

(2015) 02 KAR CK 0175
In the Karnataka High Court
Case No : M.F.A. No. 11580/2012 (MV)

Alice D'Souza and Others

APPELLANT

Vs

Mohammed Ajmal and Others

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 02 KAR CK 0175

Hon'ble Judges : N.K. Patil and G. Narendra, JJ.

Bench : Division Bench

Advocate : Guruprasad B.R. for Prasad and Sandhya Associates, for the Appellant

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—Though this appeal is posted for further Orders, by consent of both the parties the same is taken up for final disposal.

2. This appeal by the claimants is directed against the impugned Judgment and Award dated 21st December 2011 passed in M.V.C. No. 80/2011 on the file of the learned Ist Additional District Judge and Member, Motor Accident Claims Tribunal-III, Dakshina Kannada, Mangalore. The Tribunal by its impugned Judgment and Award, awarded a sum of Rs. 7,32,000/- with interest at 6% p.a. from the date of petition till payment on account of the death of deceased late Francis D'Souza in the road traffic accident. The claimants have presented this appeal on the ground that the quantum of compensation awarded by the Tribunal is inadequate and requires enhancement.

3. The brief facts of the case of the claimants/appellants on hand are that, the appellant/claimant No. 1 is the wife, appellant Nos. 2 to 6 are minor children and claimant No. 7 is mother of deceased. They filed a claim petition under Section 166 of the Motor Vehicles Act, claiming compensation on account of untimely death of deceased Francis D'Souza in a road traffic accident that occurred at

about 4.00 p.m. on 03.12.2010 contending that when the deceased was proceeding towards Mangalore on the motor cycle bearing Regn. No. KA-19/EA-707 following the Traffic Rules and Regulations in a moderate speed and when he reached in front of R.K. Garage of Adyar Village, Mangalore and taking a turn after displaying the right side indicator in order to go to the other side of the road, at that time, an Ikon Car bearing Regn. No. KA-21/M-7845 driven by its driver came at high speed and in rash and negligent manner from B.C. Road side and dashed against the motor cycle of the deceased. Due to the impact, he fell down and sustained multiple fractures all over the body. Immediately, he was shifted to Government Wenlock Hospital, Mangalore and the Medical Officer declared him dead. It is their further case that the deceased was aged about 44 years and working as Civil Contractor and was the only bread earning member in the family, whatever the amount he earned he used to spend the same for the welfare of the family consisting of 7 members. Due to untimely death of the deceased in a road traffic accident, they have suffered social and economic loss, wife has lost her life partner and the minor children have lost love and affection, inspiration and guidance of their father. The mother of the deceased has suffered mental shock and agony and during the pendency of the appeal, she is reported to be dead on 06.11.2012 after passing of the judgment and award by the Tribunal. Taking all these aspects into consideration, they have filed claim petition before the Tribunal under Section 166 of the Motor Vehicles Act, claiming compensation against the respondents-insurer and owner of the offending vehicle involved in the accident. Further, they contended that on account of rash and negligent driving by the driver of the Car, the deceased sustained multiple fractures all over the body and succumbed to the injuries. Further, it is contended that the Tribunal erred in taking the income of the deceased at Rs. 5,000/- per month, deducting 1/5th towards personal expenses by applying multiplier of 14, and awarding compensation towards loss of dependency and conventional heads with interest at 6% p.a. from the date of petition till the date of realization. Being dissatisfied with the impugned judgment and award, the appellants herein have presented this appeal seeking enhancement of compensation.

4. The submission of the learned Counsel appearing for the appellants at the outset is that, the Tribunal has erred in taking the income of the deceased at Rs. 5,000/- per month which is on lower side as the accident has occurred in the year 2012. He was working as Civil Contractor maintaining his large family, consisting of 7 members i.e. wife, minor children and mother. Therefore, he submits that the income of the deceased may be re-determined reasonably and deduct 1/5th and applying appropriate multiplier of 14 award reasonable compensation towards loss of dependency. Further, he submitted that the Tribunal also erred in not awarding reasonable compensation under the conventional heads and what is awarded is insufficient and it requires enhancement in the light of the judgments of Apex Court and also this Court in catena of judgments and also the rate of interest awarded at 6% p.a. from the

date of petition till realization is also on lower side and the interest may be awarded at 9% to 10% p.a. by modifying the impugned judgment and award.

