

The Manager Vs. Rudrappa

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Court : Karnataka

Decided On : Jul-12-2016

Judge : S.Sujatha

Appeal No. : MFA 10037/2011

Appellant : The Manager

Respondent : Rudrappa

Judgement :

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 12^H DAY OF JULY, 2016 BEFORE THE HONBLE MRS JUSTICE S SUJATHA M.F.A No.10037/2011(MV) C/w M.F.A No.9154/2012(MV) MFA No.10037/2011 BETWEEN: THE MANAGER M/S ICICI LOMBARD GENERAL INSURANCE COMPANY LTD., MAYURA COMPLEX 2^D FLOOR, DOUBLE ROAD BELLARY-583101. REP. BY ITS MANAGER M/S ICICI LOMBARD GENERAL INSURANCE CO. LTD., SVR COMPLEX No.89, 2ND FLOOR HOSUR MAIN ROAD BANGALORE-68. .APPELLANT (BY SRI.H.N.KESHAVA PRASHANTH., ADVOCATE) AND:

1. RUDRAPPA S/O GURAPPA AGED ABOUT 42 YEARS 22.

3. SMT.KAMALAMMA W/O GURAPPA AGED ABOUT 40 YEARS BOTH ARE AGRICULTURIST R/A BEDARASHIVANAKERE VILLAGE CHITRADURGA TALUK. D.MALLIKARJUNIAH S/O CHANNAVERAIAH MAJOR, OWNER OF THE

LORRY BEARING NO KA-17-A-6478 R/O JAGALUR TOWN DAVANAGERE DIST REP. BY HIS P.A.HOLDER SHAFIULLA S/O K.H.KABUL HUSSAIN 36 YEARS, 3RD CROSS, BEHIND PARK VIDYA NAGARA CHITRADURGA. .RESPONDENTS (BY SMT.SPOORTHY HEGDE.N., ADVOCATE FOR R1 AND R2; NOTICE TO R3 DISPENSED WITH V/O DATED 24.08.2015) THIS APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 11.07.2011 PASSED IN MVC NO.159/2010 ON THE FILE OF SENIOR CIVIL JUDGE, CJM, ADDITIONAL MACT, CHITRADURGA, AWARDED A COMPENSATION OF RS.6,26,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION. MFA No.9154/2012 BETWEEN:

1. RUDRAPPA S/O GURAPPA AGED ABOUT 44 YEARS SMT. KAMALAMMA W/O RUDRAPPA AGED ABOUT 42 YEARS BOTH ARE R/O BEDARASHIVANAKERE VILLAGE CHITRADUGA TALUK-577501.

2. (BY SMT.SPOORTHY HEGDE., ADVOCATE) AND:

1. M/S ICICI LOMBARD GENERAL INSURANCE .APPELLANTS COMPANY LTD., MAYURA COMPLEX 2D FLOOR, DOUBLE ROAD BELLARY-583101. D.MALLIKARJUNIAH S/O CHANNAVERIAH AGED ABOUT 60 YEARS OWNER OF THE LORRY BEARING NO KA-17-A-6478 R/O JAGALUR TOWN DAVANAGERE DIST REP. BY HIS P.A.HOLDER SHAFIULLA S/O K.H.KABUL HUSSAIN 36 YEARS, 3RD CROSS, BEHIND PARK VIDYA NAGARA CHITRADURGA.

2. (BY SRI.B.PRADEEP., ADVOCATE FOR SRI.A.M.VENKATESH R1 AND R2; NOTICE TO R3 DISPENSED WITH V/O DATED 28.02.2014) .RESPONDENTS 4 THIS APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 11.07.2011 PASSED IN MVC NO.159/2010 ON THE FILE OF SENIOR CIVIL JUDGE, (SR.DN.) ADDITIONAL MACT, CHITRADURGA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT

ON 30^H JUNE 2016 COMING ON FOR PRONOUNCEMENT OF

JUDGMENT

THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The insurer as well as the claimants are before this Court challenging the impugned judgment and order passed by the Motor Accident Claims Tribunal, Chitradurga (the Tribunal for short) in MVC No.159/2010.

2. Briefly stated the facts are: - The claimants are the parents of the deceased Praveen who died in the road traffic accident which occurred on 6.2.2009 involving the vehicles-truck bearing Regn.No.KA-17-A-6478 and truck bearing 5 Regn.No.TN-28-L-9657. It is the case of the claimants that the deceased was proceeding in the truck bearing No.KA-17-A-6478 as a cleaner and the said accident occurred due to the actionable negligence of the driver of the truck bearing Regn.No.TN-28-L-9657. It transpires that the deceased suffered severe fatal injuries and succumbed to the injuries in the course of treatment. The claim petition was instituted by the claimants based on these facts claiming compensation. The Tribunal after evaluating the evidence on record awarded compensation of Rs.6,26,000/- with interest @ 6% p.a. Being aggrieved, the insurer is before this Court challenging the liability as well as the quantum being excessive. The claimant is before this Court seeking enhancement of the compensation.

