(1996) 01 KAR CK 0007

In the Karnataka High Court

Case No : M.F.A. No. 1790 of 1988

M.G. Rukmini and Others — APPELLANT

Vs

Managing Director, Shankar Transport Co. and Another — RESPONDENT

Date of Decision : 09-01-1996

Acts Referred:

Citation : (1996) 2 ACC 655 : (1996) 3 KarLJ 161

Hon'ble Judges : Mohammed Anwar, J

Bench : Single Bench

Advocate : K.T. Gurudevaprasad, for the Appellant; C.S. Shantahamallappa and A.N. Venkatesh, for the Respondent

Judgement

Mohammed Anwar, J.—This is the claimants'' appeal directed against the judgment and award dated 11.11.1987 of M.A.C.T., D.K., Mangalore, made in M.V.C. No. 29 of 1983 on its file awarding a total compensation of Rs. 58,800/- to them on account of death of the deceased Vijayendra in an accident occurred on 6.12.1982 on the road at Kolagudde village in D.K. District, as a result of negligent driving of the passenger bus bearing registration No. MYG 6711 of respondent No. 1, which was admittedly insured with respondent No. 2, under its current insurance policy marked at Exh. D-l. By this appeal, the claimants have sought for grant of higher compensation to them.

2. The claimants have also assailed the legality of the Tribunal''s deduction from the compensation the sum of Rs. 10,000/-towards the value of the share in the property of the deceased and Rs. 4,000/-towards life insurance and the gratuity amounts which were also received by appellant No. 1 on account of death of the deceased.

3. The arguments of learned Counsel on both sides are heard.

4. Appellant No. 1 is the widow, appellant Nos. 2 and 3 are the minor children and appellant Nos. 4 and 5 are the parents of the deceased. They are hereinafter referred to as the claimants. During the pendency of this appeal, claimant No. 2,

father of the deceased, was reported dead and he has been deleted from memorandum of appeal.

5. The claimants'' proved and admitted case is that on the date of accident, i.e., 6.12.1982, he was travelling as a passenger in the said bus from Sringeri to Udupi. On its way to Udupi the bus was driven rashly and negligently by its driver and when it reached the spot of accident he attempted to overtake another bus going in front of him. As a result, the bus in question went off the road and hit against the roadside tree. In that accident, the deceased and other passengers of the bus were injured and some of them succumbed to their injuries. The injured passengers and dependants of the deceased victims filed claim petitions before the Tribunal which were clubbed and disposed of together by its common judgment and awards dated 11.11.1987.

6. On the basis of the available evidence on record the Tribunal held that the accident occurred entirely due to the negligent driving of the bus No. MYG 6711 by its driver. Thereafter at paras 32 and 35 of its judgment, the Tribunal has considered the claimants'' case for awarding compensation to them on account of death of the deceased Vijayendra in the said accident. The evidence on record shows that the deceased was aged about 38 years and was working as the Secretary in T.A.P.C.M.S. Ltd., Sringeri. He was drawing a salary of Rs. 770/- p.m. at the time of his death and the claimants were his dependants. The fact that he was getting the salary of Rs. 770/- p.m. is also borne out by Exh. P-2, salary certificate issued by the said T.A.P.C.M.S. Ltd. In that certificate the pay scale of his salary is given as Rs. 490-15-550-20-650-25-800-30-950. These are the undisputed facts. The Tribunal was of the view that the basic salary of Rs. 700/-of the deceased could be held as his gross monthly income for the purpose of computation of dependency loss suffered by the claimants. Deducting 1/3rd on the personal expenditure of the deceased, it held the figure of Rs. 450/- as the net monthly loss of dependency. Calculating the annual dependency loss at this rate with appropriate multiplier of 12 it reached the figure of Rs. 64,800/- towards the total dependency loss payable to the claimants. From this amount of Rs. 64,800/- the Tribunal deducted a sum of Rs. 10,000/-towards the value of her husband''s share in the family property and another sum of Rs. 4,000/- on account of insurance and gratuity amount that were received by the appellant No. 1, the widow of the deceased. After making these deductions it arrived at a figure of Rs. 50,800/- which was rounded off to Rs. 51,000/- as total dependency loss. To this amount, a sum of Rs. 5,000/- was added towards loss of consortium and a further sum of Rs. 3,000 towards funeral expenses. Thus, the Tribunal held the total amount of Rs. 59,000/-as awardable to the claimants. Accordingly, the impugned judgment and award had been passed by it granting the same with interest at the rate of 9 per cent per annum thereon from the date of petition and making the same payable by the respondents jointly and severally.

7. It was rightly submitted by learned Counsel for the appellants-claimants that the Tribunal grossly erred in deducting from the compensation the aforesaid

sums of Rs. 10,000/- and Rs. 4,000/- received by appellant No. 1 on the death of her husband.

8. The question of deduction from the compensation payable to the claimant of the value of the property which the deceased victim leaves behind to his heirs arose for consideration before the Division Bench of this Court in the case of General Manager, Karnataka State Road Trans. Corporation v. Bhavani Bai ILR 1987 Kar 312. At para 11 of its judgment, this Court has observed:

But the recent trend of judicial opinion is that in the generality of cases, such a deduction towards the benefit of acceleration of devolution, let alone, as done in the present case, the entire value of the estate cannot be considered permissible.

