(2016) 04 KAR CK 0140

In the Karnataka High Court

Case No : M.F.A. No 10209 of 2013 (MV)

Smt. C. Rekha APPELLANT

Vs

Cholamandalam MS General Insurance Company Ltd. RESPONDENT

Date of Decision : 26-04-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 1828

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : V.B. Siddaramaiah, Advocate, for the Petitioners; O. Mahesh, Advocate, for the Respondents No. 1

Final Decision : Partly Allowed

Judgement

Ram Mohan Reddy, J.—The claimants in MVC No. 952/2009 dissatisfied with the quantum of compensation by Judgment and Award dated 4th May, 2013 of the Additional Senior Civil Judge and MACT-XI, Tumkur (for short, ?MACT?), have presented this appeal for higher compensation.

2. The MACT by the judgment and award impugned, recorded a finding in the affirmative over Issue No. 2 attributing negligence on the driver of the offending lorry insured with the respondent-Insurance Company. In the accident that occurred on 29-4-2009, the husband of the 1st appellant and father of appellants-2 and 3, aged about 50 years 10 months (DOB : 10-6-1958) as per Ex. P1, succumbed to grievous injury on 30-4-2009 at 7.15 p.m. as per Inquest Report-Ex. P5. It was claimed that the deceased, a business man, earned huge sums of money as income, hence, sought for compensation by invoking Section 166 of the Motor Vehicles Act, 1988. Before the MACT, the 1st appellant/claimant was examined as PW. 1 and another witness as PW.2 and marked 56 documents as Exhibits-P1 to P56, while the Income-tax Officer was examined as RW. 1 and marked two documents as Exs. R1 & R2 being the certified copies of the income-tax returns for the assessment year: 2007-08 and 2008-09.

3. The MACT having regard to the material on record and evidence both oral and documentary, declined to accept Ex. P7 (income-tax return for the Assessment Year 2008-09 since filed on 4-6-2009 after the death of R. Chandrashekarasetty, but reckoned Rs. 1,29,430/- as the annual income of the deceased, as disclosed in his I.T. Returns-Ex, P8 for the Assessment Year 2007-08 i.e., the financial year 2006-07, deducted l/3rd towards the personal expenses and applied multiplier ? 13? as applicable forage ?50? of the deceased to award Rs. 11,21,731/- towards loss of dependency, to which was added Rs. 10,000/- each towards loss of consortium and loss of love and affection and Rs. 20,000/- towards funeral expenses, totalling Rs. 11,71,731/- with interest at 6% p.a. by the judgment and award impugned.

4. Although learned counsel for the appellants submits that the MACT was not justified in rejecting Ex.P7-Income tax Returns for the Assessment year 2003-09, returning Rs. 2,92,000/- as taxable income for the financial year 2007-08 nevertheless for the very same reasons assigned by MACT, the submission is noticed only to be rejected.

5. It is not in dispute that Income-tax returns : Ex. P7 in the name of the deceased was filed on 4-6-2009 declaring the taxable income of Rs. 2,92,000/- during the assessment year 2008-09, while the deceased succumbed to grievous injury on 30-4-2009. On perusal of Ex. P7 which is equivalent to Ex. R2 introduced in the evidence of the Income-tax Officer examined as RW.1, it is noticed that the deceased filed that return with his signature on the return as also the verification that what is stated by him is true and correct. If the assessee had died on 30-4-2009, it is not known how the assessee could have filed the return on 4-6-2009, the certified copy of which is Ex. R 2. In that view of the matter, no exception can be taken to the rejection of Ex. R 2, which is none other than Ex. P7 being the Income-tax return for the assessment year 2008-09 by the MACT for the purpose of assessing compensation towards loss of dependency.

6. Since the only evidence available is Ex. P8, the Income-tax return for the assessment year 2007-08, returning Rs. 1,29,430/- p.a. as the taxable income, of the deceased was justifiably reckoned by the MACT to arrive at Rs. 11,21,731/- towards loss of dependency, which finding does not call for interference.

7. There is force in the submission of the learned counsel for the 1st appellant that Rs. 10,000/- towards loss of consortium is grossly insufficient and enhancing it to Rs. 1,00,000/- is just and proper.

8. The deceased left behind a 19 year old unmarried daughter and therefore, for care and guidance, the 3rd claimant is entitled to Rs. 50,000/-, while award of Rs. 10,000/- towards loss of love and affection, does not call for interference. Funeral expenses of Rs. 20,000/- is enhanced to Rs. 25,000/-.

9. Although a faint submission is made by the learned counsel for the appellants

that the deceased survived for a whole day after the accident and took treatment in three hospitals, by reason of which, the deceased had to be transported from one hospital to another, as is evident from Ex. P5 the inquest report nevertheless, monies were expended with the hope that the deceased would survive if medical attention is given, and, in the absence of evidence as to the exact amount spent for loss of exigency, it is appropriate to award Rs. 20,000/- towards transportation.

10. In the circumstances, the appellants are entitled to Rs. 13,26,731/- with interest

HEADS

Rs.

Loss of dependency

11,21,731-00

Loss of consortium

1,00,000-00

Care and guidance of 3rd Appellant (unmarried daughter)

50,000-00

Loss of love and affection

10,000-00

Funeral expenses

25,000-00

Transportation expenses

20,000-00

TOTAL

13,26,731-00

11. In the result, this appeal is allowed in part. The judgment and award, impugned is modified entitling the appellants to Rs. 13,26,731/- with interest at 6% per annum and in all other respects remains unaltered.