3. The learned counsel appearing for the insurer would contend that the vehicle in question was not covered with the wider coverage; no additional premium to cover the risk of the 6 cleaner was paid; the insurance policy marked at Ex.R.1 covered

the basic third party liability besides the coverage for paid driver and owner cum driver. In such circumstances, the Tribunal had no jurisdiction to entertain the case. The order passed by the Tribunal without any jurisdiction is void ab initio and deserves to be set-aside. Utmost, the claimants would have invoked the provisions of the Workmens Compensation Act,1923 (.WC.Act for short) seeking compensation. In support of his contention, the learned counsel placed reliance on the following judgments: (1) 2005(6) SCC172 NATIONAL INSURANCE CO.LTD., vs PREMBAI PATEL AND OTHERS. (2) ILR2003 Kar.3538 SMT.BHIMAVVA AND OTHERS vs SHANKAR @ ADYA AND OTHERS. The learned counsel in order to establish his case would rely on paragraph 9 of the objections filed by the appellant before the Tribunal. 7 As regards the quantum of compensation awarded, it is contended that the Tribunal erred in considering the income of the deceased at Rs.4500/- per month without any cogent evidence placed on record by the claimants. It is submitted that the Tribunal further erred in deducting 1/3 of the income towards the personal expenses of the deceased which ought to have been at 50% in view of the law laid down by the Apex Court in SARLA VERMA AND OTHERS vs. DELHI TRANSPORT CORPORATION AND ANOTHER case reported in 2009 (06) SCC121 4. The learned counsel appearing for the claimants would contend that no plea was made by the insurer as regards the jurisdiction of the Tribunal in adjudicating the matter. Neither the objection filed by the insurer nor the evidence discloses the objection regarding lack of jurisdiction of the Tribunal vis--vis terms and conditions of the liability envisaged in the insurance policy at Ex.R.1. It is submitted that no such ground is taken by the appellant in the grounds of appeal memorandum. It is for the first time at the 8 arguments stage, the learned counsel appearing for the insurer is canvassing a new ground, which cannot be entertained. The learned counsel would further contend that the insurer is making an attempt to transfer the liability of satisfying the award on the owner albeit the service of notice being dispensed with, to the owner, at the instance of the insurer. The insurer is acquiesced from taking a new ground that no additional premium was paid by the owner towards the coverage of risk of the cleaner. It was for the insurance company to establish by leading cogent evidence at the initial stage before the Tribunal that it is the owner of the vehicle who is the employer, is liable to pay the compensation awarded under the Provisions of the W.C.Act and

the provisions of the Motor Vehicles Act, 1988 (MV Act for short) are not attracted. But, in the absence of such an exercise having been done by the insurer, claimant cannot be punished. The insurer cannot claim a relief beyond the back of the owner. The conduct of the insurer in getting an order of dispensation of notice on the owner is determinant to their 9 rights, the new plea cannot be allowed as much against the principles of natural justice. The learned counsel would point out that Ex.R.1 specifically covers the wider coverage in addition to basic third party liability as far as two persons are concerned. The nomenclature mentioned in the policy may be towards the paid driver and the owner cum driver, as long as the claim being made by only one person towards the accident covered under the policy, the liability of the insurer cannot be absolved. The liability is widely covered as regards two persons traveling in the vehicle along with the statutory liability, an additional premium is paid for two persons traveling in the vehicle. As such, he seeks to negate the arguments advanced by the learned counsel for the appellant as untenable. As regards the quantum of compensation, it is submitted that the tribunal, ignoring the cogent evidence placed on record awarded a meager compensation. The 10 compensation awarded under different heads, necessitates the enhancement moderately, in the facts and circumstances of the case. Thus, he seeks for enhancement of the compensation.

5. Having heard the rival submissions of the parties and perusing the material on record, it emerges that the Insurer refuted the claim made by the claimants by filing the objections to the claim petition before the Tribunal. The relevant paragraph 9 of the statement of objections which is emphasized by the learned Counsel for the insurer to contend that a specific contention was raised by the Insurer as regards the lack of jurisdiction of the Tribunal to entertain the claim petition and to award compensation, reads thus: 9. This respondent seeks protection Under Section.147 and 149 of MV Act, it is denied that the owner was holding a valid and effective permit to ply the alleged vehicle, 11 thereby violating policy conditions and provisions of M.V.Act. 6. A perusal of paragraph-9 of the Statement of objections would indicate that the Insurer has sought protection under Sections 147 and 149 of the MV Act relating to the owner holding a valid and effective permit to ply the vehicle. No specific contention is raised regarding the policy conditions in much as the non payment of the additional premium to

