(2016) 02 KAR CK 0369

In the Karnataka High Court

Case No : M.F.A. No. 8539 of 2014 (MV)

S.B. Trilochana and Others — APPELLANT

Vs

A.M. Leela and Others — RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 02 KAR CK 0369

Hon'ble Judges : N.K. Patil and Rathnakala, JJ.

Bench : Division Bench

Advocate : Jagadeesh H.T., Advocate, for the Appellant;

Final Decision : Disposed Off

Judgement

N.K. Patil, J.—1. This appeal by the claimants is directed against the judgment and award dated 18th March 2014, passed in MVC No. 566/2013, by the Senior Civil Judge & JMFC, Motor Accident Claims Tribunal, Arsikere, (for short, ''Tribunal'') for enhancement of compensation on the ground that, the compensation of Rs. 42,01,600/- awarded in favour of the claimants as against their claim for Rs. 1,85,00,000/-, is inadequate.

2. The facts in brief are that, the claimants are the wife, a minor child and parents of the deceased Yathishkumar. They filed the claim petition under Section 166 of the Motor Vehicles Act, contending that, at about 8:30 A.M, on 02-01-2013, when the deceased Yathishkumar along with others was traveling in a Maruthi Alto Car bearing Registration No. KA-18/M-7606 proceeding towards Kushalanagar, at that time, near B.M. Road, Bylukuppe, the driver of the vehicle drove the same at a high speed, in a rash and negligent manner and dashed against the culvert (bridge). Due to the impact, the deceased died due to the injuries sustained in the road traffic accident.

3. It is the case of the appellants that, the deceased was aged about 28 years, working as an Assistant Professor, getting salary of a sum of Rs. 29,126/- per

month and hale and healthy prior to the accident and 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 18th March, 2014. 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. 42,01,600/- 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 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. 27,200/- per month. He submits that the deceased was aged about 28 years and working as Lecturer in the Department of Electronics and Communication Engineering at GSSS Institute of Engineering and Technology for Women, drawing salary of Rs. 29,126/- per month as per Ex. P10, Salary Certificate. Therefore, at least 50% is to be added towards future prospects of the deceased, while computing the monthly income of the deceased. But, without considering the same, the Tribunal has assessed the income of the deceased at only Rs. 20,400/- per month. The same is liable to be re-assessed. He further submits that the deceased was the only earning member in the family and on account of his untimely and unnatural death, the claimants have been put to great financial loss apart from social status. He further submitted that the compensation awarded towards conventional heads is also on the lower side for the reason that the wife has lost the life partner at an age of about 32 years, minor daughter, aged about 3 years has lost the love and affection, special guidance and inspiration of its father and the parents aged about 48 years and 55 years have lost the love and affection and social and moral security apart from financial support. Therefore, he submitted that the compensation may be re-determined towards conventional heads also.

He also submitted that the rate of interest awarded by Tribunal at 6% per annum is also on the lower side as the accident has occurred during the year 2013. Therefore, he submitted that, reasonable compensation may be awarded towards loss of dependency and also conventional heads, by modifying the impugned judgment and award passed by Tribunal and also the rate of interest.

7. As against this, learned counsel appearing for Insurer, inter alia, 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 and avocation of the deceased and also the year of accident etc. Therefore, interference in the same is not called for. Regarding the submission of the learned counsel appearing for claimants that 50% is to be added towards future prospects, he submitted that the claimants have not produced an iota of document to establish that the deceased was working in an aided Institution. Therefore, in the absence of any piece of evidence, 50% of the income cannot be added towards future prospects, at any stretch of imagination.

