

Smt. Pushpavathi and Others Vs. Smt. Manjamma and Another

Smt. Pushpavathi and Others Vs. Smt. Manjamma and Another

SooperKanoon Citation : sooperkanoon.com/935187

Court : Karnataka

Decided On : Jun-10-2011

Judge : N.K. Patil

Appeal No. : M.F.A.NO.8632 OF 2008 (MV) C/W M.F.A.NO.10096 OF 2008 (MV)

Appellant : Smt. Pushpavathi and Others

Respondent : Smt. Manjamma and Another

Advocate for Pet/Ap. : For the Petitioners: Smt. A.R. Sharadamba, Advocate. For the Respondents: A.N. Krishna Swamy, Advocate for R2; R1 served.

Judgement :

(Prayer: This MFA is filed U/S 173(1) of MV Act against the Judgment and Award dated: 02/06/2008 passed in MVC No.1469/2005 on the file of the Addl. Civil Judge (Sr Dn), Member, Addl. MACT, Hassan, partly allowing the claim petition for compensation and awarding compensation of Rs.3,88,000/- together with interest at 6% p.a. from the date of petition till the date of deposit.)

1. These two appeals by the claimants and the Insurer are directed against the same judgment and award dated 2nd June 2008, passed in M.V.C.No.1469/2005, by the Additional Civil Judge (Sr Dn) and Member, Additional Motor Accident Claims Tribunal, Hassan, (for short, 'Tribunal').

2. While the claimants have filed the appeal for enhancement of compensation on the ground that, the compensation of Rs.3,88,000/- awarded in their favour, as against their claim for Rs.10.00 Lakhs, is inadequate and needs to be enhanced, the Insurer has filed the appeal seeking to set aside the liability fastened on it by the Tribunal, on the ground that the cause of accident is on account of the negligence on the part of the deceased himself.

3. The facts in brief are that, the claimants are the wife, minor children and parents of the deceased Late Ramesh. They filed the claim petition under Section 166 of the Motor Vehicles Act, contending that between 8:30 P.M and 9:00 P.M, on 15-08-2005, when the deceased Ramesh was proceeding on his Motor bike bearing No.KA-13/L-3777, from Hassan to Vedavathi near Tavaradevara Koppalu Village, he met with an accident on account of rash and negligent driving by the driver of Tractor-Trailer bearing No.KA-13/T-5692 and KA-13/T-5693. Due to the impact, the deceased died on the spot.

4. It is the specific case of the claimants that, due to the rash and negligent driving by the driver of the Tractor-Trailer, the accident has occurred resulting in the death of the deceased and the charge sheet has been rightly filed against the driver of the offending vehicle and that the evidence of RW3 clearly shows that, during the course of investigation, he recorded further statement of Krishnegowda and Kavi, who are said to be the eye witnesses to the alleged accident and the evidence of RW3 clearly reveals that due to rash and negligent act of the driver of Tractor-Trailer, accident has occurred. Therefore, she submits that, the Tribunal, after assessing the oral and documentary evidence has rightly fastened the liability on the insurer of the offending vehicle and the same does not call for interference.

5. It is the further case of the claimants that, the deceased was aged about 34 years, working at Tractor Show room and by doing agriculture and milk vending business, he was earning a sum of Rs.7,000/- per month and was contributing the entire sum towards the family requirements and on account of his untimely death, the family has become haywire, the parents have lost the sole bread winner of the family and also lost social security and hopes and aspirations in life, the wife has lost the life partner at a very young age and the minor children have lost the love

and affection of their father and therefore, they have to be compensated reasonably.

6. As against this, Sri.A.N. Krishna Swamy, learned counsel appearing for Insurer submitted that the Tribunal grossly erred in fastening the entire liability on the Insurer, inasmuch as the deceased himself was responsible for the cause of accident, as he himself fell on the road and that, just because charge sheet is filed on the driver of the Tractor-Trailer, it does not mean that he is entirely responsible for the cause of accident and therefore, at least, some percentage of contributory negligence may be fixed on the part of the deceased, and the impugned judgment and award may be modified accordingly.

7. On account of the death of the deceased, the claimants filed the claim petition before the Tribunal, seeking compensation of a sum of Rs.10.00 lakhs against the Insurer and the owner of the offending vehicle in question. The said claim petition had come up for consideration before the Tribunal on 2nd June 2008. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs.3,88,000/- under different heads, with 6% interest per annum, from the date of petition till the date of realisation. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimants are in appeal before this Court, seeking enhancement of compensation and the Insurer is in appeal seeking to set aside the liability fastened on it.

