
(2002) 12 KAR CK 0020

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2404 of 1996

Smt. Bhagirathi

APPELLANT

Vs

B.R. Sharath Chandra and Another

RESPONDENT

Date of Decision : 16-12-2002

Acts Referred:

Citation : (2003) 3 KCCR 1885

Hon'ble Judges : M.F. Saldanha, J;K. Ramanna, J

Bench : Division Bench

Advocate : S.B. Pavin, for the Appellant; P.S. Manjunath, for Respondent 1, for the Respondent

Judgement

M.F. Saldanha, J.—We have heard the learned Counsel who represents the owner. Unfortunately, the Insurance Company though served, did not appear either before the Tribunal and has not appeared before this Court either.

2. The Appellant's learned Counsel points out to us that there are several errors in the orders passed by the Tribunal because having resolved the legal position and recorded the finding that the compensation would be payable, even if the global compensation formula were to be accepted, that the Tribunal ought to have awarded Rs. 50,000/- and not Rs. 25,000/- because the amendment to the Act has come in the year 1989 itself. We find that apparently the learned Judge proceeded on the footing that the incident has taken place prior to the amendment and that would not be the correct position in law. Under the amended formula, the Appellant would have been entitled to a total sum of Rs. 50,000/- plus interest but, in the facts and circumstances of this case, we are of the view that the Tribunal was wrong in having ignored the remaining material on record. We need to also observe that if in a given instance, even if there is relatively limited evidence and that evidence can result in a higher compensation than the global compensation, that it is the duty of the Court to take cognizance of that evidence, in order to ensure that the aggrieved party benefits. That precisely is the formula which we propose to adopt.

3. In this case, the evidence of PW-2 is more than sufficient to establish the negligence aspect and consequently, the liability on the insurance Company is absolute. There is no doubt about the fact that the vehicle was Insured and consequently, the compensation amount will have to be paid by the Insurance Company.

4. We have on record the evidence to the effect that the deceased was a tractor driver and that he was earning Rs. 2,000/- per month. We are required however to discount this figure and to apply the requisite deductions and after using the correct multiplier we arrive at a figure of Rs. 1,32,000/- to which, adding the conventional additions, we arrive at an aggregate figure of Rs. 1,39,000/- which is rounded off to Rs. 1,40,000/-. The compensation awarded by the Tribunal is altered to Rs. 1,40,000/- and we also direct that the interest on the enhanced amount shall be at 8% p.a. and not 6% p.a. We direct the Insurance Company to deposit the balance amount with the Tribunal within an outer limit of 12 weeks from today. On receipt of the amount, the Tribunal to take the following action:

(a) That the Tribunal shall invest for the benefit of the Appellant-mother a sum of Rs. 1,00,000/- with the Post Office Savinga Bank Account at a Post Office closest to where she is normally resident in her name and the name of any nominee of her choice. The amount shall be placed in tax free investment in the monthly income scheme and the interest accrued on the amount shall be credited to the Savings Bank Account which the Appellant shall be free to withdraw.

(b) The amount shall be invested for a period of 10 years after which it shall be the option of the Appellant to either renew it or to receive the amount back alongwith whatever increases the scheme permits. The whole of the balance amount shall be released to the Appellant.

With these directions, the appeal which succeeds to stand disposed of.

We clarify that the principal amount shall be placed in the Post Office Monthly Income Scheme from where the interest shall be transferred to the Savings Bank Account which the Appellant is free to withdraw.