

(2015) 01 KAR CK 0028
In the Karnataka High Court
Case No : M.F.A. No. 11216/2012 (MV)

Rajamma and Others

APPELLANT

Vs

The M.D. of BMTC Central Office and Others

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 01 KAR CK 0028

Hon'ble Judges : N.K. Patil and G. Narendra, JJ.

Bench : Division Bench

Advocate : K. Pradeep Naik, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal is filed by the claimants, being aggrieved by the impugned Judgment and Award dated 30th June 2012 passed in M.V.C. No. 998/2011 on the file of the learned Motor Accident Claims Tribunal, Bangalore (SCCH-16).

2. The Tribunal by its impugned Judgment and Award, awarded a sum of Rs. 4,59,090/- with interest at 8% p.a. from the date of petition till realization on account of the death of deceased late Venkatesh in the road traffic accident fixing the contributory negligence at 40% on the part of the deceased and 60% on the part of the Driver of the BMTC Bus, the claimants have presented this appeal on the ground that the quantum of compensation awarded by the Tribunal is inadequate and requires enhancement and fixing 40% contributory negligence on the part of the deceased cannot be sustained and liable to be set aside.

3. The brief facts of the case of the claimants/appellants on hand are that, the claimant No. 1 is the mother, claimant No. 2 is the wife and claimant No. 3 is the minor daughter of the deceased Venkatesh. They have filed a claim petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs. 25,00,000/- on account of untimely death of deceased Venkatesh in a road traffic

accident contending that on 16.01.2011 at about 11.15 a.m. when the deceased was a pedestrian and crossing Nrupatunga Road in front of Reserve Bank of India from east to west direction towards Marthas Hospital Main Gate, at that point of time, the Driver of the BMTC Bus bearing Registration No. KA-01/F-1646 came from north to south in a high speed and negligent manner without observing traffic rules and regulations and dashed against the deceased. Due to the impact the deceased fell down and sustained multiple fatal injuries. Immediately he was shifted to St. Marthas Hospital where he was declared as dead. It is the case of the appellants that the deceased was a Painter by profession, aged about 24 years and working under one Sri. Anthony Alexander, Painting Works Contractors, Ranga Garden, Ejipura, Bengaluru and drawing salary of Rs. 9,000/- per month and contributing the entire income towards welfare of the family. The entire family was dependent upon the income of the deceased as he was the only earning member in the family. Due to untimely death of deceased, the appellants have undergone mental shock and agony. The claimant No. 2 wife of the deceased is deaf and dumb by birth, the 3rd claimant minor daughter was aged about one year. The wife has lost her life partner, the minor daughter has lost inspiration and guidance of the father and the mother has suffered mental shock and agony due to untimely death of the deceased in the road traffic accident. Taking all these aspects into consideration, they have filed claim petition before the Tribunal under Section 166 of the Motor Vehicles Act, claiming compensation against the respondents.

4. The said matter had come up for consideration before the Tribunal. The Tribunal in turn after due consideration of the oral and documentary evidence and the materials available on record has allowed the claim petition in part by awarding a sum of Rs. 4,59,090/- with interest at 8%p.a. from the date of petition till the date of realization, fixing 40% contributory negligence on the part of the deceased and the remaining 60% on the part of the driver of the BMTC Bus. Being dissatisfied with the impugned Judgment and Award passed by the Tribunal, the appellants herein have presented this appeal seeking enhancement of compensation.

5. It is the submission of the learned Counsel appearing for the appellants, Sri. K. Pradeep Naik, at the outset that, the Tribunal has erred in taking the income of the deceased only at Rs. 5,000/- per month as the deceased was working as a Painter, aged about 24 years and was the only bread earning member in the family and the dependents are wife who is deaf and dumb by birth, minor daughter and mother and the entire family was dependent on the income of the deceased. He further submitted that the accident occurred on 16.01.2011 and therefore, the income of the deceased may be re-assessed atleast at Rs. 10,000/- per month and out of which 1/3rd may be deducted towards personal expenses and the appropriate multiplier applicable is 15 and reasonable compensation be awarded towards loss of dependency and conventional heads. He further prays to reconsider the reasoning given by the Tribunal in paragraphs 10, 11 and 12 of the Judgment, fixing the contributory negligence at 40% on the

part of the deceased and fixing contributory negligence at 40% on the part of the deceased cannot be sustained and is liable to be set aside or modified.

6. As against this, the learned Counsel appearing for the respondent No. 2, Sri. Ravish Benni inter-alia contended and sought to substantiate the impugned Judgment and award passed by the Tribunal stating that the Tribunal was right in fixing the contributory negligence at 40% on the part of the deceased who was not following the Traffic Rules and Regulations and the deceased was on the middle of the road and the deceased was also responsible for causing the accident. Therefore, the Tribunal is justified in fixing 40% contributory negligence on the part of the deceased and the same is after due consideration of entire material available on file and the Tribunal is also justified in awarding just and reasonable compensation and hence, the same does not call for interference by this Court.

7. However, he fairly submitted having regard to the age, avocation and year of accident and after going through the records available on record including the oral and documentary evidence of the parties, that the income of the deceased may be re-assessed and the compensation towards loss of dependency may be redetermined and the impugned judgment and award passed by the Tribunal may be modified in accordance with law.

