(2012) 01 KAR CK 0068

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8233 of 2010 MV

Hamsashri, Suhan, and Suhal, Appellants 2 and 3 are minors Represented by their mother Hamsashri-A1	APPELLANT
Vs	
Harish Salyan and The United India Insurance Co. Ltd.	RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Citation : (2012) 01 KAR CK 0068

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : K. Ranjan Kumar, for the Appellant; O. Mahesh, for R2 and R1-Notice served but unrepresented, for the Respondent

Final Decision : Allowed

Judgement

A.S. Pachhapure

1. Though the matter is posted for admission, with the consent of the counsel, it is taken up for final disposal. The appellants dissatisfied with the compensation awarded by the Tribunal for the death of Suresh in a motor vehicle accident have filed this appeal, seeking enhancement.

2. The facts reveal that on 22.04.2008 at about 10.00 p.m., Suresh was proceeding with his brother by the side of the road at Koppala cross on N.H.17 and at that time motorcycle bearing reg. No. KA 03-J-7760 ridden in rash and negligent manner came and hit Suresh, thereby he sustained grievous injuries. During the treatment, he succumbed to the injuries on 02.05.2008. The appellants being the wife and children and the mother [died during the pendency of the claim petition before the Tribunal] of the deceased Suresh claimed compensation of Rs. 25,00,000-00.

The claim made by the appellants was contested by the 2nd respondent before the Tribunal. The wife of deceased Suresh was examined as P.W. 1 and a witness P.W. 2. The documents Exs.P1 to 13 were marked in their evidence. The respondents did not lead any oral evidence, but got marked the document Ex. R1, copy of the insurance policy. The Tribunal after hearing the learned counsel for the parties and on appreciation of the material on record held actionable negligence on the part of the rider of the motorcycle and considering the income of the deceased at Rs. 3,500-00 p.m., adopting the multiplier of 15, granted compensation of Rs. 5,03,000-00 on all the heads. Dissatisfied with the amount of compensation awarded by the Tribunal, the present appeal has been filed.

3. I have heard the learned counsel for both the parties.

4. The point that arises for my consideration is;

Whether the appellants are entitled to the enhanced compensation? If so to what extent?

5. The 1st appellant is the wife, who lost her husband, when she was at the age of 30 years. Therefore, the Tribunal has granted compensation of Rs. 15,000-00 for loss of consortium and it appears to be just and reasonable. On the basis of the medical bills produced, the Tribunal has granted compensation of Rs. 75,000-00. As the deceased after sustaining injuries in the accident was in the hospital till 02.05.2008 and was treated, the appellants had to incur expenses. The Tribunal has rightly granted compensation of Rs. 75,000-00 towards medical expenses.

6. Now, so far as the income of the deceased is concerned, the Tribunal had considered it at Rs. 3,500-00 p.m. Suresh, the deceased was a tailor by profession and that was also in a village. The learned counsel for the appellant placed a reliance on the decision of the Apex Court reported in AIR 2011 Supreme Court 2951 Ramchandrappa Vs. The Manager, Royal Sundaram Aliance Insurance Company Limited, wherein the claimant was working as a coolie and it held the earnings at Rs. 4,500-00 p.m. and in the circumstances the compensation was granted by the Apex Court. As could be seen from the contents of the Judgment, so far as the income, of the deceased was concerned, though it is held that it was Rs. 4,500-00 p.m., neither it was objected by the contesting respondent and the assessment of the income at Rs. 4,500-00 p.m. by the Apex Court was not after consideration of the rival claim. In such circumstances, I am of the opinion that the income considered by the Apex Court cannot be made applicable to the facts on hand. Though, P.W.1 states in her evidence that her husband was earning Rs. 10,000-00 p.m. and contributing Rs. 8,000-00 p.m., except her oral evidence there is no material placed on record. Even though she admits that she had some documents to prove the income, said documents were not produced. The Apex Court in respect of an accident of the year 2001, considered the income of a coolie at Rs. 3,000-00 p.m. There is raise in the prices of the essential commodities and wages and even the provisions of the Workmen''s Compensation Act provide the maximum income at Rs. 4,000-00 p.m. till recently, there is subsequent amendment to the provisions of the Workmen''s Compensation Act and no limit has been now provided. This accident

is of the year 2008, so taking into consideration that Suresh, the deceased was a tailor in a village and also probable income to maintain the family, I think the ends of justice would be met if the income is considered at Rs. 4,000-00 p.m. Deducting 1/3 towards his personal expenses, the contribution would be Rs. 3,000-00 p.m. The deceased was aged 39 years at the time of the accident and the multiplier to be adopted would be 15. So, net loss of dependency would be; Rs. 3,000 x 12 x 15 = Rs. 5,40,000-00

The Tribunal has granted compensation of Rs. 35,000-00 as loss to the estate. It appears to be on the higher side and it is just and proper to grant a sum of Rs. 20,000-00 on this head. Funeral expenses awarded is on the lower side, which has to be enhanced to Rs. 5,000-00. So also there are two minor children and the compensation for loss of love and affection has to be Rs. 10,000-00. So, in these circumstances, the net compensation payable to the appellant is as under:

PARTICULARS

Rs.

Loss of dependency.

?

5,40,000-00

Loss of consortium.

?

15,000-00

Loss to the estate.

?

20,000-00

Funeral and obsequies

ceremony.

?

5,000-00

Loss of love and affection.

?

10,000-00

Medical expenses .

?

75,000-00

TOTAL

6,65,000-00

The appellants are entitled to the aforesaid amount with interest at 6% p.a. from the date of the petition till its payment. In that view of the matter, I answer the point in affirmative.

In the result, the appeal is allowed in part. Modifying the Judgment and Award passed by the Tribunal, the appellants are entitled to a total compensation of Rs. 6,65,000-00 with interest at 6% p.a. from the date of the petition till its payment. So far as the apportionment of the compensation is concerned, the Order passed by the Tribunal is maintained.