(2011) 03 KAR CK 0102

In the Karnataka High Court

Case No : MFA No. 2010 of 2009

Lakshmamma, Manjula, Kavitha both and Nagaraju	APPELLANT
Vs	
Marulaiah and The Manager, Royal Sundaram Insurance Co. Ltd.	RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 03 KAR CK 0102

Hon'ble Judges : H.S. Kempanra, J

Bench : Single Bench

Advocate : B.L. Prathibha, for M.C. Umadevamma, for the Appellant; O. Mahesh, for R.2, for the Respondent

Judgement

H.S. Kempanra, J.—Though this matter is listed for admission with consent of the learned Counsel for the respective parties, it is taken up for final disposal.

2. This appeal is by the claimants seeking for enhancement of compensation in respect of the death of the deceased Narasimhaiah in a motor accident.

3. For the sake of convenience, the parties in this appeal would be referred to by their rankings as they are arrayed in the claim petition before the Tribunal.

4. The brief facts of the case are:

The claimants are the wife, two minor daughters and son of the deceased Narasimhaiah. They filed claim petition u/s 166 of M.V. Act before the Tribunal claiming compensation in a sum of Rs. 2,00,000/- against the Respondents on account of the death of the deceased in the motor accident that took place on 09.11.2005 at 1.30 p.m. near Ganadalu while he was proceeding walking on the road towards his house Involving the tractor bearing Reg. No. KA-44/T 245-246 owned by the first Respondent and insured with the second Respondent at the relevant point of time. It is further the case of the claimants, on account of the impact, the deceased sustained severe injuries. He was shifted to a hospital for treatment, where be expired on 09.03.2006 while undergoing treatment. They spent huge money for his treatment but they were not successful. Accordingly, they filed claim petition claiming compensation against the Respondents.

5. After service of notice, learned Counsel appearing for the first Respondent - owner though appeared, did not choose to file any statement, Second Respondent Insurer contested the claim of the Petitioner. They contended that the accident has not taken place on account of the fault of the driver of the offending tractor trailer, They further contended that the driver of the offending tractor trailer did not possess any valid and effective licence to drive the vehicle as on the data of the accident. As such there is breach of terms and conditions of the policy issued. Hence they are not liable to pay any compensation, accordingly, sought for dismissal of the petition.

6. On the basis of the above pleadings, the Tribunal framed in all three issues.

7 The Tribunal on considering the oral and documentary evidence on record held that the accident in question has taken place safety on account of the fault of the driver of the offending tractor--trailer and hence, She claimants have established actionable negligence. Further, the Tribunal looking to the evidence of the first claimant - wife and documents placed on record has awarded a sum of Rs. 3,12,000/-towards loss of dependency after determining the income at Rs. 3,000/- per month, deducting 1/3rd and applying multiplier 13. Further it has awarded a sum of Rs. 65,000/- towards conventional heads, apart from a sum of Rs. 46,120/- awarded towards medical expenses incurred by the claimants. Thus in all, the Tribunal has awarded a compensation of Rs. 4,23,120/- with interest at 6% per annum from the date of petition till realisation. It further ordered the entire compensation be paid by the second Respondent- Insurance Company.

8. The Appellants/claimants being aggrieved of the quantum of compensation are in appeal before this Court.

9. The learned Counsel appearing for the Appellants/claimants submitted that the Tribunal has erred In not properly determining the income of the deceased per month and further it has also not applied the correct multiplier that is applicable to the facts of the case having regard to the age of the deceased and it has also erred in deducting 1/3rd towards personal expenses of the deceased ignoring the fact that the deceased was to feed four mouths, by which 1/4th should have been deducted as against 1/3rd Further he submits that the compensation awarded under conventional heads is also not just and proper, hence a case for enhancement is made out.

10. Per contra, fee learned Counsel for the contesting Insurer supported the impugned judgment and award of the Tribunal.

11. Taking the rival submissions into consideration, the papers that are made available before me at the time of hearing, the point that arises for my consideration is:

Whether Appellants/claimants have made out a case for enhancement?

