(2009) 08 KAR CK 0103

In the Karnataka High Court

Case No : M.F.A. No. 3658 of 2007

Hemanth Kumar rep. by their Father, Kum. Kavya rep. by their Father and Manjappa	APPELLANT
Vs	
Vijayanada Road Lines Ltd., Arjun Pujari and The New India Assurance Co. Ltd.	RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:

Citation : (2009) 5 KCCR 3949

Hon'ble Judges : N.K. Patil, J;H. Billappa, J

Bench : Division Bench

Advocate : B.S. Prasad and B.G. Chidananda Urs, for the Appellant; Vishwanath R. Hedge, for R1 Notice to R2-Dispensed with Vide Order Dt. 19.09.2008 and S.V. Angadi, for R3, for the Respondent

Judgement

N.K. Patil, J.—This appeal arises out of the judgment and award dated 11th August 2006 passed in M.V.C. No. 98/2004 on the file of the Additional Motor Accidents Claims Tribunal, Fast Track Court - II at Davangere, (''Claims Tribunal'' for brevity). This appeal is presented by appellants mainly on the ground that, the compensation of Rs. 3,22,000/-awarded by Claims Tribunal is inadequate and requires enhancement.

2. The facts in nutshell are, one Smt Shanthamma is the deceased in this case. The appellants are respectively the son, daughter and husband of the deceased. That on 20th February 2004, at about 8:30 AM, when the deceased was waiting for the bus at Chikkabidharekallu by the side of the road along with her husband, the third appellant herein, the second respondent being the driver of the lorry bearing No. KA-25/A-2361 came driving the same from Tumkur towards Bangalore in a rash and negligent manner and dashed against her. As a consequence of the same, she suffered serious fatal injuries. Immediately, the deceased was shifted to the Hospital and in spite of the best treatment, she could not be saved and she succumbed to the injuries on 21st February 2004.

The deceased was working as skilled tailor at L.T Karle & company Manufacturers and Exporters of Readymade Cloths and was getting salary of Rs. 3,000/- per month. On account of the death of the deceased in the accident, the claimants appellants herein have filed the claim petition seeking compensation of Rs. 7,22,0007- The said claim petition had come up before the Claims Tribunal on 11th August 2006 and the Claims Tribunal, after hearing the learned Counsel for the parties and after considering the oral and documentary evidence and other material on file, has allowed the claim petition and awarded in all, compensation of Rs. 3,22,0007- with interest at 6% per annum from the date of petition till the date of payment of entire compensation amount. Being not satisfied with the compensation awarded by the Claims Tribunal, the appellants have presented this appeal seeking enhancement of compensation under various heads.

3. It is the submission of the learned Counsel for appellants that, the Claims Tribunal has erred in taking the income of the deceased at Rs. 2,400/- per month even though it was stated by the husband of the deceased that she was working as skilled tailor and getting a sum of Rs. 3,000/- per month apart from over time payments. Further, he submitted that, the deceased was aged 30 years at the time of accident and the Claims Tribunal has failed to adopt appropriate multiplier. Therefore, the impugned judgment and award passed by the Claims Tribunal is liable to be modified.

4. Per contra, learned Counsel appearing for third respondent - Insurance Company, inter alia, contended and substantiated that the impugned judgment and award passed by the Claims Tribunal is just and proper and does not call for interference.

5. After hearing the learned Counsel for appellants, learned Counsel for Insurance Company and after perusal of the judgment and award passed by the Claims Tribunal, it emerges that, deceased Smt. Shanthamma succumbed to the fatal injuries sustained by her in the accident that occurred on 20th February 2004. Taking into consideration that the deceased was working as skilled tailor at L.T. Karie & Company, Manufacturers and Exporters of Readymade Cloths, we deem it appropriate to take the income of the deceased at Rs. 3,000/- per month. After deducting 1/3rd of the said sum towards the personal expenses of the deceased, the net income comes to Rs. 2,000/- per month and per annum, it comes to Rs. 24,000/-. By adopting appropriate multiplier of ''17'', the compensation payable towards loss of dependency comes to Rs. 4,08,000/- (i.e.2,000/- x 12 x 17). In this connection, it is relevant to note that since the husband is also working in the same Export garment factory, he is treated as independent and only appellants 1 and 2 are treated as dependents of the deceased. Accordingly, only appellants 1 and 2 are entitled for compensation under the head loss of dependency.

6. Further, after careful perusal of the judgment and award impugned, it is seen that, the Claims Tribunal has not awarded any amount towards loss of estate. Having regard to the facts of the case, we deem it appropriate to award a sum of

Rs. 5,0007- towards loss of estate.

7. In so far as the compensation awarded by the Claims Tribunal towards loss of love and affection, loss of consortium, funeral expenses and medical expenses is concerned, the same is just and proper and does not call for interference.

8. In view of the discussion made above, we deem it fit to enhance the total compensation from Rs. 3,22,0007-to Rs. 4,47,000/- and the breakup is as follows:

1. Towards loss of dependency Rs. 04,08,000/- 2. Towards loss of love and affection Rs. 10,000/- 3. Towards loss of consortium Rs. 05,000/- 4. Towards funeral expenses Rs. 05,000/- 5. Towards medical expenses Rs. 14,0007- 6. Towards loss of estate Rs. 05,000/- ________________ Total = Rs.04.47.QQ0/- ______________________

9 In the light of the facts and circumstances of the case, as stated above, the judgment and award passed by the Claims Tribunal is modified as follows.

The impugned judgment and award passed by the Claims Tribunal dated 11th August 2006 in M.V.C. No. 98/2004 is modified by awarding total compensation of Rs. 4,47,000/'' instead of Rs. 3,22,000/-(enhancement being Rs. 1,25,000/-) with interest at the rate of 6% per annum from the date of petition till the date of realization.

The third respondent Insurance Company is directed to deposit the enhanced compensation with accrued interest at 6% within a period of eight weeks from today.

Out of the enhanced compensation of Rs. 1,25,000/-, Rs. 5,000/- awarded towards loss of estate shall be released in favour of the third appellant and the remaining enhanced compensation of Rs. 1,20,000/- shall be deposited in the names of appellants 1 and 2 in equal proportion in the Fixed Deposit in any Nationalized/Scheduled Bank till they attain the age of majority.

Further, in the impugned judgment and award passed by Claims Tribunal, it is directed that, 50% of the compensation apportioned to the share of the third appellant is to be deposited in his name in any Nationalized Bank. Having regard to the facts and circumstances of the case and since we have held that, the third appellant is not entitled to the compensation under the head loss of dependency, we are of the view that this portion is also liable to be modified. Accordingly, we direct that, immediately after the maturity of the Fixed Deposit made in the name of the third appellant, the matured amount may be re-invested in any nationalized/Scheduled Bank in the names of the appellants 1 and 2 in equal proportion till they attain the age of majority.

The third appellant is at liberty to withdraw the interest accrued on the aforesaid deposits for the welfare of appellants 1 and 2. Draw up the award accordingly.

Sri. S.V. Angadi, learned Counsel is permitted to file vakalath on behalf of third respondent.

