(2014) 07 KAR CK 0153

In the Karnataka High Court

Case No : M.F.A. Nos. 1291, 3080 of 2010 (MV) and Misc. Cvl. 9732 of 2010 in M.F.A. No. 3080 of 2010 (MV)

V. Sudharani and Others — APPELLANT

Vs

Amsarpasha and Others — RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 157, 166, 2(19), 2(30)

Citation : (2014) 07 KAR CK 0153

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

Bench : Division Bench

Advocate : K.N. Harish Babu, Advocates for the Appellant; G.K. Sreevidya, for T.N. Vishwanath, Advocates for the Respondent

Judgement

B. Sreenivas Gowda, J.—As these two appeals are arising out of a common road traffic accident and a common judgment and award of the Tribunal, they are heard together, admitted and disposed of finally by this common judgment.

2. It is a case of death of one Sri. S.M. Govindaraju in a road traffic accident occurred on 10.2.2006. His wife, parents and minor children filed a claim petition in MVC 5631/2007 before MACT, Bangalore, seeking compensation under Section 166 of Motor Vehicles Act, from the respondents.

3. The Tribunal by impugned judgment and award has awarded a sum of Rs. 7,22,800/- with interest at 6% p.a. from the date of petition till the date of deposit and directed the insurer of the offending vehicle to deposit the said amount. Aggrieved by the said judgment and award of the Tribunal, claimants have preferred M.F.A. No. 1291/2010 seeking enhancement of compensation, whereas, the Insurer of the offending vehicle has preferred M.F.A. No. 3080/2010 challenging the judgment and award of the Tribunal on the ground of liability.

4. Smt. Harini Shivananda, learned counsel appearing for the Insurer submits, first respondent has sold the vehicle in question in favour of deceased

Govindaraju within one week from the date of obtaining policy in his name as evident from Exs. R8 and R9 and also supported by oral evidence of first respondent examined as RW-1 and as on the date of accident deceased was in possession of the vehicle as owner as defined under Section 2(19) of the Motor Vehicles Act and therefore, the Insurer of vehicle is not liable to indemnify the deceased who travelled in the vehicle as owner at the time of accident and pay compensation to the claimants against third party liability. She submits in view of payment of premium of Rs. 200/- against P.A. Coverage their liability may be restricted to Rs. 2,00,000/- under P.A. Coverage (Personnel Accident Claim). The Tribunal, without considering this material aspect of the matter has committed an error in fastening the entire liability on the Insurance Company by directing it to deposit the compensation amount. In support of her submission, she relied upon a judgment of Rajasthan High Court in the case of Smt. Padmadevi and Others Vs. Gurbakshsingh and Others, .

5. Regarding quantum, she submits, the income of the deceased assessed by the Tribunal is more consequently, quantum of compensation awarded by the Tribunal towards loss of dependency is on higher side. She further submits, even compensation awarded towards conventional heads is also on the higher side. Therefore, she prays for allowing the appeal filed by the Insurance Company and dismissing the appeal filed by the claimants.

6. Learned counsel for first respondent supports the arguments advanced by the learned counsel appearing for the Insurance Company.

7. Sri. Harish Babu, learned counsel appearing for the claimants, submits that the claimants have specifically denied the allegation made in respect of sale and delivery of the offending vehicle by first respondent in favour of deceased Govindaraju. He contends, deceased Govindaraju had not purchased the offending vehicle either from the first respondent or from the 3rd respondent in whose name the R.C. was standing at the time of accident and he never in possession of the vehicle as owner at any point of time including the date of accident. The Tribunal considering this has justified in fastening liability on the Insurance Company and prays for confirmation of the finding of the Tribunal on liability.

8. Regarding quantum, he submits, the income of the deceased assessed by the Tribunal is on the lower side and consequently quantum of compensation awarded towards loss of dependency is on the lower side. He submits even compensation awarded towards conventional heads is also on the lower side. Therefore, he prays for dismissing the appeal filed by the Insurance Company and for allowing the appeal filed by the claimants by enhancing the compensation awarded by the Tribunal.

