

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 12TH DAY OF JANUARY 1998

BEFORE

THE HON'BLE MR.JUSTICE CHIDANANDA ULLAL

M.F.A.No.238 OF 1994

Between:

1. United India Insurance Co. Limited, Shimoga Branch, Shimoga by its Manager.
2. K Srinivasa, s/o.Kuppaswamy, major, residing near Gurunatha Saw Mill, Buddanagar, Shimoga. .. Appellants

(By Sri O Mahesh, Adv.)

And:

Smt.Sathyabhama @ Sathyamma, w/o.late K C Anantha Raj, aged 48 years, residing at No.67, Mallappa Compound, N Siddalah Road, Shimoga. .. Respondent

(By Sri S V Prakash, Adv.)

This miscellaneous first appeal is filed under Section 173(1) of the M.V.Act, 1988 against the judgment and award dated 9.7.1993 passed in MVC No.13/92 on the file of the Addl. District Judge & MACT, Shimoga, partly allowing the claim petition for compensation.

This miscellaneous first appeal coming on for hearing this day, the Court delivered the following:

- JUDGMENT -

This appeal is filed by the Insurance Company enjoining the owner of the vehicle in question to challenge the ^{- judgement and the award} ~~order~~ dated 9.7.1993 in MVC No.13/92 passed by the Addl. District Judge & MACT, Shimoga, (henceforth in brief as 'MACT'), whereunder while allowing the claim petition in part and the MACT had awarded a sum of Rs.1,85,200/- as global compensation to the respondent.

2. I heard the learned counsel for the appellants, Sri O Mahesh and the learned counsel for the respondent/claimant, Sri S V Prakash. I also perused the case records. Incidentally, it is submitted by him that the respondent/claimant had also filed cross objection/appeal for enhancement of compensation award ^{well} in time.

3. The learned counsel for the appellants, Sri O Mahesh while taking me through the facts of the case and urging the grounds in the appeal memorandum, submitted that the appeal had been filed on 2 grounds; firstly that there was contributory negligence on the part of the deceased resulting the accident and secondly that the quantum of the global compensation awarded by the MACT was on the higher side. It is argued by him that the deceased had

contributed his part of the negligence resulting the accident in question on 23.11.1991 in which the son of the deceased aged about 25 years died on the very day in the hospital after succumbing ^{into} the injuries sustained in the accident. It is pointedly argued by Sri Mahesh that the deceased was found in the rear wheel of the lorry bearing No.MYS 4040 and the said circumstances, according to him goes to show that the accident was not only due to the negligence on the part of the driver but equally due to the negligence on the part of the deceased. Incidentally, he pointed out that it is for that reason the respondent/claimant did not produce either the accident sketch or for that matter ^{the} mahazar by way evidence before the MACT, interestingly enough the percentage of contributory negligence by the deceased has not been pointed out by the learned counsel for the appellants.

4. The next point argued by the learned counsel for the appellants is that even if it is taken that the negligence of the driver of the vehicle in question was proved by the respondent/claimant before the MACT, the award of the compensation of Rs.1,85,200/- under four different heads was totally on the higher side and the same therefore to be

ee

called for to be interfered with by this court. It is his submission that the salary certificate, Ex.P6 was dated 29.10.1981 when the accident had taken place on 23.11.1991. With reference to the said Ex.P6, it is submitted by him that though there was an incentive of Rs.400/- to Rs.700/- p.m. there is no evidence to show that such an amount, infact, was paid by his employer to him at any time, for such an event arose only on completion of month of his service. Let apart according to him, the payment of said sum as incentive was only a contingency *and not certain*

With reference to Ex.P8, salary certificate produced by the respondent/claimant to say that the deceased was also earning a monthly income of Rs.500/- from M/s.Murthy Watch Co. as a watch repairer was also not proved before the MACT and the respondent did not examine both the employers who had issued Ex.Ps.6 and 8.

5. The learned counsel for the appellants alternatively submitted that even if the said two certificates were taken to be proved by the MACT, the MACT would not given a deduction of one third of the total income of Rs.1,615/-. He had also cited a Division Bench ruling of this Court reported in 1996 ACJ 921, wherein it was held that in the case of

le

unmarried persons, the dependency to the parents can be taken only 50% and not beyond. Therefore his submission is that only one half of Rs.1,615/- would have been taken by the MACT as loss of monthly dependency as against Rs.1,110/-; in furtherance he pointed out that awarding of compensation under the other heads were also on the higher side and liable to be reduced. According to him, a global compensation of Rs.1,00,000/- would have been awarded by the MACT to the respondent.

