(1983) 06 KAR CK 0002

In the Karnataka High Court

D. Bhagayamma and Others — APPELLANT

Vs

State of Karnataka and Another — RESPONDENT

Date of Decision : 17-06-1983

Acts Referred:

Citation : (1984) 2 ACC 68 : (1984) ACJ 145

Hon'ble Judges : R.S. Mahendra, J;G.N. Sabhahit, J

Bench : Division Bench

Judgement

G.N. Sabhahit, J.—This appeal by the claimants is directed against the judgment and award dated 17.7.1979 passed by the Claims Tribunal, Karwar, in MVC No. 45/ 77 on its file awarding compensation of Rs. 29,970/- to the claimants.

2. The learned Counsel for the appellants contended before us that the global compensation so awarded was very much on the lower side.

3. The sole point, therefore, that arises for our consideration in this appeal is: Whether the compensation awarded is just and proper?.

4. It is not in dispute that the deceased was aged 48 years at the time of his death and was drawing Rs. 1,120/- as monthly salary, he being an Assistant Engineer. It is further on record that in the normal course he should have been promoted as an Executive Engineer in about 3 years in which case his salary would have increased and he would have drawn Rs. 1,500/- as monthly salary in addition to the allowances. The claimants further averred that there was longevity in their family and therefore the deceased would have lived at least upto the age of 65 years. On these averments they claimed compensation of Rs. 2,21,400/- from the respondents.

5. Respondent 1 is the State, the owner of the vehicle; respondent 2 is the driver. They contested the petition. According to them, the accident was not the result of rash and negligent driving of the vehicle. Alternatively they contended that the claim was exorbitant.

6. During hearing the claimants examined P.Ws. 1 to 4 and got marked Exts. P. 1 to 15. As against that the respondents examined 2 witnesses and got marked Exts. Rule 1 and R. la.

7. The Tribunal appreciating the evidence on record, held that the accident was the result of rash and negligent driving of the vehicle in question. In that view the Tribunal awarded compensation as stated above.

8. Aggrieved by the said judgment and award, the claimants have instituted the above appeal before this Court.

9. The Tribunal has taken into consideration the loss of dependency per month at Rs. 738/- while fixing this amount, the Tribunal has kept in mind that the deceased would have become Executive Engineer and would have drawn a salary of Rs. 1,500/- p.m. within three years. Thus it is clear that the Tribunal has taken into consideration the prospects of betterment of the deceased if he were alive. Instead of Rs. 738/- however, we take the loss of dependency at the round figure of Rs. 740/-.

10. The deceased was 48 years at the time of the accident and he had 7 years of service. During the seven years the loss of dependency at the rate of Rs. 740/- p.m. would be Rs. 62,160/-. In that period, however, the Government has compensated to the family by granting pension at Rs. 320/- p.m. and that amount of pension has to be deducted from the loss of dependency. That amounts to Rs. 26,880/-. Deducting the same from Rs. 62,160/- we get the balance of Rs. 35,280/-. Since we have calculated Rs. 62,150/- as lump sum grant, on that account and for uncertainty of life we deem it just and proper to deduct Rs. 6,280/- out of this lump sum grant. We add Rs. 5,000/- towards loss to the estate of the deceased and Rs. 4,000/- towards loss of consortium to the widow, Rs. 1,000/- towards incidental and medical expenses and Rs. 1,000/-,for pain and suffering as the deceased was in the hospital for five days for treatment both at Karwar and Manipal before he died. Together, therefore, the global compensation to which the claimants are entitled would be Rs. 43,000/- instead of Rs. 29,970/- awarded by the Tribunal.

11. It may be noted in this context that this Court has ruled that the amount of gratuity and provident fund etc., should not be deducted as they art not the result of death but the legitimate earnings of the deceased. Similarly, Rs. 10,000/- awarded from the Welfare fund is the result of the premium paid by the deceased during his life time. That also cannot be deducted.

12. The claimants are the widow and children of the deceased. There are five children. We direct the respondents, that Rs. 13,000/- shall be paid over the mother and Rs. 6,000/- to every child along with interest.

13. In the result the appeal is partly allowed. The compensation is enhanced from Rs. 29,570/- to Rs. 43,000/-. Out of this amount respondents 1 and 2 the owner and drive of the vehicle in question shall pay Rs. 13,000/- to the widow of

the deceased along with interest at 6% per annum from the date of the petition till payment along with costs of this proceeding throughout. They shall further deposit Rs. 6,000/- along with interest at 6% per annum from the date of petition till payment before the Tribunal in name of each of the claimants 2 to 6. The amounts already paid shall be given deduction. The Tribunal has awarded Rs. 3,690/- in favour of claimant 4 and Rs. 5,160/- in favour of claimant 6 and it had further directed that they shall deposit the same in a Nationalised Bank. We have now enhanced the compensation in their favour at Rs. 6,000/- each. The Tribunal therefore, shall deposit, the difference of amount awarded to them along with interest in a Nationalised Bank in the names of the children with their mother as guardian till such time as they attain the age of majority. If the amounts are not earlier deposited in their names in a Nationalised Bank, the entire amount awarded shall be deposited now with interest by the Tribunal in their names with their mother as guardian. The mother would be at liberty to receive interest accruing on the said deposit from time to time and spend the same for the welfare of the minors.

14. Respondents shall bear their own costs.

