(2015) 08 KAR CK 0085

In the Karnataka High Court

Case No : MFA No. 22898/2011 (MV)

Nagaratnabai and Others — APPELLANT

Vs

The Managing Director, Divisional Office, KSRTC, Chikaballapur Division and Others — RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Citation : (2015) 08 KAR CK 0085

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : S.M. Kalwad, Advocate, for the Appellant; F.S. Dabali, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Sujatha, J.—This appeal is directed against the judgment and award passed by the Fast Track Court-I, Dharwad in MVC No. 913/2009.

2. The facts in brief are:

That on 22.08.2009 at about 10.35 a.m., the deceased along with the complainant and others were travelling in KSRTC bus bearing registration No. KA 40 F 413. When the bus came near Varur on P.B. Road, N.H.4, the bus driven by its driver in a rash and negligent manner dashed against a lorry bearing registration No. KA-25-B-6352 which was parked for repair purposes on the left side of the road. As a result of the accident, the deceased who was passenger in the said bus suffered grievous injuries and immediately after the accident, the complainant with the help of others managed to shift the deceased to KIMS hospital, Hubli. The deceased died on the way to the hospital.

3. It transpires that the deceased was working as a Sheristedar in the office of the Assistant Commissioner, Dharwad and drawing a salary of Rs. 18,303/- per month. The claimants i.e., wife and the son of the deceased filed the claim petition claiming compensation of Rs. 29,96,000/- before the claim Tribunal.

4. On service of notice, the respondents have appeared and contested the matter. The respondents have denied the material averments and contended that the accident occurred due to rash and negligent driving of the driver of the lorry bearing registration No. KA-25-B-6352, which dashed the bus.

5. After considering the evidence on record, the Tribunal awarded the compensation of Rs. 2,34,000/- with interest at the rate of 6% p.a. from the date of petition till the date of deposit.

6. The claimants are in appeal before this Court challenging the said award passed by the Tribunal primarily on the ground that the deceased was working as a Sheristedar in the office of the Assistant Commissioner, Dharwad and drawing a salary of Rs. 18,303/- per month as per the salary certificate at Ex.P5. However, the Tribunal has not appreciated the same and has taken the notional income of the deceased at Rs. 3,000/- per month on the ground that the wife of the deceased is getting family pension and his son has been provided a job on compassionate basis. It is also contended that the Tribunal has awarded paltry sum of compensation towards the other conventional heads, which is contrary to the settled principles of law.

7. Learned counsel for the appellants placed reliance on series of judgments rendered by this Court and the Apex Court to contend that the provident fund, pension and insurance receivable by the claimants cannot be within the periphery of the Motor Vehicle Act, 1988 (hereinafter referred to as ''the Act'') to be termed as pecuniary advantage, liable for deduction. It is also contended that the concept of split multiplier cannot be applied to depart from the multiplier regularly applied as per the judgment in Sarla Verma''s case. It would appropriate to refer some of the judgments, which are placed below:

1) 2014 ACJ 1441 (SC) Vimal Kanwar and others vs. Kishore Dan and others.

2) 2009 ACJ 1298 (SC) Sarla Verma and others vs. Delhi Transport Corporation and another.

3) 2011 ACJ 743 (SC) K.R. Madhusudhan and others vs. Administrative Officer and another.

4) AIR (SCW) 2014-0-4993 Sarala Devi vs. Divisional Manager, Royal Sundaram Alliance Insurance Company Limited.

5) 2013 ACJ 1253 (SC) Reshma Kumari and others v. Modanmohan and another.

6) 2012 ACJ 936 (DB-Karnataka) Suvarna and others v. Murtujsab and others.

8. On the other hand, learned counsel appearing for the respondents justifies the judgment and award passed by the Tribunal and contended that the Tribunal has rightly considered the notional income of the deceased at Rs. 3,000/- per month, since the deceased had left only one year of service at the time of the accident. The income of the deceased as per salary certificate at Rs. 18,303/- per month cannot be taken as the income to determine the loss of dependency'', since, the

deceased was at the verge of his retirement and the same would not have been his regular income after his retirement. Alternatively, it is contended that the pension amount to which the deceased was entitled would be taken as his income along with the actual monthly income of Rs. 18,303/- per month for a period of one year i.e., split multiplier requires to be adopted in the facts of the present case considering the age of the deceased who was due for retirement within a period of about one year from the date of the accident. In support of his contention, learned counsel for the respondents placed reliance on the following judgments of this Court:

1) Karnataka State Road Transport Corporation v. Narasubai Joshi @ N.L. Joshi and others in MFA No. 11966/2011 disposed of on 24.03.2014.

