(2012) 08 KAR CK 0343

In the Karnataka High Court

Case No : M.F.A. No. 11410 of 2007 (MV)

Regional Manager, Oriental Insurance Co., Ltd., Regional Office, No. 44/45, Leo Shopping Complex	APPELLANT
Vs	
Smt. Jamuna Rai, T.S. Rai, Smt. Padma Rai and M/s. Bita India Ltd.	RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 08 KAR CK 0343

Hon'ble Judges : S.N. Satyanarayana, J;N.K. Patil, J

Bench : Division Bench

Advocate : A.N. Krishna Swamy, for the Appellant; Shripad.V. Shastri, Advocate for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the Insurer is directed against the judgment and award dated 17th April 2007, passed in M.V.C. No. 6045/2005, by the XII Additional Judge, Member, Motor Accident Claims Tribunal, Bangalore (SCCH-8), (for short, ''Tribunal''), awarding compensation of Rs. 42,52,000/- with interest at 6% per annum, in favour of the claimants/respondents 1 to 3, on the ground that the compensation awarded by Tribunal is on the higher side and is liable to be reduced. The facts in brief are that, claimants are respectively the wife and parents of deceased late Susheel Rai. They filed the claim petition u/s 166 of the Motor Vehicles Act, contending that at about 3:55 P.M, on 27-05-2006, the deceased met with an accident on Ring Road at Kuvempu Circle, due to rash and negligent driving by the driver of offending vehicle bearing Registration No. HR-38/F-6543. Due to the impact, the deceased fell down and sustained grievous injuries and later on succumbed to the same.

2. It is the case of the claimants that, the deceased was hale and healthy prior to the date of accident, which resulted in his death and on account of his untimely

death, they have lost the only source of income, apart from social, moral and financial support permanently and therefore, they have to be compensated reasonably.

3. On account of the death of the deceased, the claimants filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. 60.00 lakhs against the appellant/insurer and another. The said claim petition had come up for consideration before the Tribunal on 17th April 2007. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition, awarding a sum of Rs. 42,52,000/- under different heads, with 6% interest per annum, from the date of petition till the date of deposit. Being aggrieved by the quantum of compensation awarded by the Tribunal, the Insurer is in appeal before this Court, seeking reduction of the same.

4. We have heard the learned counsel appearing for Insurer and the learned counsel for claimants, for considerable length of time.

5. After hearing the learned counsel for the parties and after re-appreciation of the oral and documentary evidence available on file, we do not find any error or material irregularity as such committed by the Tribunal in awarding the compensation of Rs. 42,52,000/- under different heads with interest at 6% per annum, in favour of the claimants, on account of the untimely death of the deceased in the road traffic accident, who was only 30 years old. It is stated that the deceased was initially appointed as a Flying Officer and subsequently promoted as Squadron leader, at the time of accident. It is also evident that the deceased was a brilliant Officer apart from being a sports person, young, energetic, and had a bright career and had he been alive, he would have been promoted periodically to a higher post and his income would have increased to many folds. Looking into all these aspects, the Tribunal, after appreciation of the oral and documentary evidence available on file, has rightly assessed the income of the deceased by taking into consideration the future prospects. It has also rightly deducted 1/3rd towards his personal expenses, as he was a married person. Further, it can be seen that the Tribunal has adopted the multiplier of ''16'' for calculating loss of dependency. But, as per the decision of the Hon''ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the proper multiplier applicable is ''17''. If the same is applied, then the claimants would be entitled to higher compensation towards loss of dependency than what is actually awarded by Tribunal. Further, it can be seen that the Tribunal has awarded only a sum of Rs. 28,000/- towards conventional heads, when in fact, the claimants are entitled to Rs. 45,000/- towards conventional heads as per Sarla Verma''s Case (supra). However, having regard to the peculiar facts and circumstances of the case, coupled with the fact that the Tribunal has considered the future prospects of the deceased, etc, and also the fact that the claimants have not come in cross appeal/cross objection, seeking enhancement of compensation, we are of the view that the compensation awarded towards

loss of dependency as well as under conventional heads is just and proper and it does not call for interference by this Court.

6. Therefore, having regard to the facts and circumstances of the case, we hold that the Tribunal has rightly awarded compensation towards loss of dependency as well as under conventional heads. Hence, interference in the impugned judgment and award passed by the Tribunal is uncalled for. For the reasons stated above, the appeal filed by the appellant/Insurer is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.

The amount, if any, in deposit by the Insurer shall be transmitted to the jurisdictional Tribunal, forthwith.

Office to draw award, accordingly.

