(2016) 01 KAR CK 0112

In the Karnataka High Court

Case No : M.F.A. No. 222 of 2013 (MV)

Bhojappa and Others — APPELLANT

Vs

Universal Sompo General Insurance Company Ltd. and Others — RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 01 KAR CK 0112

Hon'ble Judges : N.K. Patil, J.

Bench : Single Bench

Advocate : Vasanthappa, Advocate, for the Appellant; Ravi S. Samprathi, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—1. This appeal by the claimants is directed against the judgment and award dated 4th October 2012, passed in MVC No. 6266/2011, by the VIII Additional Judge, Member, Motor Accident Claims Tribunal-5, Court of Small Causes, Bangalore City, (for short, ''Tribunal'') for enhancement of compensation on the ground that, the compensation of Rs. 3,64,700/- awarded in favour of the claimants, after deducting 30% towards contributory negligence on the part of the deceased, as against their claim for Rs. 15.00 Lakhs, is inadequate.

2. The facts in brief are that, the claimant Nos. 1 and 2 are the parents and claimant No. 3 is the wife of deceased Sudeer. They filed the claim petition under Section 166 of the Motor Vehicles Act, contending that, at about 9:45 P.M, on 05-09-2011, when the deceased was proceeding from the left side of Outer Ring Road to cross the road, near Manjunatha Garage, Kudubisanahalli, Bangalore, at that time, the driver of tractor bearing Registration No. KA-53/T-1373 came negligently and dashed against the deceased, due to impact, the deceased fell down and sustained grievous injuries and was immediately shifted to the Hospital. But, in spite of the best treatment, he could not be saved and he died

on 09-09-2011 after four days at the Hospital.

3. It is the case of the appellants that, the deceased was aged about 23 years, hale and healthy and a Mason by profession, earning a sum of Rs. 300/- per day or Rs. 9,000/- per month and contributing the entire sum to the welfare of the family. It is their further case that the deceased was the only source of livelihood and the entire family was dependent on him and that on account of his untimely death, the family has become haywire and they have lost the social and financial security in their life and therefore, they have to be compensated reasonably.

4. On account of the death of the deceased, the appellants filed the claim petition before the Tribunal, seeking compensation against the respondents. The said claim petition had come up for consideration before the Tribunal on 4th October, 2012. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 3,64,700/- under different heads, after deducting 30% towards contributory negligence fixed on the part of the deceased, with 6% interest per annum, from the date of petition till the date of payment. Being dissatisfied with the quantum of compensation awarded by the Tribunal as well as the contributory negligence fixed on the part of the deceased, the appellants are in appeal before this Court, seeking enhancement of compensation and also to set aside the contributory negligence fixed on the part of the deceased.

5. I have heard learned counsel for appellants and learned counsel appearing for first respondent/Insurer, for quite some time.

6. Learned counsel appearing for appellants at the outset submitted that the Tribunal grossly erred in not assessing the reasonable monthly income of the deceased, for the reason that the deceased was a young and energetic person, aged about 23 years, working as a Mason and the only earning member in the family. A sum of Rs. 3,500/- per month assessed by Tribunal is on the lower side and liable to be re-assessed. Therefore, he submitted that reasonable monthly income of the deceased may be re-assessed and deducting 1/3rd towards the personal and living expenses and adopting proper multiplier, reasonable compensation be awarded towards loss of dependency.

He further submitted that the compensation awarded by Tribunal towards conventional heads is also on the lower side, for the reason that the claimants are the parents and wife who are fully dependent on the income of the deceased. Therefore, in the light of the law laid down by the Hon''ble Apex Court and this Court in host of judgments, reasonable enhancement may be made towards all the conventional heads.

Further, learned counsel appearing for claimants vehemently submitted that the rate of interest awarded by Tribunal at 6% p.a. is also on the lower side as the accident has occurred on 05-09-2011. In view of the ratio of law laid down by the Hon''ble Apex Court and this Court in catena of decisions, at least 8% to 10%

interest per annum may be awarded in the instant case, to meet the ends of justice and the impugned judgment and award be modified accordingly.

Regarding contributory negligence fixed on the part of the deceased at 30%, learned counsel appearing for appellants submitted that the same is liable to be set aside as the same is contrary to the material on record. Therefore, he submitted that the impugned judgment and award passed by Tribunal is liable to be modified, awarding reasonable compensation towards loss of dependency, conventional heads and awarding reasonable rate of interest and also set aside the contributory negligence fixed at 30% on the part of the deceased.

7. As against this, learned counsel appearing for first respondent/Insurer sought to substantiate the impugned judgment and award passed by Tribunal, stating that the same is passed after critical evaluation of the oral and documentary evidence available on file and interference in the same is uncalled for.

Regarding contributory negligence fixed at 30% on the part of the deceased, he submitted that the Tribunal, after critical evaluation of the entire material available on file, has rightly fixed the contributory negligence on the part of the deceased at 30%. The same being just and proper, does not call for interference by this Court.

