(2016) 02 KAR CK 0003

In the Karnataka High Court

Case No : M.F.A. Nos. 101592/2014 and 101111/2014 (MV)

Jarina and Others — APPELLANT

Vs

The Principal KLE Society''s and Others — RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Citation : (2016) 02 KAR CK 0003

Hon'ble Judges : H. Billappa and B. Veerappa, JJ.

Bench : Division Bench

Advocate : Harish S. Maigur, Advocate, for the Appellant;

Final Decision : Disposed Off

Judgement

H. Billappa, J.—1. These two appeals are directed against the judgment and award dated 25.02.2014 passed by the II Additional Sessions Judge and Addl. MACT-III, Belgaum, in M.V.C. No. 2439/2012.

2. By the impugned judgment and award, the Tribunal has granted compensation of Rs. 35,27,240/- with interest at 6% p.a. from the date of award till the date of realisation.

3. Aggrieved by that, the claimants have filed M.F.A. No. 101592/2014 and the Insurance Company has filed M.F.A. No. 101111/2014.

4. Briefly stated the facts are; the claimants are the wife, children and mother of the deceased Akbar Deshpaik. That on 08.10.2012, at about 7.30 p.m., when the deceased Akbar Deshpaik was standing by the side of the road proceeding from Belgaum-Gogte Circle to Railway Station Road of Gogate Circle, a bus bearing registration No. KA-22/A-2127 came in a rash and negligent manner and dashed against the deceased. As a result of that, the deceased Akbar Deshpaik sustained injuries and succumbed to the same. The claimants who are the wife, children and mother of the deceased claimed compensation of Rs. 75 lakhs. The Tribunal has awarded a sum of Rs. 35,27,240/- with interest at 6% p.a. from the date of

award till the date of realisation. Aggrieved by that, the claimants have filed M.F.A. No. 101592/2014 seeking enhancement and the Insurance Company has filed M.F.A. No. 101111/2014 challenging the quantum.

5. The learned counsel for the claimants i.e., appellants in M.F.A. No. 101592/2014 contended that the impugned judgment and award needs to be modified by enhancing compensation. Further he submitted that the Tribunal has erred in deducting 1/3rd towards personal expenses of the deceased. As there are six dependants, the Tribunal should have deducted only 1/4th towards personal expenses. He also submitted that the compensation awarded by the Tribunal towards loss of consortium, loss of love and affection and funeral expenses is inadequate and needs to be enhanced. Further he submitted that the Tribunal has not awarded any compensation towards loss of estate but has awarded a sum of Rs. 15,000/- towards mental agony which may be adjusted towards loss of estate. He therefore, submitted that the impugned judgment and award needs to be modified by enhancing the compensation.

6. As against this, the learned counsel for the Insurance Company i.e., appellant in M.F.A. No. 101111/2014 contended that the impugned judgment and award cannot be sustained in law. He also submitted that the Tribunal should have adopted split multiplier as the deceased was aged 57 years and would have retired from service within three years. Further he submitted that the Tribunal has not deducted any amount towards professional tax. He also submitted that the Tribunal has erred in awarding compensation under the head ''mental agony''. Therefore, the impugned judgment and award cannot be sustained in law. In support of his submission, he placed reliance on the following decisions:

"i) Union of India and Others v. K.S. Lakshmi Kumar and Others reported in , ILR 2000 KAR 3809,

ii) M.F.A. No. 20781/2013 disposed of on 11.10.2013,

iii) M.F.A. No. 25007/2012 c/w M.F.A. No. 25650/2012 disposed of on 20.01.2014,

iv) M.F.A. No. 12247/2007 disposed of on 24.10.2011."

7. In reply, the learned counsel for the claimants submitted that this Court in several decisions has considered split multiplier method and has declined to adopt the split multiplier method. He also submitted that the Hon''ble Supreme Court in K.R. Madhusudan and Others v. Administrative Officer and Another reported in , AIR 2011 SC 979, has reversed the judgment of the High Court wherein split multiplier method was adopted. In Sarla Verma v. Delhi Transport Corporation reported in , 2009 ACJ 1298, nothing is stated regarding split multiplier method. He placed reliance on the following decisions:

"i) M.F.A. No. 4134/2002 disposed of on 15.02.2006,

ii) M.F.A. No. 23003/2009 disposed of on 30.03.2012,

iii) M.F.A. No. 21584/2011 connected with M.F.A. Crob. 715/2013 disposed of on

14.02.2013,

iv) M.F.A. No. 20634/2011 connected with M.F.A. Crob. No. 713/2013 disposed of on 29.10.2014,

v) K.R. Madhusudan and Others v. Administrative Officer and Another reported in , AIR 2011 SC 979,

vi) Sarla Verma v. Delhi Transport Corporation reported in , 2009 (6) SCC 121."