9. After hearing the learned counsel appearing for the parties and perusing the judgment and award passed by the Tribunal, including it''s records, the points that arise for our consideration are:

"(i) Whether the finding of the Tribunal on liability in fastening liability on the insurer of the offending vehicle and directing the Insurer to pay the compensation amount to the claimants is sustainable in law?

(ii) Whether the quantum of compensation awarded by the Tribunal is just and reasonable or does it call for reduction or enhancement?"

Re. Point No. 1:

10. According to the Insurer, the first respondent as the owner of the offending vehicle had insured the vehicle with their Insurance Company on 3.9.2005 valid up to 2.9.2006 and within one week from the date of obtaining such Policy he had sold the vehicle in favour of deceased Govindaraju. It is her further submission that at the time of accident, deceased Govindaraju was in possession of the offending vehicle as owner and as per the terms and conditions of the policy, the insurer of the offending vehicle is not liable to indemnify the owner i.e. Govindaraju under third party liability, their liability may be restricted to Rs. 2,00,000/- under P.A. Coverage (Personnel Accident Claim) in view of payment of premium of Rs. 200/- against P.A. coverage. The Tribunal without considering this has committed an error in fastening the liability against the insurer. The insurer and first respondent except contending that the first respondent- Amsar Pasha as the owner of the offending vehicle after obtaining the Policy from their Insurance Company has sold the vehicle to deceased Govindaraju within a week from the date of obtaining such policy and at the time of accident deceased was travelling in the vehicle as owner have not substantiated their contention. On the contrary, both have admitted that while issuing the policy in the name of first respondent the R.C. was standing in the name of respondent No. 3 only and even to this day it has continued in the name of respondent No. 3 only. As on the date of issuing the policy in the name of first respondent, neither the vehicle is registered in his name and where such person is a minor in the name of guardian of such minor nor he is in possession of the vehicle either under hire purchase agreement or under an agreement of lease or under an agreement of hypothecation as defined under Section 2(30) of the Motor Vehicles Act. So the insurer could not have issued an insurance policy in the name of first respondent who is not the owner of the offending vehicle within the meaning of Section 2(30) of M.V. Act. Whenever the Insurance Company is required to insure a vehicle it has got a duty to verify the person in whose name they are issuing the Policy is the owner of the vehicle within the meaning of Section 2(30) of the M.V. Act. The first respondent is neither the R.C. owner of the vehicle nor in possession of the vehicle under a hire purchase agreement or under an agreement of lease or under an agreement of hypothecation. The Insurance Company has issued the policy in the name of the first respondent without indicating in what capacity he is obtaining the said policy. No documents were produced to show that RC was transferred from respondent No. 3 in favour of first respondent as on the date of issuing the insurance policy on 3.9.2005 which was valid upto 2.9.2006. Admittedly, the R.C. was continued in the name of

respondent No. 3 as on the date of accident. First respondent having not possessed the R.C. in his name could not have sold the vehicle in favour of deceased Govindaraju as contended by learned counsel for the Insurer as well as for the first respondent. Ex. R8-delivery note and Ex. R9-receipt are not confronted to PW2-Smt. V. Sudharani, the wife of the deceased. No attempt was made either by the Insurer or by the first respondent to prove the signature found in the delivery note Ex. P8 is that of deceased Govindaraju. It is too much on their part to expect that claimants have to prove the signature found in Ex. R8 is not that of deceased, such a procedure is unknown to Evidence Act. Further, if the vehicle was in possession of deceased Govindaraju as on the date of accident as owner as contended by the learned counsel for the insurer and the first respondent, there was no need for the third respondent to get the vehicle released from the police station which was seized after the accident as rightly contended by the learned counsel for the claimants. Section 157 of the Motor Vehicles Act, on which, reliance was placed by the learned counsel for the Insurer does not come to the assistance of the insurer, rather, it helps the case of the claimants that whenever vehicle was insured in favour of the R.C. owner and if such R.C. owner after obtaining the policy had sold the vehicle to some other person, the insurance policy will be transferred in favour of such purchaser and not vice versa.

