(2015) 07 KAR CK 0414

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2295/2013 (MV)

United India Insurance Co. Ltd.	APPELLANT
Vs	
Pallavi G. and Others	RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 11, 166

Citation : (2015) 07 KAR CK 0414

Hon'ble Judges : N.K. Patil, J;Rathnakala, J

Bench : Division Bench

Advocate : K.S. Laxminarasappa for B.C. Seetharama Rao, for the Appellant

Judgement

N.K. Patil, J—This appeal is by the Insurer being aggrieved by the impugned judgment and award dated 19th December 2012 passed in M.V.C. No. 1899/2011 on the file of the II Additional Small Causes Judge and XXVIII ACMM, M.A.C.T. (SCCH-13) at Bengaluru (hereinafter referred to as ''Tribunal'' for short). The Tribunal by its impugned Judgment and Award, awarded a sum of Rs. 16,39,000/- with interest at the rate of 6% p.a. from the date of petition till the date of realisation on account of the death of the deceased late Sri. Manjunath in the road traffic accident. The appellant/Insurer has filed this appeal on the ground that the compensation awarded by the Tribunal is exorbitant and disproportionate to the income of the deceased and requires reduction.

2. The brief facts of the case of the claimants on hand are that, the claimant No. 1 is the wife, claimant No. 2 is the son and claimant Nos. 3 and 4 are parents of the deceased late Manjunath. They have filed a claim petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs. 29,20,000/- against the appellant-Insurer and respondent No. 5/owner of offending vehicle on account of untimely death of the deceased Manjunath in a road traffic accident that occurred on 23.11.2010 at about 4.00 a.m., contending that the deceased was proceeding in Maruthi Eco Car bearing Registration No. KA-50/AC-3923 from Bengaluru towards Dharmasthala, near Anchepalya Gate. At that time the driver of the Gas

Tanker bearing Registration No. KA-02/AC-072 had stationed the vehicle in the middle of the road without putting parking lights and suddenly the driver of the car lost control over the vehicle and dashed against the rear side of the Tanker. Due to the impact, the deceased sustained grievous/fatal injuries. Immediately he has been shifted to NIMHANS, Bengaluru and after first-aid he was shifted to Columbia Asia Hospital, Bengaluru, where he had undergone treatment as inpatient for a period of more than three months and undergone several surgeries. In spite of best efforts, they could not save the deceased and he succumbed to the injuries on 15.02.2011 on account of fatal injuries sustained in the road traffic accident. Further, it is the case of the claimants/respondents that they had spent more than Rs. 8,00,000/- towards medical expenses, conveyance, attendant charges, etc. The deceased was the only bread earning member of the family, aged about 39 years and doing real estate business by name Om Sai Enterprises at Hebbala, Bengaluru and was earning income of Rs. 15,000/- per month. The claimants were depending upon the income of the deceased. Due to untimely death of the deceased, the claimant No. 1 - wife has lost her companion/husband, son has lost love and affection, inspiration and guidance of his father and parents have lost their son and suffered mental pain and agony and social and economic condition of the family is affected. Taking all these relevant aspects into consideration, they have filed claim petition before the Tribunal under Section 166 of the Motor Vehicles Act, claiming compensation against the appellant herein and respondent No. 5/owner of the offending vehicle involved in the accident.

3. The said matter had come up for consideration before the Tribunal. The Tribunal in turn after due consideration of the oral evidence of PWs 1, 2 and 3 and RWs 1 and 2 and documentary evidence at Exs. P1 to P14 and Exs. R1 to R3 and the materials available on record, by assigning valid and cogent reasons allowed the claim petition in part. The Tribunal after due appreciation of the oral and documentary evidence, recorded a finding of fact holding that due to rash and negligent driving on the part of the Driver of the Gas Tanker lorry the accident occurred. As the vehicle in question was insured as on the date of accident the Tribunal held that the appellant and respondent No. 5 herein are jointly and severally liable to indemnify the award amount. However, in view of the subsisting Insurance Policy, the Insurer/the appellant herein alone was directed to indemnify the award amount. Being dissatisfied with the impugned Judgment and Award passed by the Tribunal, the appellant herein has presented this appeal seeking reduction of compensation.

