

Jyothi Vs. Radhakrishna

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Court : Karnataka

Decided On : Sep-22-2015

Judge : S.N.Satyanarayana

Appeal No. : MFA 8867/2013

Appellant : Jyothi

Respondent : Radhakrishna

Judgement :

- 1 - IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE22D DAY OF SEPTEMBER 2015 BEFORE THE HONBLE MR.JUSTICE S.N.SATYANARAYANA M.F.A.NO.8867/2013(MV) C/W M.F.A.NOS.8868/2013 & 8869/2013 (MV) BETWEEN:

1. JYOTHI W/O GURU ARASEGOWDA, AGED ABOUT30YEARS, HOUSEHOLD,
- 2.
3. SINDHU D/O GURU ARASEGOWDA, AGED ABOUT8YEARS, MINOR, STUDENT, SANGEETHA D/O GURU ARASEGOWDA, AGED ABOUT7YEARS, MINOR, STUDENT, 4. MANOJ, S/O GURU ARASEGOWDA, AGED ABOUT6YEARS, MINOR, STUDENT, 5. LAKSHMAMMA W/O LATE ARASEGOWDA, AGED ABOUT60YEARS, HOUSEHOLD, (APPELLANT NO.2, 3 & 4 ARE MINORS REPRESENTED BY THEIR NATURAL GUARDIAN MOTHER THE APPELLANT NO.1 JYOTHI) ALL ARE R/O ULIVALA KOPPALU VILLAGE, -

2 - KASABA HOBLI, HOLENARSIPURA TALUK, HASSAN DIST. - 573 201. APPELLANTS IN M.F.A.NO.8867/2013 AGED ABOUT 42 YEARS, HOUSEHOLD, (BY SRI SYED AKBAR PASHA, FOR SRI MAHANTESH S. HOSMATH, ADVS.,) BETWEEN:

1. MEENAKSHI W/O RANGASWAMY, 2. ALL ARE R/O ULLVALA VILLAGE, KASABA HOBLI, HOLENARSIPURA TALUK, HASSAN DIST - 573 201. SOWNDHARYA D/O LATE RANGASWAMY, AGED ABOUT 18 YEARS, STUDENT, APPELLANTS IN M.F.A.NO.8868/2013 (BY SRI SYED AKBAR PASHA FOR SRI MAHANTESH S. HOSMATH, ADVS.,) BETWEEN: ASHOK S/O LATE ARASEGOWDA, AGED ABOUT 41 YEARS, TRACTOR OWNER, R/O ULLVALU VILLAGE, KASABA HOBLI, HOLENARSIPURA TALUK, HASSAN DISTRICT - 573 201. (BY SRI SYED AKBAR PASHA FOR SRI MAHANTESH S. HOSMATH, ADVS.,) IN M.F.A.NO.8869/2013 APPELLANT AND:

1. 2.- 3 - RADHAKRISHNA S/O P.KRISHNEGOWDA, AGED ABOUT 40 YEARS, OWNER OF LORRY, R/O GNANA KAVI ROAD, KUVEMPU NAGAR, CHANNARAYAPATNA, DIST:HASSAN - 573 201. (OWNER OF LORRY BEARING NO.K.L-13-C-1321) THE UNITED INDIA INSURANCE CO., LTD., ASHIK TOWERS, NARANGAPURAM, THALLICHERI, KANNUR DISTRICT, KERALA STATE, THE BRANCH OFFICE, UNITED INDIA INSURANCE CO., LTD., HASSAN- 573 201. COMMON RESPONDENTS (BY SRI P.B.RAJU, ADV., FOR R2, R1 SERVED) MFA NO.8867/2013 IS FILED UNDER SECTION 1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 03/04/2012 PASSED IN MVC NO.28/2011 ON THE FILE OF THE SENIOR CIVIL JUDGE, JMFC, MACT, HOLENARASIPUR, PARTLY FOR COMPENSATION SEEKING ENHANCEMENT OF COMPENSATION. ALLOWING PETITION CLAIM THE AND MFA NO.8868/2013 IS FILED UNDER SECTION 1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED PASSED IN MVC NO.29/2011 ON THE FILE OF THE SENIOR CIVIL JUDGE, JMFC, MACT, HOLENARASIPUR, PARTLY ALLOWING

THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. MFA NO.8869/2013 IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED - 4 - PASSED IN MVC NO.30/2011 ON THE FILE OF THE SENIOR CIVIL JUDGE, JMFC, MACT, HOLENARASIPUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THESE APPEALS COMING ON FOR FURTHER

ORDER

S THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Claimants in MVC.Nos.28/2011, 29/2011 and 30/2011 on the file of MACT, Holenarasipura, have come up in these three appeals i.e., in MFA.Nos.8867/2013, 8868/2013 and 8869/2013 seeking enhancement of compensation awarded by the tribunal. Admittedly, appeal in MFA.No.8867/2013 and 8868/2013 are by the widow, children and mother of Guru Arasegowda and widow and daughter of Rangaswamy respectively. So far as MFA.No.8869/2013 is concerned, it is by the owner of tractor trailer, which was damaged in the accident dated 10.5.2011, in which Guru Arasegowda and Rangaswamy died.

2. Brief facts leading to these appeals are as under; The facts available on record would disclose that on 10.5.2011 at about 11.30 am., deceased Guru Arasegowda and - 5 - Rangaswamy were travelling in tractor trailer bearing registration No.KA-13/TA.1040/1041. Admittedly, said tractor trailer belongs to Ashok, who is claimant in MVC.No.30/2011 and he is also brother of Guru Arasegowda. The record would also disclose that when said tractor was proceeding near Channarayapatna Housing Board, the same was hit by lorry bearing registration No.KL-13/C.1321, which was driven in a rash and negligent manner by its driver. As a result of collision between lorry and tractor trailer, Rangaswamy died at the spot and Guru Arasegowda, who suffered injuries was shifted to BGS Global Hospital, Bengaluru, where he was inpatient for 7 days and subsequently, he succumbed to the injuries. Thereafter, three claim petitions came to be filed; one by the widow, minor children

and mother of Guru Arasegowda in MVC.No.28/2011, second one by the widow and daughter of Rangaswamy in MVC.No.29/2011 and third one by the owner of tractor trailer in MVC.No.30/2011 seeking compensation for the damage caused to tractor trailer.-. 6 - 3. Before the tribunal, all the three claim petitions were clubbed together, common evidence was recorded and all the three claim petitions were disposed off by common judgment dated 3.4.2012. (a) So far as MVC.No.28/2011 is concerned, where deceased Guru Arasegowda was aged about 36 years, he died leaving him surviving his wife, aged about 28 years, three minor children and aged mother of 60 years old. In the said proceedings though it was stated that he was milk vendor, agriculturist and doing various other activities and was earning more than Rs.10,000/- pm., the claimants were not able to establish the same. Therefore, the tribunal proceeded to take the income of Guru Arasegowda notionally at Rs.3,000/- pm., and awarded compensation to the family in a sum of Rs.6,44,906.19, which was inclusive of medical expenses incurred for a period of 7 days while he was in BGS Global Hospital, which was quantified at Rs.2,49,906.19. (b) So far as MVC.No.29/2011 with reference to deceased Rangaswamy is concerned, his notional income was also taken at Rs.3000/- pm., and compensation was awarded to family - 7 - members in a sum of Rs.3,68,000/- since deceased was aged about 46 years as on the date of accident. (c) So far as MVC.No.30/2011 is concerned, based on the invoice produced by the owner of tractor trailer, the tribunal proceeded to award compensation to claimant in a sum of Rs.1,92,354/-. In all the three claim petitions interest on compensation was awarded at 6% pa., from the date of petition till date of payment of entire amount. The claimants in all the three claim petitions being aggrieved by the quantum of compensation have come up in these three appeals.

