(2014) 04 KAR CK 0246

In the Karnataka High Court

Case No : M.F.A. No. 24004/2012 (MV)

Hashinabanu APPELLANT

Vs

Mohammed Yunus RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Citation : (2014) 04 KAR CK 0246

Hon'ble Judges : B. Sreenivas Gowda, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : P.K. Sanningammanavar and Sri S.R. Hegde, Advocate for the Appellant; M.Y. Katagi, Advocate for R-2, Sri Hanumant R. Latur, Advocate for R-3 and Sri S.K. Kayakamath, Advocate for R-4, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The appellants herein are the claimants in MVC No. 749/2010. They are before this Court seeking enhancement of the compensation as against the sum awarded by the Tribunal. In respect of the death of husband of claimant No. 1 and father of claimants No. 2 to 5, the Tribunal has awarded the total compensation of Rs. 5,44,200/- of which a sum of Rs. 4,99,200/- is towards ''loss of dependency''.

2. Learned counsel for the appellants while seeking enhancement would contend that the Tribunal was not justified in reckoning the monthly income of the deceased only at Rs. 4,000/-. It is his contention that the deceased apart from owning agricultural lands had also owned a lorry which was being let out on hire and as such, the income from both the sources ought to have been taken into consideration. In that view, it is contended that the compensation is liable to be enhanced.

3. Learned counsel for respondent No. 2-Insurance Company would however seek to sustain the award passed by the Tribunal. It is contended that though the claimants had contended that the deceased had higher income, no documentary

evidence was placed before the Tribunal. It is his case that claimant No. 1 in her cross-examination has admitted that the family has been issued with Yellow Ration Card and also that the lorry had been sold prior to death of the deceased. Hence, he contends that the income as reckoned by the Tribunal itself is on the higher side and therefore, no further enhancement is called for.

4. In the light of the rival contentions, we have perused the appeal papers including the judgment passed by the Tribunal. The claim was that the deceased was earning more than Rs. 20,000/-. In that regard, it was contended that apart from doing agriculture, the goods lorry bearing No. G.A.02/U/8008 stood in the name of the deceased. It is no doubt true that as pointed out by the learned counsel for respondent No. 2-Insurance Company, claimant No. 1 who was examined as P.W. 1 has admitted that the lorry was sold about a year back. The said admission has been noticed by the Tribunal. Even if that be so, there is no clear cut evidence on record to indicate that the lorry in fact has been sold and as to whether the reference of one year back is to the date prior to the death of the deceased or as on the date on which P.W. 1 had tendered her evidence.

5. Be that as it may, what cannot be lost sight is that the document at Ex.P. 11 indicates that certain agricultural properties stood in the name of the deceased. Though it is contended that the name of the brother was also indicated in the RTC extract, that by itself cannot take away the fact that certain income was derived from the said land. While taking note of these aspects, what is also necessary to be kept in view is that at the point of death of the husband of claimant No. 1, the children were aged between 18 to 23 years. If that be so, there would be no independent income from the said persons and claimant No. 1 was a house maker. As such, either from the agricultural property, income from the lorry or from any other source, when there were five dependants on the deceased, certainly the income of Rs. 200/- per day cannot be an exaggerated amount. Hence, that income can even be taken on a conservative estimate.

6. If that be the position, the monthly income would be in a sum of Rs. 6,000/-. If 1/5th deduction is made as done by the Tribunal and the multiplier of ''13'' is adopted, the amount towards ''loss of dependency'' would be in a sum of Rs. 7,48,800/-. The Tribunal has already awarded a sum of Rs. 4,99,200/-.

7. Hence, the appellants would be entitled to the enhanced compensation of Rs. 2,49,600/-. The amount awarded towards conventional heads is justified. We therefore round-off the compensation to Rs. 2,50,000/- with interest at the same as awarded by the Tribunal.

8. The amount shall be apportioned among the claimants in the same proportion and deposit shall also be made to the extent as done by the Tribunal at the first instance. The amount shall be deposited by the second respondent-Insurance Company within six weeks from the date of receipt of copy of this judgment.

Accordingly, the appeal stands disposed of.