

IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

MFA NO.95 OF 2013 [MV]
CONNECTED WITH
MFA NO.709 OF 2013 [MV] DATED 26-03-2019

SMT. M.DEVI VS. MR. ZEFRUL HAQUE, AND ANOTHER

JUDGMENT

MFA No.95 of 2013 is filed by the widow and children of the deceased M. Jyotheshwar Reddy, seeking enhancement of compensation.

MFA No.709 of 2013 is filed by the Insurance Company, challenging the liability as well as the quantum of compensation awarded by the Tribunal.

2. Both the appeals are directed against the judgment and award dated 09.10.2012 passed by the MACT, Bengaluru in MVC No.1747/2010, wherein the Tribunal has awarded a total compensation of Rs.10,79,200/- along with interest at 6% per annum to the claimants for the death of M. Jyotheshwar Reddy in a road traffic accident.

3. I have heard the learned counsel appearing for the claimants and the learned counsel appearing for the Insurance Company.

4. The brief facts of the case are that on 22.09.2003 at about 1.30 p.m., near Mirasipalle bus stop, Mirasipalle Village of Kadappa District, the deceased M. Jyotheshwar Reddy was traveling in a Tata 709 Van bearing registration No.MH-04-AG-5501 towards Laxmipeta of Kadappa District, with a load of hens belonging to its owner, M/s. Suvera Hatcheries Private Limited, Nellor. The driver of the said van lost control over the vehicle and dashed against the oncoming lorry bearing registration No.AP-24-U-8449. In the said accident, M. Jyotheshwar Reddy succumbed to the injuries while being shifted to the hospital for treatment.

5. The claimants being the wife and two minor children of the deceased filed a claim petition, praying to award a total compensation of Rs.15 Lakhs for the death of M. Jyotheshwar Reddy.

6. Before the Tribunal, the wife of the deceased got examined herself as PW1. Exs.P1 to P10 were marked through her evidence. The claim was resisted by the respondent-Insurance Company. RW1 was examined and Exs.R1 to R5 were marked on behalf of the Insurance

Company.

7. The Tribunal after appreciating the oral and documentary evidence on record, awarded a total compensation of Rs.10,79,200/- along with interest at 6% per annum under the following heads:

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|---|---|
| Loss of dependency | Rs.10,19,200-00 |
| Loss of consortium of Married life | Rs.15,000-00 |
| Loss of love and affection | Rs.15,000-00 |
| Funeral and other expenses of estate | Rs.15,000-00 Loss |
| Total | <u>Rs.15,000-00</u> <u>Rs.10,79,200-00</u> |

8. The Tribunal held that as on the date of accident, the Tata 709 van bearing registration No.MH- 04-AG-5501 had valid insurance coverage and the deceased M. Jyotheswar Reddy was traveling in the said goods vehicle along with a load of hens belonging to his employer M/s. Suvera Hatcheries Private Limited, Nellore and that Respondent No.2 failed to prove that the deceased was traveling in the said goods vehicle as an unauthorized passenger at the time of accident and accordingly held both the respondents before the Tribunal

are jointly and severally liable to pay the compensation and directed the Insurance Company to deposit the said compensation amount.

9. Sri. C.R. Ravishankar, learned counsel appearing for the Insurance Company vehemently contended that the accident took place in the year 2003 and the claim petition has been filed on 22.03.2010 and therefore, there is an inordinate delay in filing the claim petition. The said delay could not have been condoned by the Tribunal and the petition ought to have been dismissed on the sole ground of delay. He would further contend that the deceased was a gratuitous passenger traveling in a goods vehicle. Therefore, he is not covered under the policy. Hence, the Tribunal was not proper in saddling the liability on the Insurance Company to pay the compensation. It is his contention that the case of the claimants that the deceased was a vaccination supervisor and he was traveling in the vehicle along with the load of hens and therefore, he was authorized by the owner to travel in the said vehicle cannot be accepted, because, the said fact has not been established by adducing acceptable evidence. He would contend that the deceased was a gratuitous passenger and the owner of the alleged goods vehicle has not been examined to prove that

