(2015) 04 KAR CK 0070

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 357 of 2013 (MV)

Renuka and Others APPELLANT

Vs

Leeway Logistics Ltd. and Others RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 04 KAR CK 0070

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

Bench : Division Bench

Advocate : K. Ramegowda, for the Appellant

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.

1. Though this matter is posted today for orders, with the consent of learned counsel appearing for both the parties, the same is taken up for final disposal.

This appeal by the appellants-claimants is directed against the impugned judgment and award dated 10/08/2012, passed in MVC No. 2531/2011, by the I Additional Small Causes Judge and Motor Accident Claims Tribunal, Bangalore (SCCH-11), (hereinafter referred to as ''Tribunal'' for short), for enhancement of compensation., on the ground that, a sum of Rs. 4,36,000/- awarded by the Tribunal under different heads with interest at 6% per annum from the date of petition till realization, as against the claim Rs. 60,00,000/-, on account of the death of the deceased Sri. A.H. Somashekar, in the road traffic accident is inadequate.

2. In brief, the facts of the case are:

"The appellants are the wife, children and mother of the deceased. They filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the respondents, on account of the death of the deceased in the road traffic accident, contending that, on 20.3.2011 at about 10.30 p.m. the deceased along with two others had been to Bhuvanahalli and when they came near Jodigatte-Herehalli gate on NH4, Hassan District, at that time, the driver of vehicle bearing Reg. No. KA.03.D.7597 was driving the same in a rash and negligent manner, suddenly, a cattle came across the road, in order to avoid the cattle, he took turn of the vehicle, as a result, the vehicle dashed against the bridge by the side of the road and caused the accident. Due to which, deceased sustained grievous injuries. Immediately, he was shifted to Hassan Hospital where he died due to the injuries sustained in the accident."

3. It is the further case of the appellants that, deceased was aged about 47 years, hale and healthy prior to the accident, working as a Senior Manager at M/s. VRL Logistics Limited, Bangalore, and drawing the salary of Rs. 21,000/- per month and also getting agricultural income of Rs. 10 to 15 thousand and looking after the welfare of the family by contributing his entire earnings to the family. Due to his untimely death, wife has lost her husband, children are deprived of the love and affection, guidance and security of their father and mother has lost her son, suffered financial loss as they have lost their bread earner, apart from mental shock and agony.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petition in part and awarded the compensation of Rs. 4,36,000/- under different heads with interest at 6% p.a., from the date of petition till realization.

5. Being dis- satisfied with the quantum of compensation awarded by the Tribunal, the appellants have presented this appeal, for enhancement of compensation.

6. We have heard the learned counsel appearing for the appellants and learned counsel for Insurer.

7. The submission of the learned counsel appearing for the appellants, at the outset is that, the Tribunal has erred in assessing the income of the deceased only at Rs. 4,500/- per month without accepting the salary certificate produced by the appellants at Ex. P10, which shows that he was drawing the salary of Rs. 21,000/- per month as he was working as a Senior Manager in M/s. VRL Logistics, Bangalore, on the sole ground that, appellants have not produced any statements of accounts or examined the author of the said document and therefore, he submitted that the income of Rs. 4,500/- assessed by the Tribunal is on the lower side and is liable to be enhanced. To substantiate the said submission, learned counsel appearing for appellants placing reliance on the Statements of Accounts of the deceased from 1.2.2008 to 1.9.2014 issued by Shamara Vitthal Co-operative Bank Limited, Chamarajpet, which was produced by him along with a memo dated 16.4.2015, has submitted that, a sum of Rs. 19,987/- and Rs. 20,686/- have been credited to his account for the month of

February 2011 and March 2011 from VRL Logistics which establish beyond all reasonable doubt that he was getting that much amount as his salary. Therefore, he submitted that, income of the deceased as shown in Ex. P10-Salary Certificate may be accepted and reasonable amount may be awarded towards loss of dependency after deducting 1/4th towards personal expenses and adopting T3'' multiplier. Further, he submits that, the compensation awarded by the Tribunal towards conventional heads is on the lower side and is liable to be enhanced. Therefore, he submitted that the impugned judgment and award is liable to be modified by awarding reasonable compensation towards loss of dependency and towards conventional heads.