11. A reliance has also been placed by the learned counsel appearing for the Insurer in the case of Smt. Padmadevi and Others Vs. Gurbakshsingh and Others, wherein, it was held that, " ''owner'' means person in possession under hire-purchase agreement and such person and not his financier is liable for damages." The facts involved in the said case are all together different from the facts involved in the present case and therefore, the said judgment has no application to the facts of the case. Further it is not the case of either insurer or the first respondent that the offending vehicle was insured under Act/liability only policy and it does not cover the risk of deceased who travelled in the vehicle as an occupant and to know the nature of policy, the policy is not produced either by the insurer or by the first respondent. For the reasons stated hereinabove, the Insurance Company cannot be absolved from its liability to pay the compensation to the claimants for the death of deceased Govindaraju. Considering all these aspects of the matter the Tribunal is justified in fastening the liability on the insurer of the offending vehicle. Hence we confirm the finding of the Tribunal on liability. Point No. 1 is answered accordingly.

Re. Point No. 2:

12. Now we have to see whether the quantum of compensation awarded by the Tribunal is just and reasonable or does it call for reduction or enhancement.

13. Claimants in support of their contention that deceased was a Panchayat Member and by doing agriculture and by running a Ration depot and doing other business was earning Rs. 30,000/-, has examined first claimant, wife of the deceased as PW2 and has produced certain documents at Exs. P14 to 20 which

are I.D. Cards issued by various associations and bank statements wherein deceased was shown to have been working. The Tribunal on perusal of the said documents has assessed his income at Rs. 1,00,000/- per annum. Considering the background of the deceased, the Tribunal is justified in assessing his income at Rs. 1,00,000/- per annum and we have no reason to interfere with the same. Out of which, Rs. 5,000/- is to be deducted towards income Tax and his gross income would be Rs. 95,000/- per annum. As all the six claimants are dependents, 1/4th of the income of the deceased is liable to be deducted towards his living and personal expenses and 3/4th of it should be taken as his contribution to the family. Multiplier of ''14'' is to be applied to the age group of the deceased who was 44 years. If that is so, the loss of dependency would work out to Rs. 9,97,500/- (Rs. 95,000/- x 3/4 x 14) and it is awarded as against Rs. 5,92,800/- awarded by the Tribunal.

14. In addition to that, we award a sum of Rs. 50,000/- towards loss of consortium in respect of claimant No. 1, wife of the deceased, Rs. 60,000/- towards loss of love and affection at the rate of Rs. 10,000/- to each of the claimants, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation of dead body and funeral expenses. Thus, the claimants are entitled to a total compensation of Rs. 11,57,500/- as against Rs. 7,22,800/- awarded by the Tribunal. Thus they are entitled for additional compensation of Rs. 4,34,700/- with interest at 6% p.a. Accordingly, we pass the following:

:Order:

The appeal filed by the Insurance Company is dismissed in its entirety. The appeal filed by the claimants is allowed in part.

The judgment and award passed by the Tribunal is modified in so far as quantum is concerned. Claimants are entitled to an additional compensation of Rs. 4,34,700/- with interest at 6% per annum from the date of claim petition till the date of realization.

The Insurance Company is directed to deposit the additional compensation amount with interest within three weeks from the date of receipt of a copy of this judgment.

From the additional compensation, Rs. 2,00,000/- with proportionate interest shall be invested in Fixed Deposit in the name of the claimant No. 1, Smt. V. Sudharani, wife of the deceased in any Nationalized or Scheduled or Grameena Bank for a period of 10 years and renewable for another 5 year, with a right of option to withdraw the interest periodically.

Rs. 1,00,000/- with proportionate interest shall be invested in Fixed Deposit in the name of Smt. Venkatamma, mother of the deceased, in any Nationalized or Scheduled or Grameena Bank, for a period of 5 years and renewable for another 5 years, with a right of option to withdraw the interest periodically.

The remaining amount with proportionate interest is directed to be released in favour of claimant Nos. 1 and 2 in equal proportion.

The amount deposited by the Insurer shall be transmitted to the jurisdictional Tribunal, for disbursement in terms indicated herein.

In view of disposal of main matters on merits, the relief sought by the Insurer in Misc. Cvl 9732/2010 in M.F.A. No. 3080/2010 does not survive for consideration. Hence, it is disposed of as having become infructuous.

No order as to costs.

