(2016) 01 KAR CK 0138

In the Karnataka High Court

Case No : M.F.A. Nos. 102804/2015 and 100444/2015 (MV)

Kavya and Others APPELLANT

Vs

Sohanlal and Others RESPONDENT

Date of Decision : 25-01-2016

Acts Referred:

Citation : (2016) 01 KAR CK 0138

Hon'ble Judges : H. Billappa and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : G.R. Turamani, Advocate, for the Appellant;

Final Decision : Partly Allowed

Judgement

P.S. Dinesh Kumar, J.—1. These two appeals have been filed by the claimants and the Insurer respectively.

2. M.F.A. No. 102804/2015 is by the legal representatives of the deceased Santosh Kumar who succumbed to the injuries sustained by him in a road traffic accident which occurred on 03.11.2012 while he was riding as a pillion rider on a motor-cycle bearing registration No. KA-35/H-2224 from Halageri to Banakanahalli village. The claimants presented the instant petition contending inter alia that the motor-cycle on which the deceased was travelling was dashed against by an offending car bearing registration No. KA-27/M-3016 which was driven in a rash and negligent manner causing injuries to both the rider and the pillion on the motor cycle. It was further contended that the deceased was aged 28 years and he was a milk vendor earning Rs. 25,000/- p.m. With these pleadings claimants sought compensation of Rs. 30 lakhs as compensation. On behalf of the claimants, one witness was examined and 41 exhibits marked. The claim petition was contested by the Insurer by filing statement of objections. However, no witness was examined nor any documents marked on behalf of the respondent/Insurance Company. On consideration of the material on record, the Tribunal has awarded a total sum of Rs. 9,98,000/- as compensation. Aggrieved

by the quantum of compensation, claimants have presented this appeal seeking enhancement of compensation.

3. M.F.A. No. 100444/2015 is filed by the Insurer being aggrieved by the judgment of the Tribunal with regard to grant of future prospects.

4. Heard Sri G.R. Turamari, learned counsel for the claimants and Sri Laxman B. Mannoddar, learned counsel for the respondent-Insurer.

5. Learned counsel for the claimants contended that the Tribunal erred in assessing the earnings of the deceased at Rs. 4,500/- per month while assessing loss of dependency. So far as the compensation under the other conventional heads, he contended that the same is grossly inadequate.

6. Per contra, learned counsel for the Insurer submitted that the Tribunal erred in adding 50% of the earnings towards loss of future prospects. He further submitted that no material was placed by the claimants to demonstrate that the deceased had a steady flow of earning. In the circumstances, he prayed that his appeal be allowed so far as the addition of 50% of future prospects is concerned.

7. We have carefully considered the submissions made by the learned counsel for the parties and perused the records.

8. It is not in dispute that the accident has occurred on 03.11.2012 and the deceased was aged 28 years. The pleadings before the Tribunal made on behalf of the claimants that the deceased was a milk vendor and earning Rs. 25,000/- has remained uncontroverted. However, no document is produced before the Tribunal to substantiate the monthly earnings of the deceased. In the circumstances, in the absence of any documentary evidence, in our considered view, keeping in view the date of accident and the age of the deceased, it would be just and appropriate to assess the earning of the deceased at Rs. 6,500/- per month as on the date of accident.

9. So far as the future prospects is concerned, learned counsel for the claimants has placed reliance on the judgment of the Hon''ble Supreme Court in the case of MUNNA LAL JAIN AND ANOTHER v. VIPIN KUMAR SHARMA AND OTHERS reported in , (2015) 6 SCC 347 to support his contention with regard to addition of a portion of earning towards future prospects has to be added while assessing the earning capacity of the deceased. We have carefully gone through the said judgment. In the said judgment, after considering the earlier judgments, the Hon''ble Supreme Court has held that if the deceased victim is below 40 years, 50% of the actual income has to be added towards loss of future prospects while computing loss of dependency. Respectfully, following the said judgment, we are of the view that 50% of the earnings will have to be added in the instant case also which shall account for Rs. 9,750/- i.e., Rs. 6,500 + 3,250. There are four dependants and therefore, 25% will have to be deducted towards his personal expenses. After such deduction, earning capacity of the deceased shall be Rs. 7,312.50/- which is rounded off to Rs. 7,315/- which constitutes loss of earning

including the future prospects of the deceased. As the age of the deceased was 28 years, the appropriate multiplier applicable is 17. With these inputs, the loss of dependency works out to Rs. 14,92,260/- i.e., Rs. 7315X12X17.

10. So far as the compensation towards the conventional heads is concerned, perusal of the judgment shows that the compensation awarded towards loss of consortium, transportation of dead body and funeral expenses and loss of love and affection are inadequate. So far as the loss of estate, the same shall remain undisturbed. In the circumstances we re-assess the compensation payable in the following manner:

11. In the result, we pass the following:

ORDER

"i) M.F.A. No. 102804/2015 is allowed in part,

ii) The judgment and award dated 05.11.2014 in M.V.C. No. 487/2013 on the file of the Senior Civil Judge and IT Court and AMACT, Byadgi, is modified by enhancing the compensation of Rs. 7,24,260/-;

iii) The Insurer is directed to deposit the enhanced compensation of Rs. 7,24,260/- with 6% interest from the date of petition till the date of deposit within a period of four weeks from the date of receipt of copy of this order,

iv) Upon such deposit, the enhanced compensation shall be disbursed in the same terms as directed in the award passed by the Tribunal,

v) The quantum of compensation which shall fall to the share of the 2nd appellant/Keerthan shall be placed in a fixed deposit till she attains majority and the 1st appellant/mother of the minor child shall be entitled to receive the interest once in three months,

vi) The registry is directed to transfer the amount in deposit to the Tribunal for disbursement in accordance with law,

vii) M.F.A. No. 100444/2015 filed by the Insurer stands dismissed."

No costs.