(2016) 02 KAR CK 0341

In the Karnataka High Court

Case No : M.F.A. No. 7677 of 2015 (MV)

Jogaiah, Dead by his LRs. APPELLANT

Vs

M/s. Sri. Sathya Sai Tourist RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 2 AnWR 168

Hon'ble Judges : N.K. Patil and Mrs. Rathnakala, JJ.

Bench : Division Bench

Advocate : S. Raju, Advocate, for the Appellant; H.C. Betsur, Advocate, for the Respondents No. 2

Final Decision : Allowed

Judgement

N.K. Patil, J.—This appeal by the appellants-claimants is directed against the impugned judgment and award dated 16/06/2015, passed in MVC No.312/2012, by the Additional Senior Civil Judge, Ramanagara, (hereinafter referred to as ''Tribunal'' for short), for enhancement of compensation, on the ground that, a sum of Rs. 7,31,496/- awarded by the Tribunal under different heads with interest at 6% per annum from the date of petition till realization, as against the claim Rs. 50,00,000/- on account of the death of the deceased Sri. Jogaiah, in the road traffic accident is inadequate.

2. In brief, the facts of the case are:

The appellants are the wife and children of the deceased. Initially, injured-Jogaiah has filed the petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the respondents on account of the injuries sustained by him, contending that, on 22.9.2012 at about 10.45 a.m. he was traveling in a auto rickshaw bearing Reg.No.KA.11.2748 and coming near Kanakapura Circle, Ramanagara, at that time, the driver of the Tata Indica Car bearing No.KA.05.AD.5622 came with high speed in a rash and negligent manner and dashed to the auto. Due to which, deceased suffered grievous injuries. Immediately, he was taken to Ramanagara General Hospital and from there to Pulse hospital, Bangalore. There was injury to the spinal card for which, he underwent treatment and surgery and he did not recover from the accident and died on 21.01.2013. Thereafter, his LRs are come on record seeking compensation on account of death of one Jogaiah.

3. It is the further case of the appellants that, deceased was aged between 48 to 50 years, hale and healthy prior to the accident, working as Coolie in Brick factory and earning Rs. 500/- per month and looking after the welfare of the family by contributing his entire earnings to the family.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petition in part and awarded the compensation of Rs. 7,31,496/- under different heads with interest at 6% p.a., from the date of petition till its realization.

5. Being dis-satisfied with the quantum of compensation and the rate of interest awarded by the Tribunal, the appellants have presented this appeal, for enhancement of compensation.

6. We have gone through the grounds urged by the appellants in the memorandum of appeal and heard learned counsel appearing for Insurer.

7. It is the case of the appellants that, the Tribunal has erred in not assessing the income of the deceased reasonably and what is assessed is on the lower side, as deceased was aged between 48-50 years, working as coolie in Brick factory. He was the only earning member in the family and entire family is depending on his income. Therefore, he prayed that, the income of the deceased may be reassessed reasonably. Further, it is the case of the appellants that the compensation awarded by the Tribunal towards conventional heads and 6% interest per annum is on the lower side and is liable to be enhanced reasonably in the light of the law laid down by the Apex Court and this Court. Therefore, he prayed that the impugned judgment and award is liable to be modified.

8. As against this, learned counsel Sri. Betsur appearing for the Insurer, inter-alia, contended and substantiated that the impugned judgment and award passed by the Tribunal is just and proper and after due appreciation of the oral and documentary evidence available on file and wife is the only dependant as all children are majors and they are not depending on the deceased and therefore, it does not call for interference. However, after going through the judgment and award, he fairly submitted that in the light of the law laid down by the Apex Court and this court, the rate of interest awarded is on the lower side and the same may be considered in accordance with law.

9. After going through the grounds urged in the memorandum of appeal, after hearing the learned counsel appearing for the Insurer and after careful perusal of

the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

Whether the compensation awarded by the Tribunal is just and reasonable?

10. Occurrence of the accident and the resultant death of the deceased are not in dispute. It is the case of the appellants that deceased was aged between 48-50 years, hale and healthy prior to the accident, only earning member in the family and working as coolie in brick factory''. The Tribunal, has assessed the income of the deceased at Rs. 5,850/- per month after adding 30% to Rs. 4,500/-, which is on the lower side and is liable to be reassessed reasonably. Having regard to the age, occupation of the deceased and the year of accident, we reassess his income at Rs. 7,000/- per month to meet the ends of justice. Out of which, if ?rd (Rs. 2,333/-) is deducted towards personal and living expenses of the deceased since the dependants are wife and two children only, the remaining contribution of the deceased to the family comes to Rs. 4,667/- per month. The proper multiplier of ''13'' as he was aged between 48-50 years in the light of the judgment of the Apex Court in Sarla Verma''s case, as rightly adopted by the Tribunal. Therefore, we re-determine loss of dependency at Rs. 7,28,052/- (Rs. 4,667/- x 12 x 13) instead of Rs. 4,56,300/- as awarded by the Tribunal and accordingly, it is awarded.

11. However, the compensation awarded towards conventional heads and 6% interest awarded by the Tribunal is on the lower side as rightly submitted by the learned counsel appearing for appellants. The same is liable to be enhanced. On account of the untimely death of the deceased who was the only earning member in the family, appellant No. 1, wife, has lost her companion, children are deprived of the love and affection, guidance and security of their father. Therefore, having regard to the facts and circumstances of the case and in the light of the law laid down by the Apex Court and this Court, we deem it fit to award a sum of Rs. 1,00,000/- towards loss of consortium, Rs. 1,00,000/- towards loss of love and affection at the rate of Rs. 25,000/- to the each of the appellant Nos. 1 to 4, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses.

12. However, the Tribunal has justified in awarding a sum of Rs. 2,25,196/- towards medical expenses since the deceased had met with an accident on 22.9.2012, he was under treatment and succumbed to the injuries sustained in the accident on 21.01.2013. In all, the appellants are entitled to a total compensation of Rs. 12,03,248/- instead of Rs. 7,31,496/- as awarded by the Tribunal.

13. Regarding rate of interest, as rightly pointed out by the learned counsel appearing for the appellants, 6% interest per annum awarded by the Tribunal is on the lower side, since the accident is of the year 2012. In the light of the judgment of Apex Court and this Court, we award the rate of interest at 9% per

annum on the enhanced compensation instead of 6% awarded by the Tribunal.

Thus, there would be an enhancement of Rs. 4,71,752/- with interest at 9% p.a., from the date of petition till its realization.

14. For the foregoing reasons, the appeal filed by the appellants is allowed in part. The impugned judgment and award dated 16/06/2015, passed in MVC No.312/2012, by the Additional Senior Civil Judge, Ramanagara, is hereby modified, awarding a sum of Rs. 4,71,752/- with interest at 9% p.a., from the date of petition till its realization, in addition to the compensation awarded by the Tribunal.

15. The 2nd respondent-Insurance Company is directed to deposit the enhanced compensation with interest at 9% p.a., from the date of petition till its realisation within a period of three weeks from the date of receipt of a copy of this judgment.

16. Immediately on such deposit by the Insurer, out of the enhanced compensation of Rs. 4,71,752/-, a sum of Rs. 3,00,000/- with proportionate interest shall be invested in the Fixed Deposit in the name of appellant No. 1, wife of the deceased, in any Nationalized or Scheduled or Grameena Bank, for a period of 10 years, renewable by another 10 years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

17. Remaining sum of Rs. 1,71,752/- with proportionate interest shall be released in favour appellant Nos. 1 to 4 in equal proportion immediately.

18. Draw the award accordingly.

