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The Branch Manager Vs. Devikamma @ Devakemma W/O Laxman Karenavar

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Court : Karnataka Kalaburagi

Decided On : Feb-18-2020

Judge : S.R.Krishna Kumar

Appeal No. : MFA 31002/2010

Appellant : The Branch Manager

Respondent : Devikamma @ Devakemma W/O Laxman Karenavar

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH DATED THIS THE18H DAY OF FEBRUARY 2020 BEFORE THE HONBLE MR. JUSTICE S.R.KRISHNA KUMAR MFA NO.31002/2010 (MV) C/W MFA CROB NO.1044/2011 (MV) MFA NO.31002/2010

BETWEEN :

The Branch Manager, Reliance General Insurance Co. Ltd., S.V.Patil Chowk, Asian Plaza Complex, Gulbarga, now represented by Deputy Manager, Reliance General Insurance Company Ltd., No.28, East Wing, 5th floor Centenary building, M.G.Road, Bangalore. (By Sri C.S.Kalaburagi, Advocate)

AND:

1. Devikamma @ Devakemma W/o Laxman Karenavar, Age:50 years, Occ: Household, 2. Ningamma W/o late Gangappa Karenavar, age:

27. years, Occ: Household, ... Appellant 2 3. Laxman @ Lachmana S/o Dyawappa Karenavar, Age:55 years, Occ: Nil, 4. Mallappa S/o Laxman Karenavar, Age:31 years, Occ: Agriculture, 5. Saibanna S/o Laxman Karenavar, Age:18 years, Occ: Nil, Represented by respondent No.1. All residents of Sagar (B) village, Tq: Shahapur, Dist: Gulbarga Now Yadgir.

6. Laxman S/o Bassanna, Age:28 years, Occ: Driver, R/o Shahapur proper, Dist. Gulbarga. ...

... RESPONDENTS

(Sri S.S.Sajjanshetty, Advocate for R1, R2 & R5; Sri Sanjay A.Patil, Advocate for R3 & R4; Sri S.V.Paraddy, Advocate for R6) This Miscellaneous First Appeal is filed under Section 173 (1) of Motor Vehicles Act, 1988 praying to set aside the judgment and award dated 4.3.2010 passed by the Civil Judge (Sr.Dn) at Shorapur and XII Addl. MACT, Shorapur in MVC No.961/2009. MFA CROB No.1044/2011:

BETWEEN :

1. Devikamma @ Devakemma W/o Laxman Karenavar, Age:50 years, Occ: Household, ... Cross Objectors 3 2. Ningamma W/o late Gangappa Karenavar, aged about:

27. years, Occ: Household, 3. Saibanna S/o Laxman Karenavar, Aged:20 years, All residents of Sagar (B) village, Tq: Shahapur, Dist: Gulbarga. (By Sri S.S.Sajjanshetty, Advocate)

AND:

1. Laxman S/o Bassanna, Aged about 28 years, Occ: Driver, R/o Shahapur Proper, Tq: Shahapur, Dist: Gulbarga.

2. Laxman @ Lachamana S/o Dyawappa Karenavar, Aged:55 years, Occ: Nil, R/o Shahapur proper, Tq: Shahapur, Dist: Gulbarga.

3. Mallappa S/o Laxman Karenavar, Aged about 31 years, Occ: Agri. R/o Shahapur proper, Tq: Shahapur, Dist: Gulbarga.

4. The Branch Manager, Reliance General Insurance Co. Ltd., S.V.Patel Chowk, Asian Complex, Gulbarga. Now represented by 4 Deputy Manager No.28, East Wing, 5th floor Centenary building, M.G.Road, Bangalore. ...

