

(2010) 10 KAR CK 0057
In the Karnataka High Court
Case No : M.F.A. No. 12180 of 2005

Yallaiah and Siddamma

APPELLANT

Vs

Krishnojirao, Anwar Khan and National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 10 KAR CK 0057

Hon'ble Judges : N.K. Patil, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : S. Nagaraja, for the Appellant; H.V. Rajaram, For R2 and P.B. Raju, for R3, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the claimants is directed against the common judgment and award dated 30.9.2005 passed in MVC No. 111/02 on the file of the Civil Judge (Sr. Dn.), Addl. MACT at Arsikere (hereinafter referred to as Tribunal" for short).

2. The Appellants claiming that the quantum of compensation awarded by the Tribunal is inadequate and fastening the liability only on the owner of the offending vehicle and that the third Respondent-insurer should also be made liable, have presented this appeal.

3. The brief facts of the case are as follows:

The Appellants herein, who are the parents of the deceased-Venkatesh, filed the claim petition u/s 166 of the M.V. Act claiming compensation against the insurer and the owner of the offending vehicle, on account of the death of their son. It is their case that on 10.4.2002 at about 12.15 p.m. their son deceased-Venkatesh, who was cleaner/conductor in the goods vehicle bearing No. KA-20-2858, was proceeding to Arasikere. When the said vehicle was near Gijihalli, due to the rash and negligent driving of the said vehicle by its driver, the vehicle turtled and as such, it toppled down. Due to the impact, the deceased sustained grievous

injuries and later he succumbed to the injuries. They further contended that the deceased was aged about 20 years, hale and healthy, getting income of Rs. 3,000/- p.m. and Rs. 50/- per day as batta. Apart from the same, he was an agriculturist getting income of Rs. 25,000/- p.a. He was the sole bread winner in the family and on account of his untimely death, they are facing severe social and economic distress and their future hopes have been jeopardised.

The matter had come up for consideration before the Tribunal and the Tribunal after assessing the oral and documentary evidence on record allowed the claim petition in part awarding compensation of Rs. 4,15,000/-with interest at 6% p.a. from the date of the petition till realisation. The Appellants, not being satisfied with the quantum of compensation awarded by the Tribunal and fixing the liability only on the owner of the offending vehicle and not fixing the liability on the insurer of the vehicle, felt necessitated to file the instant appeal, as stated supra.

4. The learned Counsel for the Appellants, at the outset, submitted that as a matter of fact, the offending vehicle is covered by the insurance policy. He has taken us through the original records more specifically Ex.R1-insurance policy and submitted that it is crystal clear that in respect of the cleaner/conductor, premium has been paid by the owner of the offending vehicle. Therefore, the liability be fastened on the insurer by modifying the impugned judgment and award of the Tribunal and further prays to award reasonable compensation towards loss of dependency and conventional heads.

5. As against this, Sri. P.B. Raju, the learned Counsel appearing for the Respondent No. 3-insurer, after careful perusal of Ex. R1, at the outset, fairly submitted that the liability has been covered insofar as the deceased, who is none other than the cleaner/conductor of the offending vehicle as on the date of the accident. Therefore, he submitted that an appropriate order may be passed in accordance with law in the light of the terms and conditions of Ex.R1-insurance policy of the offending vehicle.

6. After careful consideration of the submission of the learned Counsel for the claimants and insurer, the points that arise for consideration are:

- 1) Whether fastening of liability on the owner of the offending vehicle is sustainable in law ?
- 2) Whether the liability should be fastened on the insurer of the offending vehicle in the light of Ex.R1?
- 3) Whether the quantum of compensation awarded to the claimants is just and reasonable?

7. Re: Points 1 to 3:

The occurrence of the accident and the resultant death of the deceased on account of the injuries sustained in the road traffic accident are not in dispute.

