

(2009) 01 KAR CK 0062

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 10837 of 2006

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Sri. G. Rohithkumar, Sri. Pawan Kumar G. and Kum.
Jayalakshmi G.

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 149 (2), 170, 173

Citation : (2009) ILR (Kar) 1149 : (2009) 2 KarLJ 693 : (2009) 1 KCCR 517

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : B.C. Seetharama Rao, for the Appellant; Adi Law Chambers for C/R,
for the Respondent

Final Decision : Dismissed

Judgement

Huluvadi G. Ramesh, J.—This appeal is by the Insurance company challenging the quantum of compensation awarded in MVC No. 2335/04 by the IX Addl. Small Causes Judge and MACT-7, Bangalore. by order dated 26.6.06.

2. In the accident that occurred on 21.3.04 around 12.20 noon the parents of the claimants deceased Leelavathi and her husband Govindaiah have died when they were proceeding on their Hero Honda motor cycle bearing No. KA02 EK 8766 as a rider and pillion rider near Begur cross. on N.H.48 wherein a Maruti Wagon R bearing No. KA 25 M 9031 came in a negligent manner and dashed to the motor cycle due to winch both of them fell down and succumbed to the injuries on the spot.

3. The claim petition was tiled on behalf of the minors/claimants through their guardian. The Tribunal having framed relevant issues held that the accident was due to the negligence on the part of the driver of Maruti Wagon R in question and while assessing the compensation an amount of Rs. 8.89.000- has been awarded with 6% interest. The same has been assailed by the Insurance company on the

ground that the Tribunal without deducting the tax component and the incidental expenses has taken the monthly income at Rs. 9,000 - P.M. of the deceased which is contrary to the judgment reported in AIR SCW 1116. As such, the compensation awarded under loss of dependency has to be scaled down. Apart from that the Tribunal ought to have adopted the split multiplier to calculate the loss of dependency by considering the salary for the first slab and pension amount for the remaining multipliers as held in K.S.Lakshmi Kumar's case.

4. Heard.

5. It is the submission of the learned Counsel for the appellant/Insurance company as is stated in the ground of appeal that the split multiplier ought to have been adopted by the Tribunal while calculating the compensation instead of taking the multiplier 12 and without deducting the tax component the monthly income has been taken.

6. Per-contra, the learned Counsel appearing for the respondents/claimants has submitted that the application filed u/s 170 of the MVC Act to contest the matter on all the grounds is only tiled at the time of argument and no specific order has been passed by the Tribunal permitting the Insurance company to contest the matter. As such, the Insurance company is debarred from maintaining the appeal. Accordingly, in support of his argument he relied upon the decision reported in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, and submitted that even otherwise instead of adopting the multiplier of 13 as per the schedule, the Tribunal has adopted the multiplier of 12 and that there is no tax payable by the deceased to deduct the same towards the tax component and the award passed is on the lower side, which does not require any interference.

7. In the light of the arguments advanced, the question that would arise for consideration is whether the appeal is filed by the Insurance Company is maintainable? and whether the quantum of compensation awarded requires interference?"

8. In the decision reported in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, referring to Section 170 of the Motor Vehicle Act of 1988 and also referring to Sections 173, 149(2) and 170 regarding the right to file an appeal challenging the award, the Apex Court has held that "unless an order is passed by the Tribunal permitting the insured to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170, it is not permissible to the Insurer to contest the claim on the grounds which are available to the Insured or to a person against whom a claim has been made"

9. On perusal of the certified copy of the order it is seen that as submitted by the learned Counsel for the respondents no specific order has been passed permitting the Insurance company to contest the matter on all the counts except some applications filed by the Insurance company were found available on the case filed. But according to the submission made on 19.6.06 application is said to

have been filed u/s 170. But no specific order is being passed in that regard.

10. Apart from the above, on perusal of the records, it is seen that the deceased was aged about 49 years at the time of accident and the multiplier adopted by the Tribunal is 12. He is admittedly a Head Constable in the Government Department and was said to be in the verge of getting promotion. Apart from that as on today the age of retirement is 60 years and a clear 12 years service has been left with. In that regard the appropriate multiplier of 12 adopted cannot be found fault with Even on perusal of the salary certificate it is seen that no deduction is permissible towards the tax component and scaling down also would not arise. Even 1/3rd of the income has also been deducted towards personal expenses. In the circumstances and also when the date of superannuation tails within the period of multiplier there cannot be any deduction.

11. Hence, the appeal being devoid of merits on both the counts, the same is dismissed while continuing the order passed by the Tribunal. The amount in deposit be transferred to the Tribunal for disbursement.