8. As against this, learned counsel, appearing for the Insurer, inter-alia, contended and substantiated that the compensation awarded by the Tribunal is just and proper and after due appreciation of the oral and documentary evidence available on file and therefore, it does not call for interference. However, after going through the statement of accounts of the deceased issued by the Shamarao Vithal Co-operative Bank Limited, Chamarajpet, which was produced by the learned counsel appearing for appellant along with the memo, he has submitted that, the same may be considered and the income of the deceased may be reassessed in accordance with law.

9. After hearing learned counsel appearing for the parties and after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

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

10. The occurrence of the accident and the resultant death of the deceased are not in dispute. It is the case of the appellants that deceased was aged about 47 years, hale and healthy prior to the accident, working as a Senior Manager in M/s. VRL Logistics and drawing the salary of Rs. 21,000/- per month as per Ex. P10-Salary certificate, in support of which, they have produced the Statements of Account of the deceased from 1.2.2008 to 1.9.2014 issued by the Shamarao Vithal Co-operative Bank Limited, Chamarajpet. We accept Ex. P10, specifically, in view of the entries made on 7.2.2011 and 7.3.2011 as per Statement of Accounts and assess the income of the deceased at Rs. 21,000/- per month instead of Rs. 4,500/- assessed by the Tribunal. The dependants are his wife, children and mother. On account of untimely death of the deceased, appellant No. 1, wife, aged about 32 years has lost her husband, appellant Nos. 2 and 3, who are aged about 17 and 15 years are deprived of the love and affection, guidance and security of their father and appellant No. 4, ther has lost her son. Out of the income of Rs. 21,000/- per month, if Rs. 200/- is deducted towards profession tax, his net monthly income comes to Rs. 20,800/-. Out of which, if 1/4th (Rs. 5,200/-) is deducted towards the personal and living expenses of the deceased since there are four dependants, his net income comes to Rs. 15,600/- per month. The appropriate multiplier applicable is T3'' since the deceased was

aged about 47 years instead of ''11'' adopted by the Tribunal. Therefore, we redetermine the loss of dependency at Rs. 24,33,600/- (Rs. 15,600/- x 12 x 13) instead of Rs. 3,96,000/- as awarded by the Tribunal and accordingly, it is awarded.

11. Having regard to the facts and circumstances of the case as stated above and in the light of the judgment of the Apex Court and this Court, we award a sum of Rs. 1,00,000/- towards loss of consortium, Rs. 40,000/- towards; loss of love and affection at the rate of Rs. 10,000/- each to the appellant Nos. 1 to 4, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses instead of Rs. 40,000/- awarded by the Tribunal.

In all, the appellants are entitled to the total compensation of Rs. 26,23,600/- instead of Rs. 4,36,000/- awarded by the Tribunal. There would be an enhancement of Rs. 21,87,600/- with interest at 6% p.a., from the date of petition till its realization.

12. For the foregoing reasons, the appeal filed by the appellants is allowed in part. The impugned judgment and award dated 10/08/2012, passed in MVC No. 2531/2011, by the I Additional Small Causes Judge and Motor Accident Claims Tribunal, Bangalore (SCCH-11), is hereby modified, awarding a sum of Rs. 21,87,600/- with interest at 6% p.a., from the date of petition till its realization, in addition to the compensation awarded by the Tribunal.

The Insurer is directed to deposit the enhanced compensation of Rs. 21,87,600/- with interest at 6% p.a., from the date of petition till the date of realization within a period of three weeks from the date of receipt of a copy of this judgment.

Immediately on deposit by the Insurer, out of the enhanced compensation of Rs. 21,87,600/-, a sum of Rs. 5,00,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled or Grameena Bank, in the name of appellant No. 1 for a period of ten years and renewable by another ten years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

A sum of Rs. 5,00,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled or Grameena Bank, in the names of each of the appellant Nos. 2 and 3 till they attain 30 years, with liberty reserved to them to withdraw the interest accrued on it, periodically.

A sum of Rs. 3,00,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Grameena Bank, in the name of appellant No. 4 for a period of five years and renewable by another five years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

The remaining sum of Rs. 3,87,600/- with proportionate interest shall be released in favour of the appellant Nos. 1 and 4 in equal proportion immediately.

Draw the award, accordingly.

