(2014) 11 KAR CK 0114

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 20560 of 2012 (MV)

United India Insurance Company Limited APPELLANT

Vs

Basavaraj Basappa Ronad RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Citation : (2014) 11 KAR CK 0114

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Preeti Shashank, Advocate for the Appellant; Aravind D. Kulkarni, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the appellant and the learned counsel for the respondent.

2. The appellant is the insurer of a bus belonging to the respondent No. 3, which had been leased 10 the North West Road. Transport Corporation (hereinafter referred to as ''the Corporation'' for brevity). The bus having met with an accident when it was so leased to the Corporation, the contention of the appellant before the Tribunal and in this appeal, is that the liability would shift to the Corporation, which had control over the bus at the time of the accident since the contract of insurance was between the appellant and respondent No. 3 and not with the Transport Corporation and since the bus was exclusively used for the purpose of Corporation, the appellant''s liability would stand absolved during the currency of such lease and this aspect of the matter has been negated by the Tribunal and hence it is one of the primary grounds of appeal raised herein.

3. Secondly, it is contended that the deceased was aged about 75 at the time of the accident and the claimants are his major sons aged 48 and 43, respectively, and they were not dependent on any income of the deceased and firstly the deceased was not even an earning member as there is no evidence in this regard. In any event having regard to which it is unlikely that he was not earning

at all. Hence, the Tribunal was not justified in awarding compensation on the basis that the deceased was generating income on which the major sons were depending and hence, there has been a mis-carriage of justice.

4. Insofar as the first contention that the insurer is absolved of all liability, since the contract of insurance was between the appellant and the respondent No. 3 and since the vehicle concerned was on a lease in favour of the Corporation for its exclusive use the liability stood absolved or was kept in abeyance during the currency of the lease, cannot be accepted. There is no condition which is brought to the attention of the Court under the policy conditions as to the Insurance Company being absolved of its liability. If the bus in question was leased to a third party, the contract of insurance was current at the time of the accident, and therefore, it would not be possible for the Insurance Company to absolve itself of the liability. Insofar as the second contention that the deceased was aged 75, and therefore, it was doubtful that he was an earning member and further the claimants being the major sons of the deceased could not be presumed to be dependent on the alleged income of the deceased would have to be accepted for there is no evidence of the deceased being employed and being in a position to earn any money at his age. Further, the claimants have also not demonstrated that they were otherwise incapable of fending for themselves and they were dependent on the income of the decease. In that view of the matter, the basis of computing the compensation is erroneous and cannot be sustained. The claimants at best would be entitled to loss of estate on the demise of their father and this could be reasonably granted in their favour. Though the Tribunal has choosen to provide a sum of Rs. 15,000/- towards loss of love and affection and Rs. 15,000/- towards loss of estate, this ought to be substantially enhanced. Accordingly, a sum of Rs. 1,00,000/- towards loss of love and affection and loss of estate together, apart from the funeral expenses, which have been awarded at Rs. 10,000/- is unrealistic and ought to have been atleast Rs. 25,000/- and further the transportation of the dead body would again involve much more than a sum of Rs. 5,000/-, which is partially enhanced to Rs. 5,000/-.

5. It is further claimed that the deceased had undergone treatment before he actually died and he was an inpatient in KIMS Hospital, Hubli, for five days, which would again entitle the appellants to further a sum of money, which could be nominally estimated at Rs. 25,000/-. The appellants are therefore entitled to a sum of Rs. 1,15,000/- in addition to what has been awarded by the Tribunal with interest at the rate of 6% per annum from date of claim till the date of payment. The amount in deposit to be transferred to the Tribunal for the benefit of the claimants.