(2014) 09 KAR CK 0229

In the Karnataka High Court

Case No : M.F.A. Nos. 9952, 11636 and 11636 of 2012 (MV)

Future General India Insurance Company Limited — APPELLANT

Vs

Hemanth Kumar Mahato
 Hemanth Kumar Mahato Vs K. Prakash Reddy — RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 09 KAR CK 0229

Hon'ble Judges : N.K. Patil, J;B. Sreenivas Gowda, J

Bench : Division Bench

Advocate : P.S. Jagadish for P.B. Raju and R. Krishna Reddy, Advocate for the Appellant; R. Krishna Reddy, Ramalinga Reddy H.R. and P.S. Jagadish for P.B. Raju, Advocate for the Respondent

Judgement

N.K. Patil, J.—These two appeals by the Insurer and by the claimants-parents of the deceased, respectively, are arising out of the same impugned judgment and award dated 25/08/2012 passed in MVC No. 1546/2011, by the Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal, Mayohall Unit, Bangalore (SCCH-19), (hereinafter referred to as ''Tribunal'' for short).

2. The Tribunal, by its judgment and award, has awarded a sum of Rs. 23,66,000/- under different heads with interest at 6% per annum from the date of petition till the date of payment, as against the claim Rs. 40,00,000/-, on account of the death of the deceased Dr. Sujit Kumar Mahato, in the road traffic accident. The Insurer has filed an appeal for reduction of compensation on the ground that the quantum of compensation awarded by the Tribunal is disproportionate to the income of the deceased and is liable to be reduced and the claimants, have filed an appeal for enhancement of compensation on the ground that the quantum of compensation and the rate of interest awarded at 6% p.a. is on the lower side and is liable to be enhanced.

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

The claimant Nos. 1 and 2 are the parents of the deceased. They filed a claim petition before the Tribunal u/s 166 of M.V. Act, claiming compensation against the Insurer, on account of the death of the deceased Dr. Sujit Kumar Mahato, in the road traffic accident, contending that, on 20.9.2011 at about 1.10 a.m., deceased was travelling as a pillion rider on motor cycle bearing Reg. No. KA.02.HF.532 driven by its rider Dr. Vaibhav slowly and cautiously from Kundalahalli main road and when they reached Andhra Spice Restaurant, at that time, the driver of the Tata Sumo bearing Reg. No. KA.07.6538 came in a rash and negligent manner and dashed against the said motor cycle. Due to which, deceased and rider of the said motor cycle sustained grievous injuries on vital parts of their body. Immediately, he was shifted to Vydehi Hospital, but the duty doctors on examination declared as brought dead.

4. It is the further case of the claimants that, deceased was aged about 27 years, hale and healthy prior to the accident, he has done his Master''s degree in Physiotherapy and was working as a Physiotherapist in Vydehi Hospital and was drawing the salary of Rs. 50,000/- per month and looking after his parents. Due to his untimely death, claimant Nos. 1 and 2 who were completely depending upon his earnings have lost their son, who was their future hopes and security, apart from mental shock and agony.

5. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petition in part and awarded the compensation of Rs. 23,66,000/- under different heads, with interest at 6% per annum from the date of petition till the date of payment.

6. Being aggrieved by the said judgment and award, the Insurer and the claimants have presented these respective appeals, seeking appropriate reliefs as stated supra.

7. We have heard the learned counsel appearing for the Insurer and learned counsel appearing for claimants.

8. The submission of learned counsel appearing for Insurer, at the out set is that, the Tribunal has erred in taking the income of the deceased at Rs. 30,000/- per month without any credible documents produced by the appellants which is on the higher side and is liable to be re-assessed, on the ground that as per Ex. P14, deceased was receiving the consolidated salary of Rs. 10,000/- per month and Rs. 5,000/- towards night duty allowance and Rs. 5,000/- towards house rent allowance and even if another 30% is added following the law laid down by the Apex Court in Santhosh devi''s case, what is awarded is on the higher side and it is liable to be reduced substantially by modifying the impugned judgment and award passed by the Tribunal.

9. As against this, learned counsel appearing for claimants, at the outset submitted that, deceased was aged about 27 years, he has done his Master degree in Physiotherapy and other certificate courses, specialized in neurology

and he was very bright student throughout his educational career and getting the monthly salary of Rs. 50,000/- as he was working at Vydehi Hospital in Physiotherapy department and drawing the salary of Rs. 20,000/- per month, and also getting shift allowance of Rs. 5,000/- per month and also working as Consultant in different hospitals. Therefore, he submitted that the income of the deceased may taken more than Rs. 40,000/- per month or if it is not accepted another 30% should be added to the income of the deceased assessed by the Tribunal at Rs. 30,000/- per month in the light of the decision of Santhosh Devi''s case and after deducting income tax and professional tax and after deducting 50% towards personal and living expenses, his income may be reassessed and reasonable compensation may be awarded towards loss of dependency. He further submits that the compensation awarded by the Tribunal towards conventional heads and the rate of interest awarded by the Tribunal at 6% p.a. is on the lower side and is liable to be modified. Therefore, the impugned judgment and award passed by the Tribunal is liable to be modified.

