(2015) 04 KAR CK 0272

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 1216 of 2014 and 3109/2014 (MV)

Shriram General Insurance Co. Ltd. and Others APPELLANT

Vs

S. Rashmi and Others RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 04 KAR CK 0272

Hon'ble Judges : N.K. Patil, J;Rathnakala, J

Bench : Division Bench

Advocate : A.N. Krishna Swamy, for the Appellant; K.V. Shyama Prasada, Advocates for the Respondent

Judgement

N.K. Patil, J.—These two appeals by the insurer and claimant are directed against the impugned judgment and award dated 15.10.2013 passed in MVC No. 3125/2011 on the file of X ASCJ and XXXV ACMM, MACT - 16, Bangalore City. (hereinafter referred to as ''Tribunal'' for short), for enhancement of compensation.

2. The Tribunal by its judgment and award has awarded a sum of Rs. 32,33,360/- with interest at 8% per annum from the date of petition till the date of realization, as against the claim made by the claimant, on account of the death of the deceased in the road traffic accident.

3. It is the case of the claimant that, the deceased was aged about 33 years working as Clerk in Ministry of Defence and drawing a salary of Rs. 16,580/- per month, after deducting income tax and professional tax. He was the only earning member in the family and looking after the welfare of the family. Due to his untimely death, the wife and parents have lost love and affection they suffered socially and economically. Due to the rash and negligent driving by the driver of the offending vehicle involved in the accident, deceased K. Ramesh sustained multiple fractures and he succumbed due to the injuries. In the light of the judgment of Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi

Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 , 50% of the income towards future prospects is to be added. Therefore, they filed a claim petition under Section 166 of MVC Act before the Tribunal claiming compensation against the appellant - insurer and owner of the vehicle involved in the accident, in MVC No. 3125/2011. 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 and also the law laid down in SARLA VERMA''S CASE, (supra) has allowed the claim petition by awarding a compensation in a sum of Rs. 31,83,360/- towards loss of dependency and Rs. 50,000/-under conventional heads with interest at 8% per annum from the date of petition till the date of realization. Not being satisfied with the impugned judgment and award passed by the tribunal, the insurer and the claimant have presented these two appeals, respectively.

4. The submission of the learned counsel appearing for the appellant-insurer Sri. A.N. Krishna Swamy, at the outset is that the Tribunal has erred in adding 50% towards future prospects of the deceased and applying multiplier of 16 and the same cannot be sustained. Therefore, impugned judgment and award passed by the tribunal is liable to be modified by reducing the compensation.

5. Further, learned counsel appearing for the claimant, Sri. K.V. Shyama Prasada, inter alia contended and substantiated that, the tribunal has erred in not awarding reasonable compensation under the conventional heads. Further, in the light of the judgment of Apex Court and this Court in host of judgments, the Tribunal ought to have awarded interest at the rate of 9% to 10% in the interest of justice and equity. Therefore, impugned judgment and award passed by the Tribunal is liable to be modified by enhancing compensation and also the rate of interest.

6. After considering the submissions made by the learned counsel appearing for insurer and claimant and on perusal of the material available on record, including the impugned judgment and award passed by the Tribunal, the only point that arise for consideration is:

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

7. It is not in dispute that the deceased died in the road traffic accident. Further, it is not in dispute that the deceased was aged about 33 years as on the date of accident, hale and healthy prior to the accident and he was a Clerk in Ministry of Defence. Due to his untimely death the claimant has lost her life partner at the young age of 19 years and the parents - respondent Nos. 3 and 4 have lost social and financial security and also inspiration in life. His death has affected the social and economic condition of the family.

8. Further, the case of the respondent Nos. 1, 3 and 4 is that deceased was

getting a salary of Rs. 16,580/- per month after deducting income tax and professional tax. As rightly pointed out by the learned counsel appearing for claimant, in the light of the decision in Sarla Verma''s case, another 50% of the income towards future prospects of the deceased is to be added i.e., Rs. 8,290/-. Accordingly, the net income comes to Rs. 24,870/-. Out of it, if 1/3rd is deducted towards the personal expenses of the deceased, it comes to Rs. 16,580/-. In the light of the decision in Sarla Verma''s case, the appropriate multiplier applicable is 16. Accordingly, the wife and parents are entitled for a sum of Rs. 31,83,360/- (Rs. 16,580 x 12 x 16) towards loss of dependency as rightly awarded by the Tribunal. Taking into consideration the facts and circumstances of the case, we deem it fit to award a sum of Rs. 1,00,000/- towards loss of consortium, Rs. 75,000/- towards loss of love and affection, Rs. 25,000/- towards loss to estate and Rs. 25,000/- towards transportation of dead body etc., Thus, the wife and parents of deceased are entitled for a sum of Rs. 34,08,360/- as against Rs. 32,33,360/- awarded by the Tribunal. As rightly pointed out by learned counsel for the claimant, tribunal has erred in awarding interest at the rate of only 8% and the same is on the lower side. In the light of the judgment of Apex Court and this Court in catena of decisions, we deem it fit to award interest at the rate of 9% per annum instead of 8% per annum awarded by the Tribunal.

9. Having regard to the facts and circumstances of the case as referred above, the appeal filed by the appellant/insurer in MFA No. 1216/2014 is dismissed as devoid of merits.

MFA No. 3109/2015 filed by the claimant is partly allowed. The impugned common judgment and award passed by the Tribunal dated 15.10.2013 in MVC No. 3125/2011 is hereby modified. The total compensation payable comes to Rs. 1,75,000/- with interest at 9% per annum, from the date of petition till the date of realization.

The Insurer is directed to deposit the enhanced compensation of Rs. 1,75,000/- with interest at 9% p.a., from the date of petition till the date of realisation, within three weeks from the date of receipt of a copy of this judgment.

Out of the enhanced compensation with accrued interest shall be released in favour of respondent Nos. 1, 3 and 4/wife and parents of deceased in equal proportion.

The amount in deposit shall be transferred to the tribunal immediately.

In view of dismissal of main appeal, I.A. No. 2/2014 filed for amendment of the prayer in MFA No. 3109/2014, does not survive for consideration and is accordingly disposed of as having become infructuous.