(2016) 03 KAR CK 0181

In the Karnataka High Court

Case No : M.F.A. No. 1470 of 2012 (MV)

Gangadhar APPELLANT

Vs

TATA AIG General Insurance Company Limited and Others RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2016) AAC 1354

Hon'ble Judges : N.K. Patil, J.

Bench : Single Bench

Advocate : K.V. Mohan Kumar, Advocate, for the Appellant; Ravi S. Samprathi, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—1. This appeal by the claimant/legal representative of deceased Gowramma, is directed against the judgment and award dated 18th August 2011, passed in MVC No. 1321/2010, by the VIII Additional Judge and Member, Motor Accident Claims Tribunal-V, Court of Small Causes, Bangalore City, (for short, ''Tribunal'') for enhancement of compensation on the ground that, the compensation of Rs. 50,000/- awarded in favour of the claimant as against his claim for Rs. 10,00,000/-, is inadequate.

2. The facts in brief are that, the claimant is the son of deceased Gowramma. He filed the claim petition under Section 166 of the Motor Vehicles Act, contending that, at about 6:30 A.M, on 23-08-2009, when the deceased Gowramma was walking on the footpath near the temple, at Kadugurki village, devanahalli Taluk, at that time, a Car bearing Registration No. KA-03/MC-1588 came at a high speed, in a rash and negligent manner and dashed against her. Due to the impact, she fell down and sustained grievous injuries. Immediately, she was shifted to Govt. Hospital, where first aid treatment was given and from there, she was shifted to Srinivasa Hospital, where she was declared dead.

3. It is the case of the appellant that, the deceased was aged about 60 years and working as coolie, earning a sum of Rs. 4,000/- per month and hale and healthy prior to the accident. On account of the untimely death of the deceased Gowramma, the appellant has lost the love and affection, guidance and social and moral support apart from social security and therefore, he has to be compensated reasonably.

It is the further case of the appellant that in the light of the law laid down by the Hon''ble Apex Court and this Court in various judgments, the compensation should not be less than Rs. 1,50,000/- irrespective of the death.

4. On account of the death of the deceased, the appellant filed the claim petition before the Tribunal, seeking compensation against the respondents. The said claim petition had come up for consideration before the Tribunal on 18th August, 2011. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 50,000/-, with 6% interest per annum, from the date of petition till the date of payment. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

5. I have gone through the grounds urged in the memorandum of appeal and heard the learned counsel appearing for appellant and learned counsel appearing for Insurer, for quite some time.

6. It is the specific case of the appellant in the memorandum of appeal that the Tribunal is not justified in awarding meager compensation and further erred in not applying proper multiplier. Further, the Tribunal erred in coming to the conclusion that the appellant is not a dependent on the income of the deceased. Therefore, it is his case that reasonable enhancement may be made by modifying the impugned judgment and award passed by Tribunal.

7. As against this, learned counsel appearing for Respondent No. 1/Insurer inter alia contended and submitted that the appellant is entitled to only loss of estate, loss of love and affection and transportation of dead body and funeral expenses and not loss of dependency. To substantiate the same, he pointed out and vehemently submitted that the appellant is none other than the major son of the deceased aged about 40 years and he is not a dependent on the income of the deceased mother. Therefore, he submitted that reasonable compensation may be awarded towards conventional heads such as loss of estate, loss of love and affection and transportation of dead body and funeral expenses.

8. After careful consideration of the submission of the learned counsel appearing for both the parties, and after careful perusal of the judgment and award passed by the Tribunal, it emerges that the occurrence of accident on the aforesaid date and time and the resultant death of the mother of appellant are not in dispute. It is further not disputed that the deceased was aged about 60 years and hale and healthy at the time of accident.

9. The accident is of the year 2009. Therefore, having regard to the age, avocation and also the year of accident, I assess the income of the deceased at Rs. 4,500/- per month. As the appellant is not a dependent, he is entitled to only 25% towards loss of estate. Accordingly, 25% of Rs. 4,500/- works out to Rs. 1,125/-. Since the deceased was aged about 60 years, the proper multiplier applicable is ''9'' as per the decision of the Hon''ble Apex Court Sarla Verma''s case (, 2009 ACJ 1298). Thus, the compensation towards loss of estate would work out to Rs. 1,21,500/- (i.e. Rs. 1,125/- x 12 x ''9'').

10. Further, the Tribunal has erred in not awarding reasonable compensation towards conventional heads. The compensation awarded is on the lower side. As per the decision of the Apex Court in catena of decisions, I award a sum of Rs. 15,000/- towards loss of love and affection and Rs. 15,000/- towards transportation of dead body and funeral expenses as against a sum of Rs. 50,000/- awarded by Tribunal.

11. Thus, the total compensation would work out to Rs. 1,51,500/- as against Rs. 50,000/- awarded by Tribunal, with interest at 6% per annum, from the date of petition till the date of realization.

12. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned judgment and award dated 18th August 2011, passed in MVC No. 1321/2010, by the VIII Additional Judge and Member, Motor Accident Claims Tribunal-V, Court of Small Causes, Bangalore City, is hereby modified, awarding a sum of Rs. 1,01,500/-, with interest at 6% per annum, from the date of petition till the date of realization, in addition to the compensation awarded by Tribunal.

The first respondent/Insurer is directed to deposit the enhanced compensation of Rs. 1,01,500/-, with interest thereon at 6% per annum, within three weeks from the date of receipt of copy of the judgment and award.

Immediately on such deposit by the Insurer, 50% with proportionate interest shall be deposited in the name of the appellant- son of deceased, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of five years, renewable by another five years, with liberty reserved to him to withdraw the periodical interest.

Remaining sum 50% with proportionate interest shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.