
(2015) 12 KAR CK 0043
In the Karnataka High Court
Case No : M.F.A. No. 5671 of 2013 (MV)

Kondamma and Others

APPELLANT

Vs

The Proprietor, Bajwa Road Lines and Others

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 12 KAR CK 0043

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

Bench : Division Bench

Advocate : V. Appi Reddy, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the appellants/claimants is directed against the impugned judgment and award dated 01/03/2013, passed in MVC No. 1352/2011, by the VI Additional Small Causes Judge and XXXI ACMM and Motor Accident Claims Tribunal, Bangalore (SCCH-2), (hereinafter referred to as "Tribunal" for short), for enhancement of compensation.

2. The Tribunal by its judgment and award, has awarded a sum of Rs. 4,56,000/- under different heads with interest at 6% per annum from the date of petition till realization as against the claim of the appellants for a sum of Rs. 26,25,000/-, on account of the death of the deceased Sri. Giribabu N., in the road traffic accident.

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

The appellant Nos. 1 and 2 are the parents of the deceased. They filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the respondents, on account of the death of the deceased in the road traffic accident, contending that on 28.6.2010 at about 7.30 a.m. deceased and his friends were going to Kavali, Nallur District, Andhra Pradesh from Bangalore to attend Mangamma Devi Jathre and when he was proceeding towards Hoskote

Road near Confident Group Resort, Gangapura, at that time, the driver of container lorry bearing Reg. No. KA.51.1755 came from Hoskote towards Kolar with high speed in a rash and negligent manner and dashed against the Hero Honda splendor bearing Reg. No. KA.04.EM.122 in which deceased was proceeding. As a result, deceased fell down and sustained multiple grievous head injuries and succumbed to the same at the spot. It is the further case of the appellants that, deceased was aged about 29 years, hale and healthy prior to the accident, working as Accountant and Computer Operator at Bharani Hospitality Services and also doing part time milk vending business and earning Rs. 8,330/- per month.

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. 4,56,000/- under different heads with interest at 6% p.a., from the date of petition till realization.

5. Not being satisfied with the quantum of compensation and the rate of interest awarded by the Tribunal, the appellants have presented this appeal.

6. We have heard the learned counsel appearing for the appellants and learned counsel for Insurer.

7. The submission of learned counsel appearing for the appellants, at the outset is that, the Tribunal has erred in not assessing the income of the deceased reasonably and what is assessed is on the lower side and liable to be re-assessed. To substantiate the said submission, he submitted that, deceased was aged about 29 years, only son to his parents, working at Bharani Hospitality Services at Bangalore as Accountant and Computer Operator, drawing the salary of Rs. 5,830/- per month and also doing part time milk vending business and earning Rs. 2,500/- per month and totally Rs. 8,330/- per month, but the same has not been accepted by the Tribunal and therefore, he submitted that income of the deceased may be re-assessed reasonably. Further he submits that in the light of the judgment of the Apex Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, , appellants are entitled to another 30% of the income of the deceased towards future prospects and after deducting 50% towards his personal expenses and applying multiplier of "11" taking the age of the younger parent, mother, reasonable compensation may be awarded towards loss of dependency. He further submits that the compensation towards conventional heads and the rate of interest awarded by the Tribunal is on the lower side and is liable to be enhanced reasonably in the light of the judgments of the Apex Court and this Court. Therefore, he submitted that the impugned judgment and award is liable to be modified.

8. As against this, learned counsel appearing for the Insurer, inter-alia, contended and substantiated that the Tribunal, after due appreciation of the oral and documentary evidence available on file has justified in awarding reasonable

compensation under all the heads and therefore, it does not call for interference.

9. After hearing the learned counsel for both the parties 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. The occurrence of the accident and the resultant death of the deceased are not in dispute. It is also not in dispute that appellants are the parents of the deceased. It is the case of the appellants that, deceased was aged about 29 years, working as Accountant and Computer Operator at Bharani Hospitality Services at Bangalore and he used to spend whatever he earns to the welfare of the family and on account of his untimely death, they suffered lot of mental shock and agony apart from financial difficulties. Having regard to the age, occupation and year of the accident, we re-assess the income of the deceased at Rs. 5,030/- per month by accepting Ex.P19-Salary Certificate produced by the appellants instead of Rs. 5,000/- per month as assessed by the Tribunal to meet the ends of justice. To that, if 30% (Rs. 1,509/-) is added towards future prospects in the light of the judgment of the Apex Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, , his total income comes to Rs. 6,539/- per month. Out of which, if 50% (Rs. 3,269/-) is deducted towards the personal and living expenses of the deceased, since he was a bachelor, his contribution to the family comes to Rs. 3,270/- per month. The Tribunal has justified in adopting multiplier of "11" taking the age of the younger parent, mother of the deceased as 51 years after assigning valid reasons and we accept the same. Therefore, we re-determine the loss of dependency at Rs. 4,31,640/- (Rs. 3,270/- x 12 x 11) instead of Rs. 3,96,000/- awarded by the Tribunal and accordingly, it is awarded.

11. As rightly pointed out by the learned counsel appearing for appellants, the Tribunal has erred in not awarding reasonable compensation towards conventional heads. Therefore, having regard to the facts and circumstances of the case, we award a sum of Rs. 1,00,000/- towards loss of love and affection at the rate of Rs. 50,000/- each to the appellant Nos. 1 and 2, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses.

12. 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 2010. In the light of the judgment of Apex Court and this Court, we award the rate of interest at 8% per annum on the enhanced compensation instead of 6% P.A. awarded by the Tribunal.

In all, the appellants are entitled to the total compensation of Rs. 5,81,640/- instead of Rs. 4,56,000/- awarded by the Tribunal. There would be an

enhancement of Rs. 1,25,640/- with interest at 8% p.a., from the date of petition till its realization on the enhanced compensation.

13. For the foregoing reasons, the appeal filed by the appellants is allowed in part. The impugned judgment and award dated 01/03/2013, passed in MVC No. 1352/2011, by the VI Additional Small Causes Judge and XXXI ACMM and Motor Accident Claims Tribunal, Bangalore (SCCH-2), is hereby modified, awarding a sum of Rs. 1,25,640/- with interest at 8% p.a., from the date of petition till its realization in addition to the compensation awarded by the Tribunal.

The Insurer is directed to deposit the enhanced compensation of Rs. 1,25,640/- with interest at 8% p.a., from the date of petition till its realization within a period of three weeks from the date of receipt of a copy of this judgment.

Out of the enhanced compensation of Rs. 1,25,640/-, a sum of Rs. 50,000/- with proportionate interest shall be invested in the Fixed Deposit in the name of the appellant No. 2, mother of the deceased in any Nationalized or Scheduled or Grameena Bank, for a period of 10 years, renewable by another 05 years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

Remaining sum of Rs. 75,640/- with proportionate interest shall be released in favour of the appellant Nos. 1 and 2 in equal proportion.

Draw the award, accordingly.

Learned counsel Sri. K. Suryanarayana Rao, is permitted to file vakalath for R2-Insurer.