2) ICICI Lombard General Insurance Co. Ltd., v. Gangawwa and others in MFA No. 20781/2013 disposed of on 11.10.2013.

9. Having heard the learned counsel appearing for the parties and perusing the material on record, the undisputed facts are that the deceased was working as a Sheristedar in the office of the Assistant Commissioner, Dharwad and drawing a salary of Rs. 18,303/- per month as per Ex.P5. However, learned counsel appearing for the appellant drew my attention to the evidence of PW.2-employer who has deposed that the deceased had almost four years of service and he died at the age of 56 years. Further, it is contended that the age of the deceased was 56 years and not 59 years as applied by the Tribunal to arrive at the loss of dependency'' of the deceased. Whether the age of the deceased is 56 or 59 years would not matter much, if the same is to be considered for the purpose of applying the multiplier, the multiplier would be same i.e., ''9'' as per the law declared by the Apex Court in Sarla Verma''s case.

10. The important question that would fall for consideration for this Court would be the multiplier of ''9'' requires to be applied or a split multiplier has to be applied considering the age factor of the deceased i.e., 59 years. The Apex Court in the case of ''Sarla Verma and others v. Delhi Transport Corporation and another'' has laid down that the multiplier that would be applicable for the deceased with the age group of 56 to 60 years is ''9''. Applying the same, series of judgments are rendered by the Apex Court as well as by this Court. This Court in MFA No. 1009/2008 following the judgment of Apex Court in case of ''K.R. Manjunath and others Vs. Administrative Officer and another'' reported in 2011 AIR SCW 1390, has held applying split multiplier is improper. It would appropriate to award the compensation by applying the regular multiplier, that was a case dealing with the deceased aged about 53 years a Head Master in Higher Primary School.. Similarly, the Division Bench of this Court in MFA No. 21681/2013 connected with MFA No. 20780/2013 while considering the multiplier of the deceased aged about 51 years working as a line man, at HESCOM, negated the contentions raised by the insurance company that the Tribunal ought to have applied the split multiplier, since, the deceased was left only with nine years of service. The Tribunal brushing aside the ample evidence produced by the

claimants that the deceased was drawing a salary of Rs. 18,303/- per month as per Ex.P5, determined the income applying the notional income of Rs. 3,000/- per month which is totally against the settled principles of law and the cogent evidence available on record. As regards the reasoning given by the Tribunal that the wife of the deceased is getting family pension and his son is provided with a job on compassionate basis would not entitle the claimants to claim the income of the deceased as per Ex.P5 is untenable. The Apex Court in the case of ''Vimal Kanwar and others vs. Kishore Dan and others'' reported in ''2014 ACJ 1441 (SC)'' has categorically held that a salary receivable by the claimants on compassionate appointment do not come within the periphery of the Act to be termed as pecuniary advantage liable for deduction. It is also held that the insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. The amount receivable as compensation under the Act is on account of injuries or the death without making any contribution towards it. It is categorically held that the compensation payable under the Act is statutory. Even as regards the provident fund, pension and insurance receivable by the claimants are considered not to be termed as pecuniary advantage liable for deduction under the Act. This Court is of the opinion that it would be appropriate to follow the multiplier as per the judgment of the Apex Court in Sarla Varma''s case and applying the appropriate multiplier of ''9'' for the age group of 56 to 59 years. However, it is observed that the wife and his son, who was aged about 22 years have filed the claim petition seeking compensation. It transpires that the son was provided with a job on compassionate basis and he is no more to be considered as a dependant of the deceased father. Accordingly, 50% has to be deducted towards the personal expenses of the deceased. Therefore, the loss of dependency works out to Rs. 9,77,562/-.

11. In the facts and circumstances of the case, the compensation awarded under different conventional heads is too meager. This Court is of the considered opinion that it would be just and proper to award/enhance the compensation awarded by the Tribunal under the following conventional heads:

Therefore, the claimants are entitled for a total compensation of Rs. 10,57,562/-.

12. Accordingly, the appeal is allowed-in-part. The judgment and award passed by the Tribunal is modified enhancing the total compensation of Rs. 2,34,000/- awarded to Rs. 10,57,562/- with interest @ 6% p.a. The respondent-insurance company is directed to deposit the enhanced amount with interest @ 6% p.a. from the date of claim petition till the date of realisation within a period of six weeks from the date of receipt of the judgment. The claimants are at liberty to withdraw the enhanced compensation.

