(2014) 04 KAR CK 0222

In the Karnataka High Court

Case No : M.F.A. Nos. 7823 and 11150 of 2012 (MV)

Nabeesa APPELLANT

Vs

Ravi Kumar
 The Divisional Manager Vs Nabeesa RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Citation : (2014) 3 AKR 638

Hon'ble Judges : P.D. Waingankar, J;N.K. Patil, J

Bench : Division Bench

Advocate : K.S. Ranjith, Advocate for Shri K.A. Ariga, Advocate in M.F.A. No. 11150 of 2012 (MV) and Smt. Harini Shivananda, Advocate in M.F.A. No. 7823 of 2012 (MV), Advocate for the Appellant; Harini Shivananda, Advocate for R3 in M.F.A. No. 11150 of 2012 (MV) and Shri Ranjith K.S., Advocate for Shri K.A. Ariga, Advocate for R1 to R3 in M.F.A. No. 7823 of 2012 (MV), Advocate for the Respondent

Judgement

N.K. Patil, J.—Though these appeals are posted for Admission, with the consent of the learned counsel appearing for both parties, they are taken up for final disposal.

2. These appeals respectively by the Claimants and the Insurer-The Oriental Insurance Company Limited are directed against the same judgment and award dated 4th May 2012, passed in MVC No. 437/2009, by the Additional Senior Civil Judge, Additional Motor Accident Claims Tribunal, Udupi, (for short, Tribunal'').

3. While the claimants have filed the appeal, seeking enhancement of compensation on the ground that the compensation of Rs. 21,64,500/- awarded by Tribunal, after deducting 50% towards contributory negligence on the part of the rider of the motor cycle, is inadequate and the contributory negligence is liable to be set aside; the Insurer has filed the appeal, seeking reduction of compensation on the ground that, compensation of Rs. 21,64,500/- with 6% interest per annum, awarded in favour of the claimants is excessive, on the higher side.

4. The facts of the case as stated in the claim petition are that, at about 5-15 P.M., on 25-11-2008, when the deceased U.K. Mohammed Asif was proceeding as a pillion rider on a motor cycle bearing Registration No. KA-20/S-9034, from Anekere to Doopadakate, near Krishna Mandir Junction, Karkala, he met with an accident on account of rash and negligent driving by the driver of an Eicher Tanker Lorry bearing Registration No. KA-19/B-6477. Due to the impact, the deceased sustained grievous injuries and succumbed to the said injuries on the way to the Hospital.

5. 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 working as an Accountant in NMC Specialty Hospital, Abudabi, earning a sum of Rs. 3,500/- Dinars (equivalent to Rs. 45,000/-) per month. On account of the untimely and unnatural death of the deceased, the claimants, who are parents and sister of deceased have lost the love and affection and financial support apart from moral and social security and therefore, they have to be compensated reasonably.

6. On account of the death of the deceased in the road traffic accident, the claimants filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. 75,00,000/- against the owner, driver and insurer of the offending Lorry. The said claim petition had come up for consideration before the Tribunal on 4th May, 2012. 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. 21,64,500/- under different heads, with 6% interest per annum, from the date of petition till the date of deposit, after deducting 50% towards contributory negligence fixed on the part of the rider of the motor cycle. Being aggrieved by the quantum of compensation awarded by the Tribunal as inadequate and also the contributory negligence fixed by Tribunal at 50%, the claimants have filed the appeal, seeking enhancement of compensation and to set aside the contributory negligence and being aggrieved by the quantum of compensation as excessive and exorbitant, the Insurer of the Lorry has filed the appeal seeking reduction of compensation.

7. We have heard Shri K.A. Ariga, learned counsel appearing for appellants and Smt. Harini Shivananda, learned counsel appearing for Insurer, gone through the grounds urged in the memorandum of appeals filed by both the claimants and also the Insurer carefully and perused the impugned judgment and award passed by Tribunal, including the original records placed before us.