... RESPONDENTS

(V/O Dtd.16/3/12 notice to R1 dispensed with; Sri S.V.Paraddy, Advocate for R1; Sri S.M.Sajjan, Advocate for R2 & R3; Sri C.S.Kalaburagi, Advocate for R4) This MFA CROB is filed under Order 41 Rule 22 of CPC praying to call for the records in MVC No.961/2009 on the file of the Civil Judge (Sr.Dn) and Member, XII Addl. MACT at Shorapur and set aside the judgment and award dated 4.3.2010 and further to modify the award and enhance in accordance with law by allowing the Cross-Objection and to dismiss the MFA No.31002/2010 filed by respondent No.2 (being sole appellant). the amount of compensation payable This appeal and MFA Crob coming on for Further Hearing this day, the Court delivered the following: JUDGMENT Both the appeal and the Cross-Objections are filed challenging the impugned judgment and award dated 4.3.2010 passed in MVC No.961/2009 by the Senior Civil Judge and XII Addl. MACT, Shorapur whereby the Tribunal allowed the claim petition filed by the claimants thereby awarding compensation in a sum of Rs.6,90,000/- in 5 favour of the claimants towards death of one Gangappa in a fatal road traffic accident that occurred on 10.05.2009.

2. MFA No.31002/2010 is filed by the Insurance Company questioning its liability to pay compensation. MFA CROB No.1044/2011 is filed by the claimants seeking enhancement of compensation.

3. The brief facts giving rise to the above appeals are as follows; The claimants are the mother, wife and children of the deceased Gangappa who died in a road traffic accident that occurred on 10.05.2009. In the claim petition it was contended that the deceased Gangappa was the owner of the Auto bearing registration No.KA-33/6292. It was contended that on 10.05.2009 Gangappas father-in law took the said vehicle on hire basis for the purpose of a marriage in the family. Accordingly, the vehicle was engaged by Gangappas father-in law for the use of members of the marriage party. It was further contended 6 that on 10.05.2009, Gangappa attended the said marriage at Badyapur and was returning to Shorapur

in the aforesaid vehicle along with other members of the marriage party. It was alleged that the vehicle was being driven by its driver, Laxman s/o Basanna. The claimants also contended that at about 9.00 p.m. on 10.05.2009 when the deceased Gangappa was returning back to Shorapur in the aforesaid vehicle as a passenger along with other members of the marriage party, the aforesaid driver Laxman drove the vehicle in a rash and negligent manner resulting in the accident in which Gangappa died and the other passengers sustained injuries. It was also contended that Gangappa was employed as a driver of heavy transport vehicle in addition to doing his own auto vehicle business and consequently since he was the sole bread winner of the family, the claimants being his dependents are entitled to compensation towards his death. Putting forth these 7 contentions, the claimants filed the claim petition before the Tribunal.

4. Before the Tribunal, the aforesaid driver Laxman was arrayed as respondent No.1, whereas the insurance company was arrayed as respondent No.2. While the driver did not contest the claim petition, the insurance company contested the same. Apart from other contentions, it was contended by the insurance company that since the deceased Gangappa was himself the owner of the aforesaid vehicle bearing No.KA-33/6292 the question of paying compensation towards his death did not arise. Alternatively it was contended by the insurance company that assuming but not conceding that the insurance company had collected additional premium covering the liability of the deceased Gangappa who was the owner of the vehicle, the said liability was restricted to the terms and conditions of the insurance policy. Under these circumstances, the insurance company sought for dismissal of the claim petition. 8 5. After trial, the Tribunal came to the conclusion that the accident in question was on account of the rash and negligent driving of the driver of the vehicle bearing No.KA-33/6292. The Tribunal also held that the claimants were entitled to compensation on account of the death of Gangappa in the accident. By the impugned judgment and award, the Tribunal negated the contention urged on behalf of the insurance company that it was not liable to pay compensation and consequently, the Tribunal proceeded to allow the claim petition and awarded compensation in a sum of Rs.6,90,000/- as stated above.