5. As against this, the learned Counsel appearing for the 2nd respondent - Insurer inter-alia contended and sought to substantiate the impugned Judgment and award passed by the Tribunal stating that the Tribunal after due consideration of the oral and documentary evidence available on record has awarded just and reasonable compensation and hence, the same does not call for interference by this Court.

6. Further, he submitted regarding the income of the deceased that, the claimants have not produced any documents to show that he was getting salary of more than Rs. 5,000/- per month and they have not examined the representative of the Trust to the effect that he was working as Civil Contractor. However, he fairly submitted that the impugned judgment and award passed by the Tribunal so far as conventional heads, may be considered in accordance with law.

7. Having regard to the facts and circumstances of the case and after careful consideration of the submissions of learned Counsel appearing for both the parties and after perusal of the impugned judgment and award passed by the Tribunal, the only point that arise for consideration is:

"Whether the quantum of compensation awarded by the Tribunal is just and reasonable"?

8. The occurrence of accident and the resultant death of deceased in the road traffic accident is not in dispute. Further, it is not in dispute that the deceased was aged about 44 years and working as Civil Contractor and he succumbed to the fatal injuries sustained in the road traffic accident that occurred on 03.12.2010. The claimants are none other than wife and major and minor children of the deceased. Taking all these aspects into consideration, the year of accident, occupation, age of the deceased, we can safely re-assess the income of the deceased at Rs. 6,500/- per month to meet the interest of justice and by deducting 1/5th towards personal expenses i.e. Rs. 1,300/-, we take the income at Rs. 5,200/-. The deceased was aged about 44 years at the time of accident and the appropriate multiplier applicable is 14 by following the judgment of Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Accordingly, we award a sum of Rs. 8,73,600/- (Rs. 5,200/- x 12 x 14) towards loss of dependency.

9. Further, what emerges is that the appellant No. 1, who is the wife has lost her life partner at the age of 40 years and children have lost love and affection, inspiration, guidance of father. Taking into all these facts into consideration, we deem fit to award a sum of Rs. 1,00,000/- towards loss of consortium, Rs. 60,000/- towards loss of love and affection, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses. In all the claimants are entitled for total compensation of Rs. 10,83,600/- as against Rs.

7,32,000/- awarded by the Tribunal. There is enhancement of Rs. 3,51,600/-.

10. Further, the learned Counsel appearing for the appellants submitted that the rate of interest awarded by the Tribunal is on lower side. In the light of the decision in catena of judgments of Apex Court and this Court and considering the fact that the accident occurred in the year 2010, we award interest at 8% p.a. on the enhanced compensation amount from the date of petition till the date of realization.

11. Having regard to the facts referred above, the instant appeal filed by the appellants is allowed in part. The impugned Judgment and Award passed by the Tribunal dated 21st December 2011 in M.V.C. No. 80/2011 on the file of the 1st Additional District Judge and Member, Motor Accident Claims Tribunal-III, Dakshina Kannada, Mangalore is hereby modified awarding Rs. 3,51,600/- with interest at 8% p.a. from the date of petition till realization on the enhanced compensation amount, in addition to the compensation awarded by the Tribunal.

The 2nd respondent - Insurer herein is directed to deposit the enhanced compensation amount with interest after deducting the interest for the delayed period of 228 days, within a period of three weeks from the date of receipt of copy of this judgment and award.

Out of the enhanced compensation of Rs. 3,51,600/-, Rs. 1,00,000/- with proportionate interest shall be invested in Fixed Deposit in the name of the 1st appellant - wife of the deceased in any Nationalized or Scheduled Bank or Grameena Bank, for a period of ten years and renewable for another five years and she is entitled to withdraw the periodical interest accrued on it.

A sum of Rs. 75,000/- each with proportionate interest shall be invested in Fixed Deposit in the name of 5th and 6th appellants in any Nationalized or Scheduled Bank or Grameena Bank, till they attain the age of 30 years. The appellant No. 1 - mother of the minor children is entitled to withdraw the periodical interest accrued on it towards the welfare of the appellant Nos. 5 and 6 till they attain the age of 21 years. From 22 years to 30 years, the appellant Nos. 5 and 6 are entitled to withdraw the periodical interest.

Remaining amount of Rs. 1,01,600/- with interest shall be released in favour of the appellant No. 1 immediately on deposit by the 2nd respondent -Insurer.

Draw the award, accordingly.