
(2014) 07 KAR CK 0035
In the Karnataka High Court
Case No : M.F.A. No. 106 of 2013 (MV)

Thimmakka

APPELLANT

Vs

Alkurabovi

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 2(30)

Citation : (2014) 3 AKR 846

Hon'ble Judges : N.K. Patil, J;B. Sreenivas Gowda, J

Bench : Division Bench

Advocate : Shanthappa and B.M. Siddappa, Advocate for the Appellant; Ashok N. Patil, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the claimants is directed against the impugned judgment and award dated 10th September, 2012, passed in MVC No. 50/2011, by the I Additional Senior Civil Judge & Motor Accident Claims Tribunal-V, Chitradurga, (for short, "Tribunal"), seeking enhancement of compensation, on the ground that the compensation awarded by Tribunal is on the lower side. The facts in brief are that, the claimants are the mother and sister of the deceased Anjinappa S/o. Alkurappa. They filed the claim petition u/s 166 of the Motor Vehicles Act, contending that, at about 10:15 p.m., on 31-10-2010, when the deceased after loading bricks in the Lorry bearing Registration No. KA-16/A-2818, at Hiriyur and proceeding towards Bogalerahatta, near Chikkagondanahalli-Koncheramalige, the driver of the said Lorry drove the same, at high speed, in a rash and negligent manner and dashed against the front going lorry bearing Registration No. KA-06/B-5681 to its hind portion. Due to the impact, the deceased sustained grievous injuries and died on the spot.

2. It is the case of the appellants that, the deceased was aged about 20 years and working as cleaner in the Lorry, earning a sum of Rs. 6,000/- per month and hale and healthy prior to the accident. On account of the untimely death of the

deceased, the appellants have lost the love and affection, inspiration and guidance, apart from social, financial and moral support and therefore, they have to be compensated reasonably.

3. On account of the death of the deceased, the appellants filed the claim petition before the Tribunal, seeking compensation against the respondents. The said claim petition had come up for consideration before the Tribunal on 10th September, 2012. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 3,42,000/- under different heads, with 6% interest per annum, from the date of petition till the date of payment. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellants are in appeal before this Court, seeking enhancement of compensation.

4. We have gone through the grounds urged in the memorandum of appeal and heard the learned counsel appearing for appellants and also the Insurer, for quite some time.

5. After hearing the learned counsel appearing for both parties and on the basis of the pleadings available on record, the Tribunal framed necessary issues and after appreciation of the oral and documentary evidence available on file, allowed the claim petition in part, awarding compensation of Rs. 3,42,000/- with 6% interest per annum, from the date of petition till its deposit. While so awarding the compensation, the Tribunal directed the first respondent-owner of the offending Lorry, who is the father of deceased to indemnify the award and dismissed the claim petition as against respondent No. 2/Insurer of the offending vehicle, on the ground that no premium has been collected for the persons travelling in the offending Lorry except owner/driver and for employees. Being aggrieved by the liability fastened and also the quantum of compensation awarded by Tribunal, as inadequate, the appellants are in appeal before this Court, seeking to set aside the liability fixed on the owner of Lorry/father of deceased and to enhance the reasonable compensation.

6. The submission of the learned counsel appearing for appellant at the outset is that, the Tribunal has grossly erred in fixing the liability on the owner of the Lorry even though the said Lorry was covered with Insurance Policy and the same was very much in force. Further, he submitted that the Tribunal erred in coming to the conclusion that the deceased was travelling in the Lorry as unauthorized passenger, though the evidence on record goes to show that the deceased was working as a cleaner in the said Lorry. Further, he submitted that the Tribunal has committed an error holding that first respondent/owner of offending Lorry is the father of the deceased as such the deceased cannot be considered as working as cleaner in the offending Lorry.

7. So far as quantum of compensation awarded by Tribunal is concerned, learned counsel appearing for appellants submitted that the Tribunal further erred in not

awarding reasonable compensation towards loss of dependency and also conventional heads and therefore, reasonable enhancement may be made by re-assessing the monthly income at Rs. 6,000/- and adopting proper multiplier.

