(2015) 11 KAR CK 0122

In the Karnataka High Court

Case No : M.F.A. No. 3301 of 2014 (MV)

Archana and Others APPELLANT

Vs

Sharavana and Others RESPONDENT

Date of Decision : 16-11-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 11 KAR CK 0122

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : Roopamani C.S. for L.T. Gopal, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—Though this matter is posted in the orders list, it is taken up for final disposal with the consent of the learned counsel appearing for both the parties.

2. This appeal by the claimants is directed against the common impugned judgment and award dated 18.01.2014 passed in MVC No. 1248/2011 on the file of the II Additional District Judge and MACT-2, Fast Track Court, Shimoga, (hereinafter referred to as ''Tribunal'' for short) seeking to enhance the compensation.

3. The Tribunal by its judgment and award has awarded compensation of Rs. 22,88,581/- under different heads with interest at 6% per annum from the date of petition till the realization on account of death of the deceased-Jayaram in the road traffic accident.

4. In brief, the facts of the case are:

"The 1st and 2nd appellants are the daughters, 3rd appellant is the mother of the deceased-Jayaram and they filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the respondents, on account of the untimely death of the deceased-Jayaram in the road traffic accident. It is the case of the claimants that on 10.04.2011 deceased-Jayaram along with his wife and minor daughter were returning from Mandya in a car and they were going towards Kargal. At about 3.30 p.m. on N.H.206 road near Shaneshwara Temple, Ajjampura Cross, Tankere, a lorry bearing registration No. KA-13/8279 came in a rash and negligent manner and dashed against the car in which the deceased, his wife and daughter were travelling. Due to the impact, the wife died on the spot and deceased was taken to the hospital, where he took treatment for four months. On 11.08.2011, the deceased succumbed to the accidental injuries. It is further case of the appellants that the deceased was aged about 52 years. He was working as a Operator in Karnataka Power Corporation, drawing salary of Rs. 37,509/- per month and he used to spend the same for the welfare of the family. He was the only earning member of the family and entire family was depending upon the income of the deceased. On account of his untimely death, the daughters have lost love and affection, guidance, inspiration and security in life. His mother is deprived to see the bright future of her son. It has also affected social, moral and economic condition of the family. Therefore, they were constrained to file a claim petition against the respondents claiming compensation. The said claim petition had come up for consideration before the Tribunal. The Tribunal after appreciating the oral and documentary evidence and other material available on record, allowed the claim petition in part, awarding compensation of Rs. 22,88,581/- under different heads with interest at 6% p.a., from the date of petition till the date of realization. Not being satisfied with the impugned judgment and award passed by the Tribunal, the appellants have presented this appeal seeking to enhance the compensation."

5. The submission of learned counsel appearing for the appellants, at the outset is that, the Tribunal has erred in not awarding the reasonable compensation towards loss of dependency and conventional heads. What is awarded is inadequate and it requires enhancement. Further, he is quick to point out that the Tribunal has erred in not assessing the reasonable income of the deceased. The Tribunal has taken the income at Rs. 25,000/- per month which is contrary to the documentary evidence. As per Ex. P13, the deceased was drawing the salary of Rs. 37,509/- per month. Out of which, only the income tax and professional tax is to be deducted. Out of the net income, 1/3rd of the income should be deducted towards personal expenses of the deceased. Deceased was aged about 52 years at the time of the accident and therefore the appropriate multiplier is ''11''. Accordingly, the loss of dependency is to be calculated. Further, he is quick to point out that the Tribunal has not awarded reasonable compensation towards conventional heads. He also submitted that in the light of the judgment of the Apex Court and this Court in host of the judgments, the interest awarded by the Tribunal is on the lower side. Therefore, he submits to enhance the compensation and rate of interest by modifying the impugned judgment and award passed by the Tribunal.

6. Per contra, learned counsel appearing for respondent No. 3-msurer, inter alia,

contended and substantiated that, the impugned judgment and award passed by the Tribunal is just and proper. After due appreciation of the oral and documentary evidence available on record, the Tribunal is justified in awarding reasonable compensation towards loss of dependency and also conventional heads. Therefore, interference by this Court is not called for.

7. After considering the submissions made by the learned counsel appearing for both the parties and on perusal of the material available on record, including the impugned judgment and award passed by the Tribunal, the only point that arises for consideration is:

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

8. Occurrence of accident and the resultant death of deceased are not in dispute. Claimants are none other than the two daughters and mother of the deceased. Further, it is not in dispute that, the deceased was aged about 52 years at the time of accident and hale and healthy. He was working as a Operator in Karnataka Power Corporation, drawing salary of Rs. 37,509/- per month. On account of his untimely death, the daughters have lost love and affection, guidance, inspiration and security in life. The mother is deprived to see the bright future of her son. It has also affected social, moral and economic condition of the family. As per Ex. P13, the income of the deceased is assessed at Rs. 37,509/- per month and per annum it comes to Rs. 4,50,108/-. As rightly submitted by the learned counsel for the appellants, admissible deductions are income tax and professional tax. If income tax and professional tax of Rs. 31,410/- is deducted from gross salary of Rs. 4,50,108/-, the remaining amount comes to Rs. 4,18,698/- per annum. Out of which, 1/3rd is to be deducted towards personal expenses, as the claimants are three in number. The deceased was aged about 52 years and the appropriate multiplier is ''11''. Accordingly, we predetermine the loss of dependency at Rs. 30,70,452/- (Rs. 2,79,132/-x11).

9. As rightly submitted by the learned counsel for the appellants, the Tribunal has not awarded reasonable compensation towards conventional heads. Having regard to the facts and circumstances of the case, we deem it fit to award Rs. 75,000/- towards loss of love and affection at the rate of Rs. 25,000/- to each claimant, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses. In all the appellants/claimants are entitled for a compensation of Rs. 31,95,452/- as against Rs. 22,88,581/- awarded by the Tribunal. There will be an enhancement of Rs. 9,06,871/-.

10. As rightly submitted by the learned counsel for the appellants, the rate of interest awarded by the Tribunal is on the lower side. Following the judgment of the Apex Court and this Court in host of judgments, we award 9% per annum interest on the enhanced compensation from the date of petition till realization.

11. In the light of the facts and circumstances of the case as stated above, the appeal is allowed in part. The impugned judgment and award dated 18.01.2014

passed in MVC No. 1248/2011 on the file of the II Additional District Judge and AMACT-2, Fast Track Court, Shimoga, is hereby modified awarding an enhanced compensation of Rs. 9,06,871/- with 9% interest per annum from the date of petition till realisation.

The respondent No. 3-msurer is directed to deposit the enhanced compensation with interest at 9% p.a., from the date of petition till the date of realisation within three weeks from the date of receipt of a copy of this judgment.

Out of the enhanced compensation of Rs. 9,06,871/-, Rs. 3,00,000/- each with proportionate interest shall be invested in the Fixed Deposit in any Nationalized/ Scheduled Bank or Grameena Bank, in the names of the 1st and 2nd appellants-daughters of the deceased for a period of Ten years and renewable for another Five years, with liberty to them to withdraw the periodical interest accrued on it.

Rs. 2,00,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized/Scheduled Bank or Grameena Bank, in the names of the 3rd appellant-mother of the deceased for a period of Five years and renewable for another Five years, with liberty to her to withdraw the periodical interest accrued on it.

The remaining Rs. 1,06,871/- with proportionate interest shall be released in favour of the 1st, 2nd and 3rd appellants, in equal proportion, immediately, on deposit by respondent No. 3-msurer.

Office to draw the award, accordingly.