4. Heard the learned counsel for appellants as well as respondent insurer in all the appeals. Perused the judgment impugned with reference to pleadings, oral and documentary evidence available on record. On going through the same, it is seen that a serious error is committed by the tribunal while taking the notional income of deceased into consideration for the purpose of arriving at the loss of dependency to the family. Admittedly, accident has taken place on 10.5.2011. The normal practice adopted by this Court in arriving at notional income for - 8 - a person with reference to whom no proof of avocation and income is available is at the rate of

Rs.6,000/- pm., if the accident is of the year 2011. Therefore, in the instant case, taking the income of deceased at Rs.3,000/- pm., is grave error resulting in awarding unjust compensation to the family members of deceased Guru Arasegowda as well as Rangaswamy. Therefore, this Court feel that the compensation payable to claimants with reference to deceased Guru Arasegowda as well as Rangaswamy should be reassessed taking their notional income at Rs.6,000/- pm.

5. Now coming to the case of Guru Arasegowda, who was aged about 36 years as on the date of accident with five members depending on him, 1/4th of his income is taken as personal expenses and 3/4th as loss of dependency. Accordingly, compensation payable to the family under loss of dependency would be Rs.8,10,000/- (Rs.4,500/-x12x15). Since he was aged about 36 years, towards future prospects, another sum of Rs.1,00,000/- is to be added and further sum of Rs.1,00,000/- under conventional heads. In addition to that another sum of Rs.2,49,906/- is awarded towards medical - 9 - expenses. With this, the compensation payable to claimants in MVC.No.28/2011 (MFA.No.8867/2013) is in a sum of Rs.12,59,906/- rounded off to Rs.12,60,000/-. In other words enhanced compensation in a sum of Rs.6,15,094/-.

6. Now coming to the case of Rangaswamy in MVC.No.29/2011, dependents on him is only two. Therefore, 1/3rd is deducted towards his personal expenses and 2/3rd is taken as dependency to the family. Accordingly, the compensation payable to family under loss of dependency would be Rs.6,24,000/- (Rs.4000/-x12x13). To which, another sum of Rs.1,00,000/- is added towards future prospects and further sum of Rs.1,00,000/- under conventional heads. With this, the compensation payable to claimants in MVC.No.29/2011 (MFA.No.8868/2013) is Rs.8,24,000/-. In other words, the enhanced compensation is in a sum of Rs.4,56,000/-.

7. Accordingly, MFA.Nos.8867/2013 and 8868/2013 are allowed in part. The appellants in aforesaid two appeals are entitled to reassessed compensation in a sum of Rs.12,60,000/- - 10 - and Rs.8,24,000/- respectively payable with interest at 6% pa., from the date of petition till date of payment of entire amount, which the

respondent insurance company shall deposit within eight weeks from the date of receipt of certified copy of judgment in this proceedings. As and when the enhanced compensation of Rs.6,15,095/- with interest in MFA.No.8867/2013 and a sum of Rs.4,56,000/- with interest in MFA.No.8868/2013 is deposited by the contesting second respondent insurer, the same shall be distributed among the claimants in the aforesaid two appeals as under: (a) In MFA.No.8867/2013 is concerned, out of enhanced compensation of Rs.6,15,095/-, a sum of Rs.50,000/- each is ordered to be deposited in the name of claimants 2, 3 and 4 for a period of 12 years with right to receive interest periodically by first claimant for maintaining the family. Out of balance amount, a sum of Rs.1,00,000/- is ordered to be given to claimant No.5 and out of which Rs.20,000/- shall be released in her favour and Rs.80,000/- shall be deposited in her name in any nationalized bank for a period of five years with right to - 11 - receive periodical interest. The entire balance amount should be given to first claimant in such a way that she shall receive a sum of Rs.50,000/- by cash and remaining amount to be deposited in her name in any nationalized bank for a period of five years with right to receive periodical interest. (b) In MFA.No.8868/2013, the enhanced compensation of Rs.4,56,000/- is ordered to be distributed in such a way that a sum of Rs.2,00,000/- with proportionate interest is ordered to be deposited in the name of second claimant for a period of five years with right to receive periodical interest by first claimant for maintenance of second claimant and out of balance amount of Rs.2,56,000/- with proportionate interest, a sum of Rs.50,000/- is ordered to be released in favour of first claimant to meet immediate expenses and family necessities and balance to be kept in deposit in her name in any nationalized bank for a period of five years with right to receive periodical interest.

