(2016) 10 KAR CK 0024

In the Karnataka High Court

Case No : M.F.A. No. 15 of 2014 (MV).

National Insurance Co. Ltd., Divisional Office-IV, Bangalore. Through its Regional Office, No. 144, Subharam Complex, M.G. Road, Bangalore-560001, rep. by its Deputy Manager A. Ghani - Appellant @HASH Mrs. Manjula N. W/o Late Y. Nagesh, Aged About 28 Year

Date of Decision : 18-10-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2016) 4 ACC 6

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : Mr. B.C. Seetharama Rao, Advocate, for the Appellant; Mr. Prakash M.H., Advocate, for the Respondent Nos. 1 to 3; Notice Dispensed with, for the Respondent No. 4

Final Decision : Allowed

Judgement

S. Sujatha, J. - This appeal is by the insurer challenging the Judgment and Order passed by the Motor Accident Claims Tribunal, Bangalore, [the Tribunal'', for short] in MVC No. 1550/2011.

2. facts in brief are that the claimants are the widow and children of deceased Nagesh, who died in the road traffic accident on 2.3.2011 owing to the actionable negligence of the driver of the maruti car bearing registration No. KA-03/P-4163, duly insured with the insurer-appellant herein. The appellant contested the claim. The Tribunal after appreciating the evidence on record, awarded total compensation of Rs. 11,68,000/- with interest at 6% p.a. Being aggrieved, the insurer is in appeal.

3. Heard the learned counsel for the parties and perused the material on record.

4. The sole ground of attack is as much as awarding future prospects at 50% to the monthly income determined at Rs. 4,500/-. In other words, the grievance of the appellant-insurer is that the Tribunal has grossly erred in awarding future prospects in the absence of material evidence placed on record to establish the

factum of regular income earned by the deceased. In support of his contention, learned counsel placed reliance on the Judgment of this Court in Smt. Ayesha Begum and another v. Saradarulla Khan and others M.F.A. No.9119/2008 (DD 28.7.2016).

5. On the other hand, learned counsel for the claimants supporting the impugned Judgment and award would contend that the claimants are entitled to future prospects in view of the judgment of the Hon''ble Apex Court in ''Santosh Devi v. National Insurance Company Limited and Others'' [2012 ACJ 1422] and ''Rajesh and Others v. Rajbir Singh and Others'' reported in 2013 [9] SCC 54.

6. The Co-ordinate Bench of this Court considering all the judgments holding the field on this issue pertaining to future prospects has categorically held that mere reference made to the larger Bench on this issue would not curtail the powers of the Court to award compensation towards future prospects. Placing reliance on the Judgment of the Hon''ble Apex Court in the case of Sanjay Verma v. Haryana Roadways reported in 2014 (3) SCC 210 has held that this Court has to award compensation towards the future prospects in cases where regular income of the victim at the time of accident is established by material evidence placed on record. In the light of these said Judgments, the factual matrix of the present case is examined. The deceased was aged about 28 years at the time of the accident. It was contended that the deceased was a driver by profession, used to earn Rs. 10,000/- p.m. and contributing the same for his family necessity. In the absence of convincing evidence placed on record to establish such factum of income earned by the deceased, the Tribunal determined the monthly income notionally at Rs. 4,500/- which is on lower side compared to the standard mode of determination now made by this Court in identical circumstances. Considering the date of accident-2.3.2011, age of the deceased-28 years, occupation-driver, the monthly income of the deceased can be safely determined at Rs. 6,500/-.

7. The next crucial point would be awarding of future prospects to reckon the loss of dependency. No iota of evidence is available on record to establish the regular income earned by the deceased. In such circumstances, the Tribunal awarding future prospects at 50% of the income determined at Rs. 4,500/- is unsustainable. Accordingly, the award under the head ''future prospects'' is set-aside. Hence, applying the monthly income of Rs. 6,500/-, loss of dependency would work out to Rs. 8,84,000/- as against Rs. 9,18,000/- awarded by the Tribunal. In all other respects, the compensation awarded by the Tribunal remains unaltered.

8. Thus, the compensation awarded by the Tribunal is modified as under:

SI. No.

Particulars

Amount [in Rs.]

1

Loss of dependency

8,84,000

2

Loss of consortium

1,00,000

3

Loss of estate

25,000

4

Loss of care and guidance for minor children

1,00,000

5

Transportation of dead body and funeral expenses Loss of amenities

25,000

TOTAL

11,34,000

9. Thus, the compensation awarded by the Tribunal is modified and reduced to Rs. 11,34,000/- as against Rs. 11,68,000/- with interest at 6% per annum from the date of the petition till the realization.

10. The apportionment and disbursement of the award amount shall be in terms of the order passed by the Tribunal.

11. Amount in deposit shall be transferred to the jurisdictional Tribunal for disbursement.

12. In the result, the appeal is allowed to the extent indicated above.