

(2010) 04 KAR CK 0193

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1470 of 2005

Renuka and Others

APPELLANT

Vs

United India Insurance Co. Limited and Another

RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) ACJ 1162 : (2011) 1 KarLJ 45 : (2011) 8 RCR(Civil) 2488 : (2011) 2 TAC 426

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

Bench : Division Bench

Advocate : Shripad V. Shastri, for the Appellant; A.M. Venkatesh, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the claimants is directed against the impugned common judgment and award dated 26th, August, 2004, passed in M.V.C. No. 2996 of 1998, by the Member, Principal Motor Accident Claims Tribunal and Chief Judge, Court of Small Causes, Bangalore (SCCH-1) (for short, Tribunal") for enhancement of compensation, on the ground that, the compensation of Rs. 8,40,000/- with 6% interest, awarded in favour of the claimants as against their claim for Rs. 28.00 lakhs, is inadequate.

2. The Appellant 1 is the wife, Appellant 2 is the son and Appellants 3 and 4 are the parents of deceased Late Sri D.R. Narasimha Murthy. They filed the claim petition u/s 166 of the Motor Vehicles Act, 1988 contending that during midnight, on 4-5-1998, when the deceased was travelling in the Car driven by one P. Murugesh, towards Kunigal side on B.M. Road, Mallaghatta Village, within the jurisdiction of Kunigal Police Station, slowly and cautiously, observing all traffic norms, at that time, a Tanker Lorry bearing No. HR-38/A-1247, came from opposite direction of the said road, at very high speed, in a rash and negligent manner and dashed against the said car. Due to the impact, deceased sustained grievous injuries and succumbed to the same. It is the further contention of the

Appellants that the deceased, at the time of his death, was aged about 35 years and working as Educational Inspector at BEO Office at Nagamangala, drawing salary of Rs. 6,757/- per month. He was hale and healthy prior to the date of accident and was the sole bread winner in the family. In view of the untimely death of the deceased, the Appellants have lost both social and financial security and are in great distress and therefore, they have to be compensated reasonably.

3. On account of the death of the deceased, the Appellants filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. 28.00 lakhs against the Respondents. The said claim petition had come up for consideration before the Tribunal on 26th August, 2004. 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. 8,40,000/- under different heads, with 6% 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.

4. We have heard learned Counsel for Appellants and learned Counsel for Insurance Company for considerable length of time.

5. The principal submission canvassed by the learned Counsel appearing for Appellants is that, the Tribunal has erred in not awarding reasonable compensation towards loss of dependency. To substantiate the said stand, he took us through the judgment of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and submitted that, apart from the salary of the deceased, 50% of the salary has to be added to the salary of the deceased in respect of loss of future prospects, for calculating the compensation payable towards loss of dependency, since the deceased was a Government Servant, having permanent job and was aged between 30 and 40 years. Therefore, he submitted that the impugned judgment and award is liable to be modified by awarding reasonable compensation towards loss of dependency as also under the conventional heads.

6. As against this, learned Counsel appearing on behalf of Insurance Company sought to justify the impugned judgment and award passed by Tribunal. However, after going through the judgment of the Apex Court in Smt. Sarla Verma's case, he fairly submitted that, the matter requires reconsideration and that just and reasonable compensation may be awarded in the light of the aforesaid judgment.

7. After hearing learned Counsel for the parties, after careful perusal of the judgment and award passed by the Tribunal and after going through the original records made available on file apart from going through the aforesaid judgment of the Apex Court, we are of the considered opinion that the Tribunal has grossly erred in arriving at a sum of Rs. 8,10,000/- towards loss of dependency. Admittedly, the deceased was aged about 35 years and working as Educational

Inspector, drawing salary of Rs. 6,757/- per month. Out of the said sum, a sum of Rs. 100/- is to be deducted towards professional tax. The income comes to Rs. 6,657/- per month. Having regard to the age of the deceased being 35 years and the fact that he was a permanent employee, 50% of the said salary has to be added in view of the Apex Court judgment in Smt. Sarla Verma's case. If 50% (Rs. 3,328.50) is added to Rs. 6,657/-, the total net income comes to Rs. 9,985.50 per month. From that income, a sum of Rs. 1,000/- is to be deducted towards income tax. After such deduction, the net income comes to Rs. 8,985.50 per month. From the said income, having regard to the number of dependents, being four, 1/4th (Rs. 2,246/-) has to be deducted towards personal and living expenses of the deceased. After deducting the same, the net income comes to Rs. 6,739.50 per month. The proper multiplier applicable in this case, as per the decision of the Apex Court in Smt. Sarla Verma's case is, "16". Accordingly, we re-determine compensation payable towards loss of dependency is Rs. 12,93,984/- (i.e. Rs. 6,739.50 x 12 x "16") as against Rs. 8,10,000/- awarded by Tribunal.

8. Further, the Tribunal also erred in not awarding reasonable compensation under the conventional heads and not awarded any compensation towards loss of estate and loss of love and affection. The deceased has left behind his wife, son and parents. Therefore, having regard to the facts and circumstances of the case, we award a sum of Rs. 10,000/- towards loss of love and affection; Rs. 10,000/- towards loss of life expectancy/loss of estate and a sum of Rs. 10,000/- towards loss of consortium as against Rs. 20,000/- awarded by Tribunal.

9. However, a sum of Rs. 10,000/- awarded by Tribunal towards transportation of dead body and funeral expenses is just and reasonable and it does not call for interference.

10. 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 common judgment and award dated 26th August, 2004, passed in M.V.C. No. 2996 of 1998, by the Member, Principal Motor Accident Claims Tribunal and Chief Judge, Court of Small Causes, Bangalore (SCCH-1), is hereby modified, awarding a sum of Rs. 13,33,984/- as against Rs. 8,40,000/- awarded by the Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition, till the date of realisation. The break-up is as follows :

Towards Loss of Dependency Rs. 12,93,984/-

Towards Loss of love and affection Rs. 10,000/-

Towards Loss of estate/loss of expectancy Rs. 10,000/-

Towards loss of consortium Rs. 10,000/-

Towards transportation of dead body and funeral expenses Rs. 10,000/-

Total Rs. 13,33,984/-

The Insurance Company is directed to deposit the enhanced compensation of Rs. 4,93,984/-, with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment and award.

Immediately on such deposit by the Insurance Company, out of the enhanced compensation of Rs. 4,93,984/-, a sum of Rs. 2,50,000/- with proportionate interest, in the name of first Appellant-wife of deceased, Rs. 1,00,000/- with proportionate interest in the name of the second Appellant-son of the deceased, a sum of Rs. 50,000/- with proportionate interest in the name of each of Appellants 3 and 4 parents of deceased, shall be kept in Fixed Deposit, in any Nationalised or Scheduled Bank, for a period of five years and renewable by another five years with liberty reserved to them to withdraw the interest periodically.

The remaining sum of Rs. 43,984/- with proportionate interest shall be released in favour of all the Appellants, in equal proportion, immediately.

Office to draw award, accordingly.