8. Now coming to the appeal which is filed by claimant in MVC.No.30/2011 is concerned, Sri.P.B.Raju, learned counsel for insurer would bring to the notice of this Court that the tractor trailer involved in the accident is a new vehicle and the fact that - 12 - the tractor is damaged completely is not in dispute. However, what is produced before the tribunal is nothing but invoice and no receipts or bills for having paid the amount for getting it repaired are produced. He would also bring to the notice of this Court that the possibility of claimant taking compensation from its insurer towards own damage liability cannot be ruled out.

9. On going through the entire record, this Court is also of the same opinion. Surprisingly, the officials of the insurance company who are required to look into the same before satisfying the compensation awarded in these proceedings have deliberately and knowingly settled the matter. This is being observed by this Court in several cases that the insurance companies are selective in settling the claims for the reasons best known to them. Even where the judgments are incorrect and wrong it is seen that compensation is settled and in some matters where compensation is just and proper, in such matters it takes years for them to settle the compensation. This practice is going on with the insurance companies of late. In any event, it has come to the notice of this Court that such kind of discrimination is being followed by many of the insurance - 13 - companies and its officers indulging in such unfair practice, which is on the rise on either side. Earlier, said unfair practice was limited to claimants with the help of police officers and doctors in making false claims and getting compensation. Unfortunately, now the insurance officers have also joined the band wagon making the situation more worse and difficult for the courts to segregate the genuine from false cases. If all those, who are involved in these proceedings stoop to this level, god only should save this system. Anyway, this Court feel that less said the better about the conduct of the officers of Insurance Companies. The fact that they have deliberately not come up in appeal against the judgment in present claim by the owner of tractor trailer is not in dispute.

10. Infact, this Court further observe the complacency on the part of insurance company, in two of the appeals out of three appeals, though notice is duly served on it, it has conveniently not assigned the same to any other counsel. It is only in MFA.No.8969/2013 which arises from MVC.No.30/2011 where it has not taken proper care to oppose the claim before the tribunal has engaged the services of learned Counsel - 14 - Sri.P.B.Raju to represent their interest, which further fortifies the apprehension of court with reference to the dubious intention of officers of insurance company.

11. Sri.P.B.Raju learned counsel submits that the compensation awarded in the present proceedings might have been deposited and he is not aware of that. He further submits that he has no instructions with reference to appeal, if any already

filed or requirement of filing of appeal. Therefore, this Court feel that atleast in one or two cases this court should go to the bottom of all these sorry state of affairs. Hence, to ascertain the same judgment and decree passed in MVC.No.30/2011 is required to be set aside, which is under challenge in MFA.No.8869/2013 and the matter is required to be remitted back to tribunal for fresh consideration.

12. Accordingly, MFA.No.8869/2013 is disposed off by setting aside the judgment and decree dated 3.4.2012 passed in MVC.No.30/2011 on the file of MACT. The matter is remanded back to the tribunal with a direction to the Presiding Officer of Tribunal to call for the particulars of insurance of tractor trailer - 15 - bearing registration No.KA-13/TA.1040-1041 during the relevant period of accident i.e., on 10.5.2011, shall initiate suo motu enquiry to ascertain whether insured of said tractor has received any compensation from its insurer, thereafter, decide the claim petition after securing original bills for having repaired the vehicle and not to decide the same on the basis of invoice, which cannot be the basis for entertaining the claim accepting that said amount is spent towards repair of vehicle. While remanding the matter it is also made clear that if claimant does not appear before the Court in the remanded matter, it is the duty of court below to ensure his presence, if necessary with the help of police and to investigate into the matter. It is further made clear that if for any reason insurance company does not participate in the remanded proceedings, the tribunal is directed to bring it to the notice of this Court. In such an event this matter should be listed before this bench for further orders.

13. In these batch of appeals though learned Counsel Sri.P.B.Raju has filed vakalath in one of the appeals, he would submit that since he has argued on merits in all the three - 16 - appeals, he may be permitted to secure vakalath and to file the same within two weeks.

14. His submission is placed on record and two weeks time is granted to him to file vakalath. Sd/- JUDGE nd/-

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