4. It is the submission of the learned Counsel appearing for the appellant, Sri. K.S. Laxminarasappa at the outset that, the Tribunal has committed an error in not fixing the contributory negligence on the part of the deceased for the reason that due to rash and negligent driving by the driver of the Gas Tanker, the accident has occurred and thereafter fixing the entire negligence on the part of the driver of the Gas Tanker which was insured with the appellant-Insurer on the ground that the Driver of the Tanker did not possess valid authorization to drive

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/united-india-insurance-co-ltd-...

the Gas Tanker and there is no endorsement/licence to drive the said vehicle at the time of the accident. The said finding given by the Tribunal is contrary to the oral and documentary evidence available on file, the same is perverse in nature. Further, the learned Counsel appearing for the appellant vehemently submitted that, after discussing the contents of the mahazar and the contents of FIR, it discloses that there is negligence on the part of the driver of the Maruthi Eco Car and there is contributory negligence on the part of the deceased as well as the driver of the Gas Tanker. This aspect of the matter has not been looked into nor considered by the Tribunal. Therefore, he submitted that the impugned judgment and award is liable to be modified reasonably by fixing contributory negligence on the part of the deceased.

5. Further, he submitted that no post-mortem has been conducted to establish that the deceased succumbed to the fatal injuries sustained in the road traffic accident that has occurred. Exs. P6 and P7 - death summary and medical certificate are not sufficient to hold that the death of the deceased is on account of the injuries sustained in the road traffic accident. This aspect of the matter has not been looked into or considered or appreciated by the Tribunal. Therefore, the reasoning given by the Tribunal is liable to be set aside.

6. Further, he submitted that the quantum of compensation awarded by the Tribunal by adding 30% of income towards future prospects of the deceased is liable to be set aside in view of the pendency of similar case before the Larger Bench of the Apex Court. This aspect of the matter has not been looked into or considered or appreciated by the Tribunal while passing the judgment and award. He further submitted that the Insurance Company is not liable to indemnify the award amount without fixing any contributory negligence on the part of the driver of the car. Therefore, he submitted that the impugned judgment and award is liable to be modified fixing reasonable contributory negligence on the part of the driver of the car and driver of the Gas Tanker.

7. As against this, the learned Counsel appearing for the respondents - claimants inter-alia contended and sought to substantiate stating that the impugned Judgment and award passed by the Tribunal is after due consideration of entire oral and documentary evidence available on file and it has recorded a specific finding of fact in paragraphs 9 and 10 of the judgment, holding that due to the rash and negligent driving by the driver of the Gas Tanker the accident has occurred and the deceased succumbed to the injuries sustained in the road traffic accident. Further, the Tribunal has elaborately discussed the evidence of RW-1 and Exs. R1 and R2 and also the reasoning given at paragraphs 23, 24 and 25 holding that since the Gas Tanker was parked in the middle of the road without putting parking light or any indication, whatsoever and the Driver was not driving the said vehicle at the time of accident, obtaining or requirement of hazardous endorsement to drive gas tanker does not have any direct cause for the accident and therefore, the Insurance Company cannot avoid its liability and placed reliance on evidence of RW-2. Further, to substantiate his submission he placed

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/united-india-insurance-co-ltd-...

reliance on a judgment of Division Bench of this Court in the case of New India Assurance Co. Ltd. Vs. Velumurugan V. wherein at para 10 of the Judgment, wherein it is held that:

"In order to drive empty tanker, no such licence is required because the vehicle did not carry any dangerous or hazardous nature goods."

Nothing has been stated in the mahazar as to whether it was empty tanker or the Insurer has produced any documents to show that the vehicle was not possessing or carrying any dangerous or hazardous nature of goods. Therefore, he submitted that the Tribunal after due appreciation of oral and documentary evidence available on record is justified by allowing the claim petition in part, holding that the respondents therein are jointly and severally liable to pay the compensation and however, in view of the subsisting insurance policy, the appellant herein alone shall indemnify the award amount. The said reasoning given is well founded and interference by this Court is not called for.

8. Further, regarding the submission of the learned Counsel appearing for the appellant-insurer that 30% of the income towards future prospects of the deceased has been erroneously added to determine the compensation, it can be seen that in view of the law laid down in catena of judgments of Apex Court and this Court and also three Bench decision of Hon''ble Supreme Court in the case of Munna Lal Jain and Others Vs. Vipin Kumar Sharma and Others(2015) 2 ACC 806 : (2015) ACJ 1985 : (2015) 7 AD (SC) 185 : (2015) 4 ALD 114 : (2015) 4 ALLMR 436 : (2015) 4 BomCR 72 : (2015) 3 CGLJ 93 : (2015) 3 RCR(Civil) 447 : (2015) 3 RLW 2021 : (2015) 6 SCALE 522 : (2015) 6 SCC 347 : (2015) 2 WLN 113 .

9. In the light of the judgments of Apex Court and this Court in the host of judgments, the Tribunal is justified in adding 50% towards future prospects of the deceased after due appreciation of the oral and documentary evidence available on file. In the instant case, the deceased was aged about 39 years, the Tribunal has rightly added 30% of the income of the deceased towards future prospects. Therefore, interference by this Court is not called for.

