(2016) 03 KAR CK 0187

In the Karnataka High Court

Case No : M.F.A. No. 1174 of 2016 (MV)

Gayathri Bai and others APPELLANT

Vs

Shabeen Taz and another RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 1443

Hon'ble Judges : N.K. Patil and Mrs. Rathnakala, JJ.

Bench : Division Bench

Advocate : Sri K. Shantharaj, Advocate, for the Appellant; Sri C. Shankar Reddy, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the appellants-claimants is directed against the impugned judgment and award dated 13-10-2015, passed in MVC No. 20/2013, by the VI Additional District Judge and Additional : Motor Accident Claims Tribunal, Tumkur, (hereinafter referred to as ''Tribunal'' for short) for enhancement of compensation, on the ground that, a sum of Rs. 5,85,500/- awarded by the Tribunal under different heads with interest at 6% per annum from the date of petition till realization, as against the claim of Rs. 15,00,000/- on account of the death of the deceased Sri. Kanthanaika, in the road traffic accident is inadequate.

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

The appellants are the wife, minor daughter and parents of the deceased. They filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation of Rs. 15,00,000/- against the respondents, on account of the death of the deceased in the road traffic accident, contending that, on 8-11-2012 at about 8.45 p.m. deceased was proceeding on his Hero Honda Motor cycle bearing Reg. No. KA.06.EA.430 towards his house at D.M. Palya and when he reached NH4 road opposite to H.R Petrol bunk, Sathyamangala, Kasaba Hobli, at that time, the driver of the lorry bearing Reg. No. KA.05.AC.5927 which was going in front of Hero Honda Motor cycle, suddenly applied the break without giving any signal or indicator and stopped the lorry without following the traffic rules. Due to which, deceased dashed the said Lorry and sustained injuries to his head and other parts of the body and died on the spot. It is the further case of the appellants that, deceased was aged about 30 years, hale and healthy prior to the accident, working as Mason and also doing agricultural work and getting the income of Rs. 12,000/- per month and Rs. 1,50,000/- p.a. from agriculture and looking after the welfare of the family by contributing his entire earnings to the family.

3. 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. 5,85,500/- under different heads with interest at 6% p.a., from the date of petition till its realization.

4. Being dis-satisfied with the quantum of compensation and the rate of interest awarded by the Tribunal, the appellants have presented this appeal, seeking enhancement.

5. We have heard the learned counsel appearing for the appellants and learned counsel for Insurer.

6. The submission of the learned counsel appearing for appellants, at the outset is that, the Tribunal has erred in not awarding reasonable compensation towards loss of dependency, towards conventional heads and the rate of interest. To substantiate the said submission, he submitted that, deceased was aged about 30 years, mason and agriculturist by profession, the accident is of the year 2012, he was the only earning member in the family and dependants are his wife, minor daughter and parents and he used to spend whatever he earns to the welfare of the family. Therefore, he submitted that, the income of the deceased may be reassessed between Rs. 9,000/- to Rs. 10,000/- per month, after deducting ?th towards his personal and living expenses and applying ''17'' multiplier, reasonable compensation may be awarded towards loss of dependency. Further he submits that the compensation awarded by the Tribunal towards conventional heads and the rate of interest awarded at 6% p.a. is on the lower side and contrary to the law laid down by the Apex Court and this Court and the same is liable to be enhanced reasonably. Therefore, he submitted that the impugned judgment and award is liable to be modified by enhancing reasonable compensation.

7. As against this, learned counsel appearing for Insurer, inter-alia, contended and sought to substantiate that, the Tribunal, after due appreciation of the oral and documentary evidence available on file has justified in awarding reasonable compensation towards loss of dependency and conventional heads and therefore,

it does not call tor interference.

