(2014) 07 KAR CK 0040

In the Karnataka High Court

Case No : M.F.A. Nos. 201, 203 of 2013 C/W (MV)

United India Insurance Company Limited APPELLANT

Vs

Abdul Razak RESPONDENT

Date of Decision : 08-07-2014

Acts Referred:

Citation : (2014) 3 AKR 860

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : A.M. Venkatesh, Advocate for the Appellant; Sandhya Rao and S. Javeed, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N. Ananda, J.—MFA201/2013 (MVC 731/2011) is filed by the insurance company for reduction of compensation. The claim petition was filed by the parents, younger brother and younger sister of deceased Mohammed Salaluddin Maliq who died in a motor vehicle accident that took place on 11.03.2011. The deceased was not married and he was aged about 18 years at the time of accident. The learned counsel for insurance company would submit that father is not the recognized dependant; in the absence of evidence to the contrary, the choice of multiplier in a claim petition filed for the death of unmarried person by the parents shall be on the basis of the age of youngest parent.

2. In the course of proceedings, claimant No. 1 namely Abdul Razak (the father of deceased) died. Therefore, the remaining claimants are the widowed mother of deceased, his younger brother and younger sister. The younger sister of deceased was aged about 18 years and younger brother was aged about 8 years at the time of accident. In the circumstances, it can safely be inferred that the deceased had three dependants.

3. In a judgment reported in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, , the Supreme Court has held:

"15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependant. There may be a number of dependants of the deceased whose age may be different and, therefore, the age of the dependants has no nexus with the computation of compensation".

In the circumstances, the tribunal was justified in deducting 1/3rd of the income of deceased towards his personal and living expenditure. The tribunal was justified in applying the multiplier on the basis of age of the deceased. There are no reasons to interfere with the compensation awarded in MVC 731/2011 (MFA201/2013)

4. MFA 203/2013 is filed by the insurance company to reduce the compensation awarded in MVC No. 732/2011. The claimants in the instant case are the parents of deceased Salem Riyaz and his younger sister namely Bebe Ashura, aged about 15 years at the time of accident.

5. Sri. A.M. Venkatesh, learned counsel for insurance company would submit that the tribunal should have deducted 50% of income of the deceased towards his personal and living expenditure and should have adopted multiplier appropriate to the age of mother of the deceased.

6. The learned counsel for insurance company referring to the judgment of the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, would submit that the father is likely to have his own income and he will not be considered as dependant subject to evidence of the contrary. The learned counsel would submit that the age of mother of the deceased namely second claimant is relevant to decide the multiplier.

7. The learned counsel for claimant relying on the judgment reported in M. Mansoor and Another Vs. United India Insurance Co. Ltd. Another, would submit, where there are number of dependants of the deceased whose age may be different, the age of deceased would be relevant for the selection of multiplier and the age of dependants has no nexus with computation of compensation.

8. After going through the aforestated judgments, I am the opinion that in a claim petition filed by the parents for the death of their unmarried son or daughter, the father would be considered as dependant if there is satisfactory evidence in proof of the same, so also, the younger brothers and sisters of the deceased. The dependency/nature of dependency is essentially a question of fact which the claimants have to prove by adducing satisfactory evidence.

9. In the case on hand, the first claimant namely Pokabba Sharief (the father of deceased) was aged about 45 years at the time of accident. He has admitted the same in his cross-examination. He has deposed that he was doing whatever work he used to get. It is needless to state, the burden of proof of dependency lies upon the claimants because this fact which will be within the knowledge of claimants. The insurance company or respondent cannot be expected to adduce evidence in proof of the avocation of dependants.

10. The learned judge of the tribunal has not referred to the evidence of first claimant in MVC 732/2011 for the purpose of determination of amount to be deducted towards personal and living expenditure of the deceased so also to choose the multiplier.

11. In view of what has been held in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, case, the first claimant namely Pokabba Sharief (the father of deceased) cannot be considered as dependant of the deceased. However, evidence of PW. 1 that deceased was maintaining his mother and younger sister has not been controverted. Therefore, in this case, apart from his mother, the younger sister of the deceased was depending on the deceased. The younger sister of the deceased (third claimant) was aged about 15 years at the time of accident. The deceased had responsibility of maintaining her and performing her marriage. This is because the evidence of first claimant regarding his income and avocation is as vague as it could be. In the cross-examination of claimant, it is not elicited that he was pursuing any gainful avocation and he was maintaining his wife and daughter. In the circumstances, the tribunal was justified in deducting 1/3rd of income of the deceased towards his personal and living expenditure and applying multiplier appropriate to the age of deceased. There are no reasons to interfere with the impugned judgment.

In the result, I pass the following: ORDER

MFA201/2013 and 203/2013 are dismissed. The amount deposited by the insurance company shall be transferred to the tribunal.