8. As against this, learned counsel appearing for Insurer sought to justify the impugned judgment and award passed by Tribunal, stating that the same is passed after due consideration of the oral and documentary evidence available on file and also recording a specific finding of fact at paragraph 10 of its judgment. After going through the said paragraph, it proves beyond reasonable doubt that the deceased was travelling as an unauthorized passenger in the Lorry owned by his father and the insurance policy covers the risk of only the owner/driver and his employees. Further, the appellants have not produced an iota of document to substantiate their stand that the deceased was working as a cleaner in the Lorry owned by his father and was being paid a sum of Rs. 6,000/- as monthly salary. Therefore, he vehemently submitted that the Tribunal, after critical evaluation of the oral and documentary evidence available on file is highly justified in recording a finding of fact that the owner of the offending Lorry is liable to indemnify the award and dismissing the claim petition as against the Insurer of the Lorry in question. Therefore, he submitted that interference in the impugned well considered judgment and award passed by Tribunal is uncalled for.

9. After hearing the learned counsel appearing for both the parties and after careful perusal of the impugned judgment and award passed by Tribunal, the only point that arise for our consideration in this appeal is,

"Whether the Tribunal is justified in directing the Respondent No. 1- Owner of the offending Lorry to indemnify the award?"

10. After going through the entire material I available on file, it emerges that occurrence of accident and the resultant death of the deceased are not in dispute. It is further not disputed that the claimants are none other than the mother and sister of deceased and first respondent is the owner of the Offending Lorry and also father of deceased. It is the case of the claimants that the deceased was working as a cleaner in the Offending Lorry, which was involved in the accident on account of I rash and negligent driving by its driver and the said Lorry was also covered with Insurance Policy and the same was valid and very much in force as on the date of accident. Therefore, the Tribunal ought to have saddled the liability on the second respondent/Insurer of the offending vehicle.

11. The specific contention of the Insurer was that since the deceased was travelling in the offending Lorry as an unauthorized passenger, they are liable to indemnify the award. It is their further case that the claimants are the mother and sister of deceased and owner of the offending Lorry is the father of deceased and that the deceased was not employed by the Respondent No. 1/owner of offending Lorry as cleaner. Therefore, the deceased is to be considered as an unauthorized passenger in the offending Lorry at the time of accident. Further, it can be seen that though the first respondent/owner was served with notice, he

has not appeared before the Tribunal nor submitted anything as to whether he had employed the deceased son as a cleaner in the offending Lorry or not. Except taking contention in the claim petition and also in the appeal, not an iota of document is produced by the claimants in support of their case. Further, it can be seen that the claimants/appellants, deceased and the respondent No. 1/owner of the offending Lorry are residing under one roof and it is very difficult to accept the contention of the appellants that the deceased was working a cleaner in the offending Lorry of his own father, getting salary of Rs. 6,000/- per month and Rs. 100/- per day as batta, in the absence of any credible documentary evidence in support of the same. Therefore, the Tribunal came to the conclusion that the deceased was travelling in the said Lorry of his father as an unauthorized passenger at the time of accident. Further, after evaluation of the entire material available on file, the Tribunal has held that the accident occurred solely on account of rash and negligent driving by the driver of offending Lorry and that the owner of the offending Lorry/respondent No. 1/father of deceased, being the employer of the driver of offending lorry is vicariously liable for the wrong act done by the driver. Further, as per Ex. R1, no premium has been collected for the persons travelling in the offending Lorry except owner/driver and for employees. Therefore, as the deceased was not an employee or owner within the meaning of Section 2(30) of Motor Vehicles Act, the Tribunal held that, at the time of accident, deceased was travelling in the offending Lorry unauthorizedly and the first respondent/father of deceased being the owner of offending Lorry allowed an unauthorized person to travel in the Lorry. Therefore, the Insurer is absolved of its liability of indemnifying the insurer/respondent No. 1 as it is beyond the purview of contractual agreement between itself and insured. Therefore, the Tribunal fastened the liability on the first respondent/owner of the offending Lorry to indemnify the award. The said reasoning and the finding of fact recorded by Tribunal at paragraph 10 of its judgment is well considered and well reasoned and hence, interference in the same is uncalled for nor the claimants/appellants have made out a case of such interference.

12. So far as quantum of compensation awarded by Tribunal is concerned, it can be seen that the Tribunal, after critical evaluation of the oral and documentary evidence available on file, has rightly awarded compensation of Rs. 3,12,000/- towards loss of dependency, taking the monthly income at Rs. 4,000/-, deducting 50% towards his personal expenses and adopting multiplier of "13" considering the age of the younger parent, mother. Further, the Tribunal is also justified in awarding compensation of Rs. 30,000/- towards conventional heads and hence, interference in the same is also uncalled for. For the foregoing reasons, the appeal filed by the appellants is liable to be dismissed as being devoid of merits. Accordingly, it is dismissed.

Office to draw award, accordingly.