8. Learned counsel appearing for claimants vehemently submitted that, the Tribunal grossly erred in not awarding reasonable compensation towards loss of dependency and that the compensation awarded towards loss of dependency as also conventional heads is on the lower side. To substantiate the said submission, he submitted that the deceased was aged about 28 years and working as an Accountant at NMC Specialty Hospital at Abudabi since 2004, and earning Rs. 3,500/- dinars, which is equivalent to Rs. 45,000/- per month. Further, he pointed out and relied upon the judgment of Hon''ble Apex Court in Santhosh

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Devi''s case (2012 AIR SCW 2892) and submitted that the claimants are entitled to additional 30% towards loss of future prospects while calculating compensation towards loss of dependency and the proper multiplier applicable is ''14'' considering the age of the younger parent, mother, as 47 years at the time of accident.

Further, he also vehemently submitted relying upon the full bench judgment of this Court in the case of Karnataka State Road Transport Corporation Vs. Arun alias Aravind, that, a claimant can recover compensation from any one of the joint tort-feasors and the just compensation to which he is entitled cannot be reduced for non-impleading of the other joint tort-feasor and that a claim petition against one of the joint tort-feasors without impleading the other tort-feasor is maintainable and the impleaded tort-feasor is bound to satisfy the award and that negligence of the other tort-feasor cannot be a defence to reduce compensation payable to the claimant and therefore, the reduction of compensation by Tribunal at 50% is liable to be set aside, by modifying the impugned judgment and award passed by Tribunal.

9. As against this, Smt. Harini Shivananda, learned counsel appearing for Insurer vehemently submitted that, the Tribunal grossly erred in not following the ratio of law laid down by the Hon''ble Apex Court in Sarla Verma''s case (2009 ACJ 1298) in not deducting any amount towards income tax and professional tax. As per Indian currency, he was drawing Rs. 42,000/- per month and therefore, income tax ought to have been deducted as per the ratio of law laid down in the aforesaid judgment. Further, she vehemently submitted that the Tribunal grossly erred in adopting multiplier of ''17'', taking the age of deceased, instead of considering the age of the younger parent, as held in the aforesaid judgment, for the reason that the deceased was a bachelor. Therefore, she submitted that out of the income of the deceased, 50% may be deducted towards personal and living expenses of deceased, after deducting income tax and professional tax and adopting the multiplier of ''14'', compensation be awarded towards loss of dependency and also conventional heads, by modifying the impugned judgment and award passed by Tribunal.

Further, regarding the full bench decision of this Court, cited and relied upon by the learned counsel appearing for claimants, she submitted that, liberty may be reserved to the Insurer to pay and recover the remaining 50% from the owner and Insurer of the Motor Cycle bearing Registration No. KA-20/S-9034, in accordance with law, on the ground that the vehicle was insured with Bajaj Allianz Pvt. Ltd. and that the policy of the said vehicle was very much in force as on the date of accident.

10. 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 points that arise for our consideration in these two appeals are:

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I] Whether the Tribunal is justified in directing the Insurer-Oriental Insurance Company Limited to deposit only 50% of the compensation and deducting 50% from out of the total compensation payable to the claimants ?

I] Whether the quantum of compensation awarded by Tribunal is just and proper or liable to be reduced?

Re-Point I]: After careful perusal of the impugned judgment and award passed by Tribunal including the original records placed before us, it can be seen that, occurrence of accident and resultant death of the deceased U.K. Mohammed Asif are not in dispute. It is also not in dispute that the claimants are none other than the parents and sister of deceased.

11. It is the specific case of the appellants that in view of the well settled law laid down by the Hon''ble full bench of this Court, in the case of Karnataka State Road Transport Corporation Vs. Arun alias Aravind, , a claimant can recover compensation from any one of the joint tort-feasors and the just compensation to which he is entitled cannot be reduced for non-impleading of the other joint tort-feasor and that a claim petition against one of the joint tort-feasors without impleading other tort-feasor is maintainable and the impleaded tort-feasor is bound to satisfy the award and that negligence of the other tort-feasor cannot be a defence to reduce compensation payable to the claimant.

