(2016) 03 KAR CK 0333

In the Karnataka High Court

Case No : M.F.A. No. 3324 of 2013 (MV)

Rathnamma and Others APPELLANT

Vs

Raghu B.G. and Others RESPONDENT

Date of Decision : 24-03-2016

Acts Referred:

Citation : (2016) 03 KAR CK 0333

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : Kalyan R., Advocate, for the Appellant;

Final Decision : Partly Allowed

Judgement

Ram Mohan Reddy, J.—1. Claimants in MVC No. 2344/12 dissatisfied with the quantum of the compensation by judgment and award dated 18/1/2013 of the Motor Accident Claims Tribunal, XX Addl. Small Causes Judge & XVIII ACMM, Bangalore (SCCH-22), for short "MACT", have preferred this appeal for higher compensation.

2. Facts stated briefly are: Dasegowda aged 41 as on 4/9/2011, the date of accident and injury involving the motor vehicle belonging to the 1st respondent and insured by the 2nd respondent, succumbed to grievous injuries on 16/12/2011 leaving behind the appellant No. 1 - widow, appellant No. 2 - son who had attained majority, appellant No. 3 - unmarried minor daughter and appellant No. 4 - aged mother. In the claim petition it was asserted that pursuant to the grievous injuries suffered, deceased was treated at NIMHANS and thereafterwards at Victoria Hospital, Bangalore and then at Government Hospital, Nelamangala, from there at KIMS Hospital, Bangalore and finally at Adichunchanagiri Medical College Hospital, Nagamangala Taluk, where he breathed his last. The deceased, it was said, was an agriculturist, rearing cattle and also carried on business in motor rewinding and earning heftily in almost Rs. 18,000/- p.m. hence claimed compensation of Rs. 15,00,000/-.

3. That petition was opposed by filing written statement of both insured as well as the insurer denying the assertions and allegations. MACT framed issues whereafterwards the 1st claimant was examined as PW-1 and a witness Dr. M. Shivanna as PW-2 and marked 18 documents as Ex. P1 to P18, while for the respondents, none were examined nor documents marked.

4. MACT having regard to the material on record and the evidence, both oral and documentary, returned finding in the affirmative on the 1st issue holding the driver of the offending vehicle, insured by the 2nd respondent, of negligence and partly in the affirmative over the 2nd issue determining compensation of Rs. 8,66,000/- with interest at 6% p.a. and fastened the liability on the 2nd respondent - insurer to make the payment, by the judgment and award impugned.

5. Sri. Kalyan R., learned counsel for the appellants submits that MACT was not justified in reckoning Rs. 6,000/- p.m. as the income of the deceased, regard being had to the fact that PW-1 testified that the deceased an agriculturist, was rearing cattle, carrying on business in motor rewinding, depositing milk in Cooperative Society, earning money from the said sources.

Learned counsel hastens to add that although there was no material as such to establish business in motor rewinding or the number of head of cattle that the deceased was rearing or the total extent of land that was owned by the deceased, nevertheless Ex. P12, the salary certificate issued by the Milk Producer''s Cooperative Society Ltd., Budigere, Turuvekere Taluk did certify earnings of Rs. 18,000/- p.m.

It is next submitted that the deceased having had a fixed income was entitled to addition of 30% of the monthly income towards future prospects to determine loss of dependency.

The next submission of the learned counsel is that MACT awarded frugal compensation towards loss of love and affection, funeral and obsequies ceremonies, loss of consortium and failed to award compensation for conveyance of the deceased while alive, from one hospital to another.

6. Per contra Sri. O. Mahesh, learned counsel for the insurer seeks to sustain the award impugned as being well merited, fully justified and not calling for interference. Learned counsel hastens to add that the MACT having noticed that there was not a title of evidence to establish a fixed income, was justified in not adding future prospects.

7. Having heard the learned counsel for the parties, perused the pleadings, examined the judgment and award impugned and the evidence, both oral and documentary, the only question for decision making is,

"Whether in the facts, circumstances and evidence on record, the MACT was justified in awarding Rs. 8,66,000/- with interest at 6% p. a. as compensation?"

