

(2010) 05 KAR CK 0030

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4288 of 2005

M.H. Hussain and Others

APPELLANT

Vs

The Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 28-05-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163 A, 166, 173 (1)

Citation : (2010) 05 KAR CK 0030

Hon'ble Judges : Ravi Malimath, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : R. Chandrashekar, for Lawyers Net, for the Appellant; P.B. Raju, for R1, for the Respondent

Judgement

K. Bhakthavatsala, J.—The appellants-claimants are before this Court u/s 173(1) of the Motor Vehicles Act, 1988, praying for enhancement of compensation by modifying the Judgment & award dated 18-10-2004 passed in MVC No. 3939/1996 on the file of the Court of Small Causes/Additional MACT at Bangalore.

2. Learned Counsel appearing for the appellant submits that the deceased had passed S.S.L.C. in Second Class and had also obtained passport to go abroad for employment, but he was killed in the motor accident that occurred on 16-11-1996 due to rash and negligent driving of the bus bearing No. TDX7205. He further submits that the deceased was earning Rs. 6,000/- per month but the Tribunal has fixed the income of the deceased at Rs. 15,000/- per annum as notional income and after deducting 1/3rd of the amount of Rs. 5,000/- towards personal expenses of the deceased, fixed loss of dependency at Rs. 10,000/- per annum and applying the multiplier of 16 awarded compensation of (10,000 x 16) Rs. 1,60,000/-. Further, the Tribunal has awarded compensation of Rs. 5,000/- each towards funeral expenses and loss of estate. Thus, in all awarded compensation of Rs. 1,70,000/-.

3. Sri P.B. Raju, learned, counsel appearing for respondent No. 1-Insurance Company submits that the claim Petition was filed u/s 166 of the Motor Vehicles

Act, 1988. Subsequently the provision of law was amended as Section 163A. He further submits that the claimants are the aged parents and brothers and sisters of the deceased. Since the claimants failed to prove the income of the deceased the Tribunal has rightly taken the notional income of the deceased at Rs. 15,000/- per annum. He also submits that the Tribunal erred in applying the multiplier of 16 instead of 14 as the age of the mother of the unmarried deceased was 43 years. However there is no good ground for enhancement of compensation.

4. As per the decision rendered in the case of Ramesh Singh and Another Vs. Satbir Singh and Another, , in the case of death of young man leaving behind the aged parents, the age of the parents is a relevant factor for choice of multiplier. According to the decision reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, in the case of Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. for the age group of 41 to 45 years, multiplier 14 is applicable. No doubt, the claimants have not proved the income of the deceased, but keeping in view that the deceased had passed S.S.L.C. and also obtained passport so as to go abroad for employment, as per the wage structure of a coolie in the year, it would meet the ends of justice, if the wages of the deceased is fixed at Rs. 80/- per day. Thus, the income of the deceased can be safely fixed at Rs. 2,-100/- per month. A sum of Rs. 800/- has to be deducted towards personal expense"s of the deceased. Thus the loss of dependency of the claimants comes to Rs. 1,600/- per month. Since the claim petition is u/s 163A of Motor Vehicles Act, the claimants are entitled for a sum of Rs. 2,000/- towards funeral expenses and a sum of Rs. 2,500/- towards loss of estate. Thus, the claimants are entitled for compensation as under:

1. Loss of dependency (Rs. 1,600 ? 12 ? 14)=	Rs. 2,68,800/-	2. Loss of estate	
Rs. 2,500/-		3. Funeral expenses	Rs. 2,000/-
		-----	Total
			Rs. 2,73,300/-
		Less: Compensation awarded	Rs. 1,70,000/-
		-----	by the Tribunal
		Additional compensation	Rs. 1,03,300/

Thus the claimants are entitled for additional compensation of sum of Rs. 1,03,300/-.

5. In the result, the appeal is partly allowed holding that the appellants-claimants are entitled for additional compensation of Rs. 1,03,300/- along with costs and interest at rate of 6% per annum from the date of Petition till realisation. Accordingly, the impugned Judgment & award are modified. The additional compensation amount along with interest and costs shall be equally apportioned among claimants/appellant Nos. 1 & 2 alone and there is no need to pay any amount to the appellant No. 3.

Respondent No. 1 Insurance Company is directed to deposit the additional compensation along with costs and interests.

Sri P.B. Raju, learned Counsel for respondent No. 1 is granted 3 weeks time to file power for respondent No. 1.