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(2015) 09 KAR CK 0357

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3702/2013 (MV)

Roopa T.S. and Others APPELLANT

Vs

The New India Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 09 KAR CK 0357

Hon'ble Judges : N.K. Patil, J;P.S. Dinesh Kumar, J

Bench : Division Bench

Advocate : P. Suresh, for the Appellant; G.N. Rajendra, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J—Though this appeal is posted for Orders, with the consent of the learned Counsel appearing for both the parties, the same is taken up for final disposal.

2. This appeal is by the claimants directed against the impugned judgment and award dated 11th November 2011 passed in M.V.C. No. 8299/2010 on the file of the XVIII Additional Judge, Court of Small Causes and Member, M.A.C.T.-4 (SCCH-4), Bangalore (hereinafter referred to as ''Tribunal'' for short). The Tribunal by its impugned Judgment and Award, awarded a sum of Rs. 6,06,072/- with interest at the rate of 6% p.a. from the date of petition till the date of realization on account of the death of the deceased Late Sri. Venkatesh in the road traffic accident. The claimants have filed this appeal on the ground that the quantum of compensation and the rate of interest awarded by the Tribunal is inadequate and requires enhancement, by modifying the impugned Judgment and Award passed by the Tribunal.

3. The brief facts of the case on hand are that, the appellant No. 1 is the wife, appellant No. 2 is the minor daughter and appellant No. 3 is the mother of the

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deceased. They have filed a claim petition under Section 166 of the Motor Vehicles Act, claiming compensation against the respondents on account of untimely death of the deceased in the road traffic accident that occurred on 7.11.2011 at about 3.00 p.m. contending that, when the deceased as a pillion rider going on a motorcycle ridden by its rider and waiting at footpath to cross the road, near Adiganahalli Cross, NH-7 Road, Bagepalli Taluk, Chikkaballapur District, at that time, the driver of Maruthi Swift Car bearing Registration No. TN-02/AK-6584 came with high speed and in a rash and negligent manner and dashed against the Motorcycle. Due to the impact, the deceased sustained grievous injuries and thereafter succumbed to the same.

4. It is the further case of the appellants that, the deceased was aged about 25 years, working as Quality Controller in QA Department at Bombay Rayan Fashion Limited and earning more than Rs. 7,000/- per month, hale and healthy and was the only bread earning member in the family. The entire family was depending upon the income of the deceased. Due to untimely death of the deceased, the appellants are put to great hardship, loss and inconvenience and wife has lost her companion at the young age of 22 years, minor daughter has lost love and affection, inspiration, guidance of her father and mother who was aged about 50 years has lost her bright son and suffered mental pain and agony. The social and economic condition of the family is very badly affected as he was the only bread earning member in the family. Taking all these aspects into consideration, they filed claim petition under Section 166 of the M.V. Act against the respondents before the Tribunal.

5. The said matter had come up for consideration before the Tribunal. The Tribunal in turn after due appreciation of the oral and documentary evidence has assessed the income of the deceased at Rs. 4,000/- per month and out of which 1/3rd has been deducted towards personal expenses, taking the net income of the deceased at Rs. 2,667/- per month and applying the multiplier of T8'', awarded Rs. 5,76,072/- towards loss of dependency and Rs. 30,000/- towards conventional heads. In all the Tribunal has awarded total compensation of Rs. 6,06,072/- with interest at 6% p.a. from the date of petition till realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellants herein have presented this appeal seeking enhancement of compensation.

6. The principal submission of the learned Counsel appearing for the appellants at the outset is that, the Tribunal has committed miscarriage of justice in not accepting Ex. P13 - Service Certificate of the deceased. The claimants have also examined the Employer - HR Executive, Bombay Rayon Fashions Limited. To substantiate the contents of Ex. P13 - Service Certificate, he submitted that the Tribunal has disbelieved the same without any justification and contrary to the evidence on record. Therefore, the income of the deceased may kindly be taken at Rs. 7,000/- per month in the light of the law laid down by the Apex Court in the case of Santhosh Devi v. National Insurance Company Limited reported in

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AIR 2012 SCW 2892 and 30% towards future prospects of the deceased may be added and by deducting 1/3rd towards personal expense, award reasonable compensation towards loss of dependency. Further, the Tribunal has not awarded reasonable compensation towards loss of consortium, loss of love and affection, loss of estate and transportation and funeral expenses and what is awarded by the Tribunal is inadequate and the same may be awarded reasonably. Further, he submitted that the Tribunal has awarded interest at only 6% p.a., which is on the lower side as the accident occurred on 7.11.2010. Therefore, the rate of interest may be awarded at 9% p.a. to 10% p.a. from the date of petition till realization by modifying the impugned Judgment and Award passed by the Tribunal.

7. Per contra, the learned Counsel appearing for the 1st respondent - insurer inter-alia contended and sought to substantiate stating that the impugned Judgment and award passed by the Tribunal is after due consideration of oral and documentary evidence available on record accepting Ex. P16 - Pay Slip, Ex. P13 - Salary Certificate as there is no valid proof as such produced regarding income of the deceased. Therefore, notional income has been rightly assessed at Rs. 4,000/- p.m. and out of which 1/3rd has been deducted towards personal expenses of the deceased and by applying appropriate multiplier of ''18'', awarded reasonable compensation towards loss of dependency and conventional heads. Therefore, interference by this Court is not called for.

