(2017) 07 KAR CK 0026

In the Karnataka High Court

Case No : 200464 of 2016 (MV)

Dhema W/o Gnyanoba Jadhav & Anr. APPELLANT

Vs

Balasaheb S/o Rajaram Paikekar & Ors. RESPONDENT

Date of Decision : 05-07-2017

Acts Referred:

Citation : (2017) 07 KAR CK 0026

Hon'ble Judges : B. A. Patil

Bench : SINGLE BENCH

Advocate : Baswaraj R. Math, Mallanna Reddy, Rahul R. Asture

Judgement

1. This appeal is by the claimants-appellants seeking enhancement of compensation awarded by the learned Prl. Senior Civil Judge and MACT-V, Bijapur, in MVC No.1320/2012 dated 08.09.2014.

2. Heard. Appeal is admitted and with the consent of the leaned counsel appearing for the parties, it is taken up for final disposal.

3. Brief facts leading to the case are that,- On 18.11.2010 at about 4:30 a.m., Gnyanoba Jadhav was proceeding in M.S.R.T.C Bus bearing Reg.No.MH-40/8930. When the said bus was proceeding near Bharat Gas Pump at Kati Chincholli, due to rash and negligent driving of the driver, dashed to a Truck bearing Reg.No.MH-13/R-3187, which was parked on the tar road without putting any parking signal. Because of said impact, the said Gnyanoba Jadhav sustained injuries. Immediately he was shifted to Ashwini Hospital, Sholapur and subsequently he succumbed to the injuries on the same day. Petitioner No.1 being the wife, petitioner No.2 being the son filed claim petition before the Tribunal for claiming compensation.

4. Though notice served respondent No.1 not appeared and he was placed exparte.

5. Respondent No.2 appeared and filed its objection inter alia contending that,

the lorry is not insured with the respondent and the said accident is not because of the act of the driver of the lorry, he has parked by taking all the precautions. But, the driver of the bus was solely responsible for the accident and prayed for dismissal of the claim petition.

6. Respondent No.3 appeared and filed objection denying the contents of the petition by contending that the Tribunal has no jurisdiction as the accident has taken place at Maharashtra and prayed for dismissal of the petition.

7. On the basis of the pleadings, the Tribunal framed the issues and awarded compensation of Rs.10,05,000/- with 8% interest from the date of petition till realization. Assailing the said Judgment and Award, the claimants-appellants are before this Court.

8. The learned counsel for the appellants/claimants submits that, though the Tribunal by considering the fact that the deceased used to supply the milk to the dairy and relying upon Exs.P-11 and P12 by considering the income of the deceased at the rate of Rs.8,000/- p.m., after deducting 1/3rd of the income towards personal expenses after applying the multiplier of 15 has awarded an amount of Rs.9,60,000/- towards loss of dependency. But, it is the contention of the appellant claimants that the deceased was having the permanent income by supplying the milk to diary and the Tribunal ought to have awarded the compensation towards loss of future prospectus. He further contended that, even the compensation awarded under other conventional head is also on lower side and as such it requires interference at the hands of this Court. Therefore, he prays for allowing the appeal by enhancing the compensation.

9. The learned counsel for the respondent Nos.2 and 3 vehemently argued and contended by supporting the impugned Judgment and Award that, the Tribunal after considering the notional income of the deceased after applying proper multiplier, has awarded just compensation and prayed for dismissal of the appeal.

10. As could be seen from the Judgment and Award of the Tribunal, the Tribunal after taking into consideration the fact that, the deceased was supplying the milk to the diary and after taking the notional income at the rate of Rs.8,000/- p.m. has awarded an amount of Rs.9,60,000/-. But, in view of the decision in the case of Rajesh and other V/s Rajbir Singh and other reported in (2013) 9 SCC 54, and it is further clarified in Santosh Devi V/s National Insurance Company Ltd., reported in (2012) 6 SCC 421 the Tribunal ought to have awarded the compensation for loss of future prospectus, since the deceased was not having a government service and as such the claimants are entitled to 30% of the future prospectus. If that were to be adopted, under such circumstances, the appellants/ claimants are entitled to an amount of Rs.12,48,120/- (8000+2400-1/3rd x 12x15) towards loss of dependency.

11. As could be seen from the Judgment and Award, the compensation awarded under conventional heads appears to be on the lower side. In that light, the re-assessed compensation to the petitioners is as under; 1 Towards loss of

dependency including future prospectus Rs.12,48,120/-

2 Towards loss of consortium Rs.50,000/-

3 Towards transportation of dead body and funeral expenses Rs.25,000/-

4 Towards loss of love and affection Rs.25,000/-

5 Towards loss of estate Rs.50,000/- Total Rs.13,98,120/-

In all, the claimants/appellants are entitled to an additional compensation of Rs.3,93,120/- with interest at rate of 8% per annum.

12. Since, already the Tribunal has come to the conclusion that the respondent Nos.2 and 3 are liable to pay 50% each of the compensation amount with interest at the rate of 8% p.a. and the insurance company and corporation have also not preferred any appeal against the Judgment and Award of the Tribunal, as such, the respondent No.1 and 2 are liable to pay 50% of the award amount and the remaining 50% of the award amount has to be paid by respondent No.3 with accrued interest.

13. Accordingly, the appeal is allowed in part. The judgment and award passed by the Tribunal in MVC No.1320/2012 is modified as stated above.

14. The respondent-insurance company and the Corporation are directed to deposit the compensation awarded by the Tribunal and additional compensation awarded by this Court within six weeks from the date of receipt of a copy of this judgment and the same shall be distributed to the claimants as per the award of the Tribunal. While depositing the amount, both the respondents must deduct the interest for the delayed period of 457 days as per the order dated 5.7.2017.

15. The Registry is directed to draw the award accordingly.