(2015) 10 KAR CK 0175

In the Karnataka High Court

Case No : M.F.A. No. 176 of 2014 (MV)

Renuka Bai and Others — APPELLANT

Vs

K. Rajesh Nayak and Others — RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 10 KAR CK 0175

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : Thimmappa Naik for Aruna Shyam M. for Dharmashree Associates, for the Appellant; Vishwanath Poojary K., Advocate, 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 22nd November 2013, passed in MVC No. 461/2011, by the Additional Senior Civil Judge & Member, Motor Accident Claims Tribunal, Puttur, D.K., (for short, ''Tribunal'') for enhancement of compensation on the ground that, the compensation of Rs. 9,76,000/- awarded in favour of the claimants as against their claim for Rs. 40,00,000/-, is inadequate.

2. The facts in brief are that, the claimants are the wife, minor son and mother of the deceased Shankar Naik. They filed the claim petition under Section 166 of the Motor Vehicles Act, contending that, at about 1:45 hours, on 10-01-2011, when the deceased Shankara Naik was going on his Motor cycle bearing Registration No. KA-21/H-7843 from Uppinanagady towards Nellyady on NH-48 at Gandhi Park, near Hirebandady junction, a Goods Tempo bearing Registration No. KA-21/6375 came at a high speed, in a rash and negligent manner and dashed against said motor cycle, as a result of which, he sustained grievous injuries. Immediately after the same, he was shifted to Adarsha Hospital, Puttur for treatment, where the Doctor declared that the deceased was dead due to grievous injuries sustained in the road traffic accident.

3. It is the case of the appellants that, the deceased was aged about 35 years and working as Teacher in Government School, earning a sum of Rs. 20,000/- 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 22nd November, 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. 9,76,000/- 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.

5. We have gone through the grounds urged in the memorandum of appeal and heard the learned counsel appearing for appellants and also the learned counsel appearing for second respondent/Insurer, for quite some time.

6. Learned counsel appearing for claimants/appellants vehemently submitted that, the Tribunal grossly erred in taking the income of the deceased at only Rs. 8,000/- per month. He submits that the deceased was aged about 35 years and working as a Teacher in Government School, drawing salary of Rs. 19,283/- per month as per Ex. P8, Salary Certificate. But, disbelieving the same, the Tribunal, without any basis and justification, has assessed the income of the deceased at only Rs. 8,000/- per month. The same is liable to be re-assessed. 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.

Further, he submitted that the rate of interest awarded by Tribunal at 6% p.a. is also on the lower side as the accident has occurred on 10-01-2011. 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.

7. As against this, learned counsel appearing for second respondent/Insurer 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.

However, after going through the original records available, particularly the salary Certificate produced at Ex. P8, at ink page 63 of the original records and also the oral evidence of PW3, headmaster of the School, he fairly submitted that, reasonable enhancement may be made in accordance with law.

8. After hearing learned counsel for the parties, and after careful perusal of the judgment and award passed by the Tribunal including the original records placed before us, 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 Shankara Naik. It is stated that the deceased was aged about 35 years. But, as per Post Mortem report, the deceased was aged about 36 years. The Tribunal has after critical evaluation of the oral and documentary evidence available on file, has assessed the age of the deceased as 36 years. The same being just and proper, we also accept the same. Further, it is not in dispute that the deceased was working as a Teacher in Government School. To substantiate the monthly income, the claimants have produced Ex. P8, Salary Certificate for the month of December 2010, which is the latest as the deceased died in the month of January 2011. It reveals that the deceased was drawing gross salary of Rs. 19,283/- per month. In support of the same, the claimants have also adduced the evidence of PW3, the Head Master, who has stated that the deceased was working in their School and drawing the said sum. The claimants are none other than the wife, aged about 31 years and she has lost her life companion, the minor child aged about 11 years has lost the love and affection, special guidance and inspiration in life and the mother, aged about 60 years has lost the social, financial and moral security at this age and all the three persons were entirely dependent on the income of the deceased and on account of his untimely and unnatural death, they have lost the sole bread earner in the family and they are in total distress and financial crisis.

10. As per Ex. P8, Salary Certificate issued for the month of December 2010, immediately preceding the date of death of deceased, we accept the same. It reveals that the deceased was drawing salary of Rs. 19,283/- per month. From this, if professional tax of Rs. 200/- is deducted, the net income would be Rs. 19,083/-. As the dependents are three in number, we deduct 1/3rd towards personal expenses of the deceased. Accordingly, If 1/3rd (i.e. Rs. 6,361/-) is deducted from Rs. 19,083/- towards his personal and living expenses, the net income would be Rs. 12,722/- per month. Further, we have already upheld the assessment of age of the deceased by the Tribunal as 36 years. Therefore, for the said age, the proper multiplier applicable is ''15'' as per the decision of the Hon''ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport

Corporation and Another, as rightly adopted by Tribunal. Thus, the compensation towards loss of dependency would work out to Rs. 22,89,960/- (i.e. Rs. 12,722/- x 12 x''15'') as against Rs. 9,60,120/- awarded by Tribunal.

11. Further, the Tribunal has erred in not awarding reasonable compensation towards conventional heads also. In the light of the judgment of the Hon''ble Apex Court and this Court in catena of decisions, we award a sum of Rs. 1,00,000/- towards loss of consortium as against Rs. 5,000/-; Rs. 25,000/- towards loss of estate as Tribunal has not awarded any compensation under this head, Rs. 75,000/- towards loss of love and affection at the rate of Rs. 25,000/- to each claimant as the Tribunal has not awarded any compensation under this head and Rs. 25,000/- towards transportation of dead body and funeral expenses as against Rs. 10,000/- awarded by Tribunal. Thus, the total compensation payable to claimants works out to Rs. 25,14,960/- as against Rs. 9,76,000/- awarded by the Tribunal. There would be enhancement of compensation by a sum of Rs. 15,38,960/-.

Further, as rightly pointed out by learned counsel appearing for claimants, the rate of interest at 6% per annum awarded by Tribunal is on the lower side, as the accident has occurred on 10-01-2011. 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.

12. 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 22nd November 2013, passed in MVC No. 461/2011, by the Additional Senior Civil Judge & Member, Motor Accident Claims Tribunal, Puttur, D.K., is hereby modified, awarding a sum of Rs. 25,14,960/- as against Rs. 9,76,000/- 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. 15,38,960/- with 9% interest per annum from the date of petition till the date of realization.

The second respondent/Insurance Company is directed to deposit the enhanced compensation of Rs. 15,38,960/-, with interest thereon at 9% per annum, within three weeks from the date of receipt of copy of the judgment.

Immediately on such deposit by the Insurance Company, a sum of Rs. 5,00,000/- 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 fifteen years, with liberty reserved to her to withdraw the periodical interest.

A sum of Rs. 5,00,000/- 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 appellant No. 1/mother and natural guardian to withdraw the periodical interest for his welfare till he attains the age of 21 years and from 22 years to 30 years, appellant No. 2 is entitled to withdraw the periodical interest.

A sum of Rs. 3,00,000/- 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 five years, renewable by five years, with liberty reserved to her to withdraw the periodical interest.

Remaining sum of Rs. 2,38,960/- with proportionate interest shall be released in favour of the appellant Nos. 1 and 3, in equal proportion, immediately.

Office to draw award, accordingly.

