
(2017) 04 KAR CK 0118
KARNATAKA HIGH COURT
Case No: 31949 of 2010(MV)

The Manager New
India Assurance Co.
Ltd

APPELLANT

Vs

Jagadish & Anr

RESPONDENT

Date of Decision: April 27, 2017

Acts Referred:

- Motor Vehicles Act, 1988, Section 166, Section 166 - Application for compensation

Hon'ble Judges: B. A. Patil

Bench: SINGLE BENCH

Advocate: R.V.Nadagouda

Judgement

1. The present appeal is preferred by the insurer assailing the judgment and award passed by MACT No.V, Bijapur, dated 14.10.2009 in MVC.No.710/2008.

2. The facts leading to the case are that on 4.3.2007, deceased Jayashree Kulkarni was returning from hospital to go to his brother's house at Pune, at that time, a car bearing Regn.No.MH.14/4E-9523 came in a high speed in a rash and negligent manner, respondent No.2 being the driver of the said vehicle unable to control dashed against the said Jayashree Kulakarni, as a result of which, she sustained grievous injuries. She was shifted to Dr.Inamdar's hospital from there to Ruby Hospital and during the course of the treatment she succumbed to the said injuries. The claimant brother of the deceased filed the claim petition for claiming compensation on the ground that he was dependent on her and she was the sole earning member in their family.

3. In pursuance of the notice, respondent No.1 remained absent, respondent No.2 appeared and filed the written statement denying the averments of the claim petition. It is

contended that the Tribunal at Bijapur is not having jurisdiction to entertain the petition as the accident in question has occurred in Pune. It is alleged that the petitioner is not a dependent and as such the petition is liable to be dismissed.

4. On the basis of the said pleading, the Tribunal framed the following issues:-

1. Whether the petitioner proves that on 4.3.07 at 8.15555 a.m. opposite to Atlas Capco Ltd., Dhopollo Pune Mubai road, at that time Car bearing its Reg.No.MH- 14/4E9523 came in high speed, rash and gross negligent manner and dashed to Smt. Jayashree, who sustained severe injuries and died on the way to hospital?

2. Whether the petitioner is entitled for compensation? If so, what is the quantum and from whom?

3. What order or award?

5. Issue No.1 was answered in affirmative, Issue No.2 was answered in partly affirmative and Issue No.3 as for the final order.

6. In order to prove the case of the petitioner, he got examined himself as PW.1 and got marked the documents as per Ex.P1 to P10. Respondents have not adduced any oral evidence but with consent got marked Ex.R1, the copy of the insurance policy.

7. The main grounds urged by the learned counsel for the appellant are that the petitioner and the respondents are residents of Pune. The accident has occurred in Pune, as such, the Tribunal at Bijapur has no jurisdiction to entertain the petition. He would contend that the petitioner has not proved that he was dependent on the income of the deceased Jayashree. He would contend that the petitioner and the respondents are retired persons as such he is not entitled to any compensation. On these grounds, he prayed for dismissal of the petition.

8. Per contra, the respondent-claimant's counsel would submit that the petitioner is fully dependent on the deceased. He further contends that the petitioner is entitled to loss of estate and the funeral expenses which have been incurred by the petitioner though he is not entitled to compensation under other heads. On these grounds, he supports the award of the Tribunal and prays to dismiss the petition.

9. First and foremost contention raised by the learned counsel for the appellant is that the Tribunal is not having any jurisdiction to entertain the petition since the petitioner and respondents are residents of Pune and the accident in question has occurred at Pune.

Though the said contention is taken by the learned counsel for the appellant, in view of the amendment made to Section 166 of the Motor Vehicles Act, 1989, the application for compensation can be filed where the claimant resides or carries on business or within the local limits of whose jurisdiction the defendants reside. As could be seen from the records, the petitioner is a resident of Tidagundi in Bijapur District and as such the petition filed before the MACT, Bijapur is sustainable in law. Be that as it may, in view of the dictum laid down by the Apex Court that the claim petition can be filed where the claimant resides or carries on business and in proof of address the Tribunal will get the jurisdiction to entertain the said petition. In view of the said fact, the contention raised by the learned counsel for the appellant does not deserve any consideration.

10. Though the learned counsel for the petitioner contended that the petitioner-brother of the deceased Jayashree is not dependent on the income of the deceased, it is not in dispute that the petitioner and the deceased were residing together at the time of accident. Deceased was unmarried, except the present petitioner no other persons are there as dependents on the deceased. Keeping in view the said aspect, the Tribunal has awarded an amount of Rs.2,88,000/- towards loss of dependency; Rs.15,000/- towards loss of expectancy of life; Rs.10,000/- towards love and affection and Rs.10600/- towards funeral and medical expenses.

11. On going through the said award, the compensation awarded appears to be on the higher side and even the compensation awarded under various heads is also not permissible under the law. When admittedly the petitioner is brother of the deceased, then under such circumstances, petitioner is not entitled to any compensation under the heads of loss of love and affection and loss of expectancy of life. Even the compensation awarded towards loss of dependency also appears to be on the higher side. In that light, the award of the Tribunal requires to be modified.

12. It is well established principles of law that if the petitioners are not dependents then under such circumstances, they are entitled to compensation towards loss of estate and the other conventional heads for having incurred for the purpose of funeral expenses and obsequies. The petitioner has deposed and produced Exs.P7 and P8 which indicate that the deceased was drawing a sum of Rs.3,719/- per month as her pension. Though the said documents have been produced, the Tribunal taking into consideration the other aspects and by taking the income at the rate of Rs.4,000/- per month has awarded Rs.2,88,000/- towards loss of dependency, which is not a correct calculation. If she was drawing Rs.4,000/- per month as pensionary benefits, then under such circumstances, at least she could have saved Rs.750/- per month and that will be the loss of estate to the petitioner. If that were to be adopted, then under such circumstances, the petitioner is entitled to compensation of Rs.81,000/- towards loss of estate.

13. The Tribunal has awarded Rs.10,600/- towards funeral and medical expenses. The said compensation appears to be on the lower side. The petitioner being the brother of

the deceased might have incurred some expenses for the purpose of funeral and obsequies ceremonies. In that light, the petitioner is entitled to an amount of Rs.25,000/- under the said head.

14. Though no documents have been produced for having incurred the medical expenses, the Tribunal has awarded Rs.600/-, the deceased was taken to two hospitals and thereafter she succumbed to the injuries. Hence, the petitioner might have spent some money for the medical expenses and therefore he is entitled to Rs.2,000/- for medical expenses.

15. Keeping in view the aforesaid facts and circumstances, the petitioner is entitled to compensation of Rs.1,08,000/-. Accordingly, the judgment and award passed by the Tribunal is modified as indicated above.

Appeal is partly allowed accordingly.

Registry to draw the decree.