

(2016) 01 KAR CK 0062
In the Karnataka High Court
Case No : MFA No. 24969/2013 (MV)

Sarojini Ramappa Dhavali and Others	APPELLANT
Vs	
Parashuram Durgappa Ankalagi and Others	RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, Section 163-A, Section 166, Section 168

Citation : (2016) 01 KAR CK 0062

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Vitthal S. Teli, Advocate, for the Appellant;

Final Decision : Partly Allowed

Judgement

B. Veerappa, J.—1. This Miscellaneous First Appeal is filed by the parents of the deceased-Ravindra for enhancement against the judgment and award dated 30.07.2013 made in MVC No. 2503/2012 on the file of the VI Additional District & Sessions Judge, Belagavi awarding Rs. 2,82,000/- together with costs and interest at 7% per annum from the date of petition till realisation of the entire amount.

2. The claimants are the parents of the deceased-Ravindra, who on 10.10.2009 at about 23.30 hours when proceeding on motor cycle bearing No. KA-22/X-3473 on Gokul Road near bus stand Hubli in a moderate speed, met with an accident due to rash and negligent driving by the driver of an unknown auto rickshaw. Thereby the deceased sustained injuries and due to impact he was hospitalized and died while taking treatment. The parents contended that they have spent Rs. 10,000/- towards transportation of dead body, Rs. 20,000/- towards funeral expenses and Rs. 10,000/- towards medical expenses. They further contended that the deceased was aged about 23 years at the time of accident and he was earning Rs. 40,000/- per annum from labour work and maintaining himself and his family members. Due to the unfortunate death of their son, they being the parents have lost the only bread earner of the family and thus due to his

untimely death their future life has become dark and miserable. It was further contended that the vehicle involved in the accident was insured with the 2nd respondent, therefore, both the respondents are jointly and severally liable to pay the compensation. Accordingly, they sought for compensation at Rs. 8,00,000/- before the District & Sessions Judge/Tribunal.

3. The owner of the vehicle though appeared through his counsel, has not filed any objections. The 2nd respondent-insurer filed its statement of objections denying the plaint averments contending that the accident occurred due to sole negligence on the part of the deceased, who was riding the motorcycle. It was further contended that the deceased was not the owner of the said motorcycle and he had taken the said motor cycle from its real owner. Hence, he has stepped into the shoes of the owner. As such, he is not the 3rd party and hence, the claim petition was not maintainable. The Insurance Company also denied the age, occupation and income of the deceased and also denied the assertions made by the claimants with regard to loss of dependency etc.

4. Based on the pleadings, the VI Addl. District & Sessions Judge has framed the following issues:

1) Whether the petitioners prove that one Ravindra Ramappa Dhavali died due to use and involvement of Motor Cycle No. KA-22/X-3473 and unknown Auto driver as alleged in petition?

2) Whether the petitioners are entitled for compensation/If so from whom? And to what amount?

3) What order and Award?

5. In order to establish their case the petitioners/parents got examined the mother as PW1 and produced the documents Exs. P1 to P8. The respondents have not examined any witnesses, but the 2nd respondent got marked Ex. R1- Insurance Policy.

6. After considering the entire materials on record, the Tribunal by its impugned judgment and award dated 30.07.2013 has allowed the petition in part and awarded a compensation of Rs. 2,82,000/- together with costs and interest at 7% per annum from the date of claim petition till the date of realisation of the entire compensation amount. Hence, the present appeal is filed by the parents for enhancement.

7. Insurance Company has not filed any appeal.

8. I have heard the learned counsel for the parties to the lis.

9. Sri Vitthal S. Teli, learned counsel for the appellants has mainly contended that the Tribunal has erred in deducting 50% of income of the deceased towards his personal expenses and also erred in considering the age of the mother of the deceased even though the claim petition is filed under Section 163A of the Motor Vehicles Act and without considering the schedule attached to it. Therefore, he

sought for modification of the judgment and award passed by the District and Sessions Judge praying for enhancement.

10. Per contra, Smt. Preethi Shashank, learned counsel for the 2nd respondent sought to justify the impugned judgment and award passed by the District & Sessions Judge.

11. I have given anxious consideration of the arguments advanced by the learned counsels for the parties and perused the entire materials on record carefully.

12. It is an undisputed fact that the deceased was aged about 23 years at the time of accident, which occurred on 10.10.2009 due to the rash and negligent driving by the driver of unknown autorickshaw as alleged in the petition. The mother of the deceased examined as PW 1 and she reiterated the averments made in the claim petition and sought for compensation. No rebuttal evidence is adduced by the insurer, except producing Ex. R1-Policy which was in force as on the date of the accident. The learned District & Sessions Judge considering the entire oral and documentary evidence on record has come to the conclusion that the parents are entitled for compensation.

13. In view of the rival contentions urged by the learned counsel for the parties to the appeal, the only question that arises for consideration is:-

"Whether the Tribunal is justified in deducting 50% of the income of the deceased towards his personal expenses and applying the multiplier of 14 considering the age of the mother of the deceased while passing the impugned judgment and award?"