8. I have heard learned counsel for claimants and learned counsel for Insurer, for considerable length of time.

9. After hearing learned counsel for the parties, after careful perusal of the judgment and award passed by the Tribunal and after going through the original records made available, it is seen that the occurrence of accident and the resultant death of the deceased are not in dispute. The Tribunal, after assessing the oral evidence of PWs 1 and 2 on behalf of claimants and RWs.1 to 3, on behalf of Insurer, coupled with the documentary evidence at Exs.P1 to P12 and Exs.R1 to R8, has fixed the entire liability on the insurer. It was the case of the Insurer before the Tribunal that, the claimants, colluding with the owner of the offending vehicle,

have got created the documents in order to claim compensation amount. The said contention is negated by the Tribunal by assigning valid and cogent reasons, at paragraph 15 of its judgment, stating that the Insurer has not adduced any cogent evidence on record to establish the fabrication of documents. Further, the Tribunal has specifically observed that, the evidence of RW3 itself would clearly go to show that due to the accident only, the deceased died, and RW2 and RW3 have not supported the version of the Insurer and that PW2, who is the eye witness to the alleged accident, has clearly stated that due to rash and negligent driving by the driver of Tractor-Trailer, the accident has occurred. Further, the Tribunal has specifically observed that there is no evidence on record to show that the accident has occurred due to contributory negligence on the part of deceased.

10. Further, it is pertinent to note that, the insurer has not challenged the charge sheet filed by the investigating officer against the driver of the offending vehicle, before the competent authority. Further, in spite of affording sufficient opportunity, the insurer has not adduced any cogent evidence on record to show that the claimants colluded with the owner of the offending vehicle in fabricating the documents. The Tribunal has further come to the conclusion that the deceased died due to the injuries sustained in the accident and the evidence on record clearly shows that due to rash and negligent act of the driver of the Tractor-Trailer, the accident has taken place and in the said process, the deceased has died. The said reasoning and the finding given by the Tribunal, after assessing the oral and documentary evidence available on file, are just and proper and do not call for interference.

11. So far as the quantum of compensation awarded by Tribunal is concerned, I am of the view that the same is disproportionate to the loss caused to the claimants and therefore, the same needs to be enhanced. It is stated that, the deceased was aged about 34 years and working at Tractor Show room and by doing agriculture and milk vending business, earning a sum of Rs.7,000/- per month. The said amount may be a bit exaggeration. The Tribunal, disbelieving the income mentioned by the claimants, but after looking into various other aspects, has assessed the income of the deceased at Rs.3,000/- per month. The same is just and proper and I accept the same. But, the Tribunal has erred in deducting

1/3rd towards the personal and living expenses of the deceased, when in fact, it should have deducted 1/4th, since the number of dependents are five, with two minor children. Accordingly, if 1/4th (i.e. Rs.750/-) is deducted from Rs.3,000/-, the net monthly income comes to Rs.2,250/-. Since the deceased was aged about 34 years, the appropriate multiplier applicable is '16' as per the decision of the Hon'ble Apex Court in Sarla Verma's case (2009 ACJ 1298). Accordingly, I re-determine compensation payable towards loss of dependency at Rs.4,32,000/- (i.e. Rs.2,250/- x 12 x '16') as against Rs.3,60,000/- awarded by Tribunal.

12. Further, the Tribunal also erred in not awarding reasonable compensation under the conventional heads. The deceased has left behind aged parents, who are left with no security and also, wife and two minor children. Therefore, having regard to the facts and circumstances of the case, I award a sum of Rs.45,000/- towards conventional heads, such as loss of love and affection; loss of consortium, loss of estate and transportation of dead body and funeral expenses as against Rs.28,000/- awarded by Tribunal towards the conventional heads. In all, the claimants would be entitled to total compensation of a sum of Rs.4,77,000/- and the enhanced compensation would come Rs.89,000/-.

13. In the light of the facts and circumstances of the case, as stated above, the appeal filed by claimants is allowed in part; and the appeal filed by the insurer is dismissed as devoid of merits.

The impugned judgment and award dated 2nd June 2008, passed in M.V.C.No.1469/2005, by the Additional Civil Judge (Sr Dn) and Member, Additional Motor Accident Claims Tribunal, Hassan, is hereby modified, awarding a sum of Rs.4,77,000/- as against Rs.3,88,000/- awarded by the Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition till the date of realization.

The Insurance Company is directed to deposit the enhanced compensation of Rs.89,000/-, with interest thereon at 6% per annum, within three weeks from the date of receipt of copy of the judgment and award.

Immediately on such deposit by the Insurance Company, a sum of Rs.20,000/- each may be deposited in the names of each of second and third appellants/minor children of deceased, in Fixed Deposit, in any scheduled/Nationalized Bank, till they attain majority, with liberty reserved to the appellant No.1 to withdraw the periodical interest for their welfare.

Remaining sum of Rs.49,000/- with interest on Rs.89,000/- shall be released in favour of the claimant No.1/wife of the deceased, immediately.

The amount in deposit by the Insurer is directed to be transmitted to the jurisdictional Tribunal, forthwith.

Office to draw award, accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com