

(2011) 12 KAR CK 0082
In the Karnataka High Court
Case No : M.F.A. No. 6587 of 2009 (MV)

Smt. Chandramathi, Pavan and Pallavi	APPELLANT
Vs	
Dayananda And Bajaj Allianz General Insurance Company Ltd.	RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Citation : (2011) 12 KAR CK 0082

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : A.R. Sharadamba, for the Appellant; H.R. Renuka, for R2 Notice to R1 is dispensed with, for the Respondent

Judgement

S.N. Satyanarayana

1. The claimants in MVC. No. 285/2007 on the file of MACT, Sakleshapura have come up in this appeal seeking enhancement of compensation awarded therein.

2. Brief facts leading to this appeal are, claimants are widow, son and daughter of deceased Renuk, who died in a motor accident, which took place on 23.6.2006 at about 7 pm., near Devarajappa's land Magalur circle at Magalur village. The accident is not in dispute. The ownership of vehicle by 1ST respondent and relationship of insured and insurer between 1ST and 2nd respondents is not in dispute. It is also not in dispute that widow, son and daughter of deceased Renuk immediately after the death of Renuk in the aforesaid accident filed claim petition seeking compensation. They state that deceased Renuk was an agriculturist, tailor and was also doing milk vending and was earning monthly income of Rs. 18,000/- . Due to his death in the aforesaid accident, claimants have lost the breadwinner of the family. As such, they are entitled to compensation from the owner and insurer of offending motor cycle.

3. In the said proceedings, on appreciation of the oral and documentary evidence available on record, the tribunal in the absence of acceptable evidence regarding

income of deceased Renuk proceeded to accept the monthly income of deceased at Rs. 4,000/- pm., and accordingly, calculated compensation payable to claimants under the head loss of dependency at Rs. 4,48,000/- . In addition to that it has also awarded compensation under the head loss of consortium, loss of estate, loss of love and affection, transportation of dead body and funeral expenses including other expenses totaling to Rs. 66,000/- . In all a sum of Rs. 5,14,000/- was awarded by the tribunal.

4. The claimants being aggrieved by the aforesaid compensation have come up in this appeal seeking enhancement of the same on the ground that notional income taken at Rs. 4,000/- pm., by the tribunal is on lower side considering the fact that deceased was not only a tailor but also a milk vendor and agriculturist and his income should have taken at least at Rs. 6,000/- pm. It is also contended that while computing compensation towards loss of dependency the multiplier which was required to be taken was 15 since the deceased was aged about 39 years. However, tribunal by relying upon the decision rendered in Gulam Khader -vs-United India Insurance Company Ltd., 2000 KAR 4416 has taken the same at 14 which is required to be revised.

5. Heard the counsel for appellants and contesting respondent. On going through the pleadings and grounds of appeal in the light of oral and documentary evidence available on record it is seen that though claimants have stated in claim petition that deceased was earning a sum of Rs. 18,000/- pm., from the business of tailoring, milk vending and agriculture, there is nothing on record to demonstrate that he had that kind of income. Whereas to demonstrate that he was doing tailoring business a certificate said to have issued by Gram Panchayath two months prior to the date of his death is produced. There is one another document which is the passbook said to have been maintained by Krushi Dairy Farm. Incidentally, said passbook is also with reference to the period immediately prior to the date of accident. Except producing them, there is no evidence to demonstrate that they are genuine and secured during the lifetime of deceased and what is stated in the said documents is true reflection of facts. Therefore, considering the circumstances under which these documents have come into existence, the tribunal in the absence of acceptable evidence regarding the income has rightly taken the notional income of deceased at Rs. 4,000/- considering the fact that deceased was resident of a small village in Hassan Taluk where even with all the aforesaid avocations he would not have earned much more than Rs. 4,000/- pm., in the year 2006. Therefore, the notional income taken by tribunal cannot be found fault with, However, while calculating compensation payable under the head loss of dependency, there is an error on the part of tribunal in taking multiplier of 14 by following the judgment in Gulam Khader's case, referred to supra, instead of following the subsequent judgment rendered by Apex Court, in the matter of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, under which relevant multiplier would be 15. If compensation payable to claimants is reassessed taking revised multiplier 15 claimants would be entitled to compensation under the head less of dependency

as under:

32000x15=4,80,000/- instead of Rs. 4,48,000/- awarded by the tribunal.

So far as compensation awarded in a sum Rs. 66,000/- on other heads remains undisturbed

6. In the result, appeal is allowed in part. The compensation awarded by tribunal is revised from Rs. 5,14,000/- to Rs. 5.46,000/- . The 2nd respondent insurance company is directed to deposit the enhanced compensation of Rs. 32,000/- within eight weeks from the date of receipt of certified copy in this proceedings.