(2015) 01 KAR CK 0516

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 30727 and 30728 of 2012 [MV]

United India Insurance Co. Ltd. APPELLANT

Vs

Shivakumar and Others RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1)

Citation : (2015) 01 KAR CK 0516

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : S.S. Aspalli, for the Appellant; Rajesh Doddamani, Advocate for Harshavardhan R. Malipatil, Advocates for the Respondent

Judgement

A.S. Pachhapure, J.—The appellant has challenged the liability imposed on it to pay the compensation for the death of Basavaraj @ Basappa [in MVC No. 179/10] and Vimlabai [in MVC No. 178/10] i.e., the parents of respondents 1 and 2 in both the appeals respectively in the course of their employment and in a motor vehicle accident.

2. The facts reveal that on 12.05.2010, both Basavaraj @ Basappa and his wife Vimlabai were working as agricultural labourers on the tractor and trailer bearing reg. No. KA-39/T-2029 and KA-39/T-2030 respectively. Due to rash and negligent driving of the said vehicle by its driver, an accident occurred and Basavaraj @ Basappa and Vimlabai sustained severe injuries and died. Claim petitions were filed by the children, claiming compensation for loss of dependency and other conventional heads. Both the cases were clubbed and common evidence was recorded.

The Tribunal held that the accident was in the course of employment of the deceased and granted compensation of Rs. 8,92,000-00 in MVC No. 178/10 and a sum of Rs. 5,73,000-00 in MVC No. 179/10 with interest at 6% p.a. from the date of the petition till its payment. Challenging the liability imposed and also the quantum of compensation, the present appeals have been filed by the insurer.

3. I have heard learned counsel for both sides.

4. The points that arise for my consideration are;

1) Whether the compensation awarded is on the higher side?

2) Whether the insurer has no liability to pay the compensation awarded?

5. Learned counsel for the appellant/insurer submits that the deceased Basavaraj @ Basappa and Vimlabai were sitting on the sand loaded trailer and as they were not the employees, the insurer is not liable to pay the compensation. It is also his submission that the risk of only one employee covered under the insurance policy. The Judgment and Award of the Tribunal to the extent of liability in the other case is also erroneous. He submits that the compensation awarded is on the higher side.

On the other hand, learned counsel for the claimants supports the Judgment and Award and submits that the insurer was rightly ordered to pay the compensation and the amount awarded is just and reasonable. The Tribunal has rightly directed the insurer to pay the compensation.

6. So far as the liability is concerned, it is relevant to note that the vehicle which met with the accident is the tractor and trailer and under Rule 100(1)(ii) of the Motor Vehicles Rules, the unit being a light transport goods vehicle, employees not exceeding 3 can be carried in the said tractor. On this aspect of the matter, reliance could be placed on the decision reported in 2011 (2) AIR Kar R. 141 [National Insurance Co. Ltd. Vs. Maruti and Ors.]; wherein the Division Bench of this Court held that under Rule 100(1) of the Karnataka Motor Vehicles Rules provided a provision to carry 3 employees on such a vehicle. The risk is compulsorily covered under the provisions of Section 147 of the Motor Vehicles Act and irrespective of whether the premium is collected or otherwise, the insurer is liable to pay the compensation. Though the insurer has collected Rs. 25-00 to cover the risk of one employee on the vehicle, the insurer is still liable to pay the compensation in respect of the other employee as minimum 3 persons could be carried as employees on the tractor and trolley.

7. Learned counsel for the insurer relies upon the decision of the Apex Court reported in United India Insurance Company Limited Vs. Serjerao and Others, (2008) ACJ 254 : AIR 2008 SC 460 : (2008) 1 JT 82 : (2007) 13 SCALE 80 : (2008) 7 SCC 425 : (2007) 12 SCR 1150 ; wherein the Apex Court held that in view of the contentions raised and on the basis of the principle laid-down in Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others, AIR 2007 SC 1971 : (2007) 7 JT 472 : (2007) 148 PLR 88 : (2007) 7 SCALE 753 : (2007) 7 SCC 56 : (2007) 6 SCR 843 : (2007) AIRSCW 3734], remitted the matter back to the High Court to consider the principle laid-down in Brij Mohan''s case and then to decide the matter. In fact, in the decision referred to supra no principle has been laid down by the Apex Court.

8. Now, to consider the decision of the Apex Court reported in Oriental Insurance

Co. Ltd. Vs. Brij Mohan and Others, AIR 2007 SC 1971 : (2007) 7 JT 472 : (2007) 148 PLR 88 : (2007) 7 SCALE 753 : (2007) 7 SCC 56 : (2007) 6 SCR 843 : (2007) AIRSCW 3734 , there was contention by the insurer seeking to avoid its liability on the ground that the trolley was not insured and the tractor alone was insured. It was also contended that the vehicle was not being used for agriculture for which it was insured and the injured was a gratuitous passenger not covered under Section 147(1) of the M.V. Act. So, it is in the context of the aforesaid contentions raised by the insurer, the Apex Court laid-down the principle.

9. In fact, in the case on hand, both the deceased Basavaraj @ Basappa and Vimlabai were employees on the vehicle i.e., tractor and trolley, were insured and they were travelling in the trolley by sitting on the loaded sand. When an employee cannot travel on a tractor, the only place could be the trailer and when the trailer is loaded, an employee has to sit over the load and therefore, considering the facts on hand, I feel that the decision laid-down by the Apex Court in Brij Mohan''s case does not apply to the facts on hand. Considering the submission made, I am of the opinion that the insurer is liable to indemnify the owner by paying the compensation.

10. So far as the quantum of compensation is concerned, the income of Vimlabai [deceased] is considered at Rs. 5,000-00 p.m. and that of the husband Basavaraj @ Basappa is considered at Rs. 6,000-00 p.m. The accident is of the year 2010. The assessment of the income at Rs. 6,000-00 p.m. for the husband in my opinion is improper as both the husband and wife were coolies on the said tractor and trolley. The income has to be considered only at Rs. 5,000-00 for both the deceased Basavaraj @ Basappa and Vimlabai.

11. The assessment of income of deceased Basavaraj @ Basappa at Rs. 6,000-00 p.m. has to be modified and has to be accepted at Rs. 5,000-00 p.m. Deducting 1/3rd towards his personal expenses and applying multiplier 11, the amount payable towards loss of dependency would be Rs. 4,40,000-00. Rs. 45,000-00 if awarded on conventional heads, the total compensation payable would be Rs. 4,85,000-00. Therefore, the excess amount of Rs. 88,000-00 has to be reduced and the Judgment and Award needs to be modified.

12. So far as the other matter is concerned, for the death of Vimlabai, if the income at Rs. 5,000-00 p.m. is assessed by applying the multiplier 14 and deducting 1/3rd towards her personal expenses, the compensation payable towards loss of dependency would be Rs. 5,60,000-00. Rs. 2,87,000-00 was incurred towards medical expenses. If a sum of Rs. 45,000-00 was paid on conventional heads, the total compensation payable would be Rs. 8,92,000-00. Therefore, the said appeal has to be dismissed.

Consequently, MFA No. 30727/12 [MVC No. 178/10] is dismissed. MFA No. 30728/12 [MVC No. 179/10] is allowed in part. The Judgment and Award are modified. Respondents 1 and 2 are entitled to a sum of Rs. 4,85,000-00 with interest at 6% p.a. from the date of the petition till its payment. The amount is to be shared equally by respondents 1 and 2. The share of the minor shall be deposited in any Nationalized Bank until the age of majority. The amount in deposit shall be transmitted to the Tribunal.

