(2015) 10 KAR CK 0034

In the Karnataka High Court

Case No : M.F.A. No. 102820/2014 (MV)

Bheemappa and Others APPELLANT

Vs

Gutham and Others RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Citation : (2015) 10 KAR CK 0034

Hon'ble Judges : S. Abdul Nazeer and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : Manjunath Jadai, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

P.S. Dinesh Kumar, J.—Claimants in M.V.C. No. 532/2013 being aggrieved by the quantum of compensation awarded by the learned Member, MACT-II, Bellary vide Judgment and Award dated 4.1.2014 have preferred this appeal seeking enhancement.

2. Facts leading to filing of instant claim petition are one Pulakeshi, aged 24 years sustained grievous injuries in a road traffic accident and succumbed to the same when his motor cycle bearing KA-35/N-5000 was dashed against by the offending vehicle namely., a Scorpio Jeep bearing registration No. KA-22/N-0507 on 28.7.2012 near Mariyammanahalli KEB Bypass Road, Hospet. Accordingly, claimants presented the instant petition seeking a compensation of Rs. 20 lakhs contending inter alia that the deceased was earning Rs. 6,000/- per month working as a driver; that with his death the claimants have lost their loved one and bread winner.

3. Claim Petition was contested by the Insurer denying petition averments. Claimants got two witnesses examined and 10 documents marked. On behalf of the respondents, no witness was examined but insurance policy was marked as Ex. R1. Based on the pleadings, the Tribunal framed following issues:--

''1. Whether the petitioners prove that, Pulakeshi died while under treatment due to injuries sustained by him on 28.7.2012 at about 1.30 p.m, when a Motorcycle bearing Reg. No. KA-35/N-5000 being driven by Pulakeshi from Varalahalli to Hospet, was dashed near Mariyammanahalli KEB Bypass road on NH-13, by Scorpio car bearing Reg. No. KA-22/0507, coming from Hospet being driven by respondent No. 1 in rash and negligent manner so as to endanger human life?

2. Whether the petitioners prove that, Pulakeshi was aged 24 years at the time of accident and was earning Rs. 6,000/- per month as driver of School van of Priya Deekshith Education Trust of Varalahalli in H.B. Halli Taluka at the time of accident?

3. Whether petitioners are entitled to compensation? If so, how much and from whom?

4. What Order or award?"

Answering all issues in the affirmative, Tribunal awarded a compensation of Rs. 4,95,000/-. Feeling aggrieved by the quantum of compensation, claimants have preferred this appeal.

4. We have heard Sri Manjunath Jadai, learned Counsel for the appellants and Sri M.K. Soudagar, learned Counsel for respondent No. 3 -Insurance Company.

5. Learned Counsel for the appellants vehemently contended that:

"(i) though the claimants have produced documentary evidence - Ex. P9 to substantiate their plea that the deceased was earning Rs. 200/- per day, the Tribunal erred in assessing notional income of the deceased at Rs. 5,000/- per month;

(ii) the Tribunal failed to notice that the deceased was an young man, aged 24 years and a driver by profession. Therefore, 50% of his earning at the material point of time ought to have been added towards future prospects while assessing compensation under the head loss of dependency'';

(iii) the instant petition was presented by four claimants and Tribunal erred in deducting 1/3rd towards personal expenses and ought to have deducted 1/4th;

(iv) awarding only Rs. 5,000/- each towards ''Loss of Love and Affection'', loss of estate and funeral expenses'' is grossly inadequate;

(v) the deceased was admittedly aged 24 years and therefore the correct multiplier applicable was 17, whereas, the Tribunal has erroneously applied a multiplier of 12 by considering the age of the mother of the deceased. In support of this argument, learned Counsel placed reliance on the Judgment of the Hon''ble Supreme Court in the case of Munna Lal Jain and Others Vs. Vipin Kumar Sharma and Others ."

6. To fortify his contention that 50% of earning capacity ought to have been added towards future prospects, learned Counsel placed reliance on a Division

Bench Judgment of this Court dated 6.8.2015 in MFA No. 103220/2014 (Seethadevi @ Seetha & Ors. v. Khaleemullah & Ors).

