(2015) 12 KAR CK 0097

In the Karnataka High Court

Case No : M.F.A. Nos. 4573 and 2730 of 2015 (MV)

Jyothirmoy and Others APPELLANT

Vs

The Managing Director, B.M.T.C. Central Office and Others RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 1 AKR 480

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : Shripad V. Shastri, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

P.D. Waingankar, J.—Both these appeals by the claimants and insurer respectively are arising out of the judgment and award dated 11.2.2015 in MVC No. 7779/2011 on the file of Motor Accident Claims Tribunal and XIII Addl. Small Cause Judge, Bangalore.

2. The facts in brief which gave rise to these appeals are as under:--

"On 28.11.2011 at about 8.15 p.m. deceased Nageshwar Rao was riding Honda Activa bearing registration No. KA-50-J-6825 from his residence at Sahakarnagar towards his office at S.R. Nagar on Ramanamaharshi road, Sadashiva Nagar, Bangalore. When he reached in front of Veerashiva Sadana road, a BMTC bus bearing registration No. KA-01-F-1169 came from his backside and dashed against the Honda Activa which the deceased was riding. As a result of the impact, the deceased fell down and thereby the bus ran over his head, as a result of which, he died on the spot. He was working as a Public Relations Officer in BEML and getting monthly salary of Rs. 36,565/-. His wife, children and parents filed a claim petition under section 166 of the M.V. Act in MVC No. 7779/200 before the Motor Accident Claims Tribunal, Bangalore. The claim petition was contested by the insurer of the BMTC bus. The claim petition came up for consideration before the tribunal, before whom, on behalf of the claimants, 1st claimant-the wife of the deceased was examined as PW-1 and three other witnesses including the representative of the employer were examined as PW-2 to PW-4. Exs-P1 to P29 were marked. On behalf of the Corporation, three witnesses were examined apart from marking policy of insurance and the certified copy of the judgment passed in a criminal case. The tribunal on appreciation of oral and documentary evidence recorded a finding that the accident and the resultant death of Nageshwar Rao was on account of rash and negligent driving of the bus by its driver. Further, the tribunal taking his net income at Rs. 2,45,333/- per annum added 30% of his income towards future prospects and having regard to his age, applied the multiplier ''14'' and determined the ''loss of dependency'' at Rs. 27,47,730/-. In addition to that, the tribunal awarded a sum of Rs. 1.00 lakh towards ''loss of consortium'', Rs. 2.00 lakhs towards ''loss of love and affection'', Rs. 4.00 lakh towards ''loss of estate'' and Rs. 20,000/- towards ''transportation of dead-body''. Thus the tribunal awarded a total compensation of Rs. 42,92,048/- together with 8% interest p.a. from the date of petition till the date of realization from the respondent owner and insurer of the BMTC bus."

3. Aggrieved by the quantum of compensation awarded by the tribunal, the claimants have preferred MFA No. 4573/2015 for enhancement of the compensation, whereas the insurance company preferred MFA No. 2730/2015 for reduction of the compensation awarded.

4. We have heard both the learned counsel appearing for the claimants and the insurer. Perused the records.

5. The submission of the learned counsel for the claimants is that the compensation awarded by the tribunal under the head ''loss of dependency'' is on the lower side and it requires to be enhanced. Further, the learned counsel submitted that the tribunal on proper appreciation of evidence, awarded compensation under the ''conventional heads'' and no interference is called for.

6. The learned counsel for the insurer on the other hand would submit that the compensation awarded by the tribunal under the head ''loss of dependency'' was on the higher side, that the tribunal has not deducted an amount of Rs. 4.00 lakh received by the claimants under group insurance from the employer of the deceased and the compensation of Rs. 4,00,000/- awarded by the tribunal towards ''loss of estate'' is exorbitant and not based on any accepted norms. Hence, the learned counsel sought for modification of the award suitably.

