(2010) 04 KAR CK 0123

In the Karnataka High Court

Case No : M.F.A. No. 3063 of 2005

Smt. R Manjula and Others — APPELLANT

Vs

The Manager, The Oriental Insurance Co Ltd. and T.S. Venkatesh — RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2011) ACJ 1165 : (2010) ILR (Kar) 3722 : (2010) 6 KarLJ 522 : (2011) 8 RCR(Civil) 2508 : (2011) 1 TAC 490

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

Bench : Division Bench

Advocate : F.S. Dabali, for the Appellant; A. Ravi Shankar, for R1, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the claimants is directed against the impugned judgment and award dated 28th December 2004, passed in M.V.C. No. 3141/2003, by the Member, Motor Accident Claims Tribunal, II Additional Judge, Court of Small Causes, Bangalore City, (SCCH-13), (for short, Tribunal'') for enhancement of compensation on the ground that, the compensation of Rs. 4, 14,000/- with 6% interest, awarded in favour of the claimants as against their claim for Rs. 28.00 lakhs, is inadequate.

2. The facts in brief are that the first appellant is the wife, appellants 2 and 3 are the minor children and appellants 4 and 5 are the parents of the deceased Sri. N. Anand Kumar. They filed the claim petition u/s 166 of the Motor Vehicles Act, contending that at about 3:00 P.M, on 29-05-2003, the deceased was travelling in his TVS Super Moped from Yeshwanthpura to Yelahanka New Town Road and while he reached near a Garage at Attur Layout, a Private BMTC bus bearing No. KA -05/B-5918 driven by its driver, in a rash and negligent manner came and dashed against the TVS Super Moped, driven by the deceased. Due to the impact, the deceased sustained grievous injuries all over the body and

succumbed to the same at the spot. The vehicle was also badly damaged. It is the further contention of the appellants that the deceased was aged about 28 years working as ''Helper cum Operator'', drawing salary of Rs. 4,592/- per month and was hale and healthy before the accident.

3. On account of the death of the deceased, the appellants filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. 28.00 lakhs against the respondents. The said claim petition had come up for consideration before the Tribunal on 28th December 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. 4,14,000/- under different heads, with 6% 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.

4. We have carefully gone through the grounds urged in the memorandum of appeal filed by appellants and heard learned Counsel for Insurance Company for considerable length of time.

5. After hearing learned Counsel for the parties, after careful perusal of the judgment and award passed by the Tribunal and after critical evaluation of the original records placed before us, it emerges that, the deceased was aged about 28 years, working as ''Helper cum Operator'' at M/s. Subbaiah Enterprises, drawing salary of Rs. 4,592/- per month. It is the contention of the appellants that the deceased was also running a petty business in his house and earning a sum of Rs. 5,000/- per month. To substantiate the salary drawn by the deceased, the appellants have produced Ex.P13, salary statement issued by the employer and examined PW3, the proprietor of M/s. Subbaiah Enterprises, who has also corroborated the said salary drawn by him. When such being the case, the Tribunal is not justified in assessing the income of the deceased at only Rs. 3,000/- per month. The deceased was a young and energetic person, doing the side business also at home to meet the family requirements. Now, in view of the untimely death of the deceased, the future career of the children are jeopardized and the wife and parents have become in-secured, both socially and financially. Therefore, taking into consideration all these aspects, we deem it fit and appropriate to reassess the income of the deceased at Rs. 6,000/- per month. Since the deceased has left behind five dependents, 1/4th has to be deducted towards his personal and living expenses. Accordingly, after deducting 1/4th (Rs. 1,500/-) from the said income, the net monthly income comes to Rs. 4,500/-. The proper multiplier applicable in this case, as per the decision of the Apex Court in Sarla Verma''s case 2009 ACJ P. 1298 is, ''17''. Accordingly, we re-determine compensation payable towards loss of dependency at Rs. 9,18,000/- (i.e. Rs. 4,500/- x 12 x ''17'') as against Rs. 3,84,000/- awarded by Tribunal.

6. Further, the Tribunal also erred in not awarding reasonable compensation towards the conventional heads, except loss of love and affection. Therefore,

having regard to the facts and circumstances of the case, we award a sum of Rs. 10,000/- towards transportation of dead body and funeral expenses as against Rs. 5,000/-, Rs. 10,000/- towards loss of life expectancy/loss of estate and a sum of Rs. 20.000/- towards loss of consortium as against Rs. 5,000/- awarded by Tribunal. However, a sum of Rs. 20,000/- awarded by Tribunal towards loss of love and affection at the rate of Rs. 5,000/- each in respect of appellants 2 to 5 is just and reasonable and does not call for interference.

7. 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 28th December 2004, passed in M.V.C. No. 3141/2003, by the Member, Motor Accident Claims Tribunal, II Additional Judge, Court of Small Causes, Bangalore City (SCCH-13), is hereby modified, awarding a sum of Rs. 9,78,000/- as against Rs. 4,14,000/- 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. 9,18,000/- -- Towards Loss of love and affection Rs. 20,000/- @ Rs. 5,000/- each in respect of appellants 2 to 5 -- Towards Loss of estate/loss of Rs. 10,000/- expectancy -- Towards transportation of dead Rs. 10,000/- body and funeral expenses -- Towards loss of consortium Rs. 20,000/- -- TOTAL Rs. 9,78,000/- --

The Insurance Company is directed to deposit the enhanced compensation of Rs. 5,64,000/-, 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 Insurance Company, out of the enhanced compensation of Rs. 5,64,000/-, a sum of Rs. 1,50,000/- with proportionate interest, shall be kept in Fixed Deposit, in the names of each of appellant Nos. 2 and 3, in any Nationalized or Scheduled Bank, till they attain majority, with liberty reserved to the first appellant -wife of the deceased to withdraw the interest periodically for the welfare of appellants 2 and 3.

A sum of Rs. 1,00,000/- with proportionate interest shall be kept in Fixed Deposit in the name of first appellant - wife of deceased, in any Nationalized or Scheduled Bank, for a period of five years and renewable by five years with liberty reserved to her to withdraw the interest periodically.

A sum of Rs. 50.000/- with proportionate interest shall be kept in Fixed Deposit in the names of each of appellants 4 and 5 - parents of deceased, in any Nationalized or Scheduled Bank, for a period of five years and renewable by five years with liberty reserved to them to withdraw the interest periodically.

The Remaining sum of Rs. 64,000/- with proportionate interest shall be released in favour of appellant Nos. 1, 4 and 5, in equal proportion.

Office to draw award, accordingly.

Sri. A. Ravi Shankar, learned Counsel is permitted to file vakalath on behalf of first respondent within four weeks from today.