the deceased was working under him and therefore, the Tribunal holding the Insurer liable to pay the compensation is contrary to the various decisions of the Hon'ble Apex Court. The deceased as a passenger was traveling in the vehicle and not as an authorized representative, hence, he is not covered under the policy and therefore, the claimants are not entitled for any compensation from the Insurer of the vehicle. He further contended that the total compensation awarded by taking the income of the deceased at Rs.7,000/- per month, without the evidence of the employer, is not proper. Accordingly, he seeks to allow the appeal filed by the Insurance Company and to dismiss the appeal filed by the claimants.

10. In support of his arguments, he placed reliance on the following judgments:

- (i) *AIR 2017 SC 1612 M/s. Purohit and Company vs. Khatoonbee and another,*
- (ii) *ACJ 1992 Page 614 Maqbal Bee vs. APSRTC,*
- (iii) *ACJ 2005 Page 721, National Insurance Company Limited vs. Bommithi Subbhayamma and others,*
- (iv) *ACJ 2007 Page 1043 New India Assurance Company Limited vs. Vedavathi,*
- (v) *ACJ 2008 Page 268 National Insurance Company Limited vs. Cholleti Bharathamma and others.*

11. The learned counsel appearing for the claimants contended that the deceased was working as a Vaccination Supervisor at the relevant point of time,in one M/s. Suvera Hatcheries Private Limited and he was having a salary of Rs.8,500/- per month. The salary certificate has been produced and marked asEx.P6, which clearly shows that the deceased was earning the said sum by working as a Vaccination Supervisor in the said Firm from 1995. He contends that as on the date of accident, he was traveling in the vehicle along with the load of hens and therefore, he is not a gratuitous passenger. On the other hand, he was traveling with the goods as a representative of the owner. He would place reliance on the documents at Exs.P1 and P3 namely FIR and the Charge sheet contending that the said documents clearly disclose that the van coming from Hyderabad with load of hens came to the wrong side and dashed against the lorryand the deceased was traveling in the said vehicle along with the load of hens and the said accident was on account of rash and negligent driving by the driverof the van. He submits that since the deceased was traveling in the vehicle as an authorized representative and not as a gratuitous passenger, is covered under the policy and therefore, the claimants are entitled for compensation.

12. Learned counsel for the claimants further

submitted that though the claimants have produced the salary certificate which is marked at Ex.P-6, showing the income of the deceased as Rs.8,500/- per month, the Tribunal was not proper in taking the income of the deceased at Rs.7,000/- per month. Therefore, he submits that the sum arrived towards loss of dependency is on the lower side and the total compensation awarded requires enhancement. Accordingly, he prays to allow the appeal filed by the claimants and seeks to enhance the compensation by modifying the judgment and award passed by the Tribunal.

13. In support of his contention, he placed reliance on the following judgments:

- (1) *Dhannalal vs. D.P. Vijayvargiya and others reported in 1996(4) SCC 652.*
- (2) *National Insurance Company Limited vs. Baljit Kaur and others reported in 2004 ACJ 428.*
- (3) *Ramesh Kumar and others vs. National Insurance Company Limited and others reported in ILR 2002 Kar 870.*

14. The points that arise for consideration are that :

- (i) whether the claim petition was liable to be dismissed on the ground of delay in filing the petition?
- (ii) whether the deceased was a gratuitous passenger traveling in the vehicle?

(iii) whether the claimants are entitled for enhancement of compensation awarded by the tribunal?

15. It is the case of the appellants/claimants that on 22.09.2003 at about 1.30 a.m. when the deceased M.Jyotheswar Reddy was proceeding in a Tata van bearing reg. No.MH-04/AG-5501 with the load of hens belonging to his employer i.e., M/s. SuveraHatcheries Private Limited and near Mirasipalle Bus Stand, Mirasipalle village of Kadappa District, on account of rash and negligent driving, the driver of the said van lost control and dashed against the on coming lorry bearing reg. No.AP-24/U-8449 resulting in the death of said M.Jyotheswar Reddy. The claim petition came to be filed on 22.03.2010.