8. After hearing learned counsel for the parties, and after careful perusal of the judgment and award passed by the Tribunal, the only point that arise for my consideration in this appeal is,

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

9. After perusal of the entire material available on file, it emerges that, the Tribunal grossly erred in assessing the monthly income of the deceased at only Rs. 3,500/-. The same is inadequate and needs to be reassessed. It is stated that the deceased was aged about 23 years at the time of accident. But, on the basis of the ration card and other documents, the Tribunal has re-assessed the age of the deceased as 26 years. The same is accepted. He was a Mason by profession and looking after the family consisting of his parents and wife. Therefore, having regard to the age, avocation and the year of accident being 2011, I re-assess the monthly income of the deceased at Rs. 6,500/-. Having regard to the number of dependents, being three, I deduct 1/3rd towards his personal expenses. Accordingly, if 1/3rd (i.e. Rs. 2,166/-) is deducted from out of Rs. 6,500/-, the net income comes to Rs. 4,334/-. Since the deceased was aged about 26 years, the proper multiplier applicable is ''17'', as per the decision of the Hon''ble Apex Court in Sarla Verma''s case (, 2009 ACJ 1298). Accordingly, taking the monthly income of the deceased at Rs. 4,334/-, adopting the multiplier of ''17'', I award a sum of Rs. 8,84,136/- (i.e. Rs. 4,334/- x 12 x ''17'') towards loss of dependency as against Rs. 4,76,000/- awarded by Tribunal.

10. Further, the Tribunal erred in not awarding reasonable compensation towards

conventional heads. The claimants are none other than the parents and wife of deceased. The parents have lost the security and inspiration in life and the wife has lost the companion apart from financial and social security. Therefore, having regard to the facts and circumstances of the case, I deem it fit and proper to award a sum of Rs. 1,00,000/- towards loss of consortium, as against Rs. 5,000/-; Rs. 75,000/- towards loss of love and affection at the rate of Rs. 25,000/- to each claimant as against Rs. 10,000/-; Rs. 25,000/- towards loss of estate as against Rs. 10,000/-; Rs. 25,000/- towards transportation of dead body and funeral expenses as against Rs. 10,000/- awarded by Tribunal.

11. Further, as rightly pointed out by learned counsel appearing for claimants, the rate of interest awarded by Tribunal at 6% per annum is on the lower side, as the accident has occurred on 05-09-2011. Therefore, as per the ratio of law laid down by the Hon''ble Apex Court and this Court in catena of decisions and also considering the facts and circumstances of the case, we deem it fit and proper to award rate of interest at 9% per annum, on the enhanced compensation.

12. Thus, the total compensation would work out to Rs. 11,09,136/- as against Rs. 5,21,000/- awarded by Tribunal, with interest at 9% per annum, on the enhanced compensation from the date of petition till the date of realization.

13. Regarding contributory negligence fixed at 30% on the part of the deceased, after perusal of the entire material available on file including the reasoning given by Tribunal for fixing the contributory negligence at 30% on the part of the deceased, I am of the view that, the Tribunal, after critical evaluation of the oral and documentary evidence, has rightly fixed the contributory negligence of 30% on the part of the deceased. The reasoning given by the Tribunal, for fixing the said contributory negligence is well founded, well reasoned and just and proper and it does not call for interference.

14. Since I have upheld the contributory negligence fixed by the Tribunal on the deceased at 30%, the claimants are entitled to only 70% of the total compensation. After deduction of 30% towards contributory negligence, the claimants are entitled to a sum of Rs. 7,76,396/- as against Rs. 3,64,700/- awarded by Tribunal. Thus there would be enhancement of compensation by a sum of Rs. 4,11,696/- with interest at 9% per annum from the date of petition till realization.

15. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellants is allowed in part. The impugned judgment and award dated 4th October 2012, passed in MVC No. 6266/2011, by the VIII Additional Judge, Member, Motor Accident Claims Tribunal-5, Court of Small Causes, Bangalore City, is hereby modified, awarding a sum of Rs. 4,11,696/-, with interest at 9% per annum, from the date of petition till the date of realization, in addition to the compensation awarded by Tribunal.

The first respondent/Insurer is directed to deposit the enhanced compensation of Rs. 4,11,696/-, with interest thereon at 9% per annum, within three weeks from the date of receipt of copy of the judgment.

Immediately on such deposit by the Insurer, a sum of Rs. 2,00,000/- with proportionate interest shall be invested in Fixed Deposit, in the name of the Appellant No. 3 - wife of deceased, in any nationalized or scheduled Bank, for a period of ten years, renewable for ten years, with liberty reserved to her to withdraw the interest periodically.

A sum of Rs. 1,00,000/- with proportionate interest shall be invested in Fixed Deposit, in the name of the second appellant - mother of deceased, in any nationalized or scheduled Bank, for a period of five years, renewable for another five years, with liberty reserved to her to withdraw the interest, periodically.

Remaining sum of Rs. 1,11,696/- with proportionate interest shall be released in favour of Appellant Nos. 1 to 3, in equal proportion, immediately.

Office to draw award, accordingly.