

(2016) 03 KAR CK 0275
In the Karnataka High Court
Case No : M.F.A. No. 6894 of 2015 (MV)

Shakil and Others

APPELLANT

Vs

The Division Controller, K.S.R.T.C.

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 03 KAR CK 0275

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

Bench : Division Bench

Advocate : R. Yogesh, Advocate, for the Appellant; D. Vijayakumar, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

N.K. Patil, J.—1. This appeal by the claimants-appellants is directed against the impugned judgment and award dated 06/01/2015, passed in MVC No. 870/2014, by the Presiding Officer, Fast Track Court and Additional Motor Accident Claims Tribunal, Channarayapatna, (hereinafter referred to as "Tribunal" for short).

2. The Tribunal, by its judgment and award has awarded a sum of Rs. 2,62,000/- under different heads with interest at 6% per annum from the date of petition till its realization as against the claim of Rs. 20,00,000/-, on account of the death of the minor child Shahil, in the road traffic accident.

3. In brief, the facts of the case are:

"The appellant No. 1 is the brother and appellant No. 2 is the grandmother of the deceased minor child Shahil. They filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation on account of the death of the deceased in the road traffic accident, contending that, on 16.9.2013 at about 5.00 p.m. deceased Shahil was returning from school and when he was standing by the side of NH road to cross, at that time, driver of KSRTC bus bearing Reg. No. KA.18.F.720 drove the same from Hassan to Bangalore in a rash and

negligent manner and dashed against the deceased though he was standing by the side of the road and caused the accident. Due to which, deceased sustained grievous injuries. Immediately, he was shifted to Government Hospital at Channarayapatna then to Hassan for further treatment, but he succumbed to the injuries while shifting to Hassan."

4. It is the further case of the appellant that, deceased was a minor boy studying in 3rd standard and he was a very bright student. Due to his untimely death, appellants who are the younger brother and grandmother of the deceased are put to great loss and mental shock and agony as the mother of the deceased died and his father left the house long back.

5. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petition in part and awarded the compensation of Rs. 2,62,000/- with interest at 6% p.a., from the date of petition till its realization.

6. Being dis-satisfied with the quantum of compensation and the rate of interest awarded by the Tribunal, the appellants have presented this appeal.

7. We have heard the learned counsel appearing for the appellants and learned counsel for respondent-Corporation.

8. Learned counsel Sri. R. Yogesha, appearing for the appellants submitted that, the Tribunal has erred in not awarding reasonable compensation on account of the death of the deceased, minor child in the road traffic accident and what is awarded is inadequate. To substantiate the said submission, he submitted placing reliance on the judgment of the Apex Court reported in , 2014(1) SCC 244 (Kishan Gopal and another v. Lala and others) that, in the said case, the Apex Court has awarded a sum of Rs. 5,00,000/- with interest at 9% p.a. from the date of petition till its realization on account of the death of a minor boy in the road traffic accident. Therefore, he submitted that following the said judgment, this appeal may also be allowed by awarding a sum of Rs. 5,00,000/- with interest at 9% p.a. after deducting whatever amount awarded by the Tribunal.

9. As against this, learned counsel appearing for respondent-Corporation sought to substantiate that, the Tribunal, after due appreciation of the oral and documentary evidence available on record and also considering the status of the parties and in the light of the decision of the Apex Court, has justified in awarding reasonable compensation on account of the death of a minor boy and that, the law laid down by the Apex Court in Kishan Gopal's case is not applicable to the facts and circumstances of the present case and therefore, interference by this Court is not called for.

10. After considering the submissions made by learned counsel appearing for both the parties and after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal,

the only point that arises for our consideration is:

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

11. Occurrence of the accident and the resultant death of a minor child Shahil is not in dispute. It is also not in dispute that, appellants are the younger brother and grandmother of the deceased who was aged about 8 years and studying in 3rd standard as rightly pointed out by the learned counsel appearing for the appellants. Taking all these factors into consideration and in view of the decision of the Apex Court in Kishan Gopal's case reported in , 2014 (1) SCC 244 and for the reasons stated therein, we deem it fit to award a sum of Rs. 5,00,000/- with interest at 9% p.a. from the date of petition till its realization on account of the death of the deceased.

12. For the foregoing reasons, the appeal filed by the appellant is allowed in part and the impugned judgment and award dated 06/01/2015, passed in MVC No. 870/2014, by the Presiding Officer, Fast Track Court and Additional Motor Accident Claims Tribunal, Channarayapatna, is hereby modified, awarding the compensation of Rs. 5,00,000/- instead of Rs. 3,12,000/- with interest at 9% p.a., from the date of petition till its realization.

At this stage, learned counsel appearing for respondent-Corporation submitted that, the Corporation has already paid a sum of Rs. 50,000/- towards funeral and other incidental and the same has to be taken into consideration. The said fact has been admitted by the learned counsel appearing for the appellants. Therefore, there would be an enhancement of Rs. 1,88,000/- with interest at 9% p.a. from the date of petition till its realization.

The respondent-Corporation is directed to deposit the enhanced compensation of Rs. 1,88,000/- with interest at 9% p.a., from the date of petition till the date of realization, within a period of three weeks from the date of receipt of a copy of this judgment and award.

Immediately on such deposit by the Corporation, Out of the enhanced compensation of Rs. 1,88,000/-, a sum of Rs. 1,88,000/-, a sum of Rs. 88,000/- with proportionate interest shall be invested in the Fixed Deposit in the name of the appellant No. 1 in any Nationalized or Scheduled or Grameena bank, till he attains 30 years, with liberty reserved to the appellant No. 2, grandmother of the appellant No. 1 to withdraw the interest accrued on it, till he attains 21 years for his welfare and from 22 years to 30 years, appellant No. 1 is at liberty to withdraw the interest accrued on it heroically.

A sum of Rs. 50,000/- with proportionate interest shall be invested in the Fixed Deposit in the name of the appellant No. 2, grandmother of the deceased, in any Nationalized or Scheduled or Grameena bank for a period of 5 years and renewable by another 5 years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

Reaming sum of Rs. 50,000/- with proportionate interest shall be released in favour of appellant No. 2, immediately.

Office to draw the award, accordingly.