16. It is the contention of learned counsel for the Insurance Company that there is an inordinate delay in filing the claim petition and therefore, the said delay could not have been condoned by the Tribunal and the petition ought to have been dismissed only on the ground of delay. The learned counsel has placed reliance on a decision of the Hon'ble Apex Court in the case of M/s. Purohit and

Company Vs. Khatoonbee and another reported in AIR 2017 Supreme Court 1612. The Hon'ble Apex Court in the said decision has held that though no period of limitation remains prescribed, after amendment of Section 166 of the Motor Vehicles Act, 1988 [hereinafter referred to as "the Act of 1988" for brevity], whereby sub-Section (3) of Section 166 came to be deleted [with effect from 14.11.1994], yet claim must be filed within a reasonable time.

17. The learned counsel for the claimants contended that the insurer has neither taken such contention before the Tribunal nor any grounds have been urged in the appeal filed by them regarding delay. He would contend that no limitation is prescribed after the amendment to the Act of 1988 with effect from 14.11.1994 and therefore, only on the ground of delay, the petition cannot be dismissed.

18. The Hon'ble Apex Court in the case of New India Assurance Company Limited vs. C. Padma and Another reported in (2003) 7 SCC 713, has held that :

"Act like the Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims

or their families, if otherwise the claim is found genuine. Secondly, it is a self contained Act which prescribes the mode of filing the application, procedure to be followed and award to be made. Parliament, in its wisdom, realized the grave injustice and injury being caused to the heirs and legal representatives of the victims who suffer bodily injuries/die in accidents, by rejecting their claim petitions at the threshold on the ground of limitation, and purposely deleted sub- section (3) of Section 166, which provided the period of limitation for filing the claim petitions and this being the intention of the legislature to give effective relief to the victims and the families of the motor accidents untrammelled by the technicalities of the limitation."

19. The facts of the case relied upon by the learned counsel for the Insurance Company in the case of M/s. Purohit and Company Vs. Khatoonbee and another [supra] are entirely different. In the said case, there is a delay of 28 years in filing the claim petition. As contended by the learned counsel for the claimants, in the present case, the insurance company has not taken any such contention regarding delay before the Tribunal. Considering the facts and circumstances of the present case and also considering the Judgment of the Hon'ble Apex Court in the case

of The New India Assurance Company Limited vs. C. Padma and Another [supra], it cannot be said that the claim petition was not maintainable before the Tribunal.

20. The second contention by the learned counsel for the Insurance Company is that the deceased was traveling in a goods vehicle as a gratuitous passenger and therefore, the insurer would not be liable to pay compensation. It is his contention that there is nothing to show that the deceased was an authorized representative of the owner of the goods and he submits that there is no evidence to show that the vehicle was carrying any goods and therefore, in the absence of substantial evidence establishing that the deceased was an authorized representative of the owner of the goods, the insurer cannot be held liable to pay the compensation to the claimants.

21. In the case of National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and others [Supra] the Hon'ble Apex Court has held that the Insurance Company was not liable for payment of any compensation for the death of gratuitous passenger traveling in a goods vehicle.

22. In the case of New India Assurance Co. Ltd. Vs. Vedwati and others [supra] at para 6, it is held as under:

" x x x

... The difference in the language of 'goods vehicle' as appearing in the old Act and 'goods carriage' in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger.

This is clear from the expression 'in addition to passengers' as contained in the definition of 'goods vehicle' in the old Act. The position becomes further clear because the expression used is 'goods carriage' is solely for the carriage of 'goods'. Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of 'public

service vehicle'. The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923 (in short 'the WC Act'). There is no reference to any passenger in 'goods carriage'.