12. In the instant case, admittedly, there is involvement of two vehicles in the road traffic accident, i.e. motor cycle bearing Registration No. KA-20/S-9034 and Eicher Tanker Lorry bearing Registration No. KA-19/B-6477. The owner and insurer of the Eicher Tanker Lorry are brought on record and the other tort-feasor, i.e. the insurer of the Motor cycle of the deceased is not impleaded. Mere non-impleading of the other insurer cannot take away the legitimate entitlement of reasonable compensation by the claimants for the untimely death of the deceased in the road traffic accident and the impleaded tort-feasor, the Oriental Insurance Company herein is bound to satisfy the award and that the negligence of the other tort-feasor cannot be a defence to reduce the compensation payable to the claimants.

13. So far as contributory negligence fixed on the part of the rider of motor cycle and driver of Eicher Tanker Lorry at 50% each, by the Tribunal is concerned, it can be seen that the Tribunal, after critical evaluation of the oral and documentary evidence available on file, including the rough sketch, spot mahazar, and other relevant documents, has recorded a specific finding of fact that the accident occurred on account of negligence on the part of the rider of motor cycle and driver of Eicher Tanker Lorry and both are equally responsible for the occurrence of the accident. Accordingly, it fixed contributory negligence in the ratio of 50:50 on the part of the rider of motor cycle and driver of Eicher Tanker Lorry. The said reasoning and finding of fact, in our view, is just and proper and does not call for interference.

14. Accordingly, in the light of the aforesaid discussion, we hereby answer the

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point No. 1 in the ''Negative'', holding that the impleaded Insurer is liable to indemnify the entire award and thereafter is at liberty to recover 50% of the award from the other tort feasor, in accordance with law.

Re-Point No. II]: After perusal of the entire material available on file, it emerges that, the claimants are none other than the parents and sister of deceased. It is not in dispute that, the deceased was aged about 28 years as on the date of accident and working as an Accountant in NMC Specialty Hospital, Abudabi, earning a sum of Rs. 3,500/- Dinars. To Substantiate the same, the claimants have produced Ex. P10, Salary Certificate. To further substantiate the said income and also the point that the deceased was sending a regular sum to his parents for their maintenance, the claimants have produced Exs. P12 and P13, to show that the deceased was sending a fixed amount to his parents. The Tribunal, after assessing the oral and documentary evidence and other relevant material available on file, including the exchange rate that one DHS is equivalent to Rs. 12/- in the Indian currency and various other aspects, arrived at monthly income of the deceased at Rs. 42,000/-. The same, in our opinion, is just and proper and we accept the same, to meet the ends of justice.

15. As already stated, the monthly income determined by Tribunal at Rs. 42,000/- is upheld and accepted. To the said sum, as rightly pointed out, we add 30% towards future prospects as per the ratio of law laid down by the Hon''ble Apex Court in Santhosh Devi''s case (supra). Thus if 30% (i.e. Rs. 12,600/-) is added to Rs. 42,000/-, the gross income comes to Rs. 54,600/- per month. Per annum, it works out to Rs. 6,55,200/-. From this, if a sum of Rs. 2,400/- towards professional tax and 30% (i.e. Rs. 1,95,840/-) towards income tax is deducted, the net income comes to Rs. 4,56,960/- per annum. Since the deceased was a bachelor, we have to deduct 50% towards personal and living expenses of the deceased. Accordingly, if 50% (i.e. Rs. 2,28,480/-) is deducted from Rs. 4,56,960/- towards his personal and living expenses, the net income would be Rs. 2,28,480/- per annum. The deceased was aged about 28 years. But, as per the decision of the Hon''ble Apex Court in Sarla Verma''s case (2009 ACJ 1298), the age of younger parent of the deceased should be taken into consideration for adopting the multiplier, if the deceased is a bachelor, for calculating loss of dependency. In the instant case, the deceased was a bachelor and mother was aged about 47 years, as on the date of accident. Therefore, for the said age of the mother, the proper multiplier applicable is ''13''. Thus, the compensation towards loss of dependency would work out to Rs. 29,70,240/- (i.e. Rs. 2,28,480/- x ''13'') as against Rs. 42,84,000/- awarded by Tribunal.