10. After careful consideration of the submissions made by learned counsel appearing for Insurer and learned counsel appearing for claimants and after perusal of the original records available on file, including the impugned judgment and award passed by the Tribunal, the point that arises for our consideration is:

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

11. The occurrence of the accident and the resultant death of the deceased are not in dispute. It is the case of the claimants that, deceased was aged about 27 years, he stood first throughout his educational career and very bright and committed son to the claimants and he has done his Master''s degree in Physiotherapy and working as Physiotherapist in Vydehi Hospital and getting the salary of Rs. 20,000/- per month and Rs. 10,000/- towards night shift allowance and House rent allowance and also working as Consultant in different hospitals. Therefore, the Tribunal is justified in assessing his income at Rs. 30,000/-, but it has failed to add another 30% towards future prospects in the light of the decision of the Apex Court in Santhosh Devi''s case. Even if we take his income at Rs. 20,000/- per month and Rs. 5,000/- towards night shift allowance and another Rs. 5,000/- from his Consultant work and in all, Rs. 30,000/- per month and add another 30% towards future prospects having regard to his age, qualification and in the light of the decision of the Apex Court in Santhosh Devi''s case, his total income comes to Rs. 39,000/- per month and accordingly, we re-assess his income at Rs. 39,000/- per month to meet the ends of justice. Per annum it comes to Rs. 4,68,000/-. Out of which, if Rs. 64,000/- is deducted towards income tax and professional tax as rightly submitted by the learned counsel for both the parties, his net annual income comes to Rs. 4,04,000/- Out of which, if 50% is deducted towards his personal and living expenses, his net annual income comes Rs. 2,02,000/-. The proper multiplier applicable taking the age of the younger parent, mother of the deceased as 50 years, is ''13'' in view

of the law laid down by the Apex Court in Sarla Verma''s case reported in 2009 ACJ 1298. Therefore, we re-determine the loss of dependency at Rs. 26,26,000/- (Rs. 2,02,000/- x 13) instead of Rs. 23,40,000/- awarded by the Tribunal and accordingly, it is awarded.

12. Having regard to the facts and circumstances of the case, we award a sum of Rs. 20,000/- towards loss of love and affection, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation of dead body and funeral expenses. In all, the claimants are entitled to a total compensation of Rs. 26,96,000/- instead of Rs. 23,66,000/- awarded by the Tribunal.

13. Regarding rate of interest, as rightly pointed out by the learned counsel appearing for the appellants, 6% interest per annum awarded by the Tribunal is on the lower side, since the accident is of the year 2011. In the light of the judgment of Apex Court and this Court we award the rate of interest at 9% per annum on the enhanced compensation instead of 6% awarded by the Tribunal.

There would be an enhancement of Rs. 3,30,000/- with interest at 9% p.a., from the date of petition till its realization.

14. For the foregoing reasons, the appeal filed by the Insurer is dismissed as devoid of merits and the appeal filed by the claimants is allowed in part.

The impugned judgment and award dated 25/08/2012 passed in MVC No. 1546/2011, by the Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal, Mayohall Unit, Bangalore (SCCH-19), is hereby modified, awarding the compensation of Rs. 3,30,000/- with interest at 9% p.a., from the date of petition till its realization, in addition to the compensation awarded by the Tribunal.

The Insurer is directed to deposit the enhanced compensation of Rs. 3,30,000/- with interest at 9% p.a., from the date of petition till the date of realization, within a period of three weeks from the date of receipt of a copy of this judgment and award.

Immediately on such deposit by the Insurer, out of the enhanced compensation of Rs. 3,30,000/-, a sum of Rs. 1,00,000/- with proportionate interest shall be invested in Fixed Deposit, in the names of each of the claimant Nos. 1 and 2, in any Nationalized or Scheduled Bank, for a period of 05 years and renewable by another 05 years, with liberty reserved to them to withdraw the interest accrued on it, periodically.

The remaining sum of Rs. 1,30,000/- with proportionate interest shall be released in favour of the claimant Nos. 1 and 2 in equal proportion immediately.

The amount deposited by the Insurer shall be transmitted to the jurisdictional Tribunal, forthwith.

Draw the award, accordingly.

Learned counsel Sri. P.B. Raju is permitted to file vakalath for respondent No. 2 in M.F.A. No. 9952/2012 within four weeks from today.

