
(2011) 03 KAR CK 0064
In the Karnataka High Court
Case No : MFA No. 2713 of 2008

G. Shobhamani and Hemanth represented by his Mother G. Shobhamani APPELLANT

Vs

Doddashanaiah and The Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Citation : (2011) 03 KAR CK 0064

Hon'ble Judges : K. Govindarajulu, J

Bench : Single Bench

Advocate : M. Vinaya Keerthy, for the Appellant; Ashok N. Nayak, for R2, for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajulu, J.—The claimant in MVC 1541/2006 on the file of MACT, Tumkur is the Appellant.

2. Facts necessary for the consideration of the appeal are as under:

It is the claim of the claimants that on 3.12.2006., after finishing his official duty as phone Mechanic in BSNL, the deceased A.R. Ashokaiah was returning to his village Aijagondanahalli on his Hero Honda bearing registration No. KA-06-U-7269. Then the rider of the TVS Victor two wheeler motor bike bearing registration No. KA-06-U-6282 has driven the vehicle rashly, negligently and dashed against the vehicle, in which deceased was moving. As a result, A.R. Ashokaiah suffered injuries. Immediately he was shifted to general hospital Tumkur and thereafter he was referred to NIMHANS hospital, Bangalore. But on his way to NIMHANS hospital, he succumbed to injuries. Claimants contend that the 1st claimant is the wife and 2nd claimant is the son of the deceased and that they have lost the earning member of the family. So, pray for compensation of Rs. 20,03,000/-

3. Objections are filed, deny the claim, plead for the proof of the accident,

contend that the exaggerated, plead for dismissal of the claim application.

4. Issues are framed, Learned member of the Tribunal has recorded evidence, P Ws 1 and 2 are examined, Exs. P1 to P11 are marked and policy is marked as Ex. R1. The learned member of the Tribunal has awarded compensation of Rs. 6,61,832/-.

5. Learned advocate for the claimant contend that the deceased is a salaried person, aged about 45 years at the time of accident. So, the Court ought to have considered the ratio of the Sarala Varma's. case looked into the promotional opportunities also while calculating the loss of dependency this being not done by the Trial Court. Hence, the approach of the learned member of the Tribunal is not proper. Secondly, contend that the gross salary ought to have been taken, but the Tribunal has taken net salary while calculating loss of dependency. This method is also not opt. So, pray for enhancement of compensation.

6. learned Counsel for insurance Company on the other hand vehemently contend that no error or irregularity is found in the approach of the learned member of the Tribunal But admits that the judgment of the Tribunal do not suit within the ratio of Sarla Varma's case. So, the point that arise for consideration is:

Whether the compensation awarded by the tribunal is just?

7. Carefully considered the material submissions. Accident, actionable negligence are not disputed. Finding has to be given as to the quantum alone.

8. Ex. P8 Salary certificate discloses that deceased was getting salary of Rs. 10,968/-. Considering the same, 20% of the basic salary can be added. So, it works out to Rs. 8,13,161/-. If 1/3rd is deducted for personal expenses i.e. Rs. 4,387/-, then it works out to Rs. 8,774/-. Then the calculation would be Rs. 8,774/- X 12 X 14 = Rs. 14,74,032/-.

9. In addition to that, a sum of Rs. 40,000/- is awarded under the head conventional heads.

10. Accordingly, appeal is allowed. So, the claimant is entitled for total compensation of Rs, 15,14,032/- as against Rs. 6,61,832/- assessed by the Tribunal. Additional compensation of Rs. 8,52,200/-, This sum shall carry interest at 6% per annum from the date of application till deposit. The apportionment, deposit ordered by the Court below is also applicable to the enhanced compensation.