8. After careful consideration of the submission of the learned Counsel appearing for both the parties and after perusal of the impugned judgment and award passed by the Tribunal, the only point that arises for consideration is:

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

9. The occurrence of the accident and the resultant death of the deceased are not in dispute. It is also not in dispute that the deceased was aged about 25 years, working in QA Department at Bombay Rayan Fashion Limited as Quality Controller, drawing salary of Rs. 7,000/- per month as per Ex. P16 and the claimants have also produced Ex. P14 - Copy of I.D., Ex. P15 - copy of ESI Card and examined PW-2 one Sri. Nagesh S. - Human Resource Executive at Bombay Rayon Fashions Limited. The Tribunal has disbelieved the said documents produced by the appellants on the ground that they have not produced Passbook which is the only credible document.

10. After, careful consideration of the oral and documentary evidence produced at Exs. P13, P14, P15, P16 and P17 - Service Certificate, ID Card, ESI Card, Pay Slip and Notarised copy of ID Card, Ex. P18 - salary statement extract and Ex. P19 - Muster Roll extract are accepted and in the light of the same and the evidence of PW-2 - HR Executive of Bombay Rayon Fashions Limited, we can safely re-assess the income of the deceased at Rs. 7,000/- per month to meet the ends of justice. The claimants are none other than wife, minor daughter and mother of the deceased, as rightly pointed out by the learned Counsel appearing

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for the appellants and in the light of the Judgment of Apex Court in the Santhosh Devi''s case (2012 AIR SCW 2892) another 30% is to be added towards future prospects of the deceased which works out to Rs. 9,100/-. Out of which, if 1/3rd is deducted towards personal expenses of the deceased i.e. Rs. 3,033/- p.m., the net contribution on the part of the deceased to the family works out to Rs. 6,067/- per month. The deceased was aged about 25 years, the appropriate multiplier applicable is ''18''. Accordingly, we redetermine the compensation towards loss of dependency at Rs. 13,10,472/- (Rs. 6,067/- x 12 x 18) and accordingly, awarded.

11. Having regard to the facts and circumstances that wife has lost her companion at the young age of 22 years, minor daughter lost love and affection, inspiration and guidance and the mother has suffered mental pain and agony at the age of 50 years and also in the light of the judgments of Apex Court and this Court in host of judgments, we deem fit to award Rs. 1,00,000/- towards loss of consortium, Rs. 75,000/- towards loss of love and affection at the rate of Rs. 25,000/- to each appellant, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses. In all, the appellants/claimants are entitled to a total compensation of Rs. 15,35,472/- as against Rs. 6,06,072/- awarded by the Tribunal. There would be enhancement of Rs. 9,29,400/-. In the light of hosts of judgments of Apex Court and this Court, we award interest at the rate of 8% p.a. on the enhanced compensation from the date of petition till realization as the accident is of the year 2010.

12. Having regard to the facts and circumstances of the case referred above, the instant appeal filed by the appellants is allowed in part. The impugned Judgment and Award passed by the Tribunal dated 11th November 2011 passed in M.V.C. No. 8299/2010 on the file of the XVIII Additional Judge, Court of Small Causes and M.A.C.T.-4 (SCCH-4), Bangalore is hereby modified awarding Rs. 9,29,400/- with interest at 8% p.a. on the enhanced compensation from the date of petition till payment excluding the interest for the delayed period of 401 days in filing the appeal.

The 1st respondent - Insurer herein is directed to deposit the enhanced compensation amount with interest at 8% p.a. from the date of petition till realization excluding the interest for the delayed period of 401 days, within a period of three weeks from the date of receipt of copy of this judgment and award.

Out of the enhanced compensation of Rs. 9,29,400/-, Rs. 3,00,000/- with proportionate interest shall be invested in Fixed Deposit in the name of the appellant No. 1 Mrs. Roopa T.S. - wife of the deceased in any Nationalized or Scheduled or Grameena Bank, for a period of 20 years and renewable for 10 years and she is entitled to withdraw the periodical interest accrued on it.

A sum of Rs. 3,00,000/- with proportionate interest shall be invested in Fixed Deposit in the name of the appellant No. 2 Meghana - minor daughter of the

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deceased in any Nationalized or Scheduled Bank or Grameena Bank, till she attains the age of 30 years and appellant No. 1 - mother of the appellant No. 2 is entitled to withdraw the periodical interest accrued on it for the welfare of the appellant No. 2 till she attains the age of 21 years. From 22 to 30 years, the appellant No. 2 is entitled to withdraw the periodical interest accrued on it.

A sum of Rs. 2,00,000/- with proportionate interest shall be invested in Fixed Deposit in the name of the appellant No. 3 Smt. Hanumakka - mother of the deceased in any Nationalized or Scheduled or Grameena Bank, for a period of 5 years and renewable for another 5 years and she is entitled to withdraw the periodical interest accrued on it.

Remaining amount of Rs. 1,29,400/- with proportionate interest shall be released in favour of the appellant Nos. 1 and 3 in equal proportion, immediately on deposit by the 1st respondent -Insurer.

Draw the award, accordingly..

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