(2015) 09 KAR CK 0028

In the Karnataka High Court

Case No : MFA No. 24405/2012

Ambika and Others — APPELLANT

Vs

Syed Nasir Bhasha and Others — RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0028

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : Manjunatha G. Patil, Advocate, for the Appellant; M.K. Soudagar, Advocate, for the Respondent

Judgement

S. Sujatha, J.—Heard the learned counsel appearing for the parties.

2. It transpires that on 9.9.2008 the deceased was proceeding in a motor cycle for the purpose of his bank work at Pragathi Grami Bank. At about 12.30 PM while he was riding his bike, the lorry bearing Regn. No. KA-35-2423 came at high speed being driven by the driver in a rash and negligent manner collided against the motorbike as a result of which the deceased fell down and sustained grievous injuries due to which he succumbed to the injuries on the spot. Based on these facts, the claimants being the widow and minor children of the deceased, filed the claim petition which was resisted by the insurer.

3. The Tribunal after considering the evidence on record, awarded total compensation of Rs. 7,32,000/-. Being dis-satisfied, the claimants are before this Court.

4. Learned counsel appearing for the claimants contended that though cogent evidence was placed before the Tribunal to establish the income of the deceased at Rs. 10,000/- the Tribunal disbelieving the same determined the income at Rs. 6000/- per month which is contrary to the evidence on record. It is further contended that the deceased was an agriculturist besides he owned a Fair Price Shop as per the licence issued by the Office of the Tahsildar, Kudligi. His regular

income would have been more than Rs. 10,000/- on which the entire family was dependent. This clinching evidence was not considered in the right perspective by the Tribunal. It is further contended that the Tribunal has committed an error in not awarding future prospects considering the age factor of the deceased. Further, it is contended that the claimants are 4 in number. However, the Tribunal has deducted 1/3 towards the personal expenses of the deceased which is contrary to the Judgment of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

5. On the other hand, learned counsel appearing for the insurer strenuously opposed the appeal and contended that considering the evidence on record, the Tribunal has determined the monthly income at Rs. 6000/- which is just and proper. The same does not call for enhancement by this Court. Any enhancement would be only a premium to the claimants, which is not required in the facts and circumstances of the case.

6. Having heard the learned counsel for the parties, it is noticed that the deceased was aged 38 years at the time of occurrence of the accident and was running a Fair Price Shop as evidenced by the documents produced by the Tribunal besides owning agricultural lands. In support of the said contention that deceased was running a Fair Price Shop at Arakabavi, P.W. 2 was examined who has stated regarding the income the deceased was earning from the Fair Price Shop. Considering these aspects, in the circumstance of the case, it would be just and proper to enhance the income of the deceased at Rs. 7000/- per month. Claimants are also entitled to future prospects in view of the Judgment of the Apex Court in Munna Lal Jain and Others Vs. Vipin Kumar Sharma and Others . Accordingly, 30% of the income is awarded towards future prospects. The tribunal has wrongly deducted 1/3 towards the personal expenses of the deceased considering the dependents being 4 and proper deduction should have been 1/4. Applying these, loss of dependency works out to Rs. 12,28,500/-.

7. Accordingly, the judgment and award passed by the Tribunal is modified enhancing the compensation to Rs. 12,88,500/- as against Rs. 7,32,000/- awarded by the Tribunal with interest @ 8% p.a. from the date of petition till realisation deducting the interest for the delayed period of 1012 days caused in filing the appeal as per the order of this Court dated 02.09.2015. The enhanced compensation shall be deposited by the insurance company within six weeks from the date of receipt of the judgment. However, 50% of the amount shall be deposited in the name of the minor children till they attain the age of majority. Balance 50% shall be released in favour of the claimants. The order of the Tribunal in all other aspects remains undisturbed.