23. In the instant case, according to the claimants, the deceased was a Vaccination Supervisor. He was an authorized representative of the owner i.e., M/s. Suvera Hatcheries Private Limited and on the fateful day, he was traveling in the vehicle along with the load of hens. It is relevant to note that FIR has been marked as Ex.P1. The said FIR is filed by the cleaner of the lorry bearing reg. No.AP-24/U-8499. The perusal of the same would go to show that on that day, the said lorry was loaded with onion and when it reached Mirasipalle village, at that time, the offending van came from Hyderabad with a load of hens from the opposite side and on a wrong side and dashed against the lorry and in the said accident, the van driver and another person sustained grievous injuries and died. Even the driver of the lorry and other persons, who were

inmates of the lorry also sustained grievous injuries. The final report marked at Ex.P3 also discloses that the offending van was loaded with hens. On account of the death of the driver of the TATA van bearing reg. No.MH-04/AG-5501 an abated charge sheet was filed.

24. Ex.R2 is the copy of the Insurance Policy of Tata 407 van In which the deceased was traveling. The seating capacity of the said vehicle is shown as '6'. In the claim petition as well as in the oral evidence of P.W.1, it is specifically stated that the deceased was working as a Vaccination Supervisor of M/s. Suvera Hatcheries Private Limited. The claimants have also relied on Ex.P6-certificate issued by the Manager of M/s. Suvera Hatcheries Private Limited. The same would go to show that deceased M.Jyotheswar Reddy was working as a Vaccination Supervisor in the said Firm. Considering Ex.P1-FIR., Ex.P3-Final Report, and the material on record, the conclusion arrived at by the Tribunal that the deceased was traveling in the said goods vehicle along with a load of hens belonging to his employer i.e., M/s. Suvera Hatcheries Private Limited

and therefore, he is not a gratuitous passenger can not be said to be erroneous. The contention of Respondent No.2-Insurance Company that the deceased was only a passenger and the Insurance Company cannot be saddled with any liability to pay compensation to the gratuitous passenger cannot be accepted. The Insurance Company has failed to prove that the deceased was traveling in the said goods vehicle as a gratuitous passenger at the time of accident.

25. The Tribunal has taken the salary of the deceased at Rs.7,000/- p.m. Though the claimants placed reliance on Ex.P6 to contend that the deceased was having an income of Rs.8,500/- p.m., they have failed to substantiate the same by examining the person who issued the said certificate. The Tribunal has added another 30% towards future prospects of the deceased. The claimants have failed to convincingly establish the definite income the deceased was having at the time of accident. However, taking into consideration that the deceased was working as a Vaccination Supervisor and taking into consideration the year of accident and also considering that the claimants are the wife and two minor children of the deceased, I deem it proper to take Rs.5,000/- p.m. as the

income of the deceased. The deceased was aged about 41 years and addition of 25% has to be made towards future prospects. 1/3rd of the said income is to be deducted towards personal expenses of the deceased. The appropriate multiplier is '14'. Hence, the total compensation to be awarded is Rs.7,00,056/- [Rs.5,000 + Rs.1,250 = Rs.6,250 -2,083 = Rs.4,167 x 12 x 14] towards loss of dependency. A sum of Rs.70,000/- is added under the head 'loss of consortium, loss to the estate, funeral and transportation expenses'. A sum of Rs.25,000/- each is awarded towards loss of love and affection to claimant Nos.2 and 3. In all, the claimants are entitled for a total compensation of Rs.8,20,056/- as against Rs.10,79,200/- awarded by the Tribunal. The points raised are answered accordingly. Hence, I pass the following:

ORDER

MFA No.95/2013 and MFA No.709/2013 are allowed in part.

The claimants in MVC No.1747/2010 are entitled for a sum of Rs.8,20,056/- as against Rs.10,79,200/- awarded by the Tribunal with 6% interest p.a. from the date of petition till the date of realization.

Respondent Nos.1 and 2 before the Tribunal are jointly

and severally liable to pay the compensation.

The compensation awarded shall be deposited by the Insurance Company, within a period of six weeks from the date of receipt of a copy of this Judgment.

The amount deposited before this Court shall be transmitted to the Tribunal.