(2011) 09 KAR CK 0114

In the Karnataka High Court

Case No : MFA No''s. 1439 and 7614 of 2007

Thippamma and Ningappa (dead by L.Rs. Basavaraj, Ningamma and Manohar) — APPELLANT

Vs

National Ins. Company Ltd. and Syed Anwar
 Sri Syed Anwar Vs Smt. Thippamma and The Branch Manager National Insurance Company Ltd. — RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Citation : (2011) 09 KAR CK 0114

Hon'ble Judges : K.L. Manjunath, J;B. Manohar, J

Bench : Division Bench

Advocate : D.R. Nagaraja, in MFA No. 7614/2007 and H. Kantha Raja and Venkatesh B.D., in MFA No. 1439 of 2007, for the Appellant; S. Srishaila, Adv for R1 and H. Kantharaj, Adv for R2 in MFA No. 7614/2007 and D.R. Nagaraj, for R1 in MFA No. 1439 of 2007, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—MFA No. 1439/2007 is filed by the owner of the bus bearing registration No. KA-16/7298 and MFA No. 7614/2007 is filed by the claimants in MVC No. 37/2005 before the Motor Accidents Claims Tribunal, Challakere. Therefore, these two appeals are heard together.

2. The following facts are not in dispute in these appeals:

The claimant''s son by name Thippeswamy died in a road traffic accident occurred on 31-5-2004 at about 10.00 a.m. while travelling as a passenger in a bus bearing registration No. KA-16/7298. He was aged about 25 years, working as a Hamali in Challakere and he was a permanent resident of Chikkahalli village where the very said bus was halting at night and during the evening hours, the deceased was also cleaning the bus. It is the case of the claimants that on the date of accident, the deceased was travelling in the bus as a paid passenger from Chikkahalli to Challakere.

3. The Insurance Company while filing the written statement admitted the issuance of Policy, however denied the income of the deceased so also its liability on the ground that there to violation of the terms and conditions of the Policy. Before the Tribunal, the parents of the deceased were examined and it was their specific case that their son was travelling from Chikkahalli to Challakere as paid passenger. This fact is not seriously disputed in the cross-examination. It was also their case that the deceased was getting an income of Rs. 8,000/- p.m. Disbelieving the evidence of the claimants assessed the income of the deceased Rs. 60/- per day, out of which, 1/3 was deducted towards personal expenditure of the claimant and applying the multiplier of 13, the Tribunal has assessed the loss of dependency at Rs. 1,58,400/-. In addition to that, Rs. 10,000/- was awarded towards loss to the estate, Rs. 3,000/- towards funeral expenses. Thus, in all Rs. 1,71,400/- has been awarded compensation to the claimants.

4. Only on the ground that during night halt at Chikkahalli, the deceased was cleaning the bus, the Tribunal without considering the evidence of the parties, held that the deceased was travelling as a cleaner and exonerated the Insurance Company from its liability. Therefore, the owner of the bus has filed a separate appeal. The claimants have also filed a separate appeal contending that the compensation awarded to them is on the lower side. Therefore, these two matters are heard together.

5. After hearing the parties, the following points arise for consideration in these two appeals.

(i) Whether the Tribunal is justified in exonerating the Insurance Company from its liability?; and

(ii) Whether the compensation awarded by the Tribunal is on the lower side.?

6. So far as the first point is concerned, admittedly, the Insurance Company has taken up the defence that the deceased was travelling as a cleaner in the bus. But it is the case of the claimants that he was travelling as a paid passenger and not as a cleaner. It is elicited in the cross-examination of Thippamma the mother of the deceased that the deceased was travelling as a paid passenger only and not as a cleaner. It is an admitted fact that when the bus used to halt at night at Chikkahalli, he was cleaning the bus. Merely because the deceased was cleaning the bus at Chikkahalli it cannot be considered that he was a cleaner of the bus because it is only a part-time job for which, he was getting Rs. 50/- per day. Therefore, the Tribunal is not justified in exonerating the Insurance Company without there being any pleadings and evidence let in by the Insurance Company. Therefore, the appeal filed by the owner of the Bus in MFA 1439/2007 has to be allowed and the liability has to be saddled on the Insurance Company.

7. So far as enhancement is concerned, admittedly, the income of the deceased could be taken at Rs. 3.000/- p.m. considering his age and avocation. Since he was unmarried, 50% of his income has to be deducted towards his personal expenditure and the loss of dependency has been assessed at Rs. 1,500/- p.m.

and Rs. 18,000/- p.a. Considering the age of the mother of the deceased, multiplier 13 has to be adopted and loss of dependency would come to Rs. 2,34,000/- In addition to that the claimants are entitled for a sum of Rs. 30,000/- under the conventional heads. Therefore, the Appellants are entitled for total compensation of Rs. 2,64,000/-. Out of which, if we deduct Rs. 1,71,400/- awarded by the Tribunal, the Appellants are entitled for enhanced compensation of Rs. 92,600/- with interest at the rate of 6% p.a. from the date of petition till realization.

8. In the result, MFA No. 1439/2007 is allowed and the liability is saddled on the Appellant who is the owner of the bus is modified holding that the Insurance Company is also jointly and severally liable to satisfy the award, MFA 7614/2007 is allowed. The Appellants are entitled for enhanced compensation of Rs. 92,600/- with interest at 6% p.a. Out of the enhanced compensation, a sum of Rs. 60,000/- with proportionate interest accrued thereon is ordered to be deposited in the name of the mother of the deceased for a period of 5 years and she is entitled to withdraw the periodical interest. Rest of the amount be released to in favour of the Appellants.

At this stage, it is stated that a sum of Rs. 25,000/- deposited by the owner of the bus was permitted, to be withdrawn by t lie claimants. If it is so, it is for the Insurance Company to refund the said amount to the owner of the bus.

