

(2016) 02 KAR CK 0329

In the Karnataka High Court

Case No : M.F.A. No. 100007 of 2015 (MV)

Ningappa Ramanna Kori

APPELLANT

Vs

Tamil Nadu State Transport (Madurai) Ltd.

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Citation : (2016) AAC 1629

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Harish S. Maigur, Advocate, for the Appellant; Mallikarjunswamy B. Hiremath, Advocate, for the Respondent

Final Decision : Allowed

Judgement

B. Veerappa, J.—The appellant-claimants filed the above appeal for enhancement against the judgment and award dated 4-1-2011 in M.V.C. No. 256/2010 on the file of the Addl. Senior Civil Judge & AMACT, Haveri, under Section 163-A of the M.V. Act granting compensation amount of Rs. 1,50,000/- with interest at 6% per annum from the date of petition till the date of realisation.

2. It is the case of the appellant-claimants that on 1-2-2009 at about 9:00 p.m. deceased Akkamma along with her family members went to the trip to Tamilnadu in a trax bearing No. Ka-27/MFA-1594. When the said trax came near retired teacher chamber at Perambur of Chennai, the vehicle was stopped. The deceased Akkamma along with her husband went to the toilet after crossing the ring road on other side. At that time, the driver of bus bearing No. TN-72-N-1003 drove the vehicle with a high speed, rash and negligent manner, endangers to human life and dashed against her and caused accident. In view of the said accident, deceased sustained grievous injuries and other multiple injuries all over the body and due to the said grievous injuries, the deceased succumbed. On the basis of the complaint, a criminal case registered in Crime No. 29/2009 in Avaniyapura Police Station. According to the claimants, deceased Akkamma was hale and

healthy and she was working as milk vending and bangles shop and earning a sum of Rs. 3,300/- per month and as on the date of the accident, she was aged 45 years. Due to the sudden death, the claimant No. 1-husband and claimant No. 2-son suffered great mental shock and they lost serving member of the family and they have lost love and affection towards their wife and mother. Therefore, they filed compensation claim of Rs. 6,80,000/- with interest at 18%.

3. The respondent remained absent and placed ex parte. On the basis of the pleadings, the Tribunal framed the following issues :

"1. Whether petitioners prove that, on 1-2-2009 at about 9.00 p.m. near retired teacher chamber, at Perambur of Chennai, deceased Akkatuma was proceeding on ring road, at that time driver of respondent drove the Bus bearing No. TN-72-N-1003 with high speed rash and negligent manner dashed to the her and deceased sustained the grievous injuries and died in the accident.

2. Whether petitioners prove that, they are entitled the compensation? If so, what rate and against whom.

3. What order?"

4. In order to establish the case, the husband of the deceased Ningappa Ramanna Kori examined himself as RW. 1 and marked documents Exs. P-1 to P-3. Respondents have not filed any objections nor adduced any evidence nor produced the documents.

5. The Tribunal considering the entire material on record, granted a sum of Rs. 1,50,000/- with interest at 6% per annum from the date of petition till the date of realisation. Hence, the present appeal is filed for enhancement of compensation.

6. I have heard the learned counsel appearing for the parties to the lis.

7. Shri Harish S. Maigur, learned counsel for the appellants contended that the compensation awarded by the Tribunal is on the lower side and needs to be enhanced. He contended that the deceased was doing milk dairy and bangles business and was earning Rs. 3,300/- per month. While awarding compensation under the head "loss of dependency", the Tribunal was pleased to take the income of the deceased at Rs. 1,250/- per month i.e., Rs. 15,000/- per annum, without any basis and the same is on the lower side and requires to be modified. He also contended that the compensation awarded by the Tribunal under other heads is also on the lower side. Therefore, he sought to allow the above appeal by modifying the impugned judgment and award.

8. Per contra, Sri. Mallikajun B. Hiremath, learned counsel for the respondent, sought to justify the impugned judgment and award passed by the Tribunal.

9. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record.

10. It is not in dispute that on 1-2-2009, at about 9.00 p.m. the accident occurred on account of the rash and negligent driving of the driver of the bus bearing No. TN-72/N-1003 and thereby the deceased sustained grievous injuries and died in the accident. A criminal case was also registered against the driver of the bus. P.W. 1-the husband of the deceased has stated on oath that the deceased Akkamma was hale and healthy and she was doing milk vending and bangle business and was earning Rs. 3,300/- per month and she was 45 years as on the date of the accident. The respondents have not cross-examined P.W. 1, nor filed any objections denying the assertions made in the claim petition as well as the statement made on oath by P.W. 1. The respondents have also not adduced any independent evidence or produced any contra material. In the absence of any contra material produced, the Tribunal is not justified in taking into consideration the income of the deceased at Rs. 1,250/- per month, which is on the lower side.

11. According to the claimant, the deceased was doing milk vending and bangle business and she was earning Rs. 3,300/- per month and the said assertion made in the claim petition as well as the statements made in the chief-examination on oath has not been denied. Therefore, it is appropriate to take the income of the deceased at least Rs. 3,000/- per month. Taking into consideration the age of the deceased and the date of the accident, which took place on 1-2-2009. As per the post-mortem report-Ex.P3, the age of the deceased was 45 years, in view of the provisions of Section 163(A) II Schedule for compensation of third party fatal accidents, if the age of the victim is above 40 years, but not exceeding 45 years, the multiplier would be 15 and the amount of compensation so arrived in the case of fatal accident claims shall be reduced by 3rd in consideration of the expenses which the victim would have incurred towards maintaining herself had she been alive.

12. Therefore, the income of the deceased would be Rs. 3,000/- per month and deducting 3rd the compensation towards loss of dependency would be Rs. 3,60,000/- (Rs. 2000 x 12 x 15). The claimant No. 1 is the husband and he is entitled to the compensation of Rs. 5,000/- towards consortium, as per schedule II of the MVC Act. The petitioner No. 2-son is entitled to compensation of Rs. 2,500/- towards loss of estate as per II Schedule. The claimants claimed funeral expenses and they are entitled to Rs. 2,000/- towards funeral expenses, as per Schedule II of the Motor Vehicles Act.

13. In view of the oral evidence of P.W. 1 and the documentary evidence as per Exs. P1 to P3 and in the absence of any contra material, the appellant is entitled to the compensation after reassessment as under:

Amount (Rs.)

Towards loss of dependency

Rs. 3,60,000.00

Towards loss of estate

Rs. 2,500.00

Towards funeral expenses

Rs. 2,000.00

Towards consortium

Rs. 5,000.00

Total

Rs. 3,69,500.00 (rounded off to Rs. 3,70,000.00)

Less : Compensation awarded by the Tribunal

1,50,000.00

Enhanced compensation

2,20,000.00

14. In view of the aforesaid reasons, the appeal is allowed in part. The impugned judgment and award dated 4-1-2011, passed by the AMACT, Haveri, is modified. The appellants are entitled to the enhanced compensation of Rs. 2,20,000/- with interest at 6% p.a. from the date of petition till the date of realisation and the Tribunal shall release the enhanced compensation in favour of the appellants proportionately.

15. However, the appellants are not entitled to any interest for the delay of 1369 days in filing the appeal.