

Sarojini and Others Vs. Ishwaridevi and Others

Sarojini and Others Vs. Ishwaridevi and Others

SooperKanoon Citation : sooperkanoon.com/935175

Court : Karnataka

Decided On : Sep-06-2011

Judge : K.L. Manjunath & H.S. Kempanna

Appeal No. : Misc.First Appeal No.12873 of 2006 (MV) C/w Misc. First Appeal Mp.5997 of 2006 (MV)

Appellant : Sarojini and Others

Respondent : ishwaridevi and Others

Advocate for Pet/Ap. : For the Appearing Parties: Pundikai Ishwara Bhat, B.C. Seetharama Rao, Advocates.

Judgement :

(MFA No.12873/2006 is filed under Sec.173(1) of MV Act against the judgment and award dated 12.4.2006 passed in MVC No.36/2002 on the file of the Prl. Dist. Judge, Member, MACT., Mangalore, D.K. partly allowing the claim petition for compensation and seeking enhancement of compensation.

MFA No.5997/2006 is filed under Sec.173(1) of MV Act against the judgment and award dated 12.4.2006 passed in MVC No.36/2002 on the file of the Prl. Dist. Judge, Member, MACT., Mangalore, D.K. awarding a compensation of Rs.4,95,000/- with interest at 6% p.a. from the date of petition till the date of payment.)

Manjunath, J.

MFA 12873/2006 is by the claimants being not satisfied with the compensation awarded to them in MVC 36/02 on the file of MACT., Mangalore. MFA No.5997/2006 is filed by the insurance company challenging the liability saddled on it. Therefore, these two matters are heard together.

2. Having heard the counsel for the parties, admitted facts in this appeal are as hereunder:

Claimants are widow and children of one Subramanyam who was a tailor by profession aged about 52 years. On 10.10.2001 at about 10 a.m. he was proceeding from Agumbe side to Thirthahalli and when he was near Chandrakala Rice Mill of Balebail, one tourist bus bearing Reg.No.RJ 27 P-3213 was proceeding from Thirthahalli towards Agumbe. When the deceased and bus were crossing each other, a passenger of the bus threw shell of a tender coconut which fell on the head of the deceased on account of which he lost control over the scooter and fell on the road and sustained grievous injuries and succumbed to the injuries. Claimants contends that he was getting an income of Rs.10,000/- per month.

3. Counsel appearing for the insurance company contended that there was no negligence or rashness in driving the vehicle by the driver of the bus, therefore claim petition lodged by the claimant was not maintainable. Before the tribunal two witnesses were examined on behalf of the claimants and they relied upon Exs.P-1 to 11. No evidence was let in on behalf of the insurance company except producing the copy of the policy which is marked as Ex.R-1. The tribunal considering that conductor of the bus failed to manage the bus properly as he has allowed the passenger to throw shell of a tender coconut on the road without observing the deceased coming on the scooter, came to the conclusion that there is a negligence on the part of the conductor in not managing it properly and further came to the conclusion that the accident has occurred on account use of the motor vehicle. Accordingly, liability has been fixed on the insurance company.

4. Considering the income of the deceased at Rs.5000/- tribunal has awarded a total compensation of Rs.4,95,000/-. Being not satisfied with the compensation awarded by the tribunal, claimants have preferred this appeal contending that the liability has been wrongly fastened on the insurance company, insurance company has filed connected appeal. These two matters are heard by us.

5. Counsel appearing for the insurance company contends that the liability fastened on it has to be set aside since the driver of the bus was neither negligent nor rash in driving the vehicle. If a passenger has threw a shell of the tender coconut from the bus, insurance company cannot be held liable for such an act of the passenger. He further contends that the charge-sheet is filed against the passenger who threw tender coconut on the road. Per contra, counsel appearing for the claimants contends that the income taken by the petitioner is on lower side and not commensurate with the documents produced by the claimant and that compensation awarded under conventional heads is on lower side. Hence he requests to enhance the compensation by allowing his appeal.

6. Having heard the counsel for the parties, we have to consider the following points for our consideration in these two appeals:

1. Whether there is a failure on the part of the conductor of the bus in not managing the bus properly?

2. Whether the accident occurred on account of the use of the motor vehicle and as a result of which liability can be fastened on the appellant-insurance company?

3. Whether the compensation awarded by the tribunal is just and proper? Or does it calls for any interference?

7. Admittedly, a passenger in a bus has thrown coconut shell on the road without observing the vehicle of the deceased and shell of the tender coconut had fallen on the deceased, as a result of which he died. It is no doubt true that the bus in question has not dashed against the scooter of the deceased. This court also cannot hold that the driver of the bus was rash or negligent in driving the vehicle. But the conductor who was in-charge of the bus was required to manage and

maintain passengers and has failed to take due care and caution to see that the passenger shall not throw any article on the road and as a matter of fact conductor should not have allowed the passengers to throw away the shell of the tender coconut after consuming tender coconut. Therefore, there is a failure on the part of the conductor in not managing the passengers of the bus. In the circumstances, we are of the view that there is failure on the part of the conductor of the bus in not managing the passengers properly and that the accident has occurred due to use of the motor vehicle, therefore policy issued by the insurance company covers the risk of victims. Accordingly, point No.1 is held against the insurance company.

8. So far as the second point is concerned, documents produced by the claimants reveals that the deceased was a well known tailor in Thirthahalli. He had a tailoring shop in the name and style of 'Empire Tailors' in Car street, Thirthahalli which is a business centre of the town. Therefore, income of such persons should not be less than Rs.6000/- per month and the very fact that he was maintaining a scooter and maintaining his wife and children and the income of such person could not be less than Rs.200/- per day. If we consider his income at Rs.6000/- per month and Rs.72,000/- per annum, if we deduct 1/3rd towards personal expenses, loss of dependency has to be at Rs.48,000/- per annum. Considering his age as 52 years, we have to apply the multiplier of 11 and the loss of dependency will be Rs.5,28,000/-. In addition to that, claimants are entitled for a sum of Rs.40,000/- under conventional heads. Thus in all, claimants are entitled for the total compensation of Rs.5,68,000/-, out of which if we deduct Rs.4,95,000/- awarded by the tribunal, they are entitled for an enhanced compensation of Rs.73,000/-.

9. In the result, appeal filed by the insurance company in MFA 5997/2006 is dismissed. Amount in deposit in this appeal is ordered to be transmitted to the tribunal.

MFA 12873/2006 is allowed in part. Appellants are entitled for an enhanced compensation of Rs.73,000/- with interest at 6% p.a. from the date of petition till the date of payment. Considering the total number of claimants and the marginal increase in the compensation, we direct the tribunal to release the enhanced compensation to the claimants.

