

(2010) 11 KAR CK 0082
In the Karnataka High Court
Case No : M.F.A. No. 1086 of 2005

Smt. K.S. Geetha and Master Harshith. S. Kunchiti
represented by his mother K.S. Geetha

APPELLANT

Vs

Sri. M.V. Thippeswamy and United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 11 KAR CK 0082

Hon'ble Judges : N.K. Patil, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : S. Nischal, for the Appellant; A.N. Krishnaswamy, for R2, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the claimants is directed against the impugned judgment and award dated 2nd September 2004, passed in M.V.C. No. 3156/2003, by the VII Addl. Judge, Member, Motor Accident Claims Tribunal-III, Court of Small Causes, Bangalore(SCCH-3), (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 18,87,336/- awarded in favour of the claimants as against their claim for Rs. 50.00 Lakhs, is inadequate.

2. The facts in brief are that, the claimants -Appellants 1 and 2 are respectively the wife and son of the deceased Late Sri. H.K. Shivaram. They filed the claim petition u/s 166 of the Motor Vehicles Act, contending that at about 3:10 P.M, on 09-02-2003, the deceased Shivaram met with an accident, while he was going from T. Gollahalli gate towards Hariyabee in the Car bearing No. KA-16/3131, on account of rash and negligent driving by the driver of the offending Bus bearing No. KA-16/A-6116. Due to the impact, he sustained grievous injuries and succumbed to the same on the spot.

3. It is the case of the Appellants that, the deceased was aged about 46 years, working as Senior Lecturer in the Department of Botany at S. Nijalingappa

College, Bangalore, drawing salary of Rs. 16,576/- per month. It is their further case that he was the sole bread winner of the family and was contributing the entire sum towards the family requirements and on account of his untimely death, the family has become haywire, the wife has lost the life partner, the child has lost the love and affection of his father permanently and therefore, they have to be compensated reasonably.

4. On account of the death of the deceased, the Appellants filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. 50.00 lakhs against the Respondents. The said claim petition had come up for consideration before the Tribunal on 2nd September 2004. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 18,87,336/- under different heads, with 8% interest per annum, from the date of petition till the date of payment. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the Appellants are in appeal before this Court, seeking enhancement of compensation.

5. We have heard learned Counsel for Appellants and learned Counsel appearing for second Respondent - Insurer, for considerable length of time.

6. The principal submission canvassed by learned Counsel appearing for Appellants, at the outset is that, as per the decision of the Hon'ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , since the deceased aged about 46 years (between 40 and 50 years) and was a permanent employee in the aided Institution, 30% of his gross salary must be added towards future prospects for calculating the loss of dependency and further the Tribunal also erred in not awarding reasonable compensation under the conventional heads. Therefore, he submitted that the impugned judgment and award is liable to be modified accordingly.

7. As against this, learned Counsel appearing for second Respondent - Insurer while trying to justify the impugned judgment and award, does not dispute that as per the aforesaid judgment, 30% of the gross salary towards loss of future prospects has to be added, for calculating loss of dependency for the death of the deceased who was aged about 46 years and a permanent employee.

8. However, both the learned Counsel fairly submitted that a sum of Rs. 2,400/- may be deducted towards income tax and professional tax from the gross salary of the deceased after adding 30% towards future prospects.

9. After hearing learned Counsel for the parties, after careful perusal of the judgment and award passed by the Tribunal and after going through the original records made available, it is seen that the occurrence of accident and the resultant death of the deceased are not in dispute. The deceased was aged about 46 years, working as Senior Lecturer in the Department of Botany at S. Nijalingappa College. As per the claim petition and also during the relevant period of time, the deceased was drawing salary of Rs. 16,576/- per month and

we accept the same. As rightly pointed out by the learned Counsel for Appellants, 30% has to be added to the said gross salary towards future prospects as per the decision in Sarla Verma's case (supra). Accordingly, if 30% (Rs. 4,972/-) is added to gross monthly salary of Rs. 16,576/-, the total monthly income comes to Rs. 21,548/-. Out of which, as submitted by learned Counsel for the parties, if a sum of Rs. 2,400/- towards income tax and professional tax is deducted, the net income comes to Rs. 19,148/-. From the said sum, having regard to the number of dependents, 1/3rd has to be deducted, as per the aforesaid Apex Court decision. Accordingly, if 1/3rd Rs. 6,382/-) is deducted towards the personal and living expenses of the deceased, the net monthly income comes to Rs. 12,766/-. Since the deceased was aged about 46 years, the appropriate multiplier is "13" as per the decision of the Hon'ble Apex Court in Sarla Verma's case (supra). Accordingly, we re-determine compensation payable towards loss of dependency at Rs. 19,91,496/- (i.e. Rs. 12,766/- x 12 x "13") as against Rs. 16,62,336/- awarded by Tribunal.

10. Further, the Tribunal also erred in not awarding reasonable compensation under the head transportation and funeral expenses and not awarded any compensation towards loss of love and affection. The deceased has left behind the wife and a minor son. Therefore, having regard to the facts and circumstances of the case, we award a sum of Rs. 10,000/- towards loss of love and affection at the rate of Rs. 5,000/- to each Appellant and a sum of Rs. 10,000/- towards transportation of dead body and funeral expenses.

11. However, a sum of Rs. 10,000/- towards loss of consortium, a sum of Rs. 10,000/- towards loss of life expectancy/ loss of estate and a sum of Rs. 2,00,000/- awarded towards royalty that would have been earned by the sale of books, awarded by Tribunal are just and reasonable and hence, they do not call for interference.

12. In the light of the facts and circumstances of the case, as stated above, the appeal filed by Appellants is allowed in part. The impugned judgment and award dated 2nd September 2004, passed in M.V.C. No. 3156/ 2003, by the VII Addl. Judge, Member, Motor Accident Claims Tribunal-III, Court of Small Causes, Bangalore (SCCH-3), is hereby modified, awarding a sum of Rs. 21,35,392/- as against Rs. 18,87,336/- awarded by the Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition till the date of realization. The break-up is as follows:

Towards Loss of Dependency

Rs. 19,91,496/-

Towards royalty by sale of books

Rs. 2,00,000/-

Towards Loss of love and affection

Rs. 10,000/-

Towards loss of consortium

Rs. 10,000/-

Towards Loss of estate / loss of expectancy

Rs. 10,000/-

Towards transportation of dead body and funeral expenses

Rs. 10,000/-

TOTAL

Rs. 22,31,496/-

The second Respondent - Insurer is directed to deposit the enhanced compensation of Rs. 3,44,160/-(rounded off to Rs. 3,44,200/-), with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment and award.

Immediately on such deposit by the Insurer, out of the enhanced compensation of Rs. 3,44,200/-, a sum of Rs. 2,00,000/- with proportionate interest, shall be invested in Fixed Deposit, in any Nationalized or Scheduled Bank, in the name of second Appellant - son of the deceased, till he attains majority, and thereafter renewal for five years, with liberty reserved to the first Appellant to withdraw the interest periodically, till his majority and thereafter the second Appellant is entitled to withdraw the interest for a period of five years.

Further, a sum of Rs. 1,00,000/- with proportionate interest, shall be invested in Fixed Deposit, in any Nationalized or Scheduled Bank, in the name of first Appellant - wife of the deceased, for a period of five years, renewal for a further period of five years, with liberty reserved to her to withdraw the interest periodically.

Remaining sum of Rs. 44,200/- with proportionate interest, shall be released in favour of the first Appellant, immediately.

Office to draw award, accordingly.