8. In the undisputed facts that the deceased suffered grievous injury on 4/9/2011 and was alive till 16/12/2011, for a period of more than 3 months as an inpatient in 5 hospitals, in different spells, until he breathed his last, appellants must have spent enough money with the hope that deceased would survive and therefore were required to shift him from one hospital to another for which the appellants are entitled to conveyance charges. Deceased was a resident of Mudigere Village of Mavinakere Post, Turuvekere Taluk, Tumkur District and was brought to NIMHANS, Bangalore, thereafterwards to Victoria Hospital, Bangalore and from there to Government Hospital, Nelamangala and then to KIMS Hospital, Bangalore and lastly to Adichunchanagiri Medical College Hospital, Nagamangala Taluk, Mandya District. In that view of the matter, the appellants are entitled to atleast Rs. 30,000/- as conveyance charges.

9. In the absence of relevant material constituting substantial legal evidence of either avocation or income of the deceased, MACT reckoned Rs. 6,000/- as the monthly income of the deceased. Ex. P12, the certificate issued by the Milk Producers Co-operative Society Ltd., Mudigere, Turuvekere Taluk certifying that the deceased earned Rs. 18,000/- p.m. by depositing milk to the society, coupled with the testimony of PW-1, widow, that from cattle rearing, agriculture, motor rewinding and depositing milk, the deceased earned Rs. 18,000/- p.m., when not corroborated, submission of the learned counsel for the appellant that MACT was not justified in reckoning Rs. 6,000/- p.m. as income of the deceased, pales into insignificance. To a question of this court as to what was the total head of cattle reared by the deceased, learned counsel submits that there is no material placed before the MACT. So also there is no material whatsoever to establish the extent of lands the appellant possessed to claim to be an agriculturist. However, it is to be noticed that in the Lok Adalat it is recognized that an able bodied young man, unskilled, will earn atleast Rs. 6,500/- p.m. during the year 2011. The deceased left behind a widow aged 39, son aged 19, an unmarried minor daughter aged 17 and an elderly mother aged 65. If the deceased had to provide for the family, it is probable that he could have earned atleast Rs. 7,000/- p.m. Reckoning Rs. 7,000/-, deducting 1/4th, the monthly loss of dependency is Rs. 5,250/- and to the annual loss of dependency, applying multiplier ''14'' as applicable to age 41 of the deceased, the loss of dependency is Rs. 8,82,000/-.

10. The submission of the learned counsel that future prospects of 30% of Rs. 7,000/- is to be added, since deceased was in the age group 40-50, is upon the reported opinions of the Hon''ble Supreme Court wherein reference is made to salaried persons, self-employed and persons with fixed wages, in which case future prospects could be an addition to the monthly loss of dependency to arrive at total loss of dependency. In the facts and circumstances of the case, it is unnecessary to extract portions of the judgments pointed by the learned counsel for the appellants, suffice it to notice that the notional income of the deceased does not fall within the meaning of "salaried persons, self-employed and persons on fixed wage", to attract addition of future prospects to determine loss of dependency.

11. There is force in the submission of the learned counsel for the appellants that MACT awarded frugal compensation towards loss of consortium for the widow. Regard being had to the decision in Rajesh & Ors. v. Rajvir Singh & Ors. , (2013) 9 SCC 54 wherein the Apex Court observed that atleast Rs. 1,00,000/- is to be awarded towards loss of consortium, it is appropriate to enhance the compensation from Rs. 15,000/- to Rs. 1,00,000/- under the said head.

12. It is no doubt true that the decisions of the Apex Court points to payment of compensation for minors towards loss of care and guidance, love and affection in atleast Rs. 1,00,000/-. In the instant case, the deceased left behind an unmarried minor daughter aged 17 and a son aged 19, on the verge of their teens. In that view of the matter, the minor daughter is entitled to Rs. 75,000/- towards loss of care and guidance and Rs. 25,000/- to the son towards love and affection, in place of Rs. 15,000/- awarded by the MACT. Award of Rs. 10,000/- towards funeral and transportation of dead body in the facts and circumstances is on the lower side and enhancing it to Rs. 25,000/- is just and proper. The award of compensation towards loss of expectancy of life, loss to estate and medical expenses do not call for interference.

13. In the circumstances, the appellants are entitled to the following compensation:

The question formulated supra is answered accordingly.

14. In the result, this appeal is allowed-in-part. The judgment and award impugned is modified entitling the appellants to Rs. 12,07,000/- with interest at 6% p.a. instead of Rs. 8,66,000/- awarded by the MACT, and in all other respects, remains unaltered.