7. In sum and substance, he submitted that the compensation awarded is grossly inadequate and prayed for suitable enhancement by reassessing the quantum.

8. Per contra, Sri Soudhagar, learned Counsel for the Insurer supporting the impugned judgment submitted that Ex. P9 is a certificate issued by the employer - Society, testifying that the deceased was paid Rs. 200/- as daily wages and the same could not be construed as a source of permanent income to consider the prayer for adding 50% of earning towards future prospects. Insofar as the deduction of 1/3rd of earning while computing loss of dependency, he submitted that the Tribunal erred in noticing that the deceased was unmarried and therefore 50% of his earnings ought to have been deducted while assessing the compensation under the said head. With regard to the compensation on the remaining heads, the learned Counsel submitted that in view of excess compensation having been awarded by deducting only 1/3rd towards personal expenses, the appeal does not merit any consideration and accordingly prayed for its dismissal.

9. We have given our anxious consideration to the rival contentions and perused material papers.

10. The in-controvertible facts are that Pulakeshi met with the road traffic accident on 28.7.2012 and succumbed to the injuries. He was a bachelor. Therefore, the only question which falls for consideration of this Court is as to ''whether the quantum of compensation assessed and awarded by the Tribunal is just and fair?''

11. Ex. P9, is a Certificate issued by a registered Society namely., Prarthana Multipurpose Seva Society, testifying that the deceased was working as a Driver during the academic year 2012-2013 and he was paid wages at the rate of Rs. 200/- per day. Respondents have not placed any material to impeach the authenticity of Ex. P9. Therefore, in our considered view, Tribunal was not correct in fixing a notional income at Rs. 5,000/- per month in the face of Ex. P9.

12. Further, normally Societies/Institutions running Schools take additional care while appointing drivers and endeavour to employ only efficient drivers as lives of small children will be at stake. The logical corollary of this assumption is that, the deceased ought to have been an efficient driver. Every efficient professional is always in demand and in our growing society and there is no dearth for employment for efficient professionals. Evidence on record discloses that the deceased was working in a School run by a multipurpose Society and his employment can be considered akin to near permanancy. Loss of future prospects is added in cases where the probability of the consistent income with progress in quantum of earning can be safely inferred. In the light of above discussion, in our view, the instant case deserves consideration in favour of claimants with regard to the aspect of loss of future prospects. Therefore, we are

persuaded to accept the argument advanced by the learned Counsel for appellants and hold that the appellants are entitled for the benefit of addition of 50% towards ''future prospects''.

13. Further, keeping in view the date of accident the compensation awarded under the heads such as, loss of love and affection, loss of estate and funeral expenses at an equal rate of Rs. 5,000/- is grossly disproportionate and requires re-assessment.

14. Learned Counsel for the respondent-Insurance Company is right in his submission that the Tribunal erred in deducting 1/3rd of earning of the deceased towards his personal expenses. Since the deceased was a bachelor, 50% of his earning ought to have been deducted. As stated above, accepting the authenticity of Ex. P9, we hold that the deceased was earning Rs. 6,000/- per month at the material point of time. 50% of the income has to be added towards loss of future prospects, which comes to Rs. 9,000/- per month. Out of this amount, 50% is required to be deducted towards the personal expenses of the deceased, which comes to Rs. 4,500/- per month.

15. In the light of above discussions, compensation payable in this case is re-assessed as under:--

16. In the result, we pass the following:

"i) The appeal is allowed in part;

ii) The judgment and award dated 4.1.2014 in M.V.C. No. 532/2013 on the file of learned Member, MACT-II, Bellary, is modified by awarding an enhanced compensation of Rs. 5,48,000/-;

iii) The 3rd respondent-Insurance Company is directed to deposit the enhanced compensation of Rs. 5,48,000/- with 6% interest from the date of petition till the date of deposit within a period of four weeks from the date of receipt of copy of this order.

(iv) Upon such deposit, the same shall be distributed equally among the claimants/appellants. No costs."

