(2016) 01 KAR CK 0140

In the Karnataka High Court

Case No : M.F.A. No. 21709/2013 (MV)

Pooja and Others APPELLANT

Vs

Revappa and Others RESPONDENT

Date of Decision : 25-01-2016

Acts Referred:

Citation : (2016) 01 KAR CK 0140

Hon'ble Judges : H. Billappa and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : Geetha K.M., Advocate, for the Appellant; M.J. Peerjade, Advocate, for the Respondent

Final Decision : Allowed

Judgement

H. Billappa, J.—1. This appeal by the appellants/claimants is directed against the judgment and award dated 16.08.2012 passed by the II Addl. District and Sessions Judge and MACT-III, Belgaum, in MVC No. 1983/2011.

2. By the impugned judgment and award, the Tribunal has granted compensation of Rs. 4,38,200/- with interest at 6% p.a. from the date of petition till the date of realisation.

3. Aggrieved by that, the appellants/claimants have filed this appeal seeking enhancement.

4. Briefly stated the facts are; The claimants are the daughters and son of the deceased Smt. Gangubai and Sri Yellappa Nandihalli. That on 25.03.2011, the deceased Yellappa Nandihalli, the father of the claimants was riding his motorcycle bearing No. KA-22/J-8052. His wife Smt. Gangubai was the pillion rider. When they reached Gogate circle, on Belgaum-Khanapur road, a truck bearing registration No. KA-22/B-385 came from the hind side being driven in a rash and negligent manner and dashed against the motor-cycle in which the deceased was travelling. As a result of that, the deceased Yellappa Nandihalli and Smt. Gangubai, the parents of the claimants sustained injuries and succumbed to

the same. The appellants/claimants claimed compensation of Rs. 18 lakhs. The Tribunal has awarded a sum of Rs. 4,38,200/- with interest at 6% p.a. from the date of petition till the date of realisation. Aggrieved by that, the appellants/ claimants have filed this appeal seeking enhancement.

5. The learned counsel for the appellants contended that the Tribunal has erred in taking the income of the deceased at Rs. 3,500/- p.m. The deceased was working as a Asha worker in the Family Welfare Scheme of Government of Karnataka and earning Rs. 7,000/- p.m. The Tribunal has taken the income of the deceased at Rs. 3,500/- p.m. which is not correct. Further, the compensation awarded by the Tribunal towards funeral expenses, transportation charges and loss of love and affection is also inadequate and needs to be enhanced.

6. As against this, the learned counsel for the 2nd respondent-Insurance Company submitted that the Tribunal has erred in awarding compensation taking the income of the deceased at Rs. 3,500/- p.m. The claimants have already claimed compensation for the death of their father and compensation is awarded towards loss of dependency. Therefore, again compensation cannot be awarded towards loss of dependency. Therefore, the Tribunal was not justified in awarding compensation under the head ''loss of dependency''. Further, he submitted that the compensation awarded by the Tribunal towards funeral expenses, transportation charges and loss of love and affection does not call for interference. He therefore submitted that the impugned judgment and award does not call for interference.

7. We have carefully considered the submissions made by the learned counsel for the parties.

8. The point that arises for our consideration is;

"Whether the impugned judgment and award needs to be modified?"

9. It is relevant to note, the deceased Gangubai and her husband Yellappa Nandihalli who are the parents of the appellants/claimants died in the accident that occurred on 25.03.2011 is not in dispute. The liability of the Insurance Company is also not in dispute. The Tribunal has taken the income of the deceased at Rs. 3,500/- p.m. and deducting 1/3rd towards her personal expenses and adopting the multiplier of ''14'' has awarded a sum of Rs. 4,03,200/- towards loss of dependency. It was contended by the learned counsel for the 2nd respondent that the claimants have already claimed compensation for the death of their father and compensation is awarded towards loss of dependency. Therefore, again compensation cannot be awarded towards loss of dependency. We find some force in the submission of the learned counsel for the 2nd respondent. But, the compensation can be awarded under the head loss of estate. The deceased could have saved at least 50% of her income for the benefit of the family. The deceased was working as a daily wager. Therefore, it is appropriate to take the income of the deceased at Rs. 200/- per day which comes to Rs. 6,000/- p.m. The deceased could have saved at least 50% of her

income for the benefit of the family after spending 50% for her personal expenses. The deceased was aged 45 years. Therefore, the appropriate multiplier is 14. The amount saved would have gone to the benefit of the family. Therefore, the compensation payable towards loss of estate comes to Rs. 3000X12X14=5,04,000/-. Accordingly, we award a sum of Rs. 5,04,000/- towards loss of estate.

10. The Tribunal has awarded a sum of Rs. 10,000/- towards funeral expenses and transportation charges which is inadequate. We award a sum of Rs. 25,000/-.

11. The Tribunal has awarded a sum of Rs. 25,000/- towards loss of love and affection. We award a sum of Rs. 1,00,000/- towards loss of love and affection.

12. The total compensation payable comes to Rs. 6,29,000/- and the break up is as follows:

13. Accordingly, the appeal is allowed and the judgment and award dated 16.08.2012 passed by the II Addl. District and Sessions Judge and MACT-III, Belgaum, in M.V.C. No. 1983/2011 stands modified enhancing compensation by Rs. 1,90,800/- in addition to the compensation awarded by the Tribunal. The enhanced compensation of Rs. 1,90,800/- shall carry interest at 6% p.a. from the date of petition till the date of realisation. The 2nd respondent shall deposit the amount within eight weeks.

Out of the enhanced compensation, the appellants 1 to 4 shall be entitled to equal share. The enhanced amount awarded in favour of the appellants 3 and 4 shall be invested in fixed deposit in any nationalised bank till they attain majority. The appellant No. 1 who is the guardian of appellants 3 and 4 shall be entitled to withdraw the interest accrued on it and spend it for the upkeep of the appellants 3 and 4. The enhanced amount awarded in favour of the appellants 1 and 2 shall be released in their favour.