(2016) 03 KAR CK 0189

In the Karnataka High Court

Case No : M.F.A. No. 1448 of 2012 (MV)

Mohaseena Parveen and others — APPELLANT

Vs

Kifayath Ulla and others — RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 1433

Hon'ble Judges : N.K. Patil, J.

Bench : Single Bench

Advocate : Shri Lokesh Kumar K.S., Advocate, for the Appellant; Notice dispensed with v/o dated 27.08.2015, Shri B. Pradeep, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the claimants is directed against the judgment and award dated 6th June, 2011, passed in MVC No. 2103/2008, by the Member, Additional Motor Accident Claims Tribunal, Hassan (for short, ''Tribunal'') for enhancement of compensation on the ground that, the compensation of Rs. 4,95,800/- awarded in favour of the claimants as against their claim for Rs. 17,60,000/-, is inadequate.

2. The facts in brief are that the claimant No. 1 is the wife and claimant Nos. 2 and 3 are the minor children of deceased Abdul Wajid. They filed the claim petition under Section 166 of the Motor Vehicles Act, contending that, at about 6.00 p.m. on 2-8-2006, when the deceased was proceeding in his Hero Honda Splendour Motor Bike bearing Registration No. KA-14/L-9887, on Banavara-Kadur Road, near Banavara Petrol Bunk as a pillion rider, at that time, a Piaggio goods vehicle bearing Registration No. KA-18/8964 came at a high speed, in a rash and negligent manner and dashed against the Motor bike, on account of which, he sustained fatal injuries and succumbed to the same, while being shifted to the Hospital.

3. It is the case of the appellants that, the deceased was aged about 35 years and was working as Mechanic at Kadur and also doing agriculture, earning not less than a sum of Rs. 8,000/- per month and hale and healthy prior to the accident. On account of the untimely death of the deceased, the first appellant has lost her life partner, the children have lost the love and affection, social, financial and moral support and therefore, they have to be compensated reasonably.

4. On account of the death of the deceased, the appellants filed the claim petition before the Tribunal, seeking compensation of Rs. 17,60,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 6th June, 2011. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 4,95,800/- under different heads, with 6% interest per annum, from the date of petition till the date of payment. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellants are in appeal before this Court, seeking enhancement of compensation.

5. I have gone through the grounds urged in the memorandum of appeal and heard the learned counsel appearing for the appellants and learned counsel appearing for third respondent/insurer, for quite some time.

6. Learned counsel appearing for appellants vehemently submitted that, the Tribunal committed an error, in awarding meager compensation for the death of the deceased, resulting in miscarriage of justice, for the reason that, the deceased was aged about 35 years, doing mechanic work and also agriculture, earning not less than a sum of Rs. 8,000/- per month, but the Tribunal erred in assessing the income of the deceased at only Rs. 3,600/-. Further, he vehemently submitted that the Tribunal erred in not awarding reasonable compensation towards conventional heads such as loss of consortium, loss of love and affection, loss of estate and transportation of dead body and funeral expenses. Therefore, he submitted that reasonable income may be re-assessed and reasonable enhancement maybe made both under loss of dependency as well as conventional heads, by modifying the impugned judgment and award passed by Tribunal.

7. As against this, learned counsel appearing for Insurer, Shri. B. Pradeep, inter alia contended and substantiated the judgment and award passed by Tribunal stating that the same is passed after due appreciation of the oral and documentary evidence available on file and after consideration of the entire material available on file and hence, the compensation awarded by Tribunal is just and reasonable and it does not call for interference.

However, after looking at the compensation awarded towards conventional heads, he fairly submitted that the compensation awarded by Tribunal towards conventional heads is on the lower side and therefore, reasonable enhancement may be made under the conventional heads.

8. After hearing learned counsel appearing for the appellants, learned counsel appearing for the Insurer and after careful perusal of the impugned judgment and award passed by the Tribunal, the only point that arise for my consideration in this appeal is :

Whether the compensation awarded by Tribunal is just and reasonable?

After careful perusal of the entire material available on file, it can be seen that, the claimants are none other than the wife and two minor children, of deceased. Occurrence of accident and the resultant death of the deceased Abdul Wajid are not in dispute. It is staled that the deceased was aged about 35 years, working as Mechanic and also doing agriculture work, earning a sum of Rs. 8,000/- per month. But, no documentary evidence is produced to substantiate the same. In the absence of the same, the Tribunal has assessed the monthly income of the deceased at Rs. 3,600/-. The same, in my opinion, is on the lower side. Having regard to the age, avocation and also the year of accident, I can safely assess the monthly income of the deceased at Rs. 4,500/-, to meet the ends of justice. Out of the said sum, ?rd has to be deducted towards personal expenses of the deceased as the claimants are three in number. Accordingly, if ?rd (i.e. Rs. 1,500/-) is deducted from Rs. 4,500/- towards the personal expenses of the deceased, the net income would be Rs. 3,000/- per month. For the age of (he deceased being 35 years, the proper multiplier to be adopted is ''16'' as per the decision of the Hon''ble Apex Court Sarla Verma''s case (2009 ACJ 1298) : (AIR 2009 SC 3104) as rightly adopted by Tribunal. Thus, the compensation towards loss of dependency would work out to Rs. 5,76,000/- (i.e. Rs. 3,000/- x 12 ''16'') as against Rs. 4,60,800/- awarded by Tribunal.

9. Further, the Tribunal has erred in awarding a sum of only Rs. 35,000/- towards conventional heads. The same is on the lower side. As per the decision of the Apex Court in various judgments, I award a sum of Rs. 1,00,000/- towards loss of consortium, Rs. 25,000/- towards loss of estate, Rs. 1,50,000/- towards loss of love and affection and Rs. 25,000/- towards transportation and funeral expenses as against Rs. 35,000/- awarded by Tribunal towards conventional heads. Thus, the total compensation would come to Rs. 8,76,000/- as against Rs. 4,95,800/- awarded by Tribunal, with interest at 6% per annum, from the date of petition till the date of realization.

10. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellants is allowed in part. The impugned judgment and award dated 6th June 2011, passed in MVC No. 2103/2008, by the Member, Additional Motor Accident Claims Tribunal, Hassan, is hereby modified, awarding a sum of Rs. 3,80,200/-, with interest at 6% per annum, from the date of petition till the date of realization, in addition to the compensation awarded by Tribunal.

11. The third respondent/insurer is directed to deposit the enhanced compensation of Rs. 3,80,200/-, with interest thereon at 6% per annum, within

three weeks from the date of receipt of copy of the judgment.

12. Immediately on such deposit by the Insurer, a sum of Rs. 1,00,000/- with proportionate interest shall be invested in Fixed Deposit, in the name of the Appellant No. 1-wife of deceased, in any nationalised or scheduled Bank, for a period of ten years, renewable for five years, with liberty reserved to her to withdraw the interest periodically.

13. A sum of Rs. 1,00,000/- each with proportionate interest shall be invested in Fixed Deposit, in the names of the Appellant Nos. 2 and 3-minor children of deceased, in any nationalised or scheduled Bank, till they attain the age of 30 years, with liberty reserved to appellant No. 1 to withdraw the periodical interest for their welfare till they attain the age of 21 years and from 22 years to 30 years, they are entitled to withdraw the interest, periodically.

14. Remaining sum of Rs. 80,200/- with proportionate interest shall be released in favour of Appellant No. 1-wife of deceased, immediately.

15. Office to draw award, accordingly.

