

(2017) 07 KAR CK 0027
In the Karnataka High Court
Case No : 3996 of 2009 (MV)

UNITED INDIA INSURANCE CO. LTD.

APPELLANT

Vs

B. SUSHEELAMMA & ORS.

RESPONDENT

Date of Decision : 05-07-2017

Acts Referred:

Citation : (2017) 07 KAR CK 0027

Hon'ble Judges : B. Manohar

Bench : SINGLE BENCH

Advocate : A.N.KRISHNASWAMY, S.KALYAN BASAVARAJ

Final Decision : Dismissed

Judgement

1. The United India Insurance Company Limited has filed this appeal, challenging the legality and correctness of the judgment and award dated 1.04.2009 passed in MVC No.148/2007 by the MACT, Holalkere (hereinafter referred to as "Tribunal" for short), fastening liability on them to compensate the claimants.

2. The respondent Nos.1 to 4 herein filed the claim petition, contending that husband of first claimant, father of claimant Nos.2 and 3 and son of claimant No.4, the deceased Channabasappa was proceeding in a motor cycle bearing Reg.No.KA- 16/L-3971 from Hosadurga Road towards Chikkayagati on 7.01.2007 at about 7.45 p.m, near Polytechnic Hostel at Mallappanahalli, the driver of a Tractor-Trailer bearing Reg.No.KA-18/5058 and MYC/6915, drove the same in a rash and negligent manner and dashed against the motor cycle. Due to that, Channabasappa fell down and sustained grievous injuries all over the body. Immediately after the accident, he was shifted to Government Hospital, Hosadurga. Thereafter, he was shifted to C.G.Hospital, Davanagere. However, during the course of treatment, he succumbed to the injury on 13.01.2007. In the claim petition, it was contended that the deceased was running a Kirani shop, earning Rs.30,000/- per month. In addition to that, he owns the agricultural land measuring 7 acres of land. The family has lost the bread earner. Due to

negligence on the part of driver of the Tractor- Trailer, which the accident occurred, was insured with the second respondent. Both respondent Nos.1 and 2 are liable to pay compensation to an extent of Rs.28,00,000/.

3. The insurance company defended the case by filing written statement and also contended that due to rash and negligent riding of the motor cycle, the accident occurred. Both the rider of the motor cycle as well as the driver of Tractor-Trailer were not having a valid and effective driving licence as on the date of accident. The liability of the second respondent is subject to the proof with regard to the RC, FC and DL. Hence, sought for dismissal of the claim petition.

4. On the basis of the pleadings of both the parties, the parties went to trial. After trial, the Tribunal has held that due to actionable negligence on the part of driver of the Tractor-Trailer, the accident occurred. The deceased Channabasappa who was traveling in a motor cycle as a pillion rider, fell down, sustained grievous injuries and he succumbed to the said injuries on 13.01.2007. The claimants are the wife, children and father of the deceased Channabasappa. They are entitled for the compensation.

5. With regard to the quantum of compensation is concerned, though the claimants claimed that the deceased was earning Rs.30,000/- per month, no documents have been produced to substantiate the same. The Tribunal taking into consideration the income of the deceased as Rs.150/- per day, applying multiplier "14", deducting 1/3rd towards the personal expenses, awarded sum of Rs.5,04,000/- towards loss of dependency and sum of Rs.70,000/- towards conventional heads and in all sum of Rs.5,74,000/- with interest at 6% per annum. Since the driver of the offending Tractor and Trailer was having valid and effective driving licence, the liability fastened on the insurance company to compensate the claimants.

6. The insurance company being aggrieved by the judgment and award passed by the Tribunal has filed this appeal, mainly contending that the insured vehicle has been falsely implicated to get the compensation, whereas the rider of the motor cycle has not sustained injury, only the pillion rider died in the accident. The case set up by the claimants cannot be believed. Further the quantum of compensation is also on the higher side.

7. On the other hand, the advocate appearing for the respondent Nos.1 to 3 argued in support of the judgment and award and contended that due to actionable negligence on the part of the driver of Tractor-Trailer, the accident occurred. The deceased Channabasappa while proceeding as a pillion rider in the motor cycle, fell down and sustained injuries. The Tribunal has awarded fair and just compensation. Hence, sought for dismissal of the appeal.

8. I have carefully gone through the arguments addressed by the advocates appearing for the parties, perused the oral and documentary evidence.

9. The case of the claimants is that on 7.01.2007, while the deceased

Channabasappa was proceeding in a motor cycle as a pillion rider on Hosadurga Road, near Polytechnic Hostel at Mallappanahalli, the Tractor-Trailer came in a rash and negligent manner and dashed against the motor cycle. Due to that, the pillion rider fell down and sustained grievous injuries. The IMV Report clearly discloses that the head light and two indicators of the motor cycle have been damaged. In the complaint lodged by the rider, he has clearly stated that on seeing the Tractor-Trailer coming from opposite direction, he has taken the vehicle to the left side of the road. In spite of the same, Tractor- Trailer dashed against the motor cycle and the pillion rider got head injury and subsequently he succumbed to the injury. The police records clearly disclose that the police have charge-sheeted the driver of the Tractor-Trailer. The Inquest Report and other relevant records clearly disclose that due to the negligence on the part of driver of the Tractor- Trailer, the accident occurred. The finding of the Tribunal with regard to the rash and negligent driving of the Tractor-Trailer is in accordance with law. The Tribunal taking into consideration the oral and documentary evidence came to the conclusion that due to rash and negligent driving of the tractor trailer, the accident occurred and the pillion rider fell down, sustained injuries and subsequently died.

10. With regard to the quantum of compensation is concerned, the accident occurred in the year 2007. The Tribunal taking into consideration the income of the deceased as Rs.4,500/- per month as he was aged about 40 years, applying the multiplier "14" and awarded compensation of Rs.5,04,000/- towards loss of dependency and a sum of Rs.70,000/- towards conventional heads with interest at 6% per annum. I find that the quantum of compensation awarded by the Tribunal is in accordance with law. The appellant has not made out any grounds to interfere with the well considered judgment and award passed by the Tribunal. Therefore, the appeal is required to be dismissed. Accordingly, I proceed to pass the following: ORDER

Appeal is dismissed. The judgment and award passed in MVC.No.148/2007 by the MACT, Holalkere dated 01.04.2009 is confirmed. The amount deposited before this Court shall be transferred to MACT, Holalkere.