(2016) 03 KAR CK 0317

In the Karnataka High Court

Case No : Misc. First Appeal Nos. 5852/2014 and 740/2015 (MV)

Narasamma and Others APPELLANT

Vs

The Managing Director, NWKSRTC, Gadag Division, Naragunda Unit and Others RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 03 KAR CK 0317

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : V.B. Siddaramaiah, Advocate, for the Appellant; F.S. Dabali, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Rathnakala, J.—1. These two appeals are directed against the judgment and award dated 05.05.2014 in MVC No. 593/2014, on the file of II Addl. Senior Civil Judge & Addl. MACT-V), Chitradurga, (for short, ''Tribunal'') in respect of the claim petition filed by the legal heirs of Late Mahalingappa on account of his death in the road traffic accident.

2. The claimants of MFA No. 740/2015 are aggrieved by the inadequate compensation awarded by the Tribunal. In MFA No. 5852/2014, NWKRTC (for short, ''Corporation'') is challenging it''s liability to pay entire compensation as exorbitant.

3. Briefly stated, the claimants being wife, children, mother and siblings of the deceased Mahalingappa, brought the claim to the Tribunal under Section 166 of Motor Vehicles Act, 1988 (for short, ''Act'') with the contention that on 20.08.2013, at about 2.30 a.m. mid-night, the deceased Mahalingappa was traveling in a Tractor-Trailer bearing registration No. KA-16-T-8703/8704, as Hamali from Bethur Palya towards Chitradurga APMC Market with consignment;

near Namakal Garage on NH-4 road, Chitradurga, the driver of NWKRTC Bus bearing registration No. KA-42/F-825 drove the same in a rash and negligent manner, dashed to the said Tractor-Trailer from hind side. Thereby, the deceased Mahalingappa fell on the road and sustained head injury and injuries all over his body and succumbed to the injuries at the spot. The deceased was earning a sum of Rs. 10,000/- per month from his Hamali work; he was the only bread earner in his family. His first wife namely Rathnamma pre-deceased him and claimant Nos. 2 and 3 are her children. The claimant No. 1 is the 2nd wife, claimant No. 4 is the child of the deceased through claimant No. 1.

4. The case was contested by the Corporation. The Tribunal on overall evaluation and consideration of oral and documentary evidence of both the parties allowed the claim petition in part by awarding a compensation of Rs. 9,85,500/- with 6% interest per annum from the date of petition till date of realization.

5. Sri. F.S. Dabali, learned counsel for the Corporation submits that the Tribunal was not justified in fastening the liability to pay entire compensation against the Corporation, since it is evident from the documents that the deceased himself was negligent in traveling on the loaded Tractor-Trailer. By traveling so, he tendered himself for the fatal accident. Only on consideration of the fact that the driver of the bus is charge sheeted, the Tribunal fastened the entire liability against the driver of the Corporation. That apart, the driver of the tractor-trailer was negligent in moving the vehicle on National Highway on the right side of the road. The driver of the bus was driving the vehicle with all care and caution that is how in IMV report no much damage was found on both vehicles.

Learned counsel further submits that the deceased was a coolie by profession, the Tribunal had taken Rs. 5,000/- per month as his income from agriculture and Rs. 5,000/- p.m. from his coolie work and by adding 30% towards future prospects and capitalized the loss of dependency which is not permissible since the deceased had no secured avocation. The amount awarded under the conventional heads is also excessive. Hence, the judgment and award of the Tribunal may be modified by apportioning the contributory negligence on the part of the driver of the Tractor-Trailer and also by reducing the compensation reasonably.

6. Sri. V.B. Siddaramaiah, learned counsel for the claimants submits without adding 30% towards future prospects to capitalize the loss of dependency for the family, having regard to the date the accident, without any further proof, the income of the deceased may by safely assessed between Rs. 7,000/- to 8000/-. The deceased was aged about 38 years and suitable multiplier applicable to his age is 15 (as per the judgment of the Apex Court in Sarla Verma and Others v. Delhi Transport Corporation and Another reported in , 2009 ACJ 1298). But the Tribunal while calculating the loss of dependency had taken the multiplier of 13 which has decreased the compensation substantially. The amount awarded under the conventional heads is also on a lower side. No amount is awarded towards loss of estate. In that view of the matter, the impugned judgment and award of

the Tribunal may be modified by enhancing the compensation just and reasonably.

