mention that there was any vegetable bags in the offending lorry. He also submits that the spot mahazar also does not disclose that there were vegetable bags in the offending lorry. He submits that P.W4 being brother of deceased, his testimony cannot be accepted and acted upon to hold that at the time of accident, the deceased was carrying vegetable bags. It is pertinent to mention that the offending vehicle was carrying empty gas cylinders. It is the case of the claimants that the deceased boarded the lorry at Kadabahally along with 10 vegetable bags to go to Mangalore. The claimants have produced photographs of the garden land to prove that they had garden land and the deceased was doing business in vegetables. P.W2-the brother of the deceased had deposed that the deceased was travelling in the offending lorry with vegetable bags. The Insurance company did not examine the driver of the lorry to test the veracity of the statement of P.W2 as to whether the deceased was

travelling with vegetable bags in the lorry or not. The evidence of R.W1/ Administrative Officer is of no avail to hold that the deceased was not travelling with vegetable bags in the offending lorry, it is common knowledge that first information is only to set law in motion. Vegetables are perishable in nature. Under such circumstances, merely because there is no mention in the spot mahazar, it cannot be said that the deceased was not carrying vegetables in the lorry. Therefore, in our opinion, the Tribunal is justified in holding that the deceased was carrying vegetable bags in the lorry at the time of accident and that he was not a gratuitous passenger as contended by the learned Counsel for the appellant. The first contention taken by the appellant/Insurance Company falls to the ground. In so far as the quantum of compensation is concerned, the Tribunal has fixed income of the deceased at Rs. 3,000/- per month. Keeping in view the age of the deceased as 32 years, the Tribunal has applied multiplier "16". The Tribunal has deducted 1/3rd of the income towards personal expenses of the deceased and taken loss of dependency at Rs. 2,000/- per month and awarded compensation as under:

(i)

Loss of dependency (Rs. 2,000/-x12x16)

(in Rs.) 3,84,000-00

(ii)

Loss of consortium

20,000-00

(iii)

Loss of love and affection

20,000-00

(iv)

Loss of estate

20,000-00

(v)

Transportation of dead body and funeral expenses

5,000-00

Total

4,49,000-00

7. The accident occurred on 5.9.2005. Keeping in view that the deceased was 32 years old with four dependent members; an agriculturist and also doing business

in milk and vegetables, his income fixed at Rs. 3,000/- per month is on the lower side. Since the deceased had four dependent members, 1/4th of the income has to be deducted towards personal expenses. Keeping in view that the Tribunal has fixed income at lower rate and deducted 1/3rd instead of 1/4th towards personal expenses, the bone of contention of the learned Counsel for the appellant/ Insurance Company that the Tribunal has awarded excess compensation towards conventional heads, is of no avail. There is no merit in the appeal.

8. In the result, the Appeal fails and the same is hereby dismissed.

9. The Registry is directed to transmit the amount in deposit to the Tribunal for disbursement as per the impugned judgment.

10. The parties are directed to bear their own costs.