
(2004) 11 KAR CK 0054
In the Karnataka High Court
Case No : M.F.A. No. 4665 of 2000

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Shanta Lakshmi and Others

RESPONDENT

Date of Decision : 08-11-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2005) 4 ACC 598 : (2005) 2 ACC 875 : (2005) ILR (Kar) 1105 : (2005) 1 KCCR 567

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant; A.K. Bhat, for R1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Chidananda Ullal, J.—Heard Sri. Mahesh, the learned Counsel for the appellant. It is his complaint that the Tribunal had awarded Rs. 6,19,304/- instead of Rs. 4,90,220/- and thereby making a difference of Rs. 1,29,084/-. Such difference had occurred for the simple reason that, when the deceased had 10 months to go before retirement, the Tribunal had taken 11 multiplier, flat, instead of applying lesser multiplier as he had only 10 months of service and after retirement and thereafter he were to get 50% of the Salary as pension and that, 1/3rd of the annual income had been deducted towards personal expenses as the Tribunal normally does. It is a case of death and the claimants are, the widow and son. Since it is a case of death, I do not think it will make that big difference, in the matter of assessment of compensation, even if it is felt that there may be some error and thus, the compensation might have been marginally excess and on the higher side; nevertheless, from the point of view that the claim is by the widow and son, I feel that the award cannot be challenged that seriously before this Court by filing this appeal. All the more, when there is a difference of Rs. 1,29,000/-, I feel that, that part of the award

may be reduced by one half of the excess amount shown by the counsel for the appellant.

2. Since the Counsel for the appellant vehemently argued that the appellant-Insurance Co, is going to loose substantial sum, the award stands reduced from Rs. 6,19,304/- to Rs. 5,54,720/-.

3. The Counsel for the appellant further submitted that, as per the Division Bench ruling of this Court reported in ILR 2000 Kar. 3809, the award would have been Rs. 4,90,220/-. In this context, it is relevant to extract paras 16 and 17 of the reported decision. The same are as hereunder:

"16. Where the multiplier applicable is higher than the number of years of service which the deceased had before superannuation, the contribution to the family (or loss of dependency) cannot obviously be calculated with reference to the salary income, for the entire period of multiplier. Let us illustrate, if a person aged 56 years (whose age of superannuation is 60 years) dies in an accident, leaving behind him surviving his wife and two children, how should the total loss of dependency be calculated? let us assume that his salary was Rs. 6,000.00 and after retirement his pension would be Rs. 3,000.00. Under the Davies method accepted and adopted by the Supreme Court, the applicable multiplier will be "9". But, deceased would have got salary income for only 4 years and then he would get only pension. If the deduction towards personal and living expenses of the deceased is one third, the contribution to the family during the period of service(4 years period) would have been Rs. 4,000/-(that is Rs. 6000-2000).

But, obviously the contribution to the family would not have been Rs. 4,000/- after his retirement, that is from the 5th year onwards. When the pension is Rs. 3,000/- per month, after deducting one third as personal and living expenses, the contribution to the family will only be Rs. 2,000/- per month. Therefore, the loss of dependency cannot be taken as Rs. 4,000/- per month for the entire period of 9 years representing the multiplier. It has to be taken as Rs. 4,000/- per month for the first four years(when he would have been in service) and Rs. 2,000 per month for the remaining five years (when he would have received pension). The method adopted in the above illustration will have to be applied in this case.

17. In this case, the deceased was aged 53 years at the time of death and she would have attained the age of superannuation in about 7 years. The multiplier period is 9 years. After 7 years, the income would not have been Rs. 16,852,00 per month, but only roughly 50% of it as pension, and consequently the loss of dependency would have been 50% of Rs. 1,20,000,00 per annum. Thus, loss of dependency will have to be calculated with reference to the salary income for a period of 7 years and pension income for the remaining period of 2 years, as the multiplier period is 9 years". The loss of dependency would therefore be Rs. 1,20,000,00X7 plus Rs. 60,000,00 X2 i.e. Rs. 9,60,000,00."

4. Since the Counsel for the appellant, Sri. Mahesh is very vehement on the

point, I feel justice will be met if the award be modified and reduced from Rs. 6,19,304/- to Rs. 4,90,220/-. That I hereby do.

5. Appeal stands allowed in the above terms accordingly.

6. The deposit made before this Court be now transferred to the MACT below.

7. I wish to add a note here, that the appellant-Insurance Co. While preferring appeals as against the award passed by the MACTs it should not forget the social aspect in the enactment in the Motor Vehicles Act to award a just compensation to the affected parties who file claim petition u/s 166 of the Act.

8. In this context, I wish to add a general note. The Insurance Co. being the limb of the State is participating in the social cause advanced by the State in giving compensation to the victims of road traffic accidents. In my considered view, it is not money alone that matters, but something higher than money. That being the position, the Insurance Co. should rise to the occasion and should be unmindful of paying little higher compensation, for normally, Courts and Tribunals are doing guess-work in the matter of computation of compensation and in doing that, it may commit marginal errors. As I see, in doing the guess-work, such minor errors may occur. The Member of the Tribunal being the Judge, weighs different aspects of the case and assesses the compensation, and many a times, sympathies vary in different degrees according to the facts and circumstances of each case before him. As such, there cannot be hard and fast rule in that regard. Unless the award is too high and disproportionate and glaring, pricking to one's conscious, it is better for the Insurance Co. to satisfy the award than litigating further, for the suffers will be put to pain and penury, as if salt is applied to the injury already suffered; after all, the decision makers in the Insurance Co. are humans. Let humanity and mercy be shown by the Authorities in abundance, as if to the brim, so that the suffers and the victims in the road traffic accidents live with less pain, for the money given by way of award mitigates their unforeseen onslaught and sufferings and helps them to readjust themselves to the new situations; that being the position, let the Advocates representing the cause of the Insurance Co., truly represent the very spirit of the Insurance Co. Let them not be overzealous to argue, as if a kingdom is lost by the Insurance Co. in paying a little higher compensation. As is the case, in the instant case in hand as a presiding Judge to decide the appeal, it is painful for me to hear such kind of argument. I add in this context; but nevertheless, I bore with that and decided the case unmindful of the kind of pain, for a Judge as I am, have to decide the case impartially to do justice to parties who come before me.

9. Appeal stands allowed. No cost.