cover the risk of the cleaner, no evidence is led by the Insurer to establish the fact that the coverage of the policy was restricted to the paid driver and the owner-cum-driver coupled with the third party liability. In other words, the cleaner was not covered under the insurance policy. The principal ground of challenge now addressed by the learned Counsel for the Insurer before this court is that the deceased was traveling in the truck as a cleaner; hence his remedy is to avail compensation under the WC Act 12 and the Tribunal had no jurisdiction to entertain the claim made by the cleaner. In the absence of any material evidence placed on record to substantiate the stance now taken, the Insurer is acquiesced from raising plea of lack of jurisdiction of the Tribunal in entertaining the claim and awarding the compensation. Even otherwise, it is manifest from Exhibit.R1, which is a Package Policy not an Act policy that the coverage of the insurance policy was extended to two persons, paid driver and owner-cum-driver besides the third party liability. Thus, coverage was to additional two persons traveling in the truck besides the third party liability. The claim now made arising out of accident is restricted to one person. If the persons covered under the package policy is considered as a whole, two persons are covered in addition to third party liability for which additional premium is paid. Viewed from this angle, it can be held that Exhibit.R1 covered the wider coverage. However, 13 this point not being agitated by the Insurer before the Tribunal, the claimants had no opportunity to repudiate the said point and even the Tribunal had no occasion to address on these points. It is not necessary to consider this point at this appellate stage.

7. It is significant to note that the notice to the owner was dispensed with in these appeal proceedings, at the instance of the Insurer. It is relevant to excerpt the contents of the memo filed by the Advocate for the Appellant-Insurer while seeking dispensation of notice to Respondent No.3 which reads thus: The appellant herein most respectfully submits that the above appeal is filed by the appellant against the judgment and award passed in MVC No.159/2010 passed by the Motor Accident Claims Tribunal, Chitradurga. It is further submitted that the above appeal is filed only on quantum of compensation granted 14 by the tribunal and there is no dispute with regard to liability. Hence this Honble Court may be pleased to dispense with the service of Notice to the 3rd respondent herein who is the Owner of the insured vehicle. 8. In the light of dispensation of notice to the

respondent-owner, the Insurer cannot seek for, saddling the liability on the owner. It is glaringly apparent from the memo, the specific stance taken by the learned Counsel for the Appellant-Insurer, that the appeal is restricted only on the quantum of compensation awarded by the Tribunal and there is no dispute with regard to the liability. In view of the same, the contention now raised by the learned Counsel for the Appellant-Insurer on the liability, challenging the jurisdiction of the tribunal is not fit to be sustained. The grounds urged in the memo would demolish the entire edifice of the 15 arguments now contended, otherwise it would be in defiance.

9. The principles of natural justice mandates a person to be heard before fastening any liability. Notice of service to the owner being dispensed with, no order could be passed against the owner. At this juncture, it would be beneficial to refer to the Judgment of the Apex Court in the case of RAMCHANDRA Vs. REGIONAL MANAGER, UNITED INDIA INSURANCE COMPANY LTD., reported in AIR 2013 SC2561 wherein their Lordships have held thus: 20. The claimant/appellant is surely entitled to the amount of compensation over and above the Workmens Compensation Act in view of the ratio of the decisions referred to hereinbefore. The rider no doubt is that the statutory liability cannot be more than what is required under the statute under Section 95 of the Motor Vehicles Act which cannot bind the parties or prohibit 16 them from contracting or creating unlimited or higher liability to cover wider risk and the insured is bound by the terms of the contract specified in the policy in regard to unlimited or higher liability as the case may be. Thus, it is although correct that limited statutory liability cannot be extended to make it unlimited or higher, it is also manifestly clear that insofar as the entitlement of the claimant/deceased cleaner of the vehicle is concerned, the same cannot be restricted to the compensation under the Workmens Compensation Act and is entitled to compensation even under the Motor Vehicles Act which will depend upon the terms and conditions of the policy of insurance.

22. The question, therefore, is whether the amount of compensation could rightly be apportioned between the insurer/insurance company and the insured/owner of the vehicle. However, the owner of the vehicle had not appeared before the tribunal but 17 the insurance company allowed the matter to be proceeded before

the tribunal and when the respondent/insurance company filed an appeal in the High Court, the insured/owner of the vehicle once again failed to appear but the Respondent- Insurance Company did not pursue for his appearance. The High Court, however, further overlooked that the apportionment of the amount of compensation between the owner of the vehicle and the insurance company was an inter se dispute between insurance company and the insured/owner of the vehicle and, therefore, the order due to non-appearance of the insured/owner of the vehicle could not have been passed to the detriment of the claimant as the claimant in any case is entitled to the amount of compensation determined by the tribunal. If the insurance company acquiesced with the situation and allowed the proceeding to continue even in absence of the insured/owner of the vehicle who has been held liable to pay the amount 18 even though the insured might have been liable to pay higher premium, the consequence of the same obviously will have to be borne by the insurance company and the claimant cannot be made to suffer.