10. After careful consideration of the submissions of learned Counsel appearing for the appellant-Insurer and the learned Counsel appearing for the respondents - claimants and after perusal of the impugned judgment and award passed by the Tribunal, what emerges is that, the occurrence of the accident and resultant death of the deceased in the road traffic accident are not in dispute. The claimants are none other than wife, son and parents of the deceased which is also not in dispute. The deceased was aged about 39 years doing real estate business and only bread earning member in the family and the entire family was depending upon the income of the deceased. Whatever the amount the deceased was getting from his business he used to spend the same to the welfare of the entire family. The wife has lost her companion/husband at her young age of 36 years, son has lost love and affection, inspiration and guidance at the age of 18

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/united-india-insurance-co-ltd-…

years and parents aged about 66 and 70 years have lost their bright son and suffered mental pain and agony. Taking all these relevant aspects into consideration, the Tribunal has rightly awarded just and reasonable compensation on account of the untimely death of the deceased in the road traffic accident, under different heads by adding 30% income towards future prospects of the deceased by applying the appropriate multiplier ''15'' in the light of the catena of judgments of Apex Court and this Court. Therefore, interference by this Court is not called for nor we find any substance in the submission made by the learned Counsel appearing for the appellant-Insurer for reduction of the compensation awarded by the Tribunal.

11. The specific ground taken by the appellant that the Gas Tanker was carrying dangerous and hazardous goods in nature at the time of accident and no endorsement or licence was obtained to drive such vehicle at the time of accident as envisaged under Section 11 of the M.V. Act cannot be acceptable as they have not produced any credible documentary evidence nor examined the witnesses. This aspect of the matter has been considered by this Court in the case of New India Assurance Co. Ltd. Vs. Velumurugan V. .

12. After perusal of the aforesaid judgment, it is crystal clear that a special licence is required to drive all vehicles which carry goods of dangerous or hazardous nature and such licence will have effect for a period of one year and thereafter the driver has to undergo one day refresher course of the prescribed syllabus. After considering the said statutory provision, the Division Bench of this Court held that in order to drive empty tanker no such licence is required because the vehicle did not carry any dangerous or hazardous nature goods.

13. In the instant case also, it has not come in the spot mahazar or any evidence that the vehicle involved in the accident was carrying or loaded with any dangerous or hazardous nature goods; and nothing has been elicited worthwhile in the cross-examination made by the appellant-insurer. Further, in another judgment dated 11th December 2014 passed in M.F.A. No. 3571/2012 and connected cases filed by the New India Assurance Co. Ltd., the Division Bench of this Court has held in paragraph 17 of the said Judgment, which reads thus :

"The pleadings and evidence reveal that the lorry in question was carrying gas cylinders. But nowhere it has come in the evidence that the said cylinders were filled with LPG gas or not. In the absence of evidence, it is difficult for this court to hold that the lorry was carrying filled gas cylinders. Merely because it was transporting empty gas cylinders, it cannot be held that such an endorsement is required to drive the vehicle. In the absence of an endorsement, as a matter of fact, this Bench has considered the effect of driving the vehicle which is registered for transportation of dangerous or hazardous goods without separate endorsement. We have held that for carrying empty cylinders, no such endorsement is required. Therefore, in the absence of material placed by the appellant-insurance company that the vehicle in question was carrying dangerous or hazardous goods, it would be difficult for any court to hold that the insurance

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/united-india-insurance-co-ltd-...

company is not liable to satisfy the award. In addition to that, even if there is a breach of driving licence, it is the duty of the insurance company to satisfy the award of the Tribunal and recover the same from the owner of the vehicle. Based on the evidence and the material placed before the court, we are of the view that there is evidence to show that the lorry in question was packed with gas cylinders. But there is nothing on record to show that those gas cylinders were filled with LPG. In the absence of such evidence, it is difficult for us to reverse the finding of the Tribunal In the result, we do not see any merit in these appeals."

(emphasis supplied)

14. After perusal of the entire material available on record, it is seen that the appellant has not produced any credible and valid documentary evidence to substantiate the prayer sought in this appeal. This aspect of the matter has been rightly considered after discussing elaborately and the evidence of RW-1 and RW-2 and the records at Exs. R1 to R-3, the Tribunal has recorded a finding of fact in detail in paragraphs 23, 24, 25 and 26 of the judgment. We don''t find any arbitrariness or illegality in the direction issued by the Tribunal nor the appellant has made out a good ground to entertain the relief sought in this appeal.

15. Taking all these relevant aspects into consideration, we don''t find any justifiable ground as such to consider the relief sought for in this appeal. Hence, the appeal filed by the appellant-Insurer is dismissed as devoid of merits.

The amount deposited by the appellant-Insurance Company shall be transmitted to the jurisdictional Tribunal immediately.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/united-india-insurance-co-ltd-…