8. After hearing learned counsel appearing for the parties and after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is :

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

9. Occurrence of the accident and the resultant death of the deceased are not in dispute. It is also not in dispute that, deceased was aged about 30 years, hale and healthy prior to the accident, only earning member in the family and mason by profession and also doing agricultural work. The dependants are his wife, minor daughter and parents. On account of his untimely death, wife has lost her life companion at her young age, daughter is deprived of the love and affection, guidance, security of her father and parents have suffered mental shock and agony and has affected the social and economic condition of the family. Taking all these aspects into consideration, we re-assess the income of the deceased at Rs. 8,000/- per month to meet the ends of justice instead of Rs. 3,500/- per months as assessed by the Tribunal. Out of which, if ?th (Rs. 2,000/-) is deducted towards the personal and living expenses of the deceased as there are four dependants, his contribution to the family comes to Rs. 6,000/- per month. The proper multiplier applicable is ''17'' since deceased was aged about 30 years as rightly adopted by the Tribunal in view of the law laid down by the Apex Court in Sarla Verma''s case. Therefore, we determine the loss of dependency at Rs. 12,24,000/- (Rs. 6,000/- x 12 x 17) instead of Rs. 5,35,500/- as awarded by the Tribunal and accordingly, it is awarded.

10. The compensation awarded towards conventional heads and 6% interest awarded by the Tribunal is on the lower side as rightly submitted by the learned counsel appearing for appellants. Having regard to the facts and circumstances of the case as stated above and in the light of the law laid down by the Apex Court and this Court, we deem it fit to award a sum of Rs. 1,00,000/- towards loss of consortium, Rs. 1,00,000/- towards loss of love and affection at the rate of Rs. 25,000/- to the each of the appellant Nos. 1 to 4, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses. In all, the appellants are entitled to a total compensation of Rs. 14,74,000/- instead of Rs. 5,85,500/- as awarded by the Tribunal.

11. Regarding rate of interest, as rightly pointed out by the learned counsel appearing for appellants, 6% interest per annum awarded by the Tribunal is on the lower side, since the accident is of the year 2012. In the light of the judgment of Apex Court and this Court, we award the rate of interest at 9% per annum from the date of petition till its realisation on the enhanced compensation instead of 6% awarded by the Tribunal.

12. For the foregoing reasons, the appeal filed by the appellants is allowed in part. The impugned judgment and award dated 13-10-2015, passed in MVC No.

20/2013, by the VI Additional District Judge and Additional Motor Accident Claims Tribunal, Tumkur, is hereby modified, awarding a sum of Rs. 14,74,000/- instead of Rs. 5,85,500/- awarded by the Tribunal. There would be an enhancement of Rs. 8,88,500/- with interest at 9% p.a. from the date of petition till its realization.

2nd Respondent is directed to deposit the enhanced compensation of Rs. 8,88,500/- with interest at 9% p.a. from the date of petition till its realization, within a period of three weeks from the date of receipt of a copy of this judgment.

13. Immediately on such deposit by the 2nd respondent, out of the enhanced compensation of Rs. 8,88,500/-, a sum of Rs. 2,00,000/- Lakhs with proportionate interest shall be invested in the Fixed Deposit in the name of appellant No. 1, wife of the deceased, in any Nationalized or Scheduled or Grameena Bank, for a period of 10 years, renewable by another 10 years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

14. A sum of Rs. 3,00,000/- with proportionate interest shall be invested in the Fixed Deposit in the name of the appellant No. 2, in any Nationalized or Scheduled or Grameena Bank, till she attains 30 years, with liberty reserved to the appellant No. 1 to withdraw the interest accrued on it, till she attains 22 years for her welfare and from 23 years to 30 years, she is at liberty to withdraw the interest accrued on it, periodically.

15. A sum of Rs. 1,00,000/- each with proportionate interest shall be invested in the Fixed Deposit in the name of appellant No. 3 and appellant No. 4, parents of the deceased, in any Nationalized or Scheduled or Grameena Bank, for a period of 05 years, renewable by another 05 years, with liberty reserved to them to withdraw the interest accrued on it, periodically.

16. Remaining sum of Rs. 1,88,500/- with proportionate interest shall be released in favour of the appellant Nos. 1, 3 and 4 in equal proportion immediately.

17. Draw the award accordingly.

