

(2011) 12 KAR CK 0151

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4011 of 2009 (MV)

Smt. Gowramma, Mr. Thirthakumar and Mr. Yatheesh

APPELLANT

Vs

Sri. M.A. Vijayamuttu, Branch Manager National Insurance
Co. Ltd. and Branch Manager, The Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 12 KAR CK 0151

Hon'ble Judges : V. Suri Appa Rao, J;N.K. Patil, J

Bench : Division Bench

Advocate : Lokesh kumar K.S, for the Appellant; M. Narayanappa, for R4 R2 - served; R1 - notice dispensed with v/o. dated. 9.12.11, for the Respondent

Judgement

N.K. Patil, J.—Though the matter has come up for orders, the same is taken up for final disposal with the consent of the counsel appearing for both the parties.

2. This appeal by the claimants is directed against the judgment and award dated 01.02.2007 passed by the Civil Judge (Sr.Dn.) and Addl. CJM, Addl. MACT, Arsikere in MVC No. 125/2004, on the ground that the compensation awarded by the Tribunal is on the lower side and needs enhancement.

3. Brief facts of the case are that the 1st appellant is the wife of the deceased and appellant nos.2 and 3 are their children. They have filed a claim petition u/s 166 of the Motor Vehicles Act claiming compensation against the respondents due to untimely death of the deceased in the road traffic accident that occurred at about 2.45 a.m. on 17.09.3003 due to rash and negligent driving of the driver of the offending vehicle. It is the case of the claimants that due to the untimely death of the deceased Lote. Chandrappa, appellant No. 1 has lost her husband at a young age and the appellant Nos.2 and 3 have lost the love and affection of their father and they have been deprived of the guidance and social security. Their lives has been jeopardized and therefore the appellants filed a claim petition before the Tribunal. The said claim petition came up for consideration

before the Tribunal.

4. The Tribunal has assessed the income of the deceased Late. Chandrappa at Rs. 80/- per day and awarded Rs. 2,65,400/- along with interest at 6% p.a. from the date of petition till date of payment. Being aggrieved by the judgment and award, passed by the Tribunal, the claimants have filed this appeal seeking enhancement of compensation.

5. We have heard the learned counsel appearing for the appellants and learned counsel appearing for the respondents.

6. After perusal of the judgment of the Claims Tribunal, what emerges is that the occurrence of the road traffic accident resulting in the death of Late Chandrappa is not in dispute. Further, it is not disputed that the age of the deceased was 50 years at the time of accident, as per the post-mortem report. The deceased was hale and healthy prior to the accident. With regard to the dependants, they are none other than the wife and children of the deceased and the accident has occurred in the year 2003. Therefore, in the interest of justice, we can safely re-assess the income of the deceased at Rs. 3,000/- per month, out of which 1/3rd of the income is deducted towards personal expenses of the deceased, in the light of the judgment in the decision of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the remaining is Rs. 2,000/-. The deceased was aged about 50 years and the appropriate multiplier applicable is 13. Accordingly, "Loss of dependency" would come to Rs. .3,12,000/- (Rs. .2000 x 12 x 13 - Rs. .3,12,000). Having regard to the facts of the case as referred to above Rs. .45,000/- is awarded towards "Conventional Heads", In all, the total compensation would be Rs. .3,57,000/- (Rs. .3,12,000/- + Rs. .45,000/-). Thus, the claimants are entitled to a compensation of Rs. .91,600/- in addition to the compensation awarded by the Tribunal, with interest @ 6% p.a. interest from the date of petition till the date of realization.

Respondent No. 4 is directed to deposit the enhanced compensation with interest within three weeks from the date of receipt of a copy of the judgment.

The enhanced amount along with accrued interest shall be released in favour of the appellant No. 1 on deposit of the amount by respondent No. 4 - insurer.

Office is directed to draw the award accordingly.