
(2013) 12 KAR CK 0049
In the Karnataka High Court
Case No : M.F.A. No. 2385 of 2007 (MV)

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Mallika and Others

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 12 KAR CK 0049

Hon'ble Judges : N.K. Patil, J; Budihal R.B., J

Bench : Division Bench

Advocate : M.U. Poonacha, for the Appellant; Sampath Bapat, Advocate for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the appellant/Insurer is directed against the impugned judgment and award dated 12/10/2006 passed in MVC No. 233/2003, by the II Additional Civil Judge (Sr. Dn) and Additional Motor Accident Claims Tribunal, Shimoga, (for short "Tribunal"), for modification of the same. The Tribunal by its judgment and award has awarded a sum of Rs. 4,31,000/- under different heads with interest at 6% per annum from the date of petition till the date of deposit, as against the claim of the claimants for a sum of Rs. 12,00,000/-, on account of the death of the deceased Sri. K. Sadashiva, in the road traffic accident.

2. In brief, the facts of the case are:

The claimant No. 1 is the wife and claimant Nos. 2 and 3 are the children of the deceased Sri. K. Sadashiva. They filed a claim petition before the Tribunal u/s 166 of M.V. Act, claiming compensation on account of the death of the deceased, contending that, on 29.3.2003 the deceased was going to consult the Veterinary Doctor at Gajanoor in the SAM Mini bus bearing No. K.A. 18.4000 and when he was getting down from the bus at Gajanoor, due to wrong signal given by the

conductor, the driver started the bus with speed and due to which, door of the bus hit the deceased, he fell down and sustained head injuries. Immediately, he was admitted to Mc. Ganti hospital, Shimoga, then he was shifted to Nanjappa Hospital, where he took treatment for 7 days as an inpatient and succumbed to the injuries on 5.4.2003.

3. It is the further case of the claimants that, deceased was aged about 38 years, hale and healthy prior to the accident and earning Rs. 7,000/- per month by running grocery shop, doing milk vending business and also by hiring the bullocks and cart and contributing the same to the welfare of the family. Due to his untimely death, claimants were put to great loss and hardship, apart from mental shock and agony.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, in turn, after appreciating the oral and documentary evidence and other material available on file, has allowed the said claim petition in part, awarding the compensation of Rs. 4,31,000/- under different heads with interest at 6% p.a., from the date of petition till the date of deposit.

5. Being aggrieved by the said judgment and award passed by the Tribunal, the Insurer has presented this appeal, seeking reduction of compensation, on the ground that the compensation awarded by the Tribunal is disproportionate to the income of the deceased and the Tribunal has erred in awarding a sum of Rs. 50,000/- each towards consortium and towards loss of love and affection which is on higher side. Therefore, he submitted that the impugned judgment and award passed by the Tribunal is liable to be modified by reducing the compensation reasonably.

6. As against this, learned counsel for the claimants, inter-alia, contended and submitted that, the Tribunal, after appreciating the oral and documentary evidence available on file, taking into consideration the age, occupation and the year of the accident, and considering that dependants are his wife and children, has justified in awarding the compensation under different heads, which is just and reasonable and therefore it does not call for interference. Nor the appellant has made out any good grounds to consider the relief sought in this appeal. Therefore, he prayed that the appeal filed by the Insurer may be dismissed.

7. After hearing the learned counsel appearing for both the parties, after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, it can be seen that, the occurrence of the accident and the resultant death of the deceased are not in dispute. Further, it is not in dispute that, deceased was aged about 38 years and the dependants are his wife and children. Further, it emerges that, the Tribunal, after assessing the oral and documentary evidence available on file, has justified in assessing the income of the deceased at Rs. 4,000/- per month, after deducting 1/3rd towards his personal expenses since there are three claimants, and by adopting multiplier of "16" since the deceased was aged about 38 years, has

awarded a sum of Rs. 2,56,000/- towards loss of dependency, Rs. 50,000/- towards medical expenses as per medical bills produced by the claimants, Rs. 50,000/- towards loss of consortium, Rs. 50,000/- towards loss of love and affection Rs. 5,000/- funeral expenses and Rs. 20,000/- towards general expenses and in all Rs. 4,31,000/- with interest at 6% p.a., from the date of petition till its deposit, after assigning valid reasons. The said compensation awarded by the Tribunal is just and proper. We do not find any error much less material irregularity in the same and therefore, it does not call for interference. For the foregoing reasons, the appeal filed by the appellant/Insurer is liable to be dismissed as devoid of merits. Accordingly. It is dismissed.

The Registry is directed to transfer the amount deposited by the appellant/Insurer to the jurisdictional Tribunal forthwith.

In view of the dismissal of the appeal, the prayer sought by the appellant in I.A. No. II/2007 does not survive for consideration. Hence, it is disposed off as having become infructuous.