6. I have heard the learned counsel for the insurance company as well as the learned counsel for the claimants.

7. Learned counsel for the insurance company submits that it is an undisputed fact that the vehicle in question was owned by the deceased Gangappa. It is contended that the deceased Gangappa was not a third party insofar as the vehicle bearing NO.KA-33/6292 was 9 concerned and consequently he was not entitled to compensation from the insurance company. The terms and conditions of the insurance policy marked as Ex.P.9 would indicate that no additional premium was collected by the insurance company to cover the risk of the deceased Gangappa-owner of the vehicle. It is also contended that even if additional premium was collected covering the risk of Gangappa, the liability of the insurance company was restricted to the terms and conditions of the policy. It was therefore contended that the impugned judgment and award passed by the Tribunal deserves to be set aside by this Court. Learned counsel places reliance upon the following judgments; a) 2007 (5) SCC428 Oriental Insurance Co.Ltd. Vs. Meena Variyal and others b) 2008 (3) ACJ1441 Oriental Insurance Co. Ltd., Vs. Rajanidevi and others c) 2005 (1) ACJ1Dhanraj Vs. New India Assurance Company Ltd. & Another. 10 8. Per contra, learned counsel for the claimants would support the impugned judgment and award. In addition thereto learned counsel for the claimants would invite my attention to the provisions contained in Section 147 (1) (b) (ii) in order to contend that since the offending vehicle was a public service vehicle within the meaning of section 2 (35) of the Motor Vehicles Act, 1988 (for short the Act), notwithstanding the fact that the deceased Gangappa was the owner of the vehicle, since the vehicle was taken on hire and engaged by Gangappas father-in law for the purpose of the marriage party members, Gangappa was a mere passenger of the vehicle at the time of the accident and consequently, the claimants would be entitled to compensation towards his death payable by the insurance company in their favour. It is therefore contended that the impugned judgment and award fastening the entire liability to pay compensation upon the insurance company does not warrant interference at the hands of this Court. It is also contended that the quantum of compensation awarded by the Tribunal is highly 11 inadequate and insufficient and the same requires enhancement by this Court. Learned counsel places reliance upon the

following judgments: a) 2007 (II) ACC247(DB) National Insurance Co. Ltd. Vs. Kishore Kumar Lalwani & another b) 2014 ACJ1862 National Insurance Co. Ltd. Vs. Krishnan 9. I have given my anxious consideration to the rival submissions and perused the entire material on record including the impugned judgment and award.

10. A perusal of the material on record will indicate that while it is not in dispute that the deceased Gangappa was the owner of the vehicle bearing No.KA-33/6292, the said vehicle had been taken on hire by Gangappas father- in law on 10.05.2009 and the vehicle had been engaged by him for the purpose of members of the marriage party. The material on record also indicates that at the time of accident in question, Gangappa was travelling in the vehicle as a passenger along with other passengers and 12 that the vehicle had been hired and engaged by his father- in law for the purpose of the marriage. In this context it is necessary to extract section 147 (1)(b)(ii) of the M.V. Act which reads as under: Section 147. Requirements of policies and limits of liability- (1) In order to comply with the requirements of this chapter, a policy of insurance must be a policy which (a) (b) xxx Insures the person or classes of persons specified in the policy to the extent specified in sub section (2) (i) xxxxx (ii) Against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

11. Section 2 (35) of the M.V. Act defines a public service vehicle as any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxi cab, a motor cab, contract carriage and stage carriage. 13 12. The facts of the instant case disclose that the vehicle in question bearing No.KA-33/6292 was a public service vehicle within the meaning of Section 2 (35) of the Act. The material on record also indicates that the vehicle had been hired and engaged by Gangappas father-in law at the time of the accident resulting in the death of Gangappa. In this context it is relevant to state that Section 147 (1) (b)(ii) is a stand-alone provision which is independent of Section 147 (1)(b) (i) of the Act. In other words, the liability of the insurance company to pay compensation under Section 147 (1)(b) (ii) is independent and mutually exclusive of its liability to pay compensation under Section 147 (1)(b) (i) of the Act.

Under these circumstances, a harmonious and reasonable construction of the provisions contained in Section 147 (1)(b) (ii) R/W Section 2 (35) of the Act will indicate that the same would apply if the following conditions are complied with viz., (a) The vehicle in question should be a public service vehicle within the meaning of Section 2(35) of the Act; (b) The vehicle should be used in a public place; (c) Death or bodily injury should be caused to any passenger in the vehicle.

