(2013) 12 KAR CK 0295

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 9144 of 2011 (MV)

Smt. Chitra S., Puneeth Kumar P.S., Akash S. and Smt. Parvathamma	APPELLANT
Vs	
Pramod Simha J. and M/s. Tata A.I.G. Gen. Insurance Co. Ltd.	RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0295

Hon'ble Judges : N.K. Patil, J;Budihal R.B., J

Bench : Division Bench

Advocate : K.V. Shyamaprasada, for the Appellant; A. Ravishankar, for R-2, for the Respondent

Judgement

Budihal R.B., J.—This appeal is preferred by the appellants-claimants challenging the judgment and award dated 26.2.2011 passed by the Motor Vehicles Accident Claims Tribunal, Bangalore City (SCCH-14) in MVC No. 2607/2010. The Tribunal has awarded compensation of Rs. 6,75,000/- with interest at 6% p.a. from the date of petition till realization for the death of late P. Selvaraj in the motor vehicle accident. Brief facts leading to the case are that, appellant No. 1 is the wife of the deceased and appellant Nos. 2 and 3 are the minor sons and appellant No. 4 is the mother of the deceased. The deceased was doing lathe work and was earning Rs. 16,000/- per month. That, on 23.2.2010, at about 8.15 a.m., the deceased P. Selvaraj was crossing K.R. Road, near 14th cross junction, Bangalore, at that time, one Maruthi Alto car bearing No. KA-05-MC-4594 came with high speed in a rash and negligent manner and dashed against the deceased. As a result, the deceased fell down and sustained grievous injuries. Immediately, he was shifted to NIMHANS and admitted as inpatient from 23.2.2010 to 26.2.2010. Again, he was referred to Victoria hospital and during the course of treatment, he succumbed to injuries on 28.2.2010. It is the case of the claimants that they spent amount towards transportation charges and funeral charges and the entire family of the claimants were depending upon the earning the deceased. Due to the sudden death of the deceased, they were put to great inconvenience and suffered from mental shock and agony.

2. After service of notice, responding No. 1 was placed ex-parte. Respondent No. 2-insurance company filed written statement admitting issuance of the policy in favour of respondent No. 1 and that, the policy was valid as on the date of the accident. It has denied the age, occupation and monthly income of the deceased. It is further contented that the accident was due to negligence of the deceased, who crossed the road where there was no provision for a pedestrian to cross the road. Accordingly, it sought to dismiss the petition. After considering the merits of the case, the Tribunal awarded compensation of Rs. 6,75,000/- with interest at 6% p.a. from date of petition till realisation.

3. Learned Counsel appearing for the appellants-claimants, during the course of his arguments, submitted that though the appellants placed evidence, both oral and documentary, to show that the deceased was doing lathe machine work and he was earning Rs. 16,000/- per month, the Tribunal without considering this aspect, has taken his income at Rs. 5,000/- p.m., which is on the lower side. Therefore, the monthly income of the deceased has to be reassessed. He submitted that the deceased was the only earning member in the family and the appellants were depending upon the earning of the deceased. Due to untimely death of the deceased, the whole family put into miserable condition and it has affected social and economic condition of the family. Hence, the learned Counsel submitted that taking all these aspects into consideration, just and reasonable compensation may be awarded.

4. As against this, learned Counsel appearing for the respondent-insurance company, during the course of his arguments, submitted that the Tribunal has appreciated the entire evidence on record, both oral and documentary and has rightly awarded just and reasonable compensation and there are no grounds to interfere with the judgment and award passed by the Tribunal. Hence, he submitted to dismiss the appeal.

5. After considering the submissions made by the learned counsel appearing for both the parties and on perusal of the materials available on record, including the impugned judgment and award passed by the Tribunal, the only point that arise for our consideration is:

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

6. It is the contention of the appellants that the deceased was doing the business of lathe machine work and earning Rs. 16,000/- p.m. He was the only earning member in their family. The appellants have produced the salary certificate as per Ex. P. 14 issued by Bhuvaneshwari Engineering Enterprises. As per this certificate, the deceased was drawing salary of Rs. 8,000/- p.m. If that is so, the income assessed by the Tribunal at Rs. 5,000/- p.m. is on the lower side. The deceased has left his wife at the age of 32 years, his minor two children and the

aged mother. Taking all these aspects into consideration, we deem fit to reassess the monthly income of the deceased at Rs. 6,500/- instead of Rs. 5,000/- per month assessed by the Tribunal. As the deceased has left his wife, minor children and the aged mother, 1/4th of the income is to be deducted towards his personal expenses, which comes to Rs. 1,625/-. After deducting the said amount out of the monthly income of Rs. 6,500/-, the net income comes to Rs. 4,875/-. The deceased was aged 45 years at the time of accident and hence, the proper multiplier applicable is 14. Thus, the loss of dependency comes to Rs. 8,19,000/- i.e., (Rs. 4,875 x 12 x 14). Hence, the appellants are entitled to Rs. 8,19,000/- towards loss of dependency. The Tribunal is rightly justified in awarding Rs. 60,000/- towards conventional head and it does not call for interference. Thus, the total compensation comes to Rs. 8,79,000/- as against Rs. 6,75,000/- awarded by the Tribunal. So there is enhancement at Rs. 2,04,000/- in the total compensation. In the result, the appeal is allowed in part. The judgment award dated 26.2.2011 passed by the Motor Vehicles Accident Claims Tribunal, Bangalore City (SCCH-14) in MVC No. 2607/2010 is modified.

The respondent-insurance Company is directed to pay enhanced compensation of Rs. 2,04,000/- with interest at 6% p.a. from date of petition till realisation. The respondent-insurance company is further directed to deposit the enhanced compensation with accrued interest within three weeks from the date of receipt of a copy of this judgment.

Out of the enhanced compensation, The Tribunal shall invest Rs. 50,000/- each with proportionate interest in Fixed Deposit in any Nationalized or Scheduled Bank, in the name of appellant Nos. 1 to 3 for a period of ten years and renewable for another ten years, with liberty to appellant No. 1 to withdraw the interest accrued on the said investment. Appellant No. 1, the natural guardian of the appellant Nos. 2 and 3, is further entitled to withdraw the interest accrued on the deposit till appellant Nos. 2 and 3 attain the age of 21 years for their welfare. Thereafter, from 22-30 years, appellant Nos. 2 and 3 are entitled to withdraw the interest.

The remaining amount of Rs. 54,000/- with proportionate interest shall be released in favour of appellant Nos. 1 and 4 in equal proportion.