(2010) 11 KAR CK 0055

In the Karnataka High Court

Case No : M.F.A. No. 5374 of 2005 and M.F.A. No. 4716 of 2005

Branch Manager Oriental Insurance Co. Ltd. APPELLANT

Vs

Smt. Sudha Suresh and Others
 Smt. Sudha Suresh and Others Vs The Oriental Insurance Co. Ltd. and Kempanna C.D. RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 11 KAR CK 0055

Hon'ble Judges : N.K. Patil, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : A.N. Krishna Swamy, in Appeal No. M.F.A. No. 5374 of 2005 and H.C. Shivaramu, in Appeal No. 4716 of 2005, for the Appellant; H.C. Shivaramu, for R1 to R6 in Appeal No. M.F.A. No. 5374 of 2005 and A.N. Krishna Swamy, for R1 in Appeal No. 4716 of 2005, for the Respondent

Judgement

N.K. Patil, J.

These two appeals by the Insurer and the claimants are arising out of the same judgment and award dated 07/02/2005 passed in MVC No. 5050/2001 on the file of the IX Addl. Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal-VII, Bangalore, (hereinafter referred to as '' Tribunal'' for short).

2. The Tribunal by its judgment and award, has awarded a sum of Rs. 9,80,000/- with interest at 6% p.a., from the date of petition till the date of realisation as against the claim made by the claimants for a sum of Rs. 35,00,000/-, on account of the on account of the death of the deceased Sri. Suresh. G.S. in the road traffic accident.

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

The claimant No. 1 is the wife, claimant Nos. 2 to 5 are the minor children and claimant No. 6 is the mother of the deceased Sri. Suresh G.S., and they have filed a claim petition before the Tribunal u/s 166 of M.V. Act, claiming compensation against the Respondents, on account of the death of the deceased in the road traffic accident, contending that, on 23.2.2001, the deceased was driving Maruthi Zen Car bearing No. KA.02.198 on Hebbal Ring Road on left side, at that time, one Mini Lorry bearing No. KA.02.A.5715 came from opposite direction with high speed in a rash and negligent manner and dashed against the car, as a result of which, deceased sustained severe head injury and other injuries all over the body. Immediately, he was shifted to M.S. Ramaiah Hospital, after first aid, shifted to Manipal Hospital for further treatment and on the way to the hospital at about 4.15 a.m., deceased succumbed to the injuries. It is the further case of the claimants that, deceased was aged about 45 years, Proprietor of M/s. Laxmi Service Station (Petrol bunk), practicing Advocate, owning agricultural lands, looking after the same and earning substantial income. He was an income tax Assessee and filed his returns for the assessment years 2001 to 2003. The said claim petition had come up for consideration before the Tribunal. The Tribunal, In turn, after assessing the oral and documentary evidence and other materials available on file, after assessing the income of the deceased at Rs. 1,10,000/- per annum, deducting 1/3rd towards his personal and living expenses and adopting Multiplier of "13", has awarded a sum of Rs. 9,53.000/ towards loss of dependency and also awarded Rs. 27,000/- towards conventional heads and accordingly, allowed the claim petition in part, awarding the compensation of Rs. 9,80,000/- with interest at 6% p.a., from the date of petition till the date of realization. Being aggrieved by the said judgment and award, the Insurer has filed M.F.A. No. 5374/2005 contending that, the income of the deceased assessed by the Tribunal is on higher side and it requires to be reduced and the claimants have filed M.F.A. No. 4716/2005 contending that, the quantum of compensation awarded by the Tribunal is inadequate and it requires to be enhanced by modifying the impugned judgment and award passed by the Tribunal.

4. We have heard learned Counsel. appearing for the Insurer and learned Counsel appearing for claimants at considerable length of time.

5. After careful perusal of the materials available on file, including the impugned judgment and award passed by the Tribunal, it emerges that, the occurrence-and the resultant death of the deceased in the accident are not in dispute. Further it emerges that, the deceased was aged about 45 years, practicing Advocate, owning agricultural lands and also the proprietor of M/s Laxmi Service Station (Petrol bunk) and he has filed his Income Tax Returns for the Assessment years 2001-2002 and 2002-2003 as per Ex.P15 and 16 for Rs. 1,24,862/- and Rs. 11.16,742/- and paid Rs. 3,409/- and Rs. 6,485/- towards income tax respectively. The Tribunal, taking all these factors into consideration has assessed the income of the deceased at Rs. 1,10,000/- per annum and deducted 1/3rd towards the personal and living expenses of the deceased since the accident was of the year 2001. The same is just and proper and therefore, it does not call for interference. The appropriate multiplier applicable to the case in

hand is ''14'' as the deceased was aged about 45 years, in view of the law laid down by the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, instead of ''13'' adopted by the Tribunal. Therefore, we re-determine the loss of dependency at Rs. 10,26,676/-(73,334/- x 14) instead of Rs. 9,53,000/- awarded by the Tribunal, and accordingly it is awarded.

6, The Tribunal has awarded a sum of Rs. 10,000/-towards loss of consortium and a sum of Rs. 10,000/-towards loss of estate. The said compensation awarded by the Tribunal is just and reasonable and therefore, it does not call for interference.

7. The Tribunal has awarded a sum of Rs. 7,000/-towards transportation and funeral expenses and the same is on lower side and it needs to be enhanced. Further, the Tribunal has erred in not awarding any compensation towards loss of love and affection and it needs to be awarded. Having regard to the facts and circumstance of the case, we award a sum Rs. 20,000/-towards loss of love and affection and a sum of Rs. 10,000/- towards transportation and funeral expenses.

8. For the foregoing reasons, the impugned judgment and award passed by the Tribunal is liable to be modified. The total compensation payable comes to Rs. 10,76,576/-

9. Accordingly, the appeal filed by the Insurer is dismissed as devoid of merits and the appeal filed by the claimants is allowed in part and the impugned judgment and award passed by the Tribunal in MVC No. 5050/2001 is hereby modified, awarding compensation of Rs. 10,76,676/- instead of Rs. 9,80,000/- awarded by the Tribunal. The enhanced compensation comes to Rs. 96,676/- with interest at 6% p.a., from the date of petition till its realisation.

The Insurer is directed to deposit the enhanced compensation with interest, within three weeks from the date of receipt of a copy of this judgment and award.

Out of the enhanced compensation of Rs. 96,676/-, a sum of Rs. 20,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalised or Scheduled Bank, in the name of each of the claimant Nos. 4 and 5, till they attain majority with liberty to the claimant No 1 to withdraw the interest accrued on it, periodically, for their welfare.

The remaining sum of Rs. 56,676/- with proportionate interest shall be released in favour of the claimant Nos. 1 to 3 and 6 in equal proportion, immediately, on deposit by the Insurer.

The statutory deposit made by the Insurer shall be transmitted to the jurisdictional Tribunal immediately. Office is directed to draw the award, accordingly.

