(2016) 01 KAR CK 0232

In the Karnataka High Court

Case No : MFA No. 190 of 2010 (MV)

Aluvelamma and another APPELLANT

Vs

R. Nazeer Ahamed and another RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Citation : (2016) AAC 1441 : (2016) ILRKarnataka 2141

Hon'ble Judges : B. Sreenivase Gowda, J.

Bench : Single Bench

Advocate : Smt. Suguna R. Reddy, Advocate, for the Appellant; Smt. Harini Shivananda, Advocate, for the Respondent

Final Decision : Allowed

Judgement

B. Sreenivase Gowda, J.—This is an appeal by the claimants seeking enhancement of compensation awarded by the Tribunal.

2. One Sri. B.V. Narasimhappa, died in a road traffic accident. His wife filed a claim petition under Section 166 of M.V. Act, 1988 before the MACT, Chickballapur, seeking compensation from the owner and insurer of the vehicle involved in the accident. She died during the pendency of the claim petition and hence, three major sons of the original claimant Aluvelamma and deceased B.V. Narasimhappa, came on record as their legal representatives and they pursued the claim petition. The Tribunal by impugned judgment and award has awarded a sum of Rs. 2,87,000/- with interest at 6% p.a. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimants have preferred this appeal seeking enhancement of compensation.

3. Heard the learned counsel appearing for the parties and perused the Judgment and award passed by the Tribunal.

4. As there is no dispute regarding the death of deceased Narasimhappa in the road traffic accident that occurred on 08-09-2004 due to the rash and negligent driving of the driver of Lakshmi Venkateshwara Bus bearing No. KA-07-2371 and

liability of the insurer of the said vehicle, the only points that arise for consideration in this appeal are:

1. "Whether deduction of ?rd of the income of deceased by the Tribunal towards his personal expenses and taking ?rd of his income as contribution towards family in the claim petition where claimants are his major sons is just and proper?

2. Whether compensation of Rs. 2,87,000/- with interest @ 6% p.a. awarded by the Tribunal is just and reasonable or does it call for enhancement?"

5. Smt. Suguna. R. Reddy, learned Counsel appearing for the claimants submits though the claimants in support of their contentions that the deceased by working as a carpenter was earning Rs. 250-300 per day have examined the claimant 1(b) the second son of deceased as PW1 and a customer of deceased as PW2, the Tribunal has committed an error in taking the income of deceased at Rs. 3,000/- p.m. consequently, compensation awarded by the Tribunal towards loss of dependency is on the lower side. She submits even compensation awarded towards conventional heads is also on the lower side. Therefore, she prays for allowing the appeal by enhancing the compensation awarded by the Tribunal.

6. Per contra, Smt. Harini Shivanand, learned Counsel appearing for the insurer of the offending vehicle submits, admittedly the wife of deceased who filed the claim petition, died during the pendency of the petition and her three major sons came on record as her legal representatives and they pursued the claim petition, the Tribunal in spite of noticing that the claimants being major sons of deceased are not his dependent legal heirs has committed an error in deducting ?rd of the income of deceased towards his personal expenses and taking ?rd of it as his contribution towards family instead of deducting 50% of the income of the deceased towards personal expenses and taking the remaining 50% as his contribution towards family, however the total amount of compensation which has already been awarded by the Tribunal is just and reasonable and there is no scope for enhancement and therefore she prays for dismissal of the appeal.

7. By way of reply, the learned Counsel appearing for the claimants submits, claimants were not so educated persons, and they could not secure any employment and they were assisting their father in his avocation of carpenter. Since their deceased father was living with them he was contributing major portion of his earning towards family, as such the Tribunal was justified in deducting ?rd of the income of deceased towards his personal expenses and taking ?rd of it as contribution towards family.

8. The question as to, how much is to be deducted from the income of the deceased towards his personal expenses and how much is to be taken as contribution towards family while determining compensation towards loss of dependency depends upon (he facts and circumstances of each case.

9. In the instant case, it is not in dispute that initially the claim petition was tiled

by the wife of deceased seeking compensation for the death of her husband in the road traffic accident and she died during the pendency of the claim petition. Three major sons of original claimant Aluvelamma and deceased Narasimhappa came on record as their legal representatives and they pursued (he claim petition. As on the date of determination of compensation by the Tribunal, the wife of the deceased was not the claimant and the claimants were three major sons of deceased. Who being major sons of deceased with good health cannot be said that they were exclusively depending upon the income of their deceased father for their living. It is nobody''s case that deceased was residing separately from the claimants. When deceased was living with his three sons and their families it cannot be said that he was spending his entire earning for himself and he was not contributing anything towards families of his sons. In the facts and circumstances of the case and relying upon the judgment of the Hon''ble Supreme Court in the case of ''National Insurance Co. Ltd., v. Meghji Naran Soratiya and others'', reported in ''2009 ACJ 1441'', it is just and proper to deduct 50% of the income of the deceased towards his personal expenses and take the remaining 50% as his contribution towards the families of his three major sons as against deduction of ?rd of the income of deceased by the Tribunal towards his personal expenses and taking ?rd of it as contribution towards family. The Tribunal having held that the deceased was aged about 50 as per the postmortem report, it could have applied the multiplier of ''13'' applicable to his age group instead of ''11''.

10. The claimant No. 1(b) the second son of the deceased examined as PW1 has stated in his evidence that his father by working as a carpenter used to earn Rs. 250 to 300 per day. His evidence is corroborated by PW3 who has stated in his evidence that he got a dining table and other furniture prepared through the deceased and deceased was earning Rs. 250 to 300 per day. Except the oral evidence of PW1 and PW3, no documentary evidence is available with regard to the income of the deceased. Therefore, considering the age of deceased as 50, year of accident as 2004 and his avocation as carpenter, justice would be met if income of the deceased is taken at Rs. 4,500/- p.m. If that is so, the Loss of Dependency would work out to Rs. 3,51,000/- (Rs. 4,500/- x 12 x 50/100 x ''13'') and it is awarded as against Rs. 2,64,000/- awarded by the Tribunal.

11. In addition to that, a sum of Rs. 50,000/- is awarded under various conventional heads such as love and affection, loss of estate and transportation and funeral expenses as against Rs. 23,000/- awarded by the Tribunal.

12. Thus, the claimants are entitled for the following compensation :-

PARTICULARS

Rs.

Loss of Dependency (Rs. 4,500 x 12 x 50/100 x ''13'')

3,51,000

Conventional heads

50,000

TOTAL

4,01,000

Less: Compensation awarded by the Tribunal

2,87,000

BALANCE

1,14,000

13. Accordingly, the appeal is allowed in part. The judgment and award passed by the Tribunal is modified to the extent stated herein above. The claimants are entitled for an additional compensation of Rs. 1,14,000/- with interest at 6% p.a. from the date of claim petition till the date of realisation but excluding interest for the delayed period of 304 days in filing the appeal.

14. The Insurance Company is directed to deposit the additional compensation amount with interest but excluding interest for the delayed period within two months from the date of receipt of a copy of this judgment.

15. The entire amount shall be released in favour of the claimants in equal proportion.

16. No order as to costs.

