

(2014) 04 KAR CK 0029
In the Karnataka High Court
Case No : M.F.A. No. 6860 of 2012 (MV)

Smt. Shanthamma, S. Krishnaprasad and S. Pragathi	APPELLANT
Vs	
N. Manohara and Others	RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 04 KAR CK 0029

Hon'ble Judges : P.D. Waingankar, J;N.K. Patil, J

Bench : Division Bench

Advocate : V. Padmanabha Kedilaya, Advocate for the Appellant; F.S. Dabali, Advocate for R2 and Shri. S. Srishaila, Advocate for R5, Advocate for the Respondent

Judgement

N.K. Patil, J.—Though this appeal is posted for Admission, the same is taken up for final disposal, with the consent of the learned counsel appearing for the parties. This appeal by the claimants is directed against the judgment and award dated 16th March 2012, passed in MVC No. 420/2010, by the Presiding Officer, Fast Track Court-I, Member, Additional Motor Accident Claims Tribunal, Mysore, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 4,34,000/- awarded in favour of the claimants as against their claim for Rs. 22,40,000/-, is inadequate.

2. The facts in brief are that, the claimants are the wife and children of deceased S. Srinivasa. They filed the claim petition u/s 166 of the Motor Vehicles Act, contending that, at about 5:15 A.M. on 06-02-2010, when the deceased and others were proceeding in KSRTC Bus bearing Registration No. KA-09/F-3496, towards Nanjangud from Mysore, near Mahadeshwara Petrol Bunk, Thandya village, in Mysore-Ooty Main Road, at that time, the driver of the said Bus drove the same at high speed, in a rash and negligent manner and dashed against the Lorry bearing registration No.KA-12/7029, which was parked by the side of the road. Due to the impact, the deceased sustained grievous injuries and died on

the spot. Immediately, the dead body was taken to Government Hospital, Nanjangud for post mortem examination.

3. It is the case of the appellants that, the deceased was aged about 48 years and working as a cook, who was expert in making sweets cum cooking contractor, earning a sum of Rs. 18,000/- per month and hale and healthy prior to the accident. On account of the untimely death of the deceased, the appellants have lost the love and affection, inspiration and guidance and apart from social and moral support 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 against the respondents. The said claim petition had come up for consideration before the Tribunal on 16th March, 2010. 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. 4,34,000/- 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.

5. We have gone through the grounds urged in the memorandum of appeal and heard the learned counsel appearing for appellants, learned counsel appearing for second respondent/Corporation and also learned counsel appearing for fifth respondent/Insurer, for quite some time.

6. The submission of the learned counsel appearing for appellants at the outset is that, the Tribunal grossly erred in not assessing just and reasonable income of the deceased and that the monthly income of Rs. 4,000/- assessed by Tribunal is on the lower side. To substantiate the said submission, he submitted that the deceased was aged about 48 years and a Cooking contractor, expert in sweets making. He has left behind unmarried daughter, wife and a son and the accident has occurred on 06-02-2010. Therefore, he submitted that reasonable monthly income of deceased between Rs. 8,000/- and Rs. 10,000/- be re-assessed and 30% towards future prospects be added in the light of the judgment of the Hon"ble Apex Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, and deducting 1/3rd towards the personal and living expenses of the deceased, and adopting multiplier of "13, considering the age of the deceased, reasonable compensation be awarded towards loss of dependency as also conventional heads.

7. Per contra, learned counsel appearing for second respondent/Corporation, Shri F.S. Dabali, at the outset submitted that the Tribunal has erred in fastening the entire liability on the Corporation, contrary to the material available on file. Hence, the same cannot be sustained and is liable to be modified, by re-fixing the contributory negligence reasonably on the part of the drivers of both the

vehicles involved in the accident. To substantiate the said submission, he placed strong reliance on the judgment and award passed by the learned Single Judge of this Court dated 3rd July, 2013 in M.F.A. No. 6372/2012 and connected cases (The Divisional Manager, KSRTC, Chamarajanagara Bus Depot Vs. Smt. Shanthamma and others), arising out of the same accident, wherein this Court has modified the liability fastened by the Tribunal, fixing the contributory negligence in the ratio of 50:50 on the part of the drivers of both the vehicles involved in the accident, i.e. 50% on the part of the driver of the KSRTC Bus and 50% on the part of the driver of the Lorry insured with the 5th respondent Insurer. Therefore, he submitted, following the aforesaid judgment and award passed by the learned Single Judge of this Court, the impugned judgment and award passed by Tribunal is liable to be modified, fixing the contributory negligence in the ratio of 50:50 on the part of the drivers of both the vehicles involved in the accident.

8. So far as quantum of compensation awarded by Tribunal, he submitted that the quantum of compensation awarded by Tribunal is just and proper and does not call for interference by this Court.