8. We have carefully considered the submissions made by the learned counsel for the parties.

9. The point that arises for our consideration is; Whether the impugned judgment and award calls for interference?

10. It is relevant to note, the deceased Akbar Deshpaik died in the accident that occurred on 08.10.2012 is not in dispute. The liability of the Insurance Company is also not in dispute. The Tribunal taking the income of the deceased at Rs. 51,010.33, and deducting a sum of Rs. 35,080/- towards income tax and deducting 1/3rd towards personal expenses and adopting multiplier of 9 has awarded a sum of Rs. 34,62,240/- towards loss of dependency.

11. The learned counsel for the Insurance Company contended that the Tribunal should have adopted split multiplier as the deceased would have retired from service within three years. Further, the Tribunal has erred in taking the income of the deceased at Rs. 51,010.33. He placed reliance on the following decisions:

"i) Union of India and Others v. K.S. Lakshmi Kumar and Others reported in , ILR 2000 KAR 3809,

ii) M.F.A. No. 20781/2013 disposed of on 11.10.2013,

iii) M.F.A. No. 25007/2012 c/w M.F.A. No. 25650/2012 disposed of on 20.01.2014,

iv) M.F.A. No. 12247/2007 disposed of on 24.10.2011."

12. No doubt, in the above decisions split multiplier has been adopted.

13. The learned counsel for the claimants has placed reliance on the following decisions:

"i) M.F.A. No. 4134/2002 disposed of on 15.02.2006,

ii) M.F.A. No. 23003/2009 disposed of on 30.03.2012,

iii) M.F.A. No. 21584/2011 c/w M.F.A. Crob. 715/13 disposed of on 14.02.2013,

iv) M.F.A. No. 20634/2011 c/w M.F.A. Crob. 713/2013 disposed of on 29.10.2014."

14. In the decisions relied upon by the learned counsel for the claimants, the Division Bench and also the Single Judge have not adopted split multiplier. In

M.F.A. No. 4134/2002, disposed of on 15.02.2006, the Division Bench of this Court has considered Union of India and others v. K.S. Lakshmi Kumar and others reported in , ILR 2000 KAR 3809 and at paragraph 23 it has concluded as follows:

"In a case of a victim of a road accident having pensionable job, for the purpose of calculating loss of dependency, the income drawn by the deceased as on the date of death including his career progression subject to deduction as aforesaid shall be the basic factor. It cannot be divided into two parts, one during which he was entitled to full salary, and the latter period when he was entitled for pension. His gross salary subject to statutory deductions should be the basis factor which shall be subject to his personal expenses. The figure so arrived shall be the multiplicand to which appropriate multiplier will be applicable. The component of pension shall not be the criterion for determining loss of future dependency after superannuation."

15. In M.F.A. No. 23003/2009, the Single Judge of this Court following the decision in Madhusudan''s case and holding that the Apex Court has not approved adopting of split multiplier method by taking salary upto the age of superannuation and pension thereafter and following the judgment in M.F.A. No. 4134/2002 has held that split multiplier cannot be adopted.

16. In M.F.A. No. 21584/2011 connected with M.F.A. Crob. 715/2013, disposed of on 14.02.2013, the Division Bench of this Court following the decision in M.F.A. No. 4134/2002, disposed of on 15.02.2006, and M.F.A. No. 1802/2007 connected with M.F.A. Crob. 135/2009 has not adopted the split multiplier method.

17. Similarly, another division bench of this Court in M.F.A. No. 20634/2011 connected with M.F.A. Crob. 713/2013 disposed of on 29.10.2014 considering Union of India and others v. K.S. Lakshmi Kumar reported in , ILR 2000 KAR 3809 and K.R. Madhusudan and others v. Administrative Officer and another reported in , 2011 ACJ 743, has held that in view of the decision of the Apex Court in Madhusudan''s case split multiplier method cannot be adopted.