14. The records reveal that the accident and the age of the deceased are not in dispute. It is also not in dispute that as on the date of the accident, the vehicle involved in the accident was insured with the 2nd respondent insurance company and the policy was in force. It is relevant to state that as per the Second Schedule (under Section 163-A) for compensation for third party in fatal accident, under the Motor Vehicles Act, 1988, if the age of the victim is above 20 years, but not exceeding 25 years, the multiplier would be 17 and the amount of compensation so arrived at in the case of fatal accident claims shall be reduced by 1/3rd in consideration of the expenses which the victim would have been incurred towards maintaining himself had he been alive.

15. In the present case, the learned District & Sessions Judge has deducted 50% of the income and applied the multiplier of 14 considering the age of the mother of the deceased which is contrary to the provisions of Section 163A and contrary to Second Schedule of the Motor Vehicles Act, 1988. In view of the reasons stated above, the question raised in the present appeal has to be answered in negative holding that, the learned District and Sessions Judge is not justified in deducting 50% of the income and applying the multiplier of 14. Therefore, the impugned judgment and award calls for interference in the appeal.

16. The Hon"ble Supreme Court while considering the provisions of Section 163-A and Second Schedule of the Motor Vehicles Act, 1988 in the case of National Insurance Co. Ltd., Vs. Gurumallamma and Anr., reported in , (2009) 16 SCC page 43 has held as under:

"7. Section 163A was inserted by Act No. 54 of 1994 as a special measure to ameliorate the difficulties of the family members of a deceased who died in use of a motor cycle. It contains a non-obstante clause. It makes the owner of a motor vehicle or the authorized insurer liable to pay in the case of death, the amount of compensation as indicated in the Second Schedule to his legal heirs. The Second Schedule provides for the amount of compensation for third party Fatal Accident/Injury Cases Claims. It provides for the age of the victim and also provides for the multiplier for arriving at the amount of compensation which became payable to the heirs and legal representatives of the deceased depending upon his annual income. The Second Schedule furthermore provides that in a case of fatal accident, the amount of claim shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred upon himself, had he been alive. It provides for the amount of minimum compensation of Rs. 50,000/-. It furthermore provides for payment of general damages as specified in Note 3 thereof."

17. It is not in dispute that the age of the deceased was 23 years as on the date of accident and the multiplier would be 17, deduction shall be 1/3rd of his income in terms of the provisions of Section 163-A and Second Schedule of the Motor Vehicles Act, 1988. While considering the provisions of Section 168 of the Motor Vehicles Act, 1988 the Apex Court in the case of Munna Lal Jain and Another vs. Vipin Kumar Sharma & Others reported in , (2015) 6 SCC 347 has held as under:

"9. The deduction ordinarily in the case of a bachelor at 50% was approved recently by a three-Judge Bench decision in Reshma Kumari and others v. Madan Mohan and another, , (2013) 9 SCC 65, holding that the standard fixed in Sarla Verma (supra) on the aspect of deduction for personal and living expenses ... "must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out". Preceding paragraph-41 reads as follows:

"41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants."

10. In the case before us, there are no such exceptional circumstances or

compelling reasons for deviation on the basis of evidence and therefore deduction of 50% towards the personal and living expenses is not to be disturbed.

11. As far as future prospects are concerned, in *Rajesh and others v. Rajbir Singh and others*, , (2013) 9 SCC 54, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote:

"8. Since, the Court in *Santosh Devi* case actually intended to follow the principle in the case of salaried persons as laid down in *Sarla Verma* case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

The deceased being of the age of 30 years, 50% is the required addition.

12. The remaining question is only on multiplier. The High Court following *Santosh Devi* (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in *Reshma Kumari* (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote:

"36. In *Sarla Verma*, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma* that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma*."

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14. The multiplier, in the case of the age of the deceased between 26 to 30 years is 17. There is no dispute or grievance on fixation of monthly income as Rs. 12,000.00 by the High Court."

18. In the impugned judgment and award, the learned District & Sessions Judge has assessed the income of the deceased at Rs. 3,300/- which is not in dispute. In view of the same, after deducting 1/3rd of it, it comes to Rs. 2,200/- per month and the calculation of loss of dependency is Rs. 2,200/- x 12 x 17 which comes to 4,48,800/-. Out of Rs. 4,48,800/-, if the amount awarded by the Tribunal is deducted (Rs. 4,48,800 " Rs. 2,77,200/-) it comes to Rs. 1,71,600/-. The compensation awarded by the learned District and Sessions Judge in respect of other heads are undisturbed.

19. In view of the aforesaid reasons, the appeal filed by the parents of the deceased is allowed in part. The impugned judgment and award passed by the learned District & Sessions Judge is modified. The appellants are entitled to the enhanced compensation of Rs. 1,71,600/- with interest at 7% per annum from the date of claim petition till the date of realisation.

Ordered accordingly.