16. Further, the Tribunal has erred in not awarding reasonable compensation towards conventional heads. The same is on the lower side. Therefore, as per the decision of the Apex Court in Sarla Verma''s case (supra), we award a sum of Rs. 25,000/- towards loss of estate, Rs. 30,000/- towards loss of love and affection at the rate of Rs. 10,000/- to each claimant and Rs. 25,000/- towards transportation and funeral expenses as against the compensation awarded by

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Tribunal towards conventional heads. Thus the total compensation works out to Rs. 30,50,240/- as against Rs. 21,64,500/- awarded by Tribunal, after deducting 50% towards contributory negligence on the part of the rider of the motor cycle.

17. While answering point No. 1, we have held that the Tribunal is not justified in deducting 50% towards contributory negligence on the part of the rider of motor cycle and that Insurer. The Oriental Insurance Company Limited is liable to indemnify the entire award as per the ratio of law laid down in the full bench decision of this Court (supra). Therefore, in fact, there would be enhancement of compensation by a sum of Rs. 8,85,740/- with 6% interest from the date of petition till the date of deposit.

18. Accordingly, in the light of the facts and circumstances of the case, as stated above, the appeal filed by the Insurer as well as the appeal filed by the claimants are allowed in part.

The impugned judgment and award dated 4th May 2012, passed in MVC No. 437/2009, by the Additional Senior Civil Judge, Additional Motor Accident Claims Tribunal, Udupi, is hereby modified;

The deduction of 50% from out of the compensation awarded in favour of the claimants is hereby set aside, holding that the Insurer-The oriental Insurance Company Limited is liable to indemnify the entire award;

Thus, the total compensation awarded to the claimants, as aforesaid works out to Rs. 30,50,240/- as against Rs. 21,64,500/- awarded by Tribunal, after deducting 50% towards contributory negligence and there would be enhancement of compensation by a sum of Rs. 8,85,740/-.

The Insurer-The Oriental Insurance Company Limited is directed to deposit the entire compensation with interest at 6% per annum, from the date of petition till the date of realization, after deducting the amount, if any, deposited by it, within four weeks from the date of receipt of copy of the judgment.

However, liberty is reserved to the Insurer-The Oriental Insurance Company Limited to recover 50% of the award amount from the insurer of Motor Cycle bearing No. KA-20/S-9034, in accordance with law;

Out of the enhanced compensation of Rs. 8,85,740/-, a sum of Rs. 5,00,000/- with proportionate interest shall be deposited in the name of the first claimant-mother of deceased in Fixed Deposit, in any nationalized or scheduled Bank, for a period of ten years, renewable by five years, with liberty reserved to her to withdraw the interest periodically;

A sum of Rs. 2,00,000/- with proportionate interest shall be deposited in the name of the second claimant-father of deceased in Fixed Deposit, in any nationalized or scheduled Bank, for a period of five years, renewable by five years, with liberty reserved to him to withdraw the interest periodically;

Remaining sum of Rs. 1,85,740/- with proportionate interest shall be released in

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favour of claimant Nos. 1 and 2 - parents of deceased in equal proportion, immediately;

However, the apportionment of compensation ordered by Tribunal in respect of the compensation awarded by it remains unaltered;

The statutory amount in deposit by the Insurer in M.F.A. No. 7823/2012 is directed to be transmitted to the jurisdictional Tribunal, forthwith.

In mew of disposal of main appeals on merits, I.A. No. 1/2014 for direction filed in M.F.A. No. 7823/2012 stands disposed of as having become infructuous;

Office to draw the award, accordingly.

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