18. It is clear from the above decisions that the Division Bench and Single Judge of this Court have not adopted split multiplier method.

19. The Hon''ble Supreme Court in K.R. Madhusudan and others v. Administrative Officer and another reported in , AIR 2011 SC 979 has observed as follows at paragraph 14;

"The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefore. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased."

20. At paragraph 15 it is observed as follows:

"We are, thus, of the opinion that the judgment of the High Court deserves to be set aside for it is perverse and clearly contrary to the evidence on record, for having not considered the future prospects of the deceased and also for adopting a split multiplier method."

21. It is clear, the Hon''ble Supreme Court has not accepted the split multiplier method in above case. The learned counsel for the Insurance Company was also not able to point out anything from Sarla Verma''s case regarding split multiplier. Therefore, we reject the contention that the Tribunal should have adopted split multiplier method.

22. The deceased was working as a Assistant Manager in the State Bank of India, Main Branch at Belgaum. Ex. P.8 and Ex. P. 10 are the salary certificate and salary particulars of the deceased. Ex. P.8 shows that the deceased had drawn salary of Rs. 56,166.42 during August, 2012. During September, 2012, the deceased has drawn a sum of Rs. 51,010.33. The accident has occurred on 08.10.2012. Therefore, we take the salary of the deceased as Rs. 51,010.33 and it is rounded off to Rs. 51,010/-. The Tribunal has deducted a sum of Rs. 35,080/- towards income tax. But, nothing is deducted towards personal tax. Therefore, a sum of Rs. 2,400/- needs to be deducted towards professional tax. In all, a sum of Rs. 37,480/- needs to be deducted towards professional and income tax. The annual income of the deceased comes to Rs. 5,74,640/-. There are six dependants. Therefore, 1/4th needs to be deducted towards personal expenses of the deceased. The balance comes to Rs. 4,30,980/-. Therefore, the loss of dependency per annum is Rs. 4,30,980/-. The deceased was aged 57 years at the time of accident. Therefore, the appropriate multiplier is 9. The compensation payable towards loss of dependency comes to Rs. 4,30,980X9 = 38,78,820/-. Accordingly, we award a sum of Rs. 38,78,820/- towards loss of dependency.

23. The Tribunal has awarded a sum of Rs. 15,000/- towards loss of consortium. We award a sum of Rs. 1,00,000/- towards loss of consortium.

24. The compensation awarded by the Tribunal towards loss of love and affection is also inadequate. We award a sum of Rs. 1,25,000/- towards loss of love and affection.

25. The Tribunal has awarded only a sum of Rs. 15,000/- towards funeral expenses and conveyance charges. It needs to be enhanced. We award a sum of Rs. 25,000/- towards funeral expenses and conveyance charges.

26. The Tribunal has awarded a sum of Rs. 15,000/- towards mental agony. However, no compensation is awarded towards loss of estate. Therefore, we treat the compensation awarded under the head ''mental agony'' as compensation awarded for loss of estate.

27. The total compensation payable comes to Rs. 41,43,820/- and the break up is as follows:

28. Accordingly, the appeal filed by the claimants in M.F.A. No. 101592/2014 is

allowed and the impugned judgment and award passed by the II Additional Sessions Judge and Addl. MACT-III, Belgaum, in M.V.C. No. 2439/2012 stands modified enhancing the compensation by Rs. 6,16,580/- in addition to the compensation awarded by the Tribunal. The enhanced compensation of Rs. 6,16,580/- shall carry interest at 6% p.a. from the date of petition till the date of realisation. The compensation awarded by the Tribunal also shall carry interest at 6% p.a. from the date of petition till the date of realisation.

29. Out of the enhanced compensation, the claimant No. 1 i.e., the wife shall be entitled to a sum of Rs. 1,16,580/- with proportionate interest. The claimants 2 to 6 shall be entitled to a sum of Rs. 1,00,000/- each with proportionate interest. The entire enhanced compensation shall be released in favour of the claimants.

30. The appeal filed by the Insurance Company in M.F.A. No. 101111/2014 stands dismissed. The amount in deposit in M.F.A. No. 101111/2014 shall be transmitted to the Tribunal for further action.