6. On the otherhand, the learned counsel for the respondent, Sri S V Prakash counter argued that the impugned judgment and award passed by the MACT was just and proper and does not call for to be interfered with, particularly, when the MACT had not taken into account the future prospects of the deceased in his earning capacity as held by the Supreme Court in a reported decision in ILR 1994 Kar 969. Sri Prakash had also argued that the appellants herein have miserably failed to prove that there was contributory negligence on the part of the deceased before the MACT and that being so, according to him it is impermissible for the appellants to set a theory of contributory negligence on the part of the deceased before this Court. In



this context, he had drawn my attention to the objection statement filed by the Insurance Company before the MACT, wherein it had been clearly denied the negligence on part of the lorry driver resulting in the accident and the consequential death of the deceased. He had also pointed out to me that the appellant No.2, owner as well as the driver, had not only adduced evidence before the MACT besides ^{not} cared least to file objection statement before the MACT.

7. While urging the cross objection filed by the respondent/claimant, Sri Prakash submitted that the judgment and award of Rs.1,85,200/- under the head of dependency be substantially enhanced by reckoning the future prospects of the deceased. According to him a minimum of Rs.200/- would have been safely taken ^{for} better prospects ^{the purpose of} for calculation of loss of dependency. Alternatively, he submitted that the impugned award passed by the MACT be not disturbed.

8. In the light of the above submissions made, the points for my consideration are whether there was contributory negligence on the part of the deceased and whether the impugned judgment and award

CE

passed by the MACT is on the higher side and therefore called for to be interfered with by this Court in the instant appeal.

The other question is whether in cross-objection filed by an Respondent - claimant's rights be allowed.

9. It is the argument of the learned counsel for the appellants that there was contributory negligence on the part of the deceased resulting in the accident and the consequential death of the respondents' son. As pointed out by the learned

counsel for the respondent, it was no ~~today's~~ ^{Go day's} case either of the appellant No.1, Insurance Company that

matter of there was the appellant No.2, owner ^{that there was} ~~of the~~

contributory negligence on the part of the deceased.

With reference to that submission made, I have also adverted to the objection statement filed by the

appellant. In para 6 of the objection statement filed by the appellant-Insurance Company reads as follows:

"6. The son of the petitioner is reported to have died due to his rash driving of the bicycle. It is reported that the deceased hit left hind wheel of the lorry and accident was due to reasons beyond the control of the driver. As such this respondent is not liable to pay compensation to the petitioner. The lorry was slowly moving on the Sagar road to its left side, all of a sudden the cycle driven by the deceased darted to the middle of the road and hit the lorry from behind resulting in the collision."

10. From the above it is clear that it was nobody's case before the MACT that there was contributory negligence on the part of the deceased. If that so, it appears to me that it is a new case that has been made out by the appellants before this Court for the first time. Therefore, I have got no hesitation to reject the ^{said} argument advanced before me by the appellants; I accordingly so do.

11. The other point is whether the impugned judgment and award passed by the MACT is on the higher side. The MACT relying upon Ex.P6, salary certificate from Raja Agro Service Centre, Shimoga and Ex.p8, salary certificate, from Murthy Watch Co., the MACT had come to the conclusion that in all the deceased was getting monthly income of Rs.1.615/-. But he had given deduction of one third towards his personal expenses. As pointed out by the learned counsel for the appellants in a case where a bachelor dies in an accident, one half of the deceased have to be taken towards loss of dependency. Hence, it appears to me that the MACT had entered into an error in his calculation of loss of dependency. Hence the loss of dependency works out to Rs.807.50 or to round it off it works out to Rs.800/- p.m. It is to be pointed out here that

ell

there was no serious challenge by the appellant as against salary certificate-Ex.P6 and Ex.P8 produced by the respondent-claimant before the MACT.

12. The learned counsel for the respondent had also relied upon the decision of the Supreme Court reported in 1994 Kar.1969 to the effect that future prospects to be taken note of awarding compensation in the case of death and if that is to be taken, it appears to me that a fair figure of Rs.150/- p.m. safely be taken towards future prospects and even if that is base figure multiplied by 12 months, the annual loss of dependency works out to Rs.11,400.00. If multiplier of 12 is employed, by taking note of the age of the respondent-claimant at 45 years at the time of death of her son, the total loss of dependency works out to Rs.1,36,800.00. In passing the impugned award and judgment, the MACT had awarded a sum Rs.15,000/- towards loss of estate and expectancy of life. I feel that the award under the head is just and proper. The MACT had awarded towards the funeral expenses and transportation of body etc., a sum of Rs.10,000/-. In my considered view, the said sum awarded is on the higher side and as such the same is reduced to a sum Rs.5,000/-. Under the head, loss of consortium, love and affection, the

ll

MACT had awarded a sum of Rs.15,000/-, it appears to me that the said sum is ~~is~~ [✓]admissible. To sum up the above figures, the global compensation works out to Rs.1,56,800/-. The MACT had awarded interest at 9% p.a. from the date of petition down to the date of payment of compensated awarded, it appears to me the the said interest rate does not call for an inference. *In the result - In cross. objection filed by the Respondent claimant does not merit consideration.*

The impugned judgment and award passed by the MACT therefore stands modified from Rs.1,85,200/- to Rs.1,56,800/-.

The appeal therefore succeeds in part accordingly allowed in part. *Therefore* ~~In the result~~, the cross objection filed by the respondent/claimant stands dismissed. No cost.



Sd/-
Judge