

(2010) 09 KAR CK 0086

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7420 of 2008

Smt. Gowramma

APPELLANT

Vs

M. Gangadhara and The New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Citation : (2010) 09 KAR CK 0086

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : K. Vishwanatha, for the Appellant; A.K. Bhat, for R2, for the Respondent

Judgement

B. Sreenivase Gowda, J.—This appeal is by the claimant seeking enhancement of compensation.

2. Heard The appeal is admitted and with the consent of learned Counsel appearing for the parties it is taken up for final disposal.

3. For the sake of convenience parties are referred to as they are referred to in the claim petition.

4. Brief facts of the case are:

That on 02.03.2003 when deceased Jagannath was proceeding a coolie along with the cleaner Shivaprasad in the mini lorry bearing registration NO.KA. 04 A 5892 and when the said lorry was proceeding towards Poddatur it dashed against a way side tree on account of the rash and negligent driving of its driver, as a result deceased Jagannath and Shivaprasad died on the spot. Hence, the mother of deceased Jagannath filed a claim petition before MACT, Bangalore seeking compensation of Rs. 5,00,000/- and the Tribunal has awarded compensation of Rs. 1,61,000/- with interest at 6% p.a.

5. As there is no dispute regarding death of deceased Jagannath in the accident, negligence and liability of Insurer of the offending vehicle the only point that

remains for consideration is:

Whether the compensation awarded by the Tribunal is just and reasonable or does it call for enhancement or reduction?

6. After hearing the learned Counsel appearing for the parties and perusing the judgment and award of the Tribunal I am of the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and therefore it is deserved to be enhanced.

7. Deceased Jagannath was aged was 20 years as on the date of his death in the accident as evident from post mortem report. Claimant who is mother of the deceased in support of her contention that the deceased was earning Rs. 5,000/- p.m. by working as a coolie in the lorry had examined herself as PW.1. The facts relating to the accident disclosed that he sustained injuries in the accident and died while he was proceeding in the offending lorry as a coolie. Considering the age of the deceased, year of accident as 2003 and his profession as a coolie in the lorry his income could be assessed at Rs. 3,500/- p.m. as against Rs. 2,000/- assessed by the Tribunal. The deceased was a bachelor. Hence 50% of his income is to be deducted towards his personal expenses. The multiplier applicable is 14 as per the age of the mother of the deceased who is 45 years. Accordingly loss of dependency works out to Rs. 2,94,000/- (Rs. 3,500/- $\times$ 50% $\times$ 12 $\times$ 14 and it is awarded as against Rs. 1,56,000/- awarded by the Tribunal.

8. In addition to this Rs. 10,000/- is awarded towards loss of estate and Rs. 10,000/- is awarded towards transportation of dead body and funeral expenses.

9. Thus the claimant is entitled for the following compensation:

1) Loss of dependency Rs. 2,94,000/- 2) Loss of estate Rs. 10,000/- 3) Transportation of dead body & funeral expenses Rs. 10,000/- Total Rs. 3,14,000/-

10. Accordingly the appeal is allowed in part. The judgment and award of the Tribunal is modified to the extent stated herein above. The claimant is entitled for a total compensation of Rs. 3,14,000/- as against Rs. 1,61,000/- awarded by the Tribunal with interest at 6% p.a. on the enhanced compensation of Rs. 1,53,000/- from the date of claim petition till the date of realisation.

11. The Insurance Company is directed to deposit the enhanced compensation with interest within two months from the date of receipt of a copy of this judgment. Out of the enhanced compensation Rs. 1,25,000/- with proportionate interest is ordered to be invested in F.D. in the name of the claimant who is mother of the deceased in any nationalised or schedule bank for six years with a right to withdraw interest periodically and the remaining amount is ordered to be released in favour of the claimant.

No order as to cost.