8. After careful consideration of the submissions of learned Counsel appearing for both the parties and after perusal of the impugned judgment and award passed by the Tribunal, the only point that arise for consideration is:

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

9. The occurrence of accident and the resultant death of deceased in the road traffic accident are not in dispute. Further, it is not in dispute that the deceased was aged about 24 years and working as Painter under the Contractor and getting an income of Rs. 9,000/- per month. Further, the claimants are mother, wife, minor daughter of the deceased, which is also not in dispute. The Tribunal is not justified in assessing the income of the deceased at only Rs. 5,000/- per month on the ground that the appellants have not produced any credible documentary evidence to substantiate the said income. But, the absence of the credible documentary evidence, considering the age, avocation and year of accident being 2011, we have to re-assess the reasonable monthly income of the deceased. Accordingly, we can safely take the income of the deceased at Rs. 7,500/- per month to meet the ends of justice.

10. The claimants are 3 in number and therefore, 1/3rd is to be deducted towards personal expenses, which comes to Rs. 5,000/- p.m. The deceased was aged about 24 years and the appropriate multiplier applicable is 18. Accordingly, we re-determine the compensation towards loss of dependency at Rs. 10,80,000/- (Rs. 5,000/- x 12 x 18) and accordingly awarded.

11. Further, what is emerges from the records available in the file is that, it is not in dispute that mother was aged about 45 years and the wife was aged about 20 years who is deaf and dumb by birth and minor daughter was aged about 2 years. The mother of the deceased is put to mental agony on account of untimely death of her son, wife has lost her life partner at an young age and the minor child has lost the love and affection, inspiration and guidance of its father. Further, in the light of the judgment of this Court in M.F.A. No. 7737/2013 (Smt. Padmavathi and others Vs. Sri. K. Ravichandran and another) disposed of on 25.06.2014 as held in paragraph 20, we deem it fit to award Rs. 1,00,000/- towards loss of consortium, Rs. 30,000/- towards loss of love and affection, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses. In all, the claimants are entitled to a total compensation of Rs. 12,60,000/- as against Rs. 4,59,090/-. There would be enhancement of compensation by a sum of Rs. 8,00,910/-.

12. Further, as rightly pointed out by the learned Counsel appearing for the claimants, that the interest awarded by the Tribunal is on lower side. By following the catena of judgments of Hon"ble Supreme Court and this Court, we deem fit to award interest at the rate of 9% from the date of petition till the date of realization on the enhanced compensation.

13. Regarding the principal submission of the learned Counsel appearing for the appellants that the contributory negligence fixed at 40% on the part of the deceased and substantiated by the learned Counsel appearing for the Insurer, after evaluation of the records, it emerges that the spot sketch, mahazar -Exs.P2 and P3 disclose that there is zebra crossing and after following the traffic rules and regulations the deceased was crossing the road. It further emerges that, the mother of deceased had already crossed the road and the deceased was still crossing the zebra crossing and the driver of the BMTC Bus drove the bus in rash and negligent manner violating the traffic rules and regulations and he dashed against the deceased. This aspect of the matter has not been looked into nor appreciated by the Tribunal and further it emerges that the deceased was at a distance of 10 to 15 meters away from the bus and if the driver of the BMTC had been cautious, he could have stopped the bus and avoided the accident. But unfortunately, the deceased sustained multiple injuries on account of the said accident and immediately he was shifted to St. Marthas Hospital where, he was declared dead.

14. Having regard to the facts and circumstances referred above, after re-appreciation of the oral and documentary evidence specifically Exs.P2 and P3, we hold that there is entire negligence on the part of the driver of the Bus and no contributory negligence on the part of the deceased. Accordingly, it is modified fixing the entire negligence on the part of the driver of the BMTC Bus.

15. Having regard to the facts referred above, the instant appeal filed by the appellants is allowed in part. The impugned Judgment and Award passed by the Tribunal dated 30th June 2012 in M.V.C. No. 998/2011 on the file of the Motor

Accident Claims Tribunal, Bangalore (SCCH-16) is hereby modified awarding Rs. 8,00,910/- with interest at 9% p.a. from the date of petition till realization.

The 2nd respondent - Insurer herein is directed to deposit the enhanced amount with interest at 9% p.a. within a period of three weeks from the date of receipt of copy of this judgment and award.

Out of the enhanced compensation of Rs. 8,00,910/-, Rs. 3,00,000/- with proportionate interest shall be invested in Fixed Deposit in the name of the 2nd appellant Smt. Kavitha - wife of the deceased in any Nationalized or Scheduled Bank or Grameena Bank, for a period of ten years and renewable for another ten years and she is entitled to withdraw the periodical interest accrued on it.

A sum of Rs. 2,50,000/- with proportionate interest shall be invested in Fixed Deposit in the name of 3rd appellant Kum. Sumalatha - minor daughter of the deceased in any Nationalized or Scheduled Bank or Grameena Bank, till she attains the age of 30 years. The appellant No. 2 - mother of the minor daughter is entitled to withdraw the periodical interest accrued on it for the welfare of the appellant No. 3 till she attains the age of 21 years. From 22 years to 30 years, the appellant No. 3 is entitled to withdraw the periodical interest.

A sum of Rs. 1,50,000/- with proportionate interest shall be invested in Fixed Deposit in the name of the 1st appellant Smt. Rajamma @ Mary - mother of the deceased in any Nationalized or Scheduled Bank or Grameena Bank, for a period of five years and renewable for another five years and she is entitled to withdraw the periodical interest accrued on it.

Remaining amount of Rs. 1,00,910/- with proportionate interest shall be released in favour of the appellant Nos. 1 and 2, in equal proportion immediately on deposit by the 2nd respondent -Insurer.

Draw the award, accordingly.