12. The facts are not in dispute. The deceased Narasimhaiah having met with accident on 09.11.2005, injury sustained, treatment taken and having succumbed to the injuries while undergoing treatment in the hospital on 09.03.2006 are not in dispute, It is the case of the claimants that the deceased was aged 45 years, Coolie by profession, earning more than Rs. 7,500/- per month. However they have not placed any material to substantiate the said claim. The Tribunal after assessing the evidence on record taking into account the avocation of the deceased, date of the accident i.e. on 09.11.2005 has rightly determined the income of the deceased at Rs. 3,000/- par month The same doss not call for any interference. Further the Tribunal after determining the income of the deceased at Rs. 3,000/- has deducted 1/3rd towards personal expenses. The claimants are the wife, two minor daughters and manor son. Therefore, having regard to the number of mouths that the deceased was so feed during his life time, in the facts and circumstances, the Tribunal should have deducted 1/4th and not 1/3rd as has been done. Therefore if 1/4th as deducted from his monthly income, which is fixed at Rs. 3,000/- it comes to Rs. 2,250/- per month and that would be the loss of dependency to the claimants per month on account of the death of the deceased in the accident, Admittedly, the deceased was aged 45 years, which is not in dispute. Therefore, in view of what has been held by the Apex Court in Srala Varma''s Case, the proper multiplier that becomes applicable in 14 and not 13 as has been applied by the Tribunal to the facts of this case. In view of this, the claimants in all are entitled to a sum of Rs. 3,78,000/- (Rs. 2,250/- x 12 x 14) as against Rs. 3,12,000/- towards loss of dependency. Further the Tribunal has awarded a sum of Rs. 65,000/- towards conventional heads. Though it appears to be on the higher side as no appeal or no cross objections is preferred by the Insurance Company, the same does not call for any interference in this appeal Further the Tribunal has awarded a sum of Rs. 46,120/- towards medical expenses incurred by the claimants for the treatment of the deceased in the hospital. As already pointed out the accident took place on 09.11.2005. After the accident the deceased was shifted to the hospital where he was treated and he expired in the hospital while undergoing treatment on 09.03.2006. During this interregnum period they spent the amount of Rs. 46,120/- for getting the deceased treated. In support of the same, they have produced medical hills, which are at Exs.P.12 series supported by prescriptions, which are at Ex.P13 series. The Tribunal on looking to these two documents has awarded a sum of Rs. 46,120/- towards medical expenses. The genuiness of the said bills is also not seriously disputed before this Court. Therefore, the said amount awarded towards the medical expenses in the facts and circumstances is also just and proper and does not call for any interference. In view of this, the claimants/ Appellants would be entitled to total compensation of Rs. 4,89,120/- as against Rs. 4,23,100/- awarded by the Tribunal with interest at 6% per annum from the date of petition till realisation. The break up of the compensation awarded is as under:

1.

Towards loss of dependency

Rs. 3,78,000/-

2.

Towards Medical expenses

Rs. 46,120/-

3.

Towards transportationfuneral and obsequies ceremonies.

Rs. 10,000/-

4.

Towards loss of consortium

Rs. 20,000/-

5.

Towards loss of love and Affection

Rs. 15,000/-

6.

Towards loss to the estate

Rs. 20,000/-

Total

Rs. 4,89,120/-

Thus, the claimants in all are entitled to total compensation of Rs. 4,89,120/- with interest at teh rate of 6% per annum from the date of petition till realisation as against Rs. 4,23,120/- with interest ate teh rate of 6% per annum from the date of petition till realisation awarded by the Tribunal. The enhanced compensation comes to Rs. 66,000/- (Rs. 4,89,120/- - Rs. 4,23,120/-) with interest ate the rate of 6% per annum from the date of petition till realisation.

Accordingly, appeal has to succeed in part.

13. In result for the foregoing reasons I proceed to pass the following:

ORDER

(i) The Appeal is allowed in part.

(ii) The impugned judgment and award passed by the Tribunal is modified and the Appellants/claimants are awarded total compensation of Rs. 4,89,120/- with interest At the rate of 6% per annum from the date of petition till realisation as against Rs. 4,23,120/- with interest at the rate of 6% per annum from the date of petition till realisation awarded by the Tribunal. The enhanced compensation comes to Rs. 66,000/- with interest at 6% per month from the date of petition till realisation.

(iii) Second Respondent- Insurer shall deposit the entire enhanced compensation with interest before the Jurisdictional Tribunal within four weeks from the date of receipt of the copy of the judgment and award.

(iv) On deposit of the enhanced compensation, a sum of Rs. 15,000/- each with proportionate interest is ordered to be deposited in the name of minor Appellants/ claimants 2, 3 and 4 in any Nationalised/Scheduled bank till they attains majority. On their attaining majority with interest accrued on the said deposit is ordered to be deposited in their names for a period of five years renewable by further for a period five years. The said Appellants/claimants are permitted to draw the interest accrued on the said deposit periodically.

(v) The balance of Rs. 21,000/ - with proportionate interest it ordered to be released in favour of the first Appellant/ claimant wife of the deceased.

Office to draw the award accordingly.