After careful evaluation of the original records placed before us, as rightly pointed out by the learned Counsel appearing for the Appellants and rightly accepted by the counsel for the third Respondent-insurer, it is crystal clear that the owner of the offending vehicle apart from paying regular premium has paid extra premium for covering the risk of cleaner/conductor, who died due to the grievous injuries sustained in the road traffic accident occurred on 16.4.2002. This aspect of the matter has neither been looked into, appreciated nor considered by the Tribunal. Further, without assigning valid reasons the finding of fact recorded by the Tribunal is contrary to the oral and documentary evidence is not sustainable and is liable to be set-aside.

8. After reappraisal of the oral and documentary evidence and in the light of the submission of the learned Counsel appearing for the claimants and the insurer as referred to above, we are of the view that, the liability will have to be fastened on the third Respondent- insurer, insofar as it relates to the deceased only who was the cleaner/conductor in the offending vehicle as the owner has paid extra premium for covering his risk. Accordingly, the insurance company is liable to pay the compensation.

9. Further, taking into consideration the facts and circumstances of the case as stated supra, it is not in dispute that the deceased was aged 23 years working as a cleaner/conductor and also looking after agricultural activities. The accident has occurred on 10.4.2002. Having regard to the date of the accident, the Tribunal has rightly assessed the income of the deceased at Rs. 3,000/- p.m. and we accept the same. The Tribunal after taking the income of the deceased at Rs. 3,000/- p.m. has deducted one-third towards personal expenses of the deceased though he was a bachelor and further has adopted the wrong multiplicand of "17" to arrive at the loss of dependency at Rs. 4,08,000/- which, in our view, is not correct approach. Having regard to the facts of the case, since the deceased was a bachelor as on the date of the accident, 50% has to be deducted towards personal expenses of the deceased out of the monthly income of Rs. 3,000/-, which comes to Rs. 1,500/- p.m. In this case, since the parents are the claimants, the younger age of the parents i.e. the age of the mother has to be taken to apply the multiplicand. As the mother, the second Appellant, is aged 37 years, the appropriate multiplier applicable would be "15". Taking the same into consideration, we re-determine the compensation payable towards loss of dependency at Rs. 2,70,000/- (Rs. 3,000/- x 12 x 15). Accordingly, we modify the judgment and award of the Tribunal by awarding Rs. 2,70,000/- towards loss of dependency as against Rs. 4,08,000/- awarded by the Tribunal.

8. Having regard to the facts and circumstances of the case, we deem fit to award Rs. 10,000/- towards loss of estate, Rs. 10,000/- towards loss of love and affection, Rs. 10,000/- towards transportation of dead body, funeral and obsequies expenses.

9. In all, the Appellants are entitled to the compensation of Rs. 3,00,000/- as against Rs. 4,15,000/- awarded by the Tribunal. The compensation is reduced by

Rs. 1,15,000/-.

For the foregoing reasons stated above, the appeal is allowed in part. The judgment and award of the Tribunal in MVC No. 111/2002 dated 30.9.2005 is modified by fastening the liability on the third Respondent-insurer of the offending vehicle. The quantum of compensation awarded by the Tribunal at Rs. 4,15,000/- is reduced and we award the compensation of Rs. 3,00,000/- with interest at 6% p.a. from the date of the petition till realisation.

The insurer is directed to deposit the compensation of Rs. 3,00,000/- with interest at 6% p.a. from the date of the petition till realisation, within four weeks from the date of receipt of the copy of this judgment and award.

Out of the compensation of Rs. 3,00,000/-, one lakh each, with proportionate interest, shall be invested in Fixed Deposit in any Nationalized or Scheduled bank, in the name of the Appellants 1 and 2 for a period of five years renewable by another five years, with liberty to them to withdraw the interest accrued on it, periodically.

The remaining one lakh with proportionate interest shall be released in favour of Appellants 1 and 2 equally, immediately, on deposit by the insurer.

Draw the award, accordingly.