(2015) 12 KAR CK 0058

In the Karnataka High Court

Case No : M.F.A. No. 6469 of 2015 (MV)

Prema. B.D. and Others — APPELLANT

Vs

Sathyananda Rao and Others — RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 12 KAR CK 0058

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : K. Shantharaj, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the claimants is directed against the judgment and award dated 12th March 2015, passed in MVC No. 1130/2012, by the Presiding Officer, Fast Track Court, Additional Motor Accident Claims Tribunal-V, Tumkur, (for short, ''Tribunal'') for enhancement of compensation on the ground that, the compensation of Rs. 21,46,224/- awarded in favour of the claimants as against their claim for Rs. 50,00,000/-, is inadequate.

2. The facts in brief are that, the claimants are the wife, two minor children and parents of the deceased Jayarame Gowda. They filed the claim petition under Section 166 of the Motor Vehicles Act, contending that, at about 08:00 P.M, on 25-08-2012, when the deceased Jayarame Gowda, after finishing his office work, coming on his two wheeler bearing Registration No. KA-44/K-137, slowly and cautiously on the left side of NH-206, near Kotenayakanahalli gate, he met with an accident, on account of rash and negligent driving by the driver of Tata Ace bearing Registration No. KA-54/3109. Due to the impact, the deceased sustained grievous injuries to the head, face and other parts of the body and shifted to Government Hospital, Tiptur and thereafter the body was taken to native place for conducting last rites.

3. It is the case of the appellants that, the deceased was aged about 46 years, working as an Attender at Cauvery Kalpatharu Grameena Bank, drawing salary of Rs. 20,281/- per month and also earning a sum of Rs. 10,000/- per month from agricultural work and contributing the entire sum to the family requirements and hale and healthy prior to the accident. On account of the untimely death of the deceased, the appellants have lost the love and affection, inspiration and guidance, apart from social, financial and moral support and therefore, they have to be compensated reasonably.

4. On account of the death of the deceased, the appellants filed the claim petition before the Tribunal, seeking compensation against the respondents. The said claim petition had come up for consideration before the Tribunal on 12th March, 2015. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 21,46,224/- under different heads, with 6% interest per annum, from the date of petition till the date of payment. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellants are in appeal before this Court, seeking enhancement of compensation.

5. We have gone through the grounds urged in the memorandum of appeal and heard the learned counsel appearing for appellants and also the Insurer, for quite some time.

6. Shri. K. Shantharaj, learned counsel appearing for claimants/appellants vehemently submitted that, the Tribunal grossly erred in not awarding reasonable compensation towards loss of dependency and also conventional heads. To substantiate the said submission, he submitted that the deceased was working as an Attender at Kaveri Grameena Bank at J.C. Pura, drawing salary of Rs. 20,281/- per month and also earning a sum of Rs. 10,000/- per month from agriculture and in support of the same, the claimants have produced the RTC extract at Ex. P15. He further submitted that as the deceased was aged about 46 years, i.e. between 40 years and 50 years and employed in a secured job, 30% towards future prospects is liable to be added to the income of deceased for awarding compensation towards loss of dependency.

He further submitted that the compensation awarded by Tribunal towards conventional heads, i.e. loss of consortium, loss of love and affection, and transportation of dead body and funeral expenses is also on the lower side and therefore, in the light of the judgments of the Hon''ble Apex Court and this Court in host of cases, the impugned judgment and award passed by Tribunal may be modified, awarding just and reasonable compensation towards loss of dependency as also conventional heads.

Further, learned counsel appearing for claimants vehemently submitted that the rate of interest awarded by Tribunal at 6% p.a. is also on the lower side as the accident has occurred on 25-08-2012. In view of the ratio of law laid down by the Hon''ble Apex Court and this Court in catena of decisions, at least 9% to 10% interest per annum may be awarded in the instant case, to meet the ends of justice and the impugned judgment and award be modified accordingly.

7. As against this, learned counsel appearing for Insurer vehemently submitted that the compensation awarded by Tribunal is after due appreciation of the oral and documentary evidence available on file and also taking into consideration the age, avocation and also the year of accident etc. Therefore, interference in the same is not called for. However, after going through the evidence of the wife of the deceased, that the deceased was aged about 46 years and working as an Attender in a Bank, he fairly submitted that 30% may be added towards future prospects of the deceased, in the light of the judgment of the Hon''ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and reasonable enhancement may be made, in accordance with law, after deducting income tax and professional tax.

8. After hearing learned counsel for the parties, and after careful perusal of the judgment and award passed by the Tribunal including the original records placed before us, the only point that arise for our consideration in this appeal is,

"Whether the quantum of compensation awarded by Tribunal is just and reasonable?"