Learned counsel further adds to his submission that it is the driver of the bus who is charge sheeted by the Police; no evidence was adduced by the Corporation before the Tribunal to establish that the driver of the NWKRTC bus was not responsible for the accident. The deceased being a third party, the Corporation is vicariously liable for the claim of the claimants.

7. In the light of the above rival submissions I have perused the impugned judgment and award with the lower court records.

8. The death of the deceased in the vehicular accident on 20.08.2013, at about 2.30 a.m. involving the vehicle NWKRTC bus bearing registration No. KA-42-F-825 and Tractor-Trailer bearing registration No. KA-16-T-8703/8704 is not in dispute. Further, the police on investigation charge sheeting the driver of NWKRTC Bus is also a fact. No positive evidence was placed before the Tribunal to establish that either deceased himself rendered for the accident or the driver of the Tractor-Trailer drove the vehicle in a rash and negligent manner there by guilty of contributory negligence. In that view of the matter, I do not find any merits in the contention of the NWKRTC that there is contributory negligence on the part of the deceased for the accident.

9. Coming to the question of capitalizing the compensation, the Tribunal has worked out loss of dependency by deducting 1/4th of income of the deceased towards his personal expenses with the multiplier of 13. As per records, the deceased was aged about 38 years at the time of his death and suitable multiplier applicable is 15, as per Sarla verma case supra. Though there are 7 claimants, the claimant Nos. 6 and 7 being the siblings of the deceased settled away from the family of deceased, they cannot be considered as dependents. Having regard to the age, date and avocation, the monthly income of the deceased may be safely assessed at Rs. 7,500/- per month. It being family of five members, out of said amount, 1/4th has to be deducted towards personal expenses of the deceased. The net income of the deceased works out to Rs. 5,625/- per month. Thus, the loss of dependency is Rs. 10,12,500/- (Rs. 5625/- x 12 x 15 = Rs. 10,12,500/-). Rs. 1,00,000/- is awarded towards loss of consortium to the widow of the deceased, which does not call for interference. However, Rs. 1,00,000/- awarded towards loss of love and affection for three minor children and mother is inadequate, hence, Rs. 2,00,000/- under the said head would serve the ends of justice being met. Since no amount is awarded under the head loss of estate, Rs. 25,000/- would be appropriate. Rs. 25,000/- awarded towards transportation and funeral expenses is just and proper and not warranting for interference.

10. Thus, the appellants/claimants are entitled for the compensation as per the following break ups:

Accordingly, there would be enhancement of compensation of Rs. 3,77,000/-.

Since the accident is of the year 2013, the Tribunal has awarded interest only at 6% per annum which is not in accordance with the recent trend of awarding interest in the claim cases under the Act. Hence, the claimants are entitled interest at 8% per annum on the enhanced compensation amount from the date of petition till realization.

The appeal preferred by the KSRTC in MFA No. 5852/2014 is dismissed.

The appeal preferred by the claimants in MFA No. 740/2015 is allowed in part.

The judgment and award dated 05.05.2014 in M.V.C. No. 593/2013 on the file of II Addl. Senior Civil Judge & Addl. MACT-V, Chitradurga, is hereby modified to the extent that the appellants/claimants are entitled for additional compensation of Rs. 3,77,000/- along with interest @ 8% per annum from the date of petition till realization.

Corporation is directed to deposit the enhanced compensation of Rs. 3,77,000/- with accrued interest before the Tribunal within three weeks from the date of receipt of copy of this judgment.

Apportionment shall be in the same line as ordered by the Tribunal.

The enhanced compensation amount pertaining to the minor children shall be invested with accrued interest in any Nationalized bank/Scheduled Bank/ Grameena Bank of claimants'' choice till they attain the age of majority with liberty to the guardian/mother to draw interest accrued on it periodically, for the welfare of minor children.

The enhanced compensation amount in respect of Appellant No. 1/wife of the deceased and appellant No. 5/mother of the deceased in MFA No. 740/2015 with proportionate interest shall be disbursed in their favour.

Registry is directed to transmit the case records along with statutory amount deposited to the concerned Tribunal forthwith.

Draw the award, accordingly.

