(2010) 03 KAR CK 0128

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 9917 of 2007

New India Assurance Company Ltd. — APPELLANT

Vs

Umesh and Others — RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Citation : (2010) 03 KAR CK 0128

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : R. Jaiprakash, for the Appellant; P.V. Kalpana, for R2 to R7 and G.S. Devaraj, for R1, for the Respondent

Judgement

Aravind Kumar, J.—Though the matter is listed for admission, by the consent of learned Counsel for the parties, the matter is taken up for final hearing, as the matter is of the year 2007.

2. The Insurance Company is questioning the correctness and legality of the judgment and award passed by MACT-V, Court of Small Causes, Bangalore City in MVC No. 4664/2005 dated 26.04.2006.

3. The facts in this appeal are not in dispute and hence, are not being dwelt upon.

4. Though other grounds are urged in memorandum of appeal by Sri R. Jaiprakash, learned Counsel for the appellant would fairly submit that only ground that would be urged for consideration is with regard to the deduction made by the Tribunal in respect of personal expenses of deceased. Sri R. Jaiprakash would contend that personal expenses of deceased ought to have taken at 1/3rd. However, the Tribunal has deducted 1/6rd, considering the number of dependents as on date of the accident, he would hasten to odd in view of law kid down by the Hon''ble Supreme Court in case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . The proper deduction that requires to be made when the number of dependents are more than five would be 1/5st and accordingly deduction towards personal expenses of the

deceased should be taken as 1/5th as against 1/6th taken by the Tribunal.

5. Smt P.V. Kalpana, learned Counsel for respondents No. 2 to 7 would submit: that order of the Tribunal is just and proper and does not call for interference. She submits that Multiplier taken into consideration by the Tribunal is 16'' and as per Sarla Verma case referred to supra, the Multiplier requires to be taken is ? 17?. She would also admit that no cross objections have been filed or an appeal filed explaining the correctness and legality of the said judgment and award passed by the Tribunal.

6. Having heard learned Counsel for the parties, following points arise for my consideration:

1. Whether the Tribunal was justified in deducting 1/6th of personal expenses of the deceased income and if not what is to be deducted towards personal expenses?

2. What Order?

7. Re Point No. 1: The learned Counsel for the parties would fairly admit that as per law laid down as referred to supra, the personal expenses to be deducted would be 1/5th in case of dependants are more than five members. In view of the same, findings of the Tribunal by giving deduction towards personal expenses of the deceased at 1/5th would be erroneous and accordingly the same requires to be modified. The personal expenses of deceased is to be taken at 1/5th as against 1/6th taken by the Tribunal When the deduction towards personal expenses is taken at 1/5th, the natural corollary that there would be reduction in the compensation awarded by the Tribunal. The Tribunal has taken the income of the deceased at Rs. 3,000/- on notional basis as agriculturist by avocation, the same is taken into consideration and if 1/5this deducted towards the personal expenses, the income of the deceased would be Rs. 2,400/- per month or Rs. 28,800/- per annum. The appropriate Multiplier &s per the Tribunal in Gulam Khadsr?s case reported in ILR 2000 Kar 1425, would be ''16'' as taken by the Tribunal and by applying the same the total compensation that been mew payable to dependants is Rs. 4,60,300/- as against Rs. 4,80,000/- awarded by the Tribunal. In view of the same, compensation a& awarded by Tribunal is reduced from Rs. 4,80,000/- to Rs. 4,60,800/-, by answering the point No. 1 formulated same herein above in favour of the appellant. However, the compensation awarded by the Tribunal, under other heads are hereby confirmed.

8. Re Point No. 2: In view of the above discussions, following order is passed.

a. The appeal is allowed in part

b. Compensation awarded by the Tribunal under heading loss of income to the dependents is reduced to Rs. 4,60,600/-from Rs. 4,80,000/-.

c. The compensation awarded under ether heads are hereby confirmed.

Amount in deposit If any, is ordered to be transmitted to the Jurisdictional Claims

Tribunal for disbursement

No order as to costs.