9. The undisputed facts of the case are, the occurrence of accident and the resultant death of the deceased Jayarame Gowda. It is also not in dispute that the deceased was aged about 46 years and working as Attender at Kaveri Grameena Bank at J.C. Pura. The claimants have produced the salary slips for the relevant months. They have stated that the deceased was also earning Rs. 10,000/- per month from Agriculture. The same is not taken into consideration by Tribunal, on the ground that the income from the said land continues even after the death of the deceased and assessed the monthly income of the deceased at Rs. 20,281/-, as per Ex. P17. The same is just and proper and therefore, accepted, to meet the ends of justice. To this sum, we have to add 30% (i.e. Rs. 6,084/-) towards future prospects of the deceased as the deceased was aged between 40 years and 50 years and employed in a permanent secured job, in the light of the decision of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Thus, the total income comes to Rs. 26,365/- and per annum, it works out to Rs. 3,16,380/-. From this, if we deduct a sum of Rs. 16,038/- towards income tax and professional tax, the net income works out to Rs. 3,00,342/-. Further, as the dependents are presently four in number, we have to deduct 1/4th towards personal expenses of the deceased. Accordingly, If 1/4th (i.e. Rs. 75,085/-) is deducted from Rs. 3,00,342/- towards his personal and living expenses, the net income would be Rs. 2,25,257/- per annum. Further, it is stated that the deceased was aged about 46 years as on the date of accident. Therefore, for the said age, the proper multiplier applicable is ''13'' as per the decision of the Hon''ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, as

rightly adopted by Tribunal. Thus, the compensation towards loss of dependency would work out to Rs. 29,28,341/- (i.e. Rs. 2,25,257/- x ''13'') as against Rs. 21,09,224/- awarded by Tribunal.

10. Further, the Tribunal has erred in not awarding reasonable compensation towards conventional heads, such as loss of consortium, loss of love and affection, loss of estate and transportation and funeral expenses. Therefore, in the light of the judgment of the Hon''ble Apex Court and this Court in catena of decisions, we award a sum of Rs. 1,00,000/-towards loss of consortium as against Rs. 5,000/-; Rs. 25,000/- towards loss of estate as the Tribunal has not awarded any compensation under this head; Rs. 1,25,000/- towards loss of love and affection at the rate of Rs. 25,000/- to each claimant (as the claimants were five in number at the time of accident) as against Rs. 20,000/- and Rs. 25,000/- towards transportation of dead body and funeral expenses as against Rs. 12,000/- awarded by Tribunal.

11. Thus, the total compensation payable to claimants works out to Rs. 32,03,341/- as against Rs. 21,46,224/- awarded by the Tribunal. There would be enhancement of compensation by a sum of Rs. 10,57,117/-.

12. Further, as rightly pointed out by learned counsel appearing for claimants, the rate of interest at 6% per annum awarded by Tribunal is on the lower side, as the accident has occurred on 25-08-2012. Therefore, as per the ratio of law laid down by the Hon''ble Apex Court and this Court in catena of decisions and also considering the facts and circumstances of the case, we deem it fit and proper to award rate of interest at 9% per annum on the enhanced compensation, from the date of petition till the date of realization.

13. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellants is allowed in part. The impugned judgment and award dated 12th March 2015, passed in MVC No. 1130/2012, by the Presiding Officer, Fast Track Court, Additional Motor Accident Claims Tribunal-V, Tumkur, is hereby modified, awarding a sum of Rs. 32,03,341/- as against Rs. 21,46,224/- awarded by the Tribunal, from the date of petition till the date of realization. Thus, there would be enhancement of compensation by a sum of Rs. 10,57,117/- with 9% interest per annum from the date of petition till the date of realization.

The second respondent/Insurance Company is directed to deposit the enhanced compensation of Rs. 10,57,117/-, with interest thereon at 9% per annum, within three weeks from the date of receipt of copy of the judgment.

Immediately on such deposit by the Insurance Company, a sum of Rs. 3,00,000/- with proportionate interest shall be invested in the name of first appellant -wife of deceased, in Fixed Deposit, in any scheduled/Nationalized/ Grameena Bank, for a period of ten years, renewable by ten years, with liberty reserved to her to withdraw the periodical interest.

A sum of Rs. 2,00,000/- each with proportionate interest shall be invested in the names of second and third appellants - minor children of deceased, in Fixed Deposit, in any scheduled/Nationalized/Grameena Bank, till they attain the age of 30 years, with liberty reserved to the appellant No. 1/mother and natural guardian to withdraw the periodical interest for their welfare till they attain the age of 21 years and from 22 years to 30 years, the appellant Nos. 2 and 3 are entitled to withdraw their periodical interest.

A sum of Rs. 1,00,000/- with proportionate interest shall be invested in the name of fourth appellant -mother of deceased, in Fixed Deposit, in any scheduled/ Nationalized/Grameena Bank, for a period of five years, renewable by five years, with liberty reserved to her to withdraw the periodical interest.

Remaining sum of Rs. 2,57,117/- with proportionate interest shall be released in favour of the appellant Nos. 1 and 4, in equal proportion, immediately.

Office to draw award, accordingly.