(2016) 03 KAR CK 0191

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 11366 of 2011 (MV).

United India Insurance Co. Ltd. — APPELLANT

Vs

N. Nagarathnamma and Others — RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 1346

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : B.A. Ramakrishna, Advocate, for the Appellant; N. Gopalkrishna, Jagadish G. Kumbar, S.A. Khadri, Advocates and S.A. Khadri, Advocate and N. Gopalakrishna, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J. - The insurer of the offending motor vehicle aggrieved by the judgment and award dated 6th July, 2011 in MVC 2160/2010 of the 3rd Addl. Sr. Civil Judge and MACT, SCCH 18, Bangalore (for short ''MACT'') has presented this appeal.

2. In the accident that occurred on 22-2-2010 at about 4.45 p.m. one Doddanna while proceeding from his village Gantiganahalli, Melukote along with others in a Bolero Jeep bearing certificate of registration KA-43-M-1536 insured by the appellant, which when met with an accident due to rash and negligent driving of the said vehicle, Doddanna succumbed to grievous injury.

3. In the claim petition filed for compensation, it was asserted that the deceased was earning Rs. 15,000/- per month from agriculture and that widow, her two major sons and one unmarried daughter were dependant upon the income of the deceased. That claim was opposed by filing statement of objections of the insurer, denying that the driver of the jeep had an effective driving licence while asserting breach of terms and conditions of policy of insurance. In the premise of

the pleadings of parties, the MACT framed issues the first of which was over proof of actionable negligence on the driver of the motor vehicle; second over proof of claimants being legal representatives of deceased-Doddanna; third over, what compensation and from whom recoverable and the last, over final order or award.

4. The first claimant was examined as PW. 1 and one eye-witness as P.W. 2 and marked 27 documents as Exs. PI to P27 while for the respondent/appellant neither oral nor documentary evidence was adduced.

5. The MACT having regard to the material on record, evidence both oral and documentary, more appropriately, the documents Exs. PI to P4, none other than the FIR, charge-sheet, panchanama and hand sketch coupled with the fact that charge-sheet was directed against the driver of the offending vehicle for commission of cognisable offences under the Indian Penal Code as also for contravening the provisions of the Motor Vehicles Act, 1988, answered issue No. 1 in the affirmative attributing actionable negligence to the driver. This finding is not called in question.

6. Regard being had to the testimony of P.W. 1, the MACT answered issue No. 2 that the claimants were the legal representatives of deceased-Doddanna.

7. Although it was asserted that deceased aged 76 earned Rs. 15,000/- from agriculture, nevertheless, no material worthwhile is placed either over avocation or income. The RTC, pahanis, Exs. P13 to P27, are in respect of lands in several survey numbers for the period 2010-2011, standing in the name of Doddanna. Regard being had to the age of the deceased, there is no merit in the contention that he was carrying on agricultural operation by himself, but being an agriculturist it is possible that he could be supervising agricultural operations, calling for assessment of his income. The MACT, in the facts and circumstances, reckoned Rs. 6,000/- p.m. as notional income of deceased, deducted ?rd towards personal expenses of the deceased and applying multiplier 5, awarded Rs. 2,40,000/- towards loss of dependency; to which was added Rs. 5,000/- towards transportation of dead body from hospital; Rs. 10,000/- towards loss of consortium; Rs. 15.000/- towards loss of love and affection to claimants 2 to 4, children; Rs. 10,000/- towards loss to estate and towards funeral expenses Rs. 10,000/-, totalling to Rs. 2,90,000/- with interest at 8% p.a. by the judgment and award impugned.

8. The submission of learned counsel for the appellants that the deceased was a gratuitous passenger, hence no liability could be fastened on the appellant, since the risk of such person is not covered by the policy of insurance, is noticed only to be rejected. There is not a titre of evidence to establish the fact that the deceased was a gratuitous passenger so as to absolve the appellant of the liability to pay compensation in terms of the policy of insurance.

9. There is force in the submission of Sri B. A. Ramakrishna, learned counsel for the appellant that the MACT was not justified in deducting ?rd of income towards

personal expenses, more so, in the light of the fact that he left behind one dependent i.e. the widow, while his children being adults, are not shown to be dependent on the services of the deceased. If that is kept in mind and the dependent is only one viz., the widow, aged 61, it is appropriate to deduct 50% of the income towards personal expenses of the deceased hence the monthly loss of income is Rs. 3,000/- and applying multiplier 5, the annual loss of dependency is Rs. 1,80,000/-.

10. The MACT, awarded Rs. 10,000/- towards loss of consortium, which in the circumstances, is not just compensation, having regard to the decision of the Apex Court in Rajesh v. Rajbir Singh (2013) 9 SCC 54, wherein it is observed that a widow is entitled to Rs. 1,00,000/- as compensation. The award of compensation under other heads of damage do not call for interference.

11. In the light of what is stated supra, the compensation towards loss of dependency is reduced, nevertheless, as frugal compensation is awarded towards loss of consortium. addition of aforesaid amounts, amounts to very same sum determined as total compensation by the MACT and, therefore, there is no necessity to interfere with the judgment and award as far as quantum of compensation.

12. In the result, there is no merit in the appeal and is accordingly, dismissed.

13. The amount in deposit is directed to be transmitted to the MACT forthwith.