(2015) 07 KAR CK 0091

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7793 of 2014 (MV)

Rehana Easmin and Others — APPELLANT

Vs

The Managing Director, APSRTC and Others — RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 07 KAR CK 0091

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

Bench : Division Bench

Advocate : Sreevidya for T.N. Viswanatha, for the Appellant; D. Vijaya Kumar, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the claimants is directed against the judgment and award dated 29th October 2013, passed in MVC No. 1057/2013, by the VII Additional Judge, Member, Motor Accident Claims Tribunal-3, Court of Small Causes, Bangalore (SCCH-3), (for short, ''Tribunal'') for enhancement of compensation on the ground that, the compensation of Rs. 9,61,000/- awarded in favour of the claimants as against their claim for Rs. 25,00,000/-, is inadequate.

2. The facts in brief are that, the claimants are the wife, minor child and mother of the deceased Zameed Badsa. They filed the claim petition under Section 166 of the Motor Vehicles Act, contending that, at about 8:00 PM, on 26-10-2012, when the deceased Zameed Badsa was proceeding on the Motor Cycle bearing Registration No. KA-01/EZ-3319 on Kasturba Road near Balekundre circle, Bangalore, a APSRTC Bus bearing Registration No. AP-29/Z-2300 being driven by its driver, drove the same at a high speed, in a rash and negligent manner and dashed against the vehicle of the deceased. Due to the impact, the deceased fell down and came under the right rear wheel of the said Bus due to which, the deceased succumbed to the injuries on the way to the Hospital.

3. It is the case of the appellants that, the deceased was aged about 30 years and working as Proprietor cum gold smith of M/s. Rehana Gold Jewellery work, Bangalore, earning Rs. 30,000/-per month 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 29th October, 2013. 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. 9,61,000/- under different heads, with 8% 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 Corporation, for quite some time.

6. Learned counsel appearing for claimants/appellants vehemently submitted that, the Tribunal grossly erred in taking the notional income of the deceased at only Rs. 6,000/- per month. He submits that the deceased was aged about 30 years working as Proprietor cum goldsmith of M/s. Rehana Gold Jewellery Work, Bangalore, earning Rs. 30,000/- per month and he was the sole earning member in the family and the entire family was dependent on the income of the deceased. He further submitted that the wife aged about only 23 years has lost her life companion, the child aged about only one year has lost its father''s love and affection, special guidance and the mother aged about 52 years has lost the security in life. All these aspects of the matter have not been properly looked into or considered or appreciated by the Tribunal. Therefore, he submitted that, reasonable compensation may be awarded towards loss of dependency, by adopting proper multiplier and deducting 1/3rd towards the personal and living expenses of the deceased. He further submitted that the compensation awarded by Tribunal towards conventional heads is also on the lower side and therefore, the impugned judgment and award passed by Tribunal may be modified, awarding just and reasonable compensation towards loss of dependency as also conventional heads.

He further submitted that the rate of interest awarded by Tribunal at 8% p.a. is also on the lower side, for the reason that the accident is of the year 2012 and having regard to the ratio of law laid down by the Hon''ble Apex Court and this Court in catena of decisions, the claimants are entitled to interest of at least 9% to 10% per annum. Therefore, he submitted that rate of interest also may be modified.

7. As against this, learned counsel appearing for Corporation 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.

8. After hearing learned counsel for the parties, and after careful perusal of the judgment and award passed by the Tribunal, 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 Zameed Badsa. It is also not in dispute that the deceased was aged about 30 years and a proprietor and goldsmith of M/s. Rehana Gold Jewellery Work, Bangalore. To substantiate the same, the claimants have produced the notarized copy of Licence issued by Weights and Measures at Ex. P18. But, that does not disclose the exact actual income of the deceased. In the absence of any prove of income, notional income of the deceased is assessed at Rs. 6,000/- per month by the Tribunal. The same in our view is on the lower side. Having regard to the age, avocation, year of accident and also the documentary evidence produced by claimants at Ex. P18, we re-assess the income of the deceased at Rs. 10,000/- per month, to meet the ends of justice. Further, as the dependents are three in number, we deduct 1/3rd towards personal expenses of the deceased. Accordingly, If 1/3rd (i.e. Rs. 3,333/-) is deducted from Rs. 10,000/- towards his personal and living expenses, the net income would be Rs. 6,667/- per month. Further, it is stated that the deceased was aged about 30 years as on the date of accident. Therefore, for the said age, the proper multiplier applicable is ''17'' as per the decision of the Hon''ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 as rightly adopted by Tribunal. Thus, the compensation towards loss of dependency would work out to Rs. 13,60,068/- (i.e. Rs. 6,667/- x 12 x'' 17'') as against Rs. 8,16,000/- awarded by Tribunal.

10. Further, the Tribunal has erred in not awarding reasonable compensation towards conventional heads. In the light of the judgment of the Hon''ble Apex Court and this Court in catena of decisions and also considering the fact that the wife was aged only 23 years and minor son was aged only one year, we award a sum of Rs. 1,00,000/- towards loss of consortium as against Rs. 50,000/-; Rs. 25,000/- towards loss of estate as against Rs. 30,000/- and Rs. 30,000/- towards loss of expectancy; Rs. 75,000/- towards loss of love and affection at the rate of Rs. 25,000/- to each claimant as against Rs. 20,000/- and Rs. 25,000/- towards transportation of dead body and funeral expenses as against

Rs. 15,000/- awarded by Tribunal. Thus, the total compensation payable to claimants works out to Rs. 15,85,068/- as against Rs. 9,61,000/- awarded by the Tribunal. There would be enhancement of compensation by a sum of Rs. 6,24,068/-.

11. Further, learned counsel appearing for claimants vehemently submitted that the rate of interest awarded by Tribunal at 8% p.a. is also on the lower side as the accident has occurred on 26-10-2012. 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.

12. As rightly pointed out by learned counsel appearing for claimants, the rate of interest at 8% per annum awarded by Tribunal is on the lower side, as the accident has occurred on 26-10-2012. 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 29th October 2013, passed in MVC No. 1057/2013, by the VII Additional Judge, Member, Motor Accident Claims Tnbunal-3, Court of Small Causes, Bangalore (SCCH-3), is hereby modified, awarding a sum of Rs. 15,85,068/- as against Rs. 9,61,000/- 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. 6,24,068/- with 9% interest per annum from the date of petition till the date of realization, excluding interest for the delayed period of 279 days in filing the appeal.

The Corporation is directed to deposit the enhanced compensation of Rs. 6,24,068/-, with interest thereon at 9% per annum, within three weeks from the date of receipt of copy of the judgment, excluding interest for the delayed period of 279 days in filing the appeal.

Immediately on such deposit by the Corporation, a sum of Rs. 2,00,000/- 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 fifteen years, renewable by ten years, with liberty reserved to her to withdraw the periodical interest.

A sum of Rs. 2,00,000/- with proportionate interest shall be invested in the name of second appellant - minor son of deceased, in Fixed Deposit, in any scheduled/ Nationalized/Grameena Bank, till he attains the age of 30 years, with liberty reserved to the appellant No. 1 to withdraw the periodical interest till he attains the age of 21 years and from 22 years to 30 years, the appellant No. 2 is entitled to withdraw the interest periodically.

A sum of Rs. 1,00,000/- with proportionate interest shall be invested in the name of third 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. 1,24,068/- with proportionate interest shall be released in favour of the appellant Nos. 1 and 3, in equal proportion, immediately.

Office to draw award, accordingly.