

(2012) 10 KAR CK 0107
In the Karnataka High Court
Case No : M.F.A. No. 4102 of 2009 (MV)

Smt. Basavalingamma and Others

APPELLANT

Vs

The Managing Director, B.M.T.C., K.H. Road, Shanthinagar,
Bangalore-27 and Divisional Manager, M/s. United India
Insurance Company Ltd., No. 19/1, South End Road, 2nd
Floor, Basavanagudi, Bangalore

RESPONDENT

Date of Decision : 19-10-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 10 KAR CK 0107

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

Bench : Single Bench

Advocate : H.S. Sathish Kumar, for the Appellant; S. Shrishaila, Advocate for R2 and R1 served, for the Respondent

Judgement

Mr. Justice N.K. Patil

1. This appeal by the claimants is directed against the judgment and award dated 23rd December 2008, passed in MVC No. 6185/2007, by the XII Additional Judge, Court of Small Causes, Motor Accident Claims Tribunal, Bangalore (SCCH-8), (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 4,28,000/- awarded in favour of the claimants as against their claim for Rs. 10,00,000/-, is inadequate. The facts in brief are that, the claimant No. 1 is the wife and claimant Nos. 2 and 3 are the minor children and claimants 4 and 5 are the parents of deceased Durugappa. They filed the claim petition u/s 166 of the Motor Vehicles Act, contending that, at about 8:45 P.M., on 07-07-2007, when the deceased was standing near the Tanker which was standing near a bridge at Arkavati, of Makalai Nelamangala Taluk, on the road due to exhaust of diesel and when the driver was filling the diesel, the driver of the of the offending vehicle, the BMTC bus bearing Registration No. KA-01/F-7866 being driven by its driver in a rash and negligent manner, dashed against the Tanker from its behind and as such the tanker

moved further and dashed against the deceased, who was standing in front of it and he died on the way to the Hospital.

2. It is the case of the appellants that, the deceased was aged about 26 years and was working in a Cement Godown, earning a sum of Rs. 6,000/- per month and was hale and healthy prior to the accident. On account of the untimely death of the deceased, the first appellant has lost her life partner, the children have lost the love and affection, inspiration and guidance and all the claimants have lost the social and moral support and therefore, they have to be compensated reasonably.

3. 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 23rd December, 2008. 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. 4,28,000/- 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.

4. I 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.

5. After hearing learned Counsel appearing for the appellants and Insurer, and after careful perusal of the judgment and award passed by the Tribunal, I am of the view that the compensation awarded by Tribunal towards loss of dependency is just and proper and the compensation awarded towards conventional heads is on the lower side.

6. But, during the course of arguments, learned Counsel appearing for appellants drew my attention to the latest decision of the Hon''ble Apex Court in the case of Santosh Devi Vs. National Insurance Company Limited and others (Civil Appeal No. 3723/2012, arising out of SLP (C) No. 24489/2010), wherein, at paragraph 14, the Apex Court has held after referring to Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and other relevant judgments, that "Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation." Further, the Hon''ble Apex Court has categorically observed that "In our view, it will be na?ve to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment etc. would remain the same through out his life. The rise in the cost of living affects everyone across the board. It does not make any distinction

between rich and poor....."

7. In the case on hand, admittedly, the deceased was working in a Cement Godown Therefore, the claimants are entitled to 30% enhancement in respect of compensation awarded towards loss of dependency, towards future prospects, in view of the judgment of the Hon''ble Apex Court in Santosh Devi Vs. National Insurance Company Ltd. and others (supra). The Tribunal has awarded a sum of Rs. 4,08,000/- towards loss of dependency and 30% of it would work out to Rs. 1,22,400/- and the same is awarded with 6% interest from the date of petition till the date of realization.

8. Further, Tribunal has erred in awarding only a sum of Rs. 20,000/- towards the conventional heads, viz. loss of consortium, loss of estate, loss of love and affection, and transportation and funeral expenses. The same is on the lower side. Having regard to the law laid down by the Hon''ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , I award a sum of Rs. 25,000/-, in addition to Rs. 20,000/- awarded by Tribunal towards conventional heads. Thus, the total enhancement of compensation would come to Rs. 1,47,400/- (i.e. Rs. 1,22,400/- + Rs. 25,000/-), with interest at 6% per annum, from the date of petition till the date of realization. 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 23rd December 2008, passed in MVC No. 6185/2007, by the XII Additional Judge, Court of Small Causes, Motor Accident Claims Tribunal, Bangalore (SCCH-8), is hereby modified, awarding a sum of Rs. 1,47,400/-, with interest at 6% per annum, from the date of petition till the date of realization, in addition to the compensation awarded by Tribunal.

The second respondent /Insurer is directed to deposit the enhanced compensation of Rs. 1,47,400/-, with interest thereon at 6% per annum, within three weeks from the date of receipt of copy of the judgment and award.

Immediately on such deposit by the Insurer, a sum of Rs. 1,00,000/- with proportionate interest shall be deposited in the name of the first appellant-wife of deceased, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of ten years, renewable by another ten years, with liberty reserved to her to withdraw the periodical interest.

Remaining sum of Rs. 47,400/- with proportionate interest shall be released in favour of appellant Nos. 1 and 5, in equal proportion, immediately.

Office to draw award, accordingly.