

(2016) 07 KAR CK 0110
In the Karnataka High Court
Case No : MFA 3705 of 2012

Rangappa

APPELLANT

Vs

Kumar

RESPONDENT

Date of Decision : 01-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2017) AAC 529

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : SRI. R. Chandrashekar, Advocate, for the Appellant in MFA 3705 of 2012; Sri. A.N. Krishnaswamy, Advocate, for the Respondent No. 2 in MFA 3705 of 2012; Sri. Shivabasappa Kadli for Sri. A.N. Krishna Swamy, Advocates, for the Appellant in MFA 1355 of 2011;

Final Decision : Disposed Off

Judgement

Mrs. S. Sujatha, J.—Insurance company as well as the claimants are before this court challenging the judgment and order passed by the Motor Accidents Claims Tribunal, Bangalore (Tribunal" for short) in MVC No. 4941/09 dated 28/6/2010.

2. The facts in brief are that on 1/6/2009 when the deceased Puttamma was proceeding as a pillion rider on motor cycle bearing Reg. No. KA-51-H-3650, met with a road traffic accident due to the high speed and rash and negligent driving of the rider of the motor cycle. The deceased fell down and succumbed to the fatal injuries on the way to the hospital. The Tribunal, after appreciating the evidence on record, awarded a total compensation of Rs. 4,98,000/- with interest at 6% p.a.

3. The insurer is before this court inter alia contending that the Tribunal was required to have noticed that the very basis of the claim under Section 166 of the Motor Vehicles Act, 1988, is negligence on the part of the rider of the motor cycle. No iota of material was placed on record by the claimants to indicate that

the rider of the motor cycle was negligent in causing the accident. Owing to inevitable reasons, he had applied brake and the deceased who was sitting as a pillion rider fell down and succumbed to the injuries. In the absence of actionable negligence established by the claimants, the Tribunal erred in fastening the liability on the insurer, indemnifying the owner.

4. The claimants are before this court contending that the compensation awarded by the Tribunal is meager. The Tribunal grossly erred in determining the monthly income of the deceased at Rs. 3,000/-. It is also contended that the compensation awarded under the different heads deserves to be enhanced, in the facts and circumstances of the case.

5. I have heard the learned counsel for the parties and perused the material on record. It emerges that the deceased sustained fatal injuries due to the road traffic accident in question and died on the way to the hospital. The material on record establishes that the accident occurred due to the rash and negligent driving of the rider of the motor cycle. Ex.P2 - mahazar and Ex.P3 - sketch discloses that the rider of the offending bike's negligence was the cause for the accident. Ex.P4 - the IMV report discloses that there was no mechanical defects in the bike. The contents of the inquest report and the postmortem report reflects that the death of the deceased was due to the injuries sustained in the accident. These documents clearly establish that the accident occurred only due to the rash and negligent driving of the rider of the motor vehicle. Hence, the arguments of the learned counsel on the factum of negligence, deserves to be negated.

6. As regards the quantum of compensation awarded by the tribunal, it is imperative to refer to the income of the deceased determined by the tribunal. In the absence of cogent evidence to substantiate the income, the tribunal has adopted the notional income at Rs. 3,000/- p.m.. The accident being of the year 2009, it would be apt to refer to the notional income fixed by this Court and Lok Adalath for the accidents of the year 2009. It would be safely determined at Rs. 5,000/- which is normally adopted for the road traffic accidents of the year 2009. The tribunal having fixed the income at Rs. 3,000/- has not deducted any amount towards the personal expenses" for the reason that the deceased was a coolie residing in a village and she had no expenditure towards her personal and living expenses. However, in the background of the case, though the deceased was a rustic woman, necessarily she would have incurred some amount towards her "personal living expenses". In view of the same, I am of the opinion that 7rd of the amount requires to be deducted towards her personal expenses. Thus applying multiplier of "13", as the deceased was in the age group of 46-50 years with the monthly income of Rs. 5,000/- deducting 7rd towards her personal expenses, loss of dependency" works to Rs. 5,20,000/- It is significant to observe that the compensation awarded under different heads is inadequate. In the light of the date of the accident and the avocation of the deceased vis-a-viz, the number of dependants, in the circumstances, it would be appropriate to

enhance the compensation awarded under the different heads following the law laid down by the Hon''ble Apex Court in the case of Rajbsh v. Rajbir Singh reported in (2013) 9 SCC 54. Accordingly, the compensation awarded by the tribunal is modified as under:-

SI.No.

Heads

Amount in Rs.

1

Loss of dependency

5,20,000/-

2

Loss of love and affection

1,00,000/-

3

Transportation and Funeral expenses

25,000/-

4

Consortium 40,000/-

TOTAL

6,85,000/-

The claimants in MFA No. 3705/2012 shall be entitled to a total compensation of Rs. 6,85,000/- as against Rs. 4,98,000/- awarded by the tribunal. There shall be enhancement of compensation of Rs. 1,87,000/-. The award amount shall carry interest at 6% p.a. from the date of petition till the date of realization by deducting interest for the delayed period of 561 days in filing the appeal.

7. Accordingly, the following order is made:-

1. MFA No. 1355/2011 filed by the Insurance company is dismissed.
2. MFA No. 3705/2012 filed by the appellants-claimants is disposed of in terms of the above.