7. In view of the submission made both the learned counsel and on the perusal of the material on record the point for consideration is:--

"Whether the compensation awarded by the tribunal is just and reasonable?"

The accident and the death of the deceased in the motor vehicle accident are not in dispute. It is also not in dispute that the first claimant is the wife of the deceased, second and third claimant are the minor children of the deceased and 4th and 5th claimants are the parents of the deceased. It is borne out from the records that the deceased was working as a Public Relation Officer in BEML. He was getting a monthly salary of Rs. 30,000/- to Rs. 40,000/-. The claimants have produced the salary slip of the deceased for the relevant period and also the income-tax returns filed by the deceased at the relevant point of time. Having regard to the salary which he was drawing at the relevant point of time, as could be seen from Ex-P9-three salary slips and the income-tax returns filed by the deceased for the relevant period, we deem it just and proper to take the income of the deceased at Rs. 36,565/- p.m. The annual income therefore comes to Rs. 4,38,780/-. since he was aged 43 years at the time of accident, 30% of his income will have to be added towards his future prospects, which comes to Rs. 1,31,634/-. The total loss of income comes to Rs. 5,70,414/- per annum. By deducting income-tax and professional tax amounting to Rs. 45,841/-, the net annual income comes to Rs. 5,24,573/-. Since the dependants are five in number, 1/4th is to be deducted towards the personal and living expenses of the deceased. If 1/4th of his income i.e., Rs. 1,31,143/- is deducted from Rs. 5,24,573/-, the annual dependency, comes to Rs. 3,93,430/-. If it is multiplied by ''14'' multiplier having regard to the age of deceased as 43 years, the total ''loss of dependency'' comes to Rs. 55,08,020/- as against Rs. 27,47,730/- determined by the tribunal. In addition to that, the claimants are entitled for a sum of Rs. 1.00 lakh towards ''loss of consortium'' Rs. 2.00 lakh towards ''loss of love and affection'' Rs. 25,000/- towards ''loss of estate'' and Rs. 25,000/- towards ''transportation of dead body and funeral expenses''. Thus totally, the claimants are entitled for compensation of Rs. 58,58,020/- as against Rs. 42,92,048/- determined by the tribunal. There shall be enhancement of compensation of Rs. Rs. 15,66,020/-. There is no substance in the submission made by the learned counsel for the insurance company that the amount of Rs. 4.00 lakhs received by the claimants under group insurance from the BEML-the employer of the deceased is liable to be deducted while computing the compensation. The payment of said amount is nothing to do with the compensation to be paid by the tortfeaser. The said amount was paid by the employer of the deceased under contract of employment between the employee and the employer.

8. For the foregoing reasons, MFA 4573/2015 filed by the claimants is allowed-in-part. The judgment and award dated 11.2.2015 in MVC No. 7779/2011 on the file of Motor Accident Claims Tribunal and XIII Addl. Small Cause Judge, Bangalore, stands modified awarding enhanced compensation of Rs. 15,66,020/- over and above the compensation awarded by the tribunal together with 9% p.a. interest on the enhanced compensation from the date of petition till the date of realization.

The insurance company is directed to deposit the enhanced compensation within a period of three weeks from the date of receipt of copy of this Judgment.

In the event of deposit, a sum of Rs. 4.00 lakh with proportionate interest shall be deposited in the name of claimant Nos. 1, 2 and 3 in any Nationalised Bank/ Schedule Bank/Grameena Bank for a period of 10 years and renewable for another 10 years with liberty to claimant No. 1-natural guardian-mother of appellant Nos. 2 and 3(in MFA No. 4573/2015) to withdraw the interest periodically for the welfare of appellant Nos. 2 and 3.

Remaining amount of compensation together with interest shall be released to appellant/claimant No. 1. MFA No. 2730/2015 filed by insurance company is hereby dismissed.

The amount in deposit in MFA No. 2730/2015 by the insurance company shall be transmitted to the jurisdictional tribunal, immediately.

