(2015) 08 KAR CK 0095

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 30717 of 2010 (MV) and 31487 of 2010

New India Assurance Co. Ltd. APPELLANT

Vs

Bagawwa Ramappa Patted and Others RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 4 AKR 308

Hon'ble Judges : B. Sreenivas Gowda, J.

Bench : Single Bench

Advocate : Sanjay M. Joshi, for the Appellant; Shailaja C.D. for Shivayogimath Associates and A. Syed Habeeb, for the Respondent

Final Decision : Dismissed

Judgement

B. Sreenivas Gowda, J.—MFA No. 31487/2010 is filed by the claimants seeking enhancement of compensation awarded by the Tribunal. Whereas MFA No. 30717/2010 is filed by the insurer of offending vehicle seeking reduction of compensation awarded by the Tribunal. As these appeals are arising out of a common judgment and award of the Tribunal, with the consent of the learned counsel appearing for the parties both the appeals are heard and disposed of finally by this common judgment.

2. As there is no dispute regarding death of one Ramappa in a road traffic accident that occurred on 06.02.2007 due to rash and negligent driving of a Truck bearing No. KA-25-9790 by its driver and liability of the insurer of the said vehicle, the only point remains for consideration in this appeal is:

"Whether compensation of Rs. 6,00,000/- with interest at the rate of 6% per annum awarded by the Tribunal is just and reasonable or does it call for enhancement or reduction?"

3. After hearing the learned counsel appearing for parties and perusing the

judgment and award of the Tribunal, I am of the view that quantum of compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and therefore, it is required to be enhanced.

4. Claim petition is filed by wife and two major sons of deceased Ramappa seeking enhancement under section 166 of Motor Vehicles Act. The claimants in support of their contention that deceased by working as shepherd and agricultural coolie was earning Rs. 8,000/- per month have examined the third claimant - son of the deceased as P.W. 1 and have produced the passbook issued by Karnataka Sheep and Sheep Produces Development Board, Bangalore and it has been certified by veterinary doctor. Ex. P7 would show deceased was having 84 sheeps. Therefore, considering the age of the deceased as 45 years, year of accident as 2007 and avocation of the deceased as shepherd having 84 sheeps at the time of his death, his income could be easily assessed at Rs. 7,000/- p.m. as against Rs. 5,000/- per month assessed by the Tribunal. Considering number of dependents, 1/3rd of the income of the deceased deducted by the Tribunal towards his personal expenses is just and proper. Multiplier of 14'' applied by the Tribunal based on the age of the deceased who was 45 years at the relevant point of time is also sound and proper. Therefore, loss of dependency works out to Rs. 7,84,000/- (Rs. 7,000/- x 2/3 x 12 x 14) and it is awarded as against Rs. 5,60,000/- awarded by the Tribunal under this head.

5. In addition to that a sum of Rs. 50,000/- is awarded in respect of first claimant towards loss of consortium and a sum of Rs. 50,000/- is awarded towards loss of love and affection of claimants 2 and 3 at the rate of Rs. 25,000/- each and a sum of Rs. 20,000/- is towards transportation of dead body and funeral expenses and a sum of Rs. 10,000/- awarded towards loss of estate by the Tribunal is just and proper.

6. Thus claimants are entitled for the following compensation:

7. Hence, the claimants are entitled for additional compensation of Rs. 3,14,000/- with interest at 6% p.a. from the date of claim petition till the date of realisation, excluding interest for the delayed period of 112 days in filing the appeal.

8. The Insurance company is directed to deposit the additional compensation with interest, within two months from the date of receipt of copy of the judgment, excluding interest for the delayed period of 112 days in filing the appeal.

9. From the additional compensation of Rs. 3,14,000/-, Rs. 2,50,000/- with proportionate interest in the name of first claimant wife of the deceased is to be invested in Fixed Deposit in any Nationalized/Scheduled/Grameena Bank for a period of 10 years, with a right of option to her to withdraw interest periodically and the remaining amount with proportionate interest is ordered to be released in favour of all the claimants in equal proportionate.

10. The Tribunal while releasing the amount is also directed to issue F.D. slips to the claimant No. 1 to enable her to withdraw the fixed amount on its maturity, without insisting for an order from the Tribunal.

11. In view of allowing the appeal of the claimants and enhancing compensation awarded by the Tribunal, appeal filed by the insurer for reduction of compensation does not survive for consideration. Accordingly, it is dismissed. Amount deposited in the appeal of the insurance company is ordered to be transmitted to the Tribunal for disbursement in terms indicated hereinabove.

No order as to costs.