(2014) 07 KAR CK 0114

In the Karnataka High Court

Case No : M.F.A. No. 8193 of 2006 (MV)

United India Insurance Co. Ltd. — APPELLANT

Vs

Tholasiramma and Others — RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 07 KAR CK 0114

Hon'ble Judges : N.K. Patil, J;B. Sreenivas Gowda, J

Bench : Division Bench

Advocate : O. Mahesh, Advocates for the Appellant; Shripad. V. Shastri, Advocates for the Respondent

Judgement

N.K. Patil, J.—This appeal by the appellant-Insurer is directed against the impugned judgment and award dated 16/02/2006 passed in MVC No. 5571/2004, by the III Additional Judge and Member, Motor Accident Claims Tribunal, Bangalore (SCCH-18), (hereinafter referred to as ''Tribunal'' for short).

2. The Tribunal by its judgment and award, has awarded a sum of Rs. 4,14,000/- under different heads with interest at 6% per annum from the date of petition till its realization, as against the claim of the claimants for a sum of Rs. 50/- lakhs, on account of the death of the deceased, Sri. Y.K. Chikka Kambaiah, in the road traffic accident, holding that Insurer and owner of the offending vehicle are liable to pay the compensation amount and directing the Insurer to deposit the said compensation amount. The direction issued by the Tribunal to the Insurer to indemnify the award amount is not sustainable and is liable to be set aside, insurer has presented this appeal.

3. In brief, the facts of the case are:

The claimants are the wife, children and mother of the deceased. On account of the death of the deceased in the road traffic accident, they filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation, against the Insurer and owner of the offending vehicle, contending that, on 2.6.2004 at about 6.00 p.m. deceased was proceeding in a Tractor bearing No. KA. 11.3299 and when he came near Devasandra Kodihalla. H. Durga Hobli, the driver of the said tractor drove the same in a rash and negligent manner and in order to avoid the accident, as a cow was suddenly passed on the road, he suddenly took the vehicle towards extreme left and dashed against a stone and turned turtle. Due to which, deceased fell down and sustained multiple injuries. Immediately, he was shifted to Pragathi Clinic Hospital and after giving first aid, he was referred to Bangalore Hospital since the injuries are grievous but on the way to the hospital, he succumbed to the injuries.

4. It is the further case of the claimants that, deceased was aged about 49 years, hale and healthy prior to the accident and earning Rs. 12,000/- per month by doing silk business and agricultural work and looking after the welfare of the family. Due to his untimely death, claimants have lost their bread earner and put to great mental shock and agony and also suffered both social and financial insecurity.

5. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence, has allowed the claim petition in part and awarded the compensation of Rs. 4,14,000/- under different heads with interest at 6% p.a., from the date of petition till its realization, holding that Insurer and owner are liable to pay the compensation amount and directing the Insurer to deposit the said compensation amount.

6. Being aggrieved by the said judgment and award, the Insurer has presented this appeal, on the ground that, a direction issued by the Tribunal to it to indemnify the award amount is not sustainable and is liable to be set aside.

7. We have heard learned counsel appearing for the appellant-Insurer and learned counsel appearing for claimants.

8. It is the submission of the learned counsel Sri. O. Mahesh, appearing for the Insurer that, the impugned judgment and award passed by the Tribunal is liable to be set aside so far as it relates to issuing a direction to the Insurer to indemnify the award amount. To substantiate the said submission, he submitted that, the Tribunal has grossly erred in fastening the liability on the insurer when it was specifically pleaded and proved that risk of a person carried on insured tractor in question was not required to be covered under law and in fact, not covered under the policy in question. Further, he submits that the Tribunal ought to have seen that Rule 28 of Road Regulations, 1989 prohibits carrying any person on tractor and as such insurer 13 not liable to be indemnify the award amount and the reasoning given by the Tribunal based on a ruling relied upon by it is not applicable to the facts of the case and erred in fastening the liability on the Insurer. Therefore, he submitted that the impugned judgment and award passed by the Tribunal is liable to be set aside at threshold.

9. As against this, learned counsel Sri. Shripad V. Shastri, appearing for

claimants, inter-alia, contended and tried to substantiate the impugned judgment and award passed by the Tribunal is just and reasonable and taking into consideration the age, occupation of the deceased and the year of accident the Tribunal is justified in issuing a direction to the Insurer to indemnify the award amount and therefore, it does not call for interference.

10. After hearing the learned counsel for both the parties and after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

Whether the direction issued by the Tribunal to the Insurer to indemnify the award amount is sustainable in law?

11. The occurrence of the accident and the resultant death of the deceased are not in dispute. Further it is not in dispute that claimants are the wife, children and mother of the deceased. Further, it emerges that, the Tribunal, after considering the oral and documentary evidence available on file, has observed in para-10 of its judgment that, the version of PWs 1 and 2 and contents of police documents went unchallenged., as the respondents have not adduced any cogent evidence to support their defence that, the driver of said tractor was not at fault in causing the said accident. Apart from this, the respondents have not adduced the evidence of driver of tractor, who is the best person to speak about the manner in which he was driving his vehicle and that the accident was not caused due to his fault and there is no rebuttal evidence adduced by the respondents and held that, the claimants have proved that on the said day, time and place the said accident was taken place due to use of said offending vehicle being driven by its driver in a rash and negligent manner and caused the accident and thereby deceased was succumbed to the accidental injuries.

12. Further, it is significant to note that, the Tribunal ought to have carefully gone into the contents of Ex. P1 which is crystal clear that, complaint is given by the son of the deceased to the effect that he was travelling sitting on the mudguard, the driver of the tractor has hit the stone due to his rash and negligent driving, due to which, deceased fell down and sustained grievous injuries. It is the first best statement made at the time of giving complaint and as per the relevant provisions of MV Act and regulations, except the driver, nobody is permitted to travel in the tractor and in the policy, risk of the driver alone is covered. Therefore, we are of the considered view that the insurer is not liable to indemnify the award amount. But, this aspect of the matter has not been looked into or considered or appreciated by the Tribunal while issuing a direction to the Insurer to indemnify the award amount only on the ground that nothing has been elicited in the cross examination of PWs 1 and 2 and that is not a ground to issue a direction to the insurer. The Tribunal ought to have gone into the statements made in the claim petition, contents of FIR which are very much available on record before issuing a direction to the insurer. Therefore, we are of the considered view that the reasoning given by the Tribunal for issuing a

direction to the insurer to indemnify the award amount cannot be sustained and is liable to be set aside.

13. For the foregoing reasons, the appeal filed by the appellant-Insurer is allowed.

The impugned judgment and award dated 16/02/2006 passed in MVC No. 5571/2004, by the III Additional Judge and Member, Motor Accident Claims Tribunal, Bangalore (SCCH-18), is hereby set aside so far as it relates to issuing a direction to the Insurer to indemnify the award amount.

It is needless to clarify that the claimants are entitled to recover the compensation amount awarded by the Tribunal from the owner of the tractor in accordance with law.

The Registry is directed to refund the amount deposited by the Insurer to the Insurer personally or through its counsel forthwith.

Draw the award, accordingly.

