(2016) 03 KAR CK 0072

In the Karnataka High Court

Case No : M.F.A. No. 6451 of 2014 (MV).

Lingaraju and Others — APPELLANT

Vs

Iffco. Tokio General Insurance Co. Ltd., Bangalore and another — RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 1361

Hon'ble Judges : N.K. Patil;Rathnakala, JJ.

Bench : Division Bench

Advocate : Thyagaraja B.S. Nagaraja, Advocate, for the Appellant; D.S. Sridhar, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J. - This is claimants'' appeal filed against the impugned judgment and award dated 23rd May, 2014 passed in MVC No. 5562/2012 on the file of the III Additional Senior Civil Judge and Motor Accident Claims Tribunal, Court of Small Causes, Bangalore (SCCH-18) (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. 9,75,000/- under different heads with interest at 8% per annum from the date of petition till the date of deposit, as against the claim of the claimants for a sum of Rs. 40,00,000/-, on account of the death of the deceased late Sri Mohith in the road traffic accident.

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

The 1st and 2nd appellants are parents of the deceased and 3rd appellant is sister of the deceased and they have filed a claim petition before the Tribunal under Section 166 of 5 M.V. Act, claiming compensation of Rs. Rs. 40,00,000/- on account of the death of the deceased in the road traffic accident, contending that, on 11-3-2012 at about 5.45 p.m. deceased-Mohith was riding the motorcycle bearing registration No. KA-01-EW-3553 along with his friend Saurabh Dutt as a pillion rider, on Sarjapur road, from Kaigondrahalli towards city to go to his house. At that time, a cow suddenly entered the road and to avoid it, deceased-Mohith applied brake and fell down on the road. At that time the driver of the car bearing registration No. KA-01-MH-4597 drove the same in a rash and negligent manner from backside and ran over the said Mohith. As a result of the said accident, the rider and pillion rider of the motorcycle sustained grievous injuries all over the body. Thereafter the deceased succumbed to the injuries. The appellants have spent huge amount towards transport and funeral charges. Deceased was the only bread earning member and they were dependent on the deceased. It is the further case of the appellants that, the deceased was aged about 23 years at the time of accident, hale and healthy and working as a marketing executive in Mayur Group, HSR Layout, Bangalore and earning Rs. 20,000/- p.m. and contributing the entire income to the welfare of his family. Due to his untimely death, they suffered socially and economically and sudden death of the deceased has caused much hardship to his family members. The said claim petition had come up for consideration before the Tribunal. The Tribunal after appreciating the oral evidence of RW. 1 and P.W. 2 and documentary evidence at Exs. PI to PI8 and other material available on record, has allowed the claim petition in part and awarded the compensation of Rs. 9,45,000/- towards loss of dependency, Rs. 10,000/- towards funeral and transportation expenses and Rs. 20,000/- towards loss of love and affection. In all Rs. 9,75,000/- is awarded, with interest at 8% p.a., from the date of petition till the date of deposit. Not being satisfied with the compensation awarded by the Tribunal, the appellants have presented this appeal, for enhancement of compensation.

4. The submission of the learned counsel appearing for the appellants at the outset is that, the Tribunal has failed to assess the just and reasonable income of the income of Rs. 75,000/- per month assessed by the Tribunal is on the lower side since the accident has occurred on 11-3-2012 and he was aged about 23 years and only son to his parents. The Tribunal has not considered the income of the deceased properly even though he was working as a marketing executive in Mayur Group, HSR Layout, Bangalore and earning Rs. 20,000/- p.m. Taking all these aspects, the income of the deceased may be reassessed at least between Rs. 15,000/- and 20,000/- p.m. and 50% may be deducted towards personal expenses for calculation of loss of dependency after applying appropriate multiplier ''14'' taking age of the younger parent, mother of the deceased. The Tribunal also erred in not awarding reasonable compensation towards conventional heads. Further, he submitted that the rate of interest awarded at 8% per annum is also on the lower side since the accident is of the year 2012 and the same may be enhanced to 9% to 10% per annum. Therefore, the impugned judgment and award passed by the Tribunal is liable to be modified.

