

(2015) 10 KAR CK 0039

In the Karnataka High Court

Case No : MFA Nos. 10330 and 9448/2013 (MV)

Roopa M.C. and Others

APPELLANT

Vs

Hanumanthaiah C. and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Citation : (2015) 10 KAR CK 0039

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Kalyan R., Advocate, for the Appellant

Judgement

B. Manohar, J.—These two appeals are filed both by the claimant as well as the Insurance Company challenging the judgment and award dated 8th August 2013 made in MVC No. 5298/2012 passed by the Motor Accidents Claims Tribunal, Bangalore (hereinafter referred to as "the Tribunal" for short).

2. MFA No. 10330/2013 is filed by the claimant, being not satisfied with the quantum of compensation awarded by the Tribunal, whereas MFA No. 9448/2013 has been filed by the Insurance Company challenging the very same award, wherein the Tribunal has added 50% towards future prospects; deducted 1/3rd towards personal expenditure and applying the multiplier 18, awarded the compensation of Rs. 10,80,000/- towards loss of dependency and also on other conventional heads.

3. Since the judgment and award passed by the Tribunal is challenged in these two appeals, both the appeals are clubbed together and passed the common order.

4. The claimant filed the claim petition contending that her husband deceased Girish was proceeding in a Hero Honda motorbike bearing registration No. KA-02/HQ-6740 on Tavarekere main road, near Paper Factory, a Honda Activa bearing registration No. KA-02/HG-338 came with high speed in a rash and negligent manner and dashed against the motor bike of the husband of the claimant. As a

result of which, husband of the claimant fell down and sustained grievous injuries and died on the spot. She claims that, at the time of death, her husband was aged about 24 years and working as a Mestri in plumbing work. He used to undertake private plumbing work and 5-6 persons were working under him. She claimed that the deceased husband was earning Rs. 20,000/- p.m. Within a few months after her marriage, she lost her husband. Hence she sought for compensation of Rs. 20,00,000/-.

5. Respondents 1 and 2 entered appearance. The first respondent filed the written statement denying the allegation with regard to rash and negligent riding of the motor bike and contended that due to the negligence on the part of the deceased himself, the accident had occurred and sought for dismissal of the claim petition.

6. The second respondent-insurer filed statement of objections denying the averments made in the claim petition and also contended that there is no negligence on the part of the rider of the Honda Activa motorcycle and he was not having valid driving license as on the date of accident. Hence the insurer is not liable to compensate the claimant and sought for dismissal of the claim petition as against the insurer.

7. On the basis of the pleadings of the parties, the Tribunal framed necessary issues. The claimant in order to prove her case examined herself as P.W. 1 and also examined one eye witness as P.W. 2 and got marked the documents as Ex. P1 to Ex. P.23. On behalf of the respondents none of the witnesses were examined nor has any document been marked.

8. On the basis of the pleadings of the parties, oral and documentary evidence let in by the parties, the Tribunal held that due to the rash and negligent riding of the Honda Activa motorcycle, the accident occurred and the husband of the claimant died on the spot. Hence the claimant is entitled for compensation. With regard to quantum of compensation is concerned, though it was claimed that the deceased was earning Rs. 20,000/- p.m. no document has been produced in this regard. Though the salary certificate issued by Maruthi Security and Allied Services have been produced to show that the deceased was working as a plumber and getting salary of Rs. 8,000/- p.m., the Proprietor of Maruthi Security and Allied Services has not been examined to prove the salary certificate. In view of that, taking into consideration income of the deceased at Rs. 5,000/- p.m.; adding 50% towards future prospects; deducting 1/3rd towards personal expenditure and applying the multiplier 18, the Tribunal has awarded a sum of Rs. 10,80,000/- towards loss of dependency; Rs. 1,00,000/- towards loss of consortium; Rs. 5,000/- towards loss of love and affection; Rs. 25,000/- towards funeral and transportation of dead body. In all, Rs. 12,10,000/- was awarded with interest at the rate of 6% p.a. from the date of petition till its realization. The claimant being not satisfied with the quantum of compensation awarded by the Tribunal taking the salary of deceased at Rs. 5,000/- p.m. filed MFA No. 10330/2013. On the other hand, the Insurance Company being

aggrieved by the exorbitant compensation awarded taking into consideration the future prospects to an extent of 50% of the salary filed MFA No. 9448/2013.

9. I have carefully considered the arguments addressed by the learned counsel for the parties, perused the judgment and award, oral and documentary evidence and other relevant records.

10. The occurrence of the accident, the actionable negligence on the part of the rider of the offending vehicle and avocation of the deceased are not in dispute. The dispute is only with regard to the income earned by the deceased as well as the quantum of compensation. The claimant claimed that the deceased was working as a Plumber; earning more than Rs. 20,000/- p.m. Apart from working in Maruthi Security and Allied Services, he was doing private plumbing work appointing 5-6 persons under him. However, to substantiate the said contention, no document has been produced. Though the salary certificate Ex. P21 was produced, the author of the said salary certificate has not been examined. In view of that, the Tribunal has taken the income of the deceased at Rs. 5,000/- p.m. and added 50% towards future prospects; deducting 1/3rd towards personal expenditure awarded a sum of Rs. 10,80,000/- towards loss of dependency. The grievance of the insurer is that awarding future prospects to an extent of 50% of the salary of deceased is contrary to law. The reliance placed on the judgment of the Hon'ble Supreme Court reported in Rajesh and Others Vs. Rajbir Singh and Others, is pending consideration before the larger bench. Hence, the judgment and award passed by the Tribunal is not sustainable in law.

11. Admittedly, the accident occurred on 6-8-2012. At the time of accident, the deceased was aged about 24 years, he was working as a plumber in Maruthi Security and Allied Services. The claimant also claims that her husband was undertaking private plumbing work by appointing 5-6 person under him. There was lot of demand for the plumbers in a City like Bengaluru. Usually plumbers would earn more than Rs. 300/- per day. Even though the claimant has not examined the author of Ex. P21 i.e. salary certificate, the income of the deceased can be taken as Rs. 7,000/- p.m. since the accident is of the year 2012. Deducting 1/3rd towards his personal expenditure, the claimant is entitled to a sum of Rs. 10,08,000/- (84000-28000 : 56000 x 18) towards loss of dependency. Further the claimant is entitled to a sum of Rs. 1,00,000/- towards consortium; Rs. 25,000/- towards transportation of dead body; Rs. 25,000/- towards loss of estate; Since the claimant lost her husband's love and affection within a period of 2 1/2 months of her marriage, she is entitled to a sum of Rs. 25,000/- towards loss of love and affection of her husband. Hence, the claimant is entitled for compensation of Rs. 11,83,000/- as Against Rs. 12,10,000/- awarded by the Tribunal with interest at 6% p.a. Hence, I pass the following:

"ORDER

MFA No. 10330/2013 filed by the claimant seeking enhancement of compensation is dismissed. MFA No. 9448/2013 filed by the Insurance Company

is partly allowed. The judgment and award dated 08-08-2013 made in MVC No. 5298/2012 is modified. The claimant is entitled for compensation of Rs. 11,83,000/- as against Rs. 12,10,000/- awarded by the Tribunal."

The amount in deposit be transferred to MACT, Bengaluru.