13. As stated above, the facts of the instant case and the material on record clearly establish that the vehicle bearing No.KA-33/6292 was a public service vehicle being used in a public place at the time of the accident resulting in the death of Gangappa. Under these circumstances, notwithstanding the fact that Gangappa was the owner of the said vehicle, since he was undisputedly a passenger travelling in the vehicle, the provisions contained in Section 147 (1)(b) (ii) would be applicable to the facts of the instant case. As such, I am of the considered opinion that the Tribunal was fully justified in coming to the correct conclusion that the insurance company is liable to pay compensation in favour of the claimants towards the death of Gangappa.

14. Insofar as the decisions of the Apex Court relied upon by the learned counsel for the insurance company is concerned, a perusal of the same will indicate that the provisions contained in Section 147 (1)(b) (2) R/W Section 2(35) of the M.V. Act did not arise for consideration in the said judgments and as such, while there is no dispute with regard to the propositions of law laid down by the Apex Court in the said decisions, the same will not apply to the facts of the instant case.

15. The Division Bench of Madhya Pradesh High Court in Kihore Kumar Lalwanis case referred to supra under identical circumstances has held as under:

9. Coming to the first question, so far as liability of the Insurance Company is concerned, from perusal of the law laid down in the case of Dhanraj (supra), it is evident that in that case the claimant was driver of his own Jeep and in this case the impact of Sub-Clause (ii) of Clause (b) of Sub-section (1) of Section 147 of the Act was not considered, which reads as under: S.147. Requirement of policies and limits of liability- (1) In order to comply with the requirements of this chapter, a policy of Insurance must be a policy which, (a) (b) 16 is issued by a person who is

an authorised insurer, and insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2): (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place; (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of use of the vehicle in a public place.

10. In the present case, undisputedly the respondent No.1 was owner of his own Bus but the same was booked for a marriage party in which the respondent was one of the members. The word Public Place and Public Service Vehicle are defined under Sections 2(34) and 2(35) of the Act respectively, which read as under: S.2 (34). Public place means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, 17 and includes any place or stand at which passengers are picked up or set down by a stage carriage. S.2 (35): Public service vehicle means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage and stage carriage.

11. Undisputedly the accident occurred at a public place by a public service vehicle. It is also proved by the evidence on record that respondent No.1 was travelling in the offending vehicle as a passenger being a member of the marriage party and not as a owner to supervise and control the Bus. Since the respondent No.1 was a passenger in a public service vehicle, may be owned by him, which met with an accident at public place, therefore, the respondent No.1 ought to have been treated as third party as laid down by Division Bench of this Court in the case of Oriental Insurance Company (supra) and his claim petition cannot be dismissed only on the ground that respondent No.1 was the owner of the vehicle.

16. I fully endorse the aforesaid view taken by the Division Bench of the Madhya Pradesh High Court. In view 18 of the aforesaid discussion, I do not find any merit in the appeal filed by the insurance company and the same deserves to be dismissed.

17. Insofar as the enhancement in the quantum of compensation as sought for by the claimants-Cross- Objections is concerned, taking the notional income of the deceased as Rs.5,000/- per month as per the Lok Adalath guidelines since the accident occurred in the year 2009 and adding Rs.2,000/- (40% towards future prospects) and deducting 1/4th towards personal expenses, the compensation payable towards loss of dependency is as under: $Rs.5,250 \times 12 \times 17 = Rs.10,71,000/-$ 18. The claimants would also be entitled to a sum of Rs.70,000/- towards conventional heads. Thus, the total compensation payable in favour of the claimants would come to Rs.11,41,000/-. 19 19. The Tribunal having awarded a sum of Rs.6,90,000/-, the claimants would be entitled to an additional enhanced compensation of Rs.4,51,000/- together with interest at 6% p.a. from the date of the claim petition till realization.

20. In the result, I pass the following: ORDER i) ii) MFA No.31002/2010 filed by the Insurance Company is hereby dismissed. MFA CROB No.1044/2011 is hereby partly allowed. iii) Impugned judgment and award is modified. The claimants are entitled to additional enhanced compensation of Rs.4,51,000/- together with interest at 6% p.a. from the date of claim petition till realization. 20 iv) The apportionment and disbursement to be done as per the impugned judgment and award passed by the Tribunal. v) The amount in deposit is directed to be transferred to the Tribunal for disbursement. Sd/- JUDGE NSP

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