24. Consequently, the High Courts view impliedly holding that the claimant/appellant was not entitled to any compensation under the Motor Vehicles Act beyond the entitlement under the Workmens Compensation Act so as to leave it open to the Respondent/Insurance Company to realise it from the owner of the vehicle at the belated stage of appeal before the High Court when the respondent/insurance company had failed even to urge the alternative plea regarding non-payment of extra premium by the owner of the vehicle and had even reconciled to the fact that the owner of the vehicle had failed to appear in spite of service of notice, is not fit to be sustained. 19 10. The above referred Judgment rendered by the Honble Apex Court is squarely applicable to the facts of the present case. The very same set of arguments were canvassed before the Honble Supreme Court by the Insurer, a case of the cleaner traveling in a matador, claiming compensation for the injuries sustained in a road traffic accident under the MV Act. The Apex Court has categorically held that the insurance companies without realizing the defence taken before the Tribunal cannot take a contention that the claimant was not entitled to any compensation under the MV Act beyond the entitlement under the WC Act, more particularly, when the Insurer has not urged the said plea regarding non payment of extra premium by the owner

of the vehicle and had even reconciled to the fact that the owner of the vehicle had failed to appear despite service of notice. Applying the principles of law as laid down by the Apex Court in RAMCHANDRAS case [supra]., the 20 arguments of the learned Counsel for the Appellant- Insurer deserves to be negated.

11. The Judgment relied upon by the learned Counsel for the Insurer in the case of BHIMAVVA AND OTHERS [supra]. rendered by the larger Bench of this Court is not applicable to the facts of the present case. The larger Bench considering the Judgment of the Apex Court in the case of NEW INDIA ASSURANCE COMPANY LTD., Vs. ASHA RANI reported in AIR 2003 SC607 and in the case of ORIENTAL INSURANCE COMPANY LIMITED Vs. DEVIREDDY KONDAY REDDY AND OTHERS reported in AIR 2003 SC1009 has held that the liability of the insurance company in the case of an Act policy to be limited to the liability arising under the W.C.Act for the employees specified in the proviso. The said Judgment is not applicable to the facts of the present case as the insurance policy being goods 21 carrying package policy and no specific plea being raised on this aspect by the Insurer before the Tribunal.

12. In the case of NATIONAL INSURANCE COMPANY LIMITED Vs. PREMBAI PATEL AND OTHERS reported in [2005]. 6 SCC172 the Apex Court has laid down the principles of law relating to nature of liability under Section 4 of the WC Act vis--vis the policy for Act liability. Accordingly, the said Judgment is also not applicable to the facts of the present case.

13. As regards the challenge made to the quantum, it is apt to refer to the factual matrix of the case. The deceased Praveen was aged 25 as on the date of the accident. The monthly income of the deceased was determined by the Tribunal at Rs.4,500/-. It is apparent that the deceased was working as a Cleaner in a truck bearing No.KA.17/A-6478 at the time of the accident. It is obvious that this court as well as the Lok 22 Adalat, even in the absence of cogent evidence placed on record to establish the exact monthly income of the victim of the road traffic accident of the year 2009, recognized the monthly income of the victim at Rs.5,000/-. Applying the same yardstick, the monthly income of the deceased can be safely determined at Rs.5,000/-. Employing the multiplier of 18, after deducting

50% towards personal expenses of the deceased, the loss of dependency works out to Rs.5,40,000/-.

14. The compensation awarded under different heads is on the lower side. In the given circumstances and in the light of the Judgment of the Apex Court laid down in the case of RAJESH AND OTHERS Vs. RAJBIR SINGH AND OTHERS reported in 2013 ACJ1403 the compensation awarded by the Tribunal deserves to be enhanced. Thus, the total compensation awarded by the Tribunal is modified as under:

23. Towards loss of dependency Towards funeral, religious and transportation charges Towards loss of estate Towards loss of love and Affection - - - -
Rs.5,40,000/- Rs. 25,000/- Rs. 20,000/- Rs. 50,000/- TOTAL15
The Judgment and Order passed by the Tribunal is Rs.6,35,000/- - [a]. [b]. [c]. [d]. modified and the appellant shall be entitled to total compensation of Rs.6,35,000/- as against Rs.6,26,000/- awarded by the Tribunal with interest at 6% per annum from the date of the petition till realization.

16. The appeal filed by the Insurance Company is dismissed and the appeal filed by the claimants is allowed to the extent indicated above.

17. The amount, if any, deposited by the insurance company shall be transmitted to the Tribunal for disbursement. brn, AN/- Sd/- JUDGE

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