(1996) 01 KAR CK 0075

In the Karnataka High Court

Case No : MFA No. 99 of 1993

Lakshman and Others APPELLANT

Vs

Susheela Chand Choudary and Others RESPONDENT

Date of Decision : 31-01-1996

Acts Referred:

Citation : (1996) 2 ACC 427 : (1996) ACJ 1265 : (1996) ILR (Kar) 2337 : (1996) 3 KarLJ 570

Hon'ble Judges : G.P. Shivaprakash, J;A.M. Farooq, J

Bench : Division Bench

Advocate : A. Niranjan Kumar, for Patil Associates, for the Appellant; U. Abdul Khader, for R-2, for the Respondent

Final Decision : Allowed

Judgement

G.P. Shivaprakash, J.—The deceased was aged 19 years. He was a Pre-University Student. While he was proceeding on the bicycle on 9-8-1989 at about 8-55 a.m., a goods lorry bearing registration No. ADT 5495 driven in a rash and negligent manner came from behind and dashed against the cycle. The lorry ran over the deceased who died at the spot. The claimants are his parents and his minor sister.

2. The mother of the deceased i.e., the second appellant has given evidence as P.W.1. In her evidence she has stated that her son was earning while studying and he was bringing home Rs. 600/- per month by giving private tuition. She has deposed that the deceased had the desire to do Post-graduation, in which event he would have contributed not less than Rs. 1,500/- per month for the maintenance of the family. On that basis, the claimants claimed Rs. 4,50,000/- for loss of dependency. A sum of Rs. 10,000/- was claimed for loss of estate; an amount of Rs. 5,000/- for funeral expenses and Rs. 25,000/- for loss of love and affection. In addition, they claimed a sum of Rs. 1,000/- for the damage caused to the cycle. In all they claimed a total compensation of Rs. 4,91,000/-, with interest at the rate of 12% from the date of petition till the date of realisation.

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3. The Tribunal has assumed "a nominal sum of Rs. 250/- per month" for the value of "the service" the deceased would have rendered to his parents. The Tribunal has adopted 16 as multiplier. On that basis, a sum of Rs. 48,000/- is determined for loss of dependency. The Tribunal has found that the claim of Rs. 3,000/-towards funeral expenses said to have been incurred by the parents, as deposed to by P.W.1, is exorbitant. The Tribunal has awarded Rs, 1000/- towards funeral and other expenses incidental thereto. The Tribunal has awarded Rs. 900/- for the damage caused to the cycle, thus, a total sum of Rs. 50,000/- is awarded by the Tribunal.

4. Sri A. Niranjan Kumar, learned Counsel appearing for the appellants, submitted, that the amount of Rs. 48,000/- towards loss of dependency as determined by the Tribunal is very much on the lower side. He submitted that the deceased was a young boy of 19 years and he had a bright future. Though he was from a family of agriculturists, he had the ambition to study and had studied upto PUC II. The learned Counsel submitted that in the ordinary course, after completion of education, the minimum he would have earned per month from any avocation, would not have been less than Rs. 1,500/-. He urged that if the deceased had completed his degree course and secured appointment he would have earned not less than Rs. 2 to 3 thousand per month. He further submitted that even under the provision of the Minimum Wages Act, an ordinary worker is entitled to wages of Rs. 30/- per day.

5. In the circumstances of the case, it is impossible to have any arithmetical formula for determining the loss of dependency. We must necessarily have to make a rough estimate. Taking into consideration the prevailing wage structure, we estimate the probable earning capacity of the deceased immediately after completion of PUC examination at Rs. 1,200/-. Out of Rs. 1,200/- if 173rd of the amount is deducted towards his personal expenses, the balance would be Rs. 800/-.

6. Sri Abdul Khader, learned Counsel appearing for the Insurance Company, submitted that this Court in several decisions has observed that normally bachelors spend more on themselves and therefore 50% of their earnings will. have to be deducted towards personal expenses. This may be so in respect of bachelors living in cities where there are so many diversions for spending money; but not so in a small backward town where the deceased was living, where the opportunity for spending money would be very much less. Therefore, we consider deduction of 1/3rd towards personal expenses would be appropriate.

7. The next step in the calculation process would be to ascertain the proper multiplier. In H.T. Bhandary Vs. Muniyamma, , this Court has observed that, choosing of the multiplier depends on the age of the deceased if the dependants are young in age; otherwise the multiplier would depend upon the number of years the dependency would last i.e., the age of the dependants would be the factor for determining the multiplier.

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8. In the instant case the father was aged 50 and the mother was aged 45 years. The correct multiplier, therefore, in accordance with the above ruling, would be 10 and not 16, adopted by the Tribunal. Multiplying Rs. 9,600/-, being the annual income, by 10, we get Rs. 96,000/- which could be taken as loss of dependency.

9. We propose to award a sum of Rs. 2,000/- towards funeral and other expenses and a sum of Rs. 900/- for the damage to the bicycle.

10. Invariably in cases pertaining to accidents claims, a certain amount is given for loss of consortium when a spouse dies in an accident. We do not see any reason why a certain sum should not be awarded when a son dies in the accident. In the instant case the deceased was the only son of the claimants. He was aged 19 years and the parents naturally had high expectations regarding the future of their only son who would have showered lot of love and affection on them. In fact P.W.1 has deposed that the deceased had the desire to do Post-graduate work. We award a sum of Rs. 10,000/- towards loss of filial love and affection, thus affecting their quality of life in the remaining years.

11. The aggregate of the above (Rs. 96,000-00 for loss of dependency; Rs. 2,000-00 for funeral expenses; Rs. 900-00 for damage caused to the cycle and Rs. 10,000-00 for loss of filial love and affection) is Rs. 1,08,900/-. Since the claimants are getting, a lumpsum amount of Rs. 1,08,900/-, we award a consolidated sum of Rs. 1,00,000/- as the total compensation payable to the claimants.

12. We award interest at the rate of 9% per annum on the enhanced compensation amount as against 6% awarded by the Tribunal, from the date of petition till the date of realisation.

13. Since the parents are illiterate, it is desirable that the aforesaid amount of compensation shall be kept in a nationalised Bank for a period of five years. The interest earned thereon will be utilised by the appellants for their maintenance.

14. In the result, this appeal succeeds and the award of the Tribunal stands modifier in the manner indicated above.

15. Appeal allowed with costs of Rs. 1,000/-.

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