(2011) 01 KAR CK 0119

In the Karnataka High Court

Case No : M.F.A. No. 5856 of 2009

The Oriental Insurance Co Ltd. APPELLANT

Vs

Smt N.B. Manjula and Others RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Citation : (2011) 01 KAR CK 0119

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : M.U. Poonacha, for the Appellant; N. Gopalakrishna and Jagadish G. Kumar for R1 to R5 and R6, for the Respondent

Judgement

B. Sreenivase Gowda, J.—This appeal is by the insurer of the offending vehicle challenging the award of the Tribunal both on the ground of liability and quantum.

2. Heard, the appeal is admitted and with the consent of the learned Counsel appearing for the parties, it is taken up for final disposal.

3. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.

4. The brief facts of the case:

On 13.10.2007, when the deceased Y.V. Ramesh was going towards his village Yendanahalli from Vaddahalli in a goods tempo bearing registration No. KA-07-6806 after selling tomato vegetables at Vadahalli shandy with a load of empty tomato boxes near shettihslli cross on Chintamani-Srinivasapura road, the driver of the said tempo drove the same in a rash and negligent manner and caused accident, As a result, the deceased sustained grievous injuries and died in the Government Hospital, Chintamani. Hence, his wife, two minor children and parents filed a claim petition before the MACT, Bangalore seeking compensation of Rs. 20,00,000/-. The Tribunal awarded them a compensation of Rs. 5,40,000/- with interest at 6% p.a.

5. As there is no dispute regarding death of the deceased in a road traffic accident occurred due to rash and negligent driving of a goods tempo by its driver, the only points that arise for my consideration in the appeals are:

whether the Tribunal is justified in fastening the liability against the insurer of the offending vehicle and whether the quantum of compensation awarded by the Tribunal is just and reasonable or does it call for reduction?

6. The learned Counsel for the insurer of the offending vehicle submits that as total number of persons including the deceased travelled in the tempo is more than the seating capacity permitted and it is contrary to the terms of permit and in violation of terms of policy and therefore, the insurer is not liable to indemnify the owner and pay the compensation to the claimants and further the compensation awarded by the Tribunal is not just and proper, it is on the higher side, therefore he prays for allowing the appeal.

7. Per contra the learned Counsel appearing for the claimants submits that the deceased was travelling along with the goods and he was the only person, who sustained injuries and died in the said accident and further the quantum of compensation awarded by the Tribunal is just and proper and there is no scope for reduction and he prays for dismissal of appeal.

8. In the FIR, charge sheet, Mahazar marked at Ex.P-1 to 3, it is clearly mentioned that the deceased was travelling in the offending tempo along with the empty boxes of tomato after selling the tomatoes in the sandy but it is not clear that how many persons including the deceased were travelling in the tempo and that question does not arise in this case because the deceased was the only person who died in the said accident and that being so, the insurer is liable to pay the compensation awarded by the Tribunal. Considering the same, the Tribunal has also rightly fastened the liability against the insurer of the vehicle.Now, I have to see whether the quantum of compensation awarded by the Tribunal is just and proper or does it call for reduction.

9. The deceased was aged about 35 years at the time of his death in the accident as evident from the post mortem report Ex.P-6. The claimants are his wife, two minor children and parents. The claimants in support of their contention that the deceased was earning a sum of Rs. 15,000/- per month by doing agricultural work, have examined the first claimant, wife of the deceased as PW-1 and have produced RTC extract at Ex.P-7 to show their land holding and produced the genealogical tree at Ex.P-8 to show their relationship with the deceased. Therefore, the Tribunal considering his age as 35 years, profession as agriculturist and year of accident as 2007, has rightly assessed his income at Rs. 4,000/- per month. There are four claimants and therefore 1/4th of the income of the deceased has to be deducted towards his personal expense. The multiplier applicable to his age group is 16. So, the ''loss of dependency'' works out to Rs. 5,76,000/- (4000 x 3/4 at 16 x 12) and whereas the Tribunal has awarded Rs. 4,80,000/-under this head and there is no scope for reduction under this head.

10. Further, Rs. 15,000/- awarded by the Tribunal towards ''loss of consortium'', Rs. 15,000/- towards ''loss of love and affection'', Rs. 15,000/-towards ''loss of estate'' and Rs. 15,000/- towards ''transportation of dead body and funeral expenses'' are just and proper and there is no scope for reduction under any of these heads.

11. As the compensation awarded by the Tribunal is less than just entitlement and there is no scope of reduction, the appeal to dismissed as devoid of merits.

12. The amount in deposit is ordered to be transferred to the Tribunal for disbursement in terms of the award of the Tribunal.

13. No order as to costs.