(2011) 10 KAR CK 0102

In the Karnataka High Court

Case No : M.F.A. No. 8565 of 2008 (MV)

Guruswamy, G. Leela and Pavithra — APPELLANT

Vs

M/s. The Oriental Insurance Co. Ltd. — RESPONDENT

Date of Decision : 15-10-2011

Acts Referred:

Citation : (2011) 10 KAR CK 0102

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

Bench : Single Bench

Advocate : Shripad.V. Shastri, for the Appellant; B.S. Umesh, for R1, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil

1. This appeal is directed against the judgment and award dated 1.3.2008 passed in MVC No. 7278/2006 on the file of XIII Addl. Small Causes Judge & Member, Motor Accidents Claims Tribunal, Bangalore (SCCH No. 15), (hereinafter referred to as ''the Tribunal'' for brevity). The Tribunal by its judgment and award has awarded a sum of Rs. 5.22,000/- with interest; at 6% p.a. from the date of petition till its realisation. Being aggrieved by the same, the appellants have presented this appeal on the ground that the compensation awarded by the Tribunal is inadequate and requires enhancement. The brief facts of the ease are:

Appellants No. 1 and 2 are the parents and appellant No. 3 is the sister of the deceased. It is the case of the appellants that on 23.8.2006 at about 8.45 p.m when deceased Rajkumar was travelling as a pillion rider ridden by one Prakash on Outer Ring road near Devarabeesanahalli Junction road, Bangalore, a lorry bearing registration No. TN-60-3232 came in a rash and negligent, manner and dashed against the motor cycle, due to which Rajkumar suffered grievous injuries and lateron succumbed to the same. Appellants submit that the as on the date of accident, the deceased Rajkumar was working as a Software Engineer at Flextronics Software Systems Ltd. earning salary of Rs. 33,366/-p.m. On account of untimely death of the deceased, the appellants filed a claim petition as referred above. The Tribunal after assessing oral and documentary evidence and other relevant material on file, taking into consideration the age and status of the deceased and source of income, allowed the claim petition in part awarding Rs. 5,22,000/- with 6% interest from the date of petition till realisation.

2. Heard the learned counsel appearing for the appellants and the learned counsel for the first respondent-Insurance Company for considerable length of time.

3. Learned counsel for the appellants submits that the Tribunal has committed material irregularity in assessing the income of the deceased and also deducting 50% towards personal expenses and seeks re-appreciation of the documents and prays for enhancement.

4. As against this, learned counsel for the first respondent-insurer interalia contended that the Tribunal after assessing the oral and documentary evidence has awarded just and reasonable compensation and hence, the same is in accordance with law and does not call for interference.

5. After careful perusal of the judgment and award and after evaluation of the original records available on file, what emerges is that, the Tribunal has committed error in calculating the compensation towards loss of dependency. It is not in dispute that the deceased was aged about 24 years as on the date of death and was a Software Engineer, by profession earning Rs. 33,366/- p.m. Rs. 4,00,392/- p.a. Out of the said sum, the permissible deductions towards are only income tax and professional tax i.e., are Rs. 1,20,117/- and Rs. 2400/- respectively. If the same is deducted, the remaining net amount comes to Rs. 2,77,875/- p.a., out of which 50% is to be deducted towards personal expenses of the deceased. After deduction the net income would be Rs. 1,38,938/- p.a. In the light of the Apex Court judgment in SARLA VERMA''s case, the proper multiplier applicable would be ''13'' since the mother is the younger of the parents, who is aged 49 years. Accordingly, the appellants are entitled to Rs. 18,06,194/- (Rs. 1,38,938 p.a x 13) towards "loss of dependency" as against Rs. 4,77,000/- awarded by the Tribunal

6. Having regard the facts and circumstances of the case. I am of the view that the Tribunal has awarded just and reasonable compensation of Rs. 45,000/- under the other conventional heads, deceased was a bachelor, i.e., towards ''loss of estate'' ''loss of love and affection'' and ''transportation and funeral expenses'' & it does not call for interference.

7. Accordingly, the appeal filed by the appellants is allowed in part. The judgment and award dated 01.3.2008 passed by the Tribunal in MVC No. 7278/2006 is hereby modified by awarding total compensation of Rs. 18,51,194/- as against Rs. 5,22,000/- (total enhancement being Rs. 13,29,194/-) along with interest; at 6% p.a. from the date of petition till the

date of realisation.

8. The 1st respondent-Insurance Company is directed to deposit the enhanced compensation with interest within four weeks from the date of receipt of copy of this judgment and award. Out of the enhanced compensation, a sum of Rs. Five lakhs with proportionate interest shall be kept in Fixed deposit in any Nationalised or Scheduled Bank in the name of appellant No. 2 for a period of five years renewable for another period of five years, with permission to withdraw the interest periodically; a sum of Rs. Four lakhs with proportionate interest shall be kept in Fixed deposit in any Nationalised or Scheduled Bank in the name of appellant, No. 1 for a period of five years, renewable for another period of five years, with permission to withdraw the interest periodically and a sum of Rs. One lakh with proportionate interest shall be kept in Fixed deposit in any Nationalised or Scheduled Bank in the name of appellant No. 3 for a period of five years renewable for another period of five years, with permission to withdraw the interest periodically. The remaining compensation of Rs. 3,29,194/- with proportionate interest shall be released in favour of appellants No. 1 and 2 in equal proportion forthwith on deposit of the amount by the 1st respondent-Insurance Company.

Office is directed to draw the award accordingly.