8. After hearing learned counsel for the parties, and after careful perusal of the judgment and award passed by the Tribunal, 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 Yathish Kumar. It is also not in dispute that the deceased was aged about 28 years and working as an Assistant Professor/ Lecturer in the department of Electronics and Communication Engineering at GSSS Institute of Engineering and Technology for Women. It is stated that he was earning gross salary of Rs. 30,106/- per month and net salary of Rs. 29,176/- per month. But, as per Ex. P10, Salary Certificate, the deceased was getting salary of Rs. 29,126/- per month. The submission of the learned counsel appearing for claimants that 50% is to be added towards future prospects cannot be accepted for the reason that they have not produced any supportive documentary evidence to show that the deceased was working in an aided Institution. However, considering the ratio of law laid down by the Hon''ble Apex Court in Sathosh Devi''s case (AIR 2012 SCW 2892), we are inclined to add 30% towards future prospects of the deceased. Accordingly, we accept the salary of the deceased as per Ex. P10, Salary Certificate, which shows that he was drawing salary of a sum of Rs. 29,126/- per month. If we add 30% (i.e. Rs. 8,737/-), the gross monthly income comes to Rs. 37,863/-. Per annum, it works out to Rs. 4,54,356/-. Out of this, if we deduct a sum of Rs. 27,835/- towards income tax and professional tax, the net income works out to Rs. 4,26,521/-. Further, as the dependents are four in number, we deduct 1/4th towards personal expenses of the deceased. Accordingly, If 1/4th (i.e. Rs. 1,06,630/-) is deducted from Rs. 4,26,521/- towards his personal and living expenses, the net income would be Rs. 3,19,891/- per annum. Further, it is stated that the deceased was aged about 28 years as on the date of accident. Therefore, for the said age, the proper multiplier applicable is ''17'' as per the decision of the Hon''ble Apex Court in Sarla Verma''s case (, 2009 ACJ 1298) as rightly adopted by Tribunal. Thus, the compensation towards loss of dependency would work out to Rs. 54,38,147/- (i.e. Rs. 4,26,521/- x''17'') as against Rs. 41,61,600/- awarded by Tribunal.

10. Further, the Tribunal has erred in not awarding reasonable compensation towards conventional heads also and therefore, the compensation awarded towards conventional heads is liable to be re-determined. 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. 15,000/-; Rs. 25,000/- towards loss of estate as the Tribunal has not awarded any compensation under this head; Rs. 1,00,000/- towards loss of love and affection at the rate of Rs. 25,000/- to each claimant as against Rs. 15,000/- and Rs. 25,000/- towards transportation of dead body and funeral expenses as against Rs. 10,000/- awarded by Tribunal.

11. Thus, the total compensation payable to claimants works out to Rs. 56,88,147/- as against Rs. 42,01,600/- awarded by the Tribunal. There would be enhancement of compensation by a sum of Rs. 14,86,547/-.

12. 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 02-12-2013. 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.

13. 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 18th March 2014, passed in MVC No. 566/2013, by the Senior Civil Judge & JMFC, Motor Accident Claims Tribunal, Arsikere, is hereby modified, awarding a sum of Rs. 56,88,147/- as against Rs. 42,01,600/- 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. 14,86,547/- with 9% interest per annum from the date of petition till the date of realization.

The Respondent No. 2/Insurance Company is directed to deposit the enhanced compensation of Rs. 14,86,547/-, 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. 4,00,000/- 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 ten years, renewable by another ten years, with liberty reserved to her to withdraw the periodical interest.

A sum of Rs. 4,00,000/- with proportionate interest shall be invested in the name of the second appellant -minor daughter of deceased, in Fixed Deposit, in any scheduled/Nationalized/Grameena Bank, till she attains the age of 30 years, with liberty reserved to appellant No. 1, mother and natural guardian of appellant No. 2 to withdraw the periodical interest for her welfare till she attains the age of 21 years and from 22 years to 30 years, the appellant No. 2 is entitled to withdraw the periodical interest.

A sum of Rs. 2,00,000/- each with proportionate interest shall be invested in the names of third and fourth appellants - parents of deceased, in Fixed Deposit, in any scheduled/Nationalized/Grameena Bank, for a period of five years, renewable for five years, with liberty reserved to them to withdraw the periodical interest.

Remaining sum of Rs. 2,86,547/- with proportionate interest shall be released in favour of the appellant Nos. 1, 3 and 4, in equal proportion, immediately.

Office to draw award, accordingly.