5. Per contra, the learned counsel appearing for the insurer inter alia contended

and substantiated that, the impugned judgment and award passed by the Tribunal is just and proper. The Tribunal has rightly assessed income of the deceased at Rs. 7,500/- p.m. added 50% towards future prospects and deducted 50% towards personal expenses of the deceased. The appellants have not produced any documents to show the income of the deceased not examined the employer of the Mayur Group. They have not produced the statement of Bank passbook. Therefore, in the absence of any credible material on record, the Tribunal has rightly assessed the income at Rs. 7,500/- p.m. and rightly added 50% towards future prospects and rightly deducted 50% towards personal expenses, after considering the oral and documentary'' evidence and interference by this Court is not called for.

6. After considering the submissions made by the learned counsel appearing for both the parties and on perusal of the material available on record, including the impugned judgment and award passed by the Tribunal, the only point that arise for consideration is :

"Whether the quantum of compensation awarded by the Tribunal is just and reasonable?"

7. It is not in dispute that the deceased died in the road traffic accident. Further it is not in dispute that, the deceased was aged about 23 years at the time of accident, hale and healthy and looking after the welfare of the appellants. The claimants are none other than the parents and sister of the deceased, who have lost their future security due to his untimely death. He was working as marketing executive in Mayur Group and was well qualified person. Having regard to the age, avocation and year of accident, we can safely re-assess the income of the deceased at Rs. 15,000/- per month to meet the ends of justice as against the income assessed by the Tribunal. Out of it, if 50% is deducted towards the personal expenses of the deceased, it comes to Rs. 7,500/-. In light of the judgment of Apex Court in Sarla Verma''s case (AIR 2009 SC 3104), the appropriate multiplier applicable as ''14'' taking the age of the younger parent mother of the deceased. Accordingly, the appellants are entitled towards loss of dependency at Rs. 12,60,000/- (Rs. 7,500/- x 12 x 14).

8. Considering the facts and circumstances of the case that, the parents have lost their son and sister has lost her brother and they have lost the love and affection, inspiration and guidance in life, we deem it fit to award Rs. 25,000/- towards loss of estate, Rs. 1,50,000/- towards loss of love and affection at the rate of Rs. 50,000/- to each appellant and Rs. 25,000/- towards funeral and transportation expenses. In all, the claimants are entitled for Rs. 14,60,000/- as against Rs. 9,75,000/- awarded by the Tribunal.

9. As rightly pointed out by the learned counsel appearing for the appellants that the rate of interest awarded by the Tribunal at 8% p.a. is on the lower side and accident occurred in the year 2012 and in the light of catena of judgments, we deem it fit to award 9% interest per annum on enhanced compensation.

10. Having regard to the facts and circumstances of the case as stated above, appeal is allowed in part. The impugned judgment and award passed by the Tribunal dated 23-5-2014 in MVC No. 5562/2012 is hereby modified. The total compensation payable comes to Rs. 14,60,000/- as against Rs. 9,75,000/- awarded by the Tribunal. There will be an enhancement of Rs. 4,85,000/- with 9% interest per annum.

11. The 1st respondent-Insurer is directed 10 deposit the enhanced compensation of Rs. 4,85,000/- with interest at 9% p.a., from the date of petition till the date of realization, within three weeks from the date of receipt of a copy of this judgment.

12. Out of the enhanced compensation, Rs. 2,00,000/- with proportionate interest shall be invested in the fixed deposit in any Nationalized or Scheduled Bank, in the name of the 2nd appellant/mother of the deceased for a period of five years and renewable for another five years, with liberty to her to withdraw the interest accrued on it periodically.

13. Rs. 1,00,000/- with proportionate interest shall be invested in the fixed deposit in any Nationalised or Scheduled Bank, in the name of the 1st appellant/ father, for a period of five years and renewable for another five years, with liberty to him to withdraw the interest accrued on it periodically.

14. The remaining Rs. 1,85,000/- with proportionate interest shall be released in favour of the 1st and 2nd appellants, in equal proportion immediately, on deposit by the 1st respondent-Insurer.

15. Draw the award, accordingly.