Further discussing the legal aspect of this matter, the court has ruled:

A benefit which was pre-existent cannot be said to arise out of the death. What pre-existed and merely passed on the death cannot be said to arise out of the death.

It has further held that:

In the present case the Tribunal has taken the entire value of the two sites as eligible for deduction to lessen the damages. This is wholly incorrect. In a situation of this kind no deduction could be made even for the acceleration of the devolution of interest.

Therefore, I find that the deduction of Rs. 10,000/- made by the Tribunal in this case on account of the value of the share in the family property is impermissible. As regards the deduction made by the Tribunal in the compensation towards the life insurance and gratuity amount of the deceased, the Tribunal has erred on this count also. This court has laid down in the case of D. Bhagayamma v. State of Karnataka 1984 ACJ 145 (Karnataka) that:

...that the amount of gratuity and provident fund, etc., should not be deducted as they are not the result of death but the legitimate earnings of the deceased. Similarly, Rs. 10,000/- awarded from the Welfare Fund is the result of the premium paid by the deceased during his lifetime. That also cannot be deducted.

The enunciation of this legal proposition by this Court finds its support from the pronouncement of the Supreme Court in N. Sivammal v. Managing Director, Pandian Roadways Corporation 1985 ACJ 75 (SC). At para 5 of its judgment, it has said:

The High Court next proceeded to evaluate the pensionary benefits which the widow, appellant No. 1, would enjoy. Appellant No. 1 as the widow of the deceased is entitled to pension at the rate of Rs. 120/- p.m. for a period of seven years whereafter the amount will taper down. The High Court evaluated the monetary benefit of pension and reduced the amount of compensation by Rs. 10,000/-. We are unable to appreciate this reduction. We find no justification for it.

Therefore, the deduction from the compensation made by the Tribunal of the total amount of Rs. 14,000/- on account of the value of the share of the deceased in the family property and towards the insurance amount and the gratuity amount received by appellant No. 1, widow of the deceased, is not permissible and the same cannot at all be upheld.

9. It was further contended by the learned Counsel for the claimants that the figure of Rs. 64,800/- arrived at by the Tribunal for the loss of dependency is not just and proper and the same is on the lower side. To substantiate this contention he submitted that there was no justification for the Tribunal to fix the gross income of the deceased at Rs. 700/- p.m. when it was proved by the claimants that he was drawing a total salary of Rs. 770/- p.m. at the time of his death as the Secretary of T.A.P.C.M.S. Ltd., Sringeri. I find this contention of Mr. K.T. Gurudevaprasad, learned Counsel for appellants, acceptable. In view of this undisputed proved fact, there was no justification whatever for the Tribunal to scale down the deceased''s salary to Rs. 700/- p.m. The Tribunal, therefore, should have held the gross income of the deceased at Rs. 770/- p.m. and not Rs. 700/- p.m. Deducting 1/3rd thereof on account of personal expenses, the balance of Rs. 514/- approximately, rounded off to Rs. 515/- per month, was the net monetary benefit available to the claimants for their maintenance. Annual dependency loss at this rate comes to Rs. 6,180/- which when multiplied by the appropriate multiplier of 12 gives the resultant product of Rs. 74,160/- towards the total dependency loss to which the claimants are entitled. Furthermore, the Tribunal has erred in not granting any compensation to the claimants on account of loss to the estate of the deceased. Therefore, a sum of Rs. 5,000/- is awarded to them under this head, while maintaining Rs. 5,000/- under the head of loss of consortium and Rs. 3,000/- towards funeral expenses granted by the Tribunal. Thus, the total amount of compensation payable to the claimants would come to Rs. 87,160/-. Therefore, I find that the just and proper compensation awardable to them is Rs. 87,160/- and not Rs. 59,000/-as determined by the Tribunal.

10. The learned Counsel for respondent No. 2, insurance company, fairly submitted that in view of its special endorsement dated 24.12.1982 connected with the relevant policy at Exh. D-1 issued in favour of respondent No. 1 in respect of his said bus and in view of the Division Bench decision of this Court in M.F.A. No. 654 of 1988; decided on 8.9.1988, the unlimited liability of respondent No. 2 under its said policy to indemnify respondent No. 1 against his liability to meet the claim of appellants is not disputed.

11. In the result and for the reasons stated above, the appeal is allowed in part, between claimants 1, 2, 3 and 5, since Appellants-claimants are entitled to the claimant No. 4 is dead; and also on invest enhanced compensation of Rs. 87,160/- ment of the same in their respective instead of Rs. 59,000/- as fixed by the names. The parties to bear their own costs Tribunal, together with interest at 9 per in this appeal. The impugned award of the cent per annum from the date of petition Tribunal shall stand modified to this till payment. The Tribunal shall pass

extent, appropriate order in regard to apportionment of the enhanced award amount Appeal partly allowed.

