(2012) 08 KAR CK 0059

In the Karnataka High Court

Case No : M.F.A. No. 10855 of 2007 (MV)

M/s. Oriental Insurance Company Ltd. — APPELLANT

Vs

Smt. Prathima and Others — RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 08 KAR CK 0059

Hon'ble Judges : S.N. Satyanarayana, J;N.K. Patil, J

Bench : Division Bench

Advocate : P.B. Raju, for the Appellant; Ashok Haranahalli, for M/s. Ashok Haranahalli Associates for R1 and R2 and M/s. S. Dorai Babu Associates for R5 and R6, R3 and R4 served, for the Respondent

Judgement

1. This appeal by the Insurance Company is directed against the judgment and award dated 30th march 2007, passed in MVC No. 3568/2005, by the IX Additional Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal-7, Bangalore, (for short, ''Tribunal'') for reduction of compensation on the ground that, the compensation of Rs. 19,10,000/- with 6% interest per annum, awarded in favour of the claimants as against their claim for Rs. 64,26,800/-, is inadequate. The facts in brief are that the respondent No. 1 is the wife, respondent No. 2 is the minor son and respondent Nos. 5 and 6 are the parents of the deceased S. Chandrashekar, who died in the road traffic accident. The respondents 1 and 2 filed the claim petition u/s 166 of the Motor Vehicles Act, contending that, the deceased met with a road traffic accident, at about 3:15 A.M, on 09-01-2005, when he was travelling in a Santro Car bearing Registration No. KA-04/MG-7209, on Bangalore Chikkaballapur Road, Bangalore-Bellary National High way, slowly and cautiously on the left side, on account of rash and negligent driving by the driver of Goods vehicle bearing Registration No. KA-.04/B-6395 Due to the impact, the deceased sustained grievous injuries and died on the spot.

2. It is the case of the claimants that, the deceased was hale and healthy prior to the date of accident, which resulted in his death and that he was a Proprietor of M/s. Pavan Bar and Restaurant and an income tax assessee and was contributing substantial sum towards the family requirements and in view of his untimely death, the family is displaced and they are in great financial distress and have lost the only hope social and financial security and aspiration in life and therefore, they have to be compensated reasonably.

3. On account of the death of the deceased the claimants filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. 64,26,800/- against the appellant/Insurer and others. The said claim petition had come up for consideration before the Tribunal on 30th March, 2007. 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. 19,10,000/- under different heads, with 6% interest per annum, from the date of petition till the date of deposit. Being aggrieved by the quantum of compensation awarded by the Tribunal, the Insurer is in appeal before this Court, seeking reduction of compensation.

4. We have gone through the grounds urged in the memorandum of appeal carefully, perused the impugned judgment and award passed by Tribunal and heard the learned counsel for Insurer as well as the counsel for claimants.

5. Learned counsel appearing for appellant Insurer vehemently submits that the Tribunal has erred in not deducting any sum towards the personal and living expenses of the deceased and further also erred in awarding exorbitant compensation towards conventional heads. Therefore, he submits that the impugned judgment and award is liable to be modified, by reducing the compensation considerably.

6. As against this, learned counsel appearing for claimants submits that the Tribunal, after critical evaluation of the oral and documentary evidence available on file, has rightly awarded compensation and hence, interference in the same is not called for.

7. After hearing the rival contentions of the parties, after perusal of the impugned judgment and award passed by Tribunal and after re-appreciation of the oral and documentary evidence available on file, the only point that arise for our consideration in this appeal is:

Whether the quantum of compensation awarded is excessive and liable to be reduced?

After careful perusal of the impugned judgment and award passed by Tribunal, we are of the view that the Tribunal has grossly erred in assessing the income of the deceased at only Rs. 10,000/- per month. It can be seen that the deceased was a proprietor of M/s. Pavan Bar and Restaurant and an income tax assessee. If the average of three years'' income tax returns, immediately preceding the date of accident, produced at Exs. P17, P18 and P21 is taken into consideration, then, the monthly income of the deceased comes to Rs. 12,000/-. As the dependents are four in number, 1/4th has to be deducted towards the personal and living expenses of the deceased. Accordingly, if 1/4th (i.e. Rs. 3,000/-) is deducted from Rs. 12,000/- towards his personal and living expenses, the net income would be Rs. 9,000/- per month. Since the deceased was aged about 33 years, the proper multiplier applicable is ''16'' as per the decision of the Hon''ble Apex Court Sarla Verma''s case (2009 ACJ 1298) as against ''15'' adopted by Tribunal. Thus, the compensation towards loss of dependency would work out to Rs. 17,28,000/- (i.e. Rs. 9,000/- x 12 x''16'') as against Rs. 18,00,000/- awarded by Tribunal.

8. Further, the Tribunal grossly erred in awarding a sum of Rs. 1,10,000/- towards conventional heads. The same is on the higher side. As per the decision of the Apex Court in Sarla Verma''s case (supra), we award a sum of Rs. 45,000/- towards conventional heads, such as loss of estate, loss of consortium, loss of love and affection and transportation and funeral expenses as against Rs. 1,10,000/- awarded by Tribunal.

9. Thus, the total compensation would come to Rs. 17,73,000/- as against Rs. 19,10,000/- awarded by Tribunal, with interest at 6% per annum, from the date of petition till the date of realization. There would be reduction of compensation by Rs. 1,37,000/-. In the light of the facts and circumstances of the case, as stated above, the appeal filed by the Insurance Company is allowed in part. The impugned judgment and award 30th March 2007, passed in MVC No. 3568/2005, by the IX Additional Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal-7, Bangalore, is hereby modified, reducing the total compensation from Rs. 19,10,000/- awarded by Tribunal, to Rs. 17,73,000/- (reduction being Rs. 1,37,000/-), with interest at 6% per annum, from the date of petition till the date of realization.

The Insurance Company is directed to deposit the remaining compensation, with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment and award.

The apportionment of compensation made by Tribunal gets proportionately reduced to the extent of reduction of compensation made by this Court.

The statutory amount in deposit by the Insurance Company is directed to be transmitted to the jurisdictional Tribunal, forthwith.

Office to draw award, accordingly.

