

(2024) 03 KAR CK 0030

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 782 Of 2016 (MV-D)

Hemalatha & Others

APPELLANT

Vs

K. Shivanna & Others

RESPONDENT

Date of Decision : 18-03-2024

Acts Referred:

Citation : (2024) 03 KAR CK 0030

Hon'ble Judges : Jyoti Mulimani, J

Bench : Single Bench

Advocate : P. Nataraju

Final Decision : Allowed

Judgement

Jyoti Mulimani, J

1. Sri.P.Nataraju., learned counsel for the appellants has appeared in person.
2. Notice to respondents was ordered on 20.07.2016. A perusal of the office note depicts that respondents 1 & 2 are served and unrepresented. They have neither engaged the services of an advocate nor conducted the case as party in person.
3. Though the appeal is listed today for hearing on interlocutory application, it is heard finally.
4. For the sake of convenience, the parties shall be referred to as per their status and rankings before the Tribunal.
5. It is the case of the claimants that on the 06th day of June 2012 at about 9:45 p.m., deceased R.Raghukumar @ Raghu was riding a Bajaj CT 100 Motor Cycle bearing Registration No.KA-41-E-1350. When he reached near signal point towards Adichunchanagiri Road in Udayaravi Road in front of Kuvempunagar Sports Club, a Hero Honda Splendor Motor Cycle bearing Reg No.KA-09-EG-2764 came in a rash and negligent manner and hit him. Due to the forced impact, he fell down and sustained injuries. Thereafter, he succumbed to the injuries on the

way to Apollo Hospital, Mysuru. The dependants of the deceased filed the claim petition seeking compensation.

In response to the notice, the respondents have appeared through their counsel and filed statement of objections and prayed for dismissal of the claim petition.

The second respondent contended that he sold the said vehicle to first respondent on 26.05.2010 and first respondent issued a delivery note and he had also intimated the RTO about the sale of the vehicle. Among other grounds, he prayed for dismissal of the claim petition.

Based on the above pleadings, the Tribunal framed issues, parties led evidence and marked the documents. The Tribunal vide Judgment dated:26.08.2015 allowed the claim petition in part and dismissed claim petition as against respondent No.2 and held that the first respondent is liable to pay the compensation. It is this Judgment that is called into question in this appeal on several grounds as set-out in the Memorandum of appeal.

6. Sri.P.Nataraj., learned counsel for the appellants in presenting his arguments vehemently contended that the Tribunal has erred in awarding meagre compensation.

He argued by saying that the compensation awarded by the Tribunal requires enhancement.

A further submission is made that the second respondent Nemiram was the RC owner of the offending vehicle as on the date of accident. However, the Tribunal erred in not holding that first and second respondents are jointly and severally liable to pay the compensation. Learned counsel vehemently contends that dismissal of petition against respondent No.2 is unsustainable in law.

Lastly, he submits that viewed from any angle, the Judgment of the Tribunal is untenable. Counsel therefore, submits that the appeal may be allowed.

In support of his contention, learned counsel placed reliance on the decision of Hon'ble Apex Court in PUSHPA @ LEELA AND OTHERS VS. SHAKUNTALA AND OTHERS reported in 2011 AIR SCW 562.

Heard, the contentions urged on behalf of the appellant and perused the appeal papers and also the records with utmost care.

7. The following points would arise for consideration:

1. Whether the Claimants are entitled for enhanced compensation?
2. Whether the dismissal of the claim petition as against second respondent is sustainable in law?

8. The facts are sufficiently stated and do not require reiteration. The Claimants appeal is one for enhancement of compensation and modification of the judgment.

It is noticed that the Tribunal has awarded compensation of Rs.9,18,000/- (Rupees Nine Lakhs Eighteen Thousand only) towards Loss of dependency. It is contended that the deceased was dealing with fixing of mosaic and granite tiles to buildings and was earning not less than Rs.15,000/- (Rupees Fifteen Thousand only) per month. However, there is no proof of income. Hence, the chart prepared by the Legal Service Authority must be taken into consideration. As per the chart, the salary of the deceased must be taken as Rs.7,000/-(Rupees Seven Thousand only) per month if the accident is occurred in the year 2012. The age of the deceased was 30 years as on the date of accident, hence the multiplier 17 is to be adopted. Hence, the amount towards the loss of dependency is as under:

CALCULATION OF LOSS OF DEPENDENCY

Future prospects:

It is taken into consideration at 40% as per chart because the age of deceased is below 40 years.

$$7,000 \times 40\% = 2,800$$

$$7,000 + 2,800 = 9,800$$

$$9,800 \text{ divided by } 3 = 3,266$$

$$9,800 - 3,266 = 6,534$$

$$6,534 \times 12 \times 17 = 13,32,936/-$$

Rs.13,32,936/-

The compensation awarded by the Tribunal towards under other heads remains intact.

9. Accordingly, this Court re-determines the compensation as under:

1.

Loss of dependency

13,32,936

Rs.13,32,936/-

2.

Loss of Consortium

1,00,000

Rs.1,00,000/-

3.

Funeral expenses

25,000

Rs.25,000/-

4.

Loss of love and affection.

30,000

Rs.30,000/-

5.

Loss of estate

10,000

Rs.10,000/-

6.

Medicines and Medical Expenses

Nil

Nil

7

Transportation of Dead Body

10,000

Rs.10,000/-

8.

Pain and Suffering

Nil

Nil

Total:

Rs.15,07,936/-

(Less) Compensation awarded by the Tribunal:

- Rs.10,93,000/-

Enhanced compensation awarded by this Court:

Rs.4,14,936/-

Now let me consider whether the Tribunal is justified in dismissing the claim petition as against the second respondent.

Admittedly, the accident occurred on the 6th day of June 2012. A perusal of the entire material on record depicts that the second respondent is the RC owner of the offending vehicle as on the date of accident. Except for stating that he has sold the vehicle in favor of the first respondent, the second respondent has not made any efforts to see that the vehicle is transferred in favor of the first respondent. It is pivotal to note that neither the transferor nor the transferee took any steps for change of name of owner in certificate of registration. The Tribunal has overlooked this issue and erroneously dismissed the claim petition as against the second respondent. The dismissal of claim petition against respondent No.2 is contrary to the decision of the Apex Court in PUSHPA @ LEELA AND OTHERS VS. SHAKUNTHALA AND OTHERS reported in 2011 AIR SCW 562. Hence, I conclude that the first and second respondent are jointly and severally liable to pay the entire compensation amount.

Having regard to the facts and circumstances of the case and the prevailing rate of interest during the relevant time, this Court deems it appropriate to award interest at the rate of 6% per annum on the enhanced compensation amount from the date of claim petition till realization.

10. Hence, the following:

ORDER

1. The Miscellaneous First appeal is allowed and the Judgment dated:26.08.2015 passed by MACT, Prl. Judge, Small Causes and Senior Civil Judge, Mysuru in M.V.C No.34/2013 is modified to the extent stated hereinabove.
2. The claimants are entitled for the enhanced compensation of Rs.4,14,936 /- (Rupees Four Lakhs Fourteen Thousand and Nine Hundred and Thirty Six only) with interest at the rate of 6% per annum from the date of the claim petition till the date of realization.
3. The first respondent and second respondent are jointly and severally shall deposit the enhanced compensation amount along with 6% interest within a period of two months from the date of receipt of the certified copy of this Judgment.
4. The Registry to draw the modified award accordingly.
5. Office is directed to transmit the original records to the concerned Tribunal forthwith.