9. It is the case of the fifth respondent/Insurer that, the Tribunal is justified in fastening the entire liability on the part of the driver of the Bus belonging to the Corporation and interference in the same is uncalled for. But, after going through the judgment and award passed by the learned Single Judge of this Court dated 3rd July, 2013 in M.F.A.No. 6372/2012 and connected cases (The Divisional Manager, KSRTC, Chamarajanagara Bus Depot Vs. Smt. Shanthamma and others), arising out of the same accident, where he himself has represented the Oriental Insurance Company Limited, which is respondent No. 7 in the first case, he does not dispute that the liability saddled on the Corporation has been modified, fixing the contributory negligence on the part of the drivers of both the vehicles involved in the accident, in the ratio of 50:50. Therefore, he submitted that the same may be considered in accordance with law.

10. After careful consideration of the submission of the learned counsel appearing for the appellants, learned counsel appearing for, second respondent/Corporation and learned counsel appearing for 5th respondent/Insurer, including the original records placed before us and also the judgment and award relied upon by the learned counsel appearing for Corporation, the points that arise for our consideration in this appeal are:

1] Whether the Tribunal is justified in fixing the entire negligence on the part of the driver of the bus belonging to the second respondent/Corporation?

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

Re-Point No. 1]: After perusal of the entire material available on file, it is not in dispute that the occurrence of accident and the resultant death of the deceased in the said accident. After appreciating the oral and documentary evidence

available on file, the Tribunal had saddled the entire liability on the part of the second respondent/Corporation. Being aggrieved by the liability saddled on it, the second respondent/Corporation had filed an appeal and the same had come up for consideration before the learned Single Judge and the learned Single, after critical evaluation of the oral and documentary evidence available on file, has modified the said judgment and award passed by Tribunal, arising out of the same accident, by re-fixing the negligence in the ratio of 50:50, on the part of the drivers of both the vehicles involved in the accident. Learned counsel appearing for second respondent/Corporation has placed before us a copy of the judgment passed by the learned Single Judge dated 3rd July, 2013 in M.F.A.No. 6372/2012 and connected cases (The Divisional Manager, KSRTC, Chamarajanagara Bus Depot Vs. Smt. Shanthamma and others), arising out of the same accident. The learned counsel appearing for the fifth respondent/Insurer does not dispute the same. Accordingly, following the judgment and award passed by the learned Single Judge of this Court dated 3rd July, 2013 in M.F.A. No. 6372/2012 and connected cases (The Divisional Manager, KSRTC, Chamarajanagara Bus Depot Vs. Smt. Shanthamma and others), arising out of the same accident, we answer point No. 1] in the "Negative" and re-fix the negligence in the ratio of 50:50 on the part of the drivers of both the vehicles involved in the accident.

Re-Point No. 2: So far as quantum of compensation awarded by Tribunal is concerned, it can be seen that the compensation awarded by Tribunal is on the lower side and liable to be re-determined. Therefore, we answer point No. 2 also in the "Negative" and proceed to determine the compensation as follows.

11. After going through the entire material placed before us, it emerges that the deceased was aged about 48 years and a Cook by profession. He has left behind, wife, unmarried daughter and a son. The accident is of the year 2010. Therefore, the monthly income of Rs. 4,000/- assessed by Tribunal is on the lower side and liable to re-assessed. Having regard to the age, avocation and the year of accident, we re-assess the monthly income of the deceased at Rs. 6,500/- per month, to meet the ends of justice.

12. As rightly pointed out by learned counsel appearing for appellants, in the light of the decision of the Hon'ble Apex Court in the case of Santosh Devi Vs. National Insurance Company Limited and others (Civil Appeal No. 3723/2012, arising out of S.L.P.(C)No. 24489/2010), the claimants are entitled to additional 30% towards future prospects.

13. In the case on hand, we have re-assessed the income of the deceased at Rs. 6,500/- per month. In view of the judgment of the Hon'ble Apex Court in Santosh Devi Vs. National Insurance Company Ltd. and others (supra), we add 30% to the monthly income of the deceased, towards future prospects. Accordingly, the total monthly income would be Rs. 8,450/- (Rs. 6,500/- + Rs. 1,950/-). As the claimants are three in number, 1/3rd is to be deducted towards the personal and living expenses of the deceased. Since the deceased was aged about 48 years, the proper multiplier applicable is "13" as per the decision of the

Hon"ble Apex Court Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, as rightly adopted by Tribunal. Accordingly, if 1/3rd (i.e. Rs. 2,816/-) is deducted from Rs. 8,45.0/- towards his personal expenses, the net income would be Rs. 5,634/- per month. Thus, the compensation towards loss of dependency would work out to Rs. 8,78,904/- (i.e. Rs. 5,634/- x 12 x "13") as against Rs. 4,16,000/- awarded by Tribunal.

14. Further, the Tribunal has erred in awarding a meagre sum of Rs. 18,000/- towards conventional heads. The same is on the lower side. As per the decision of the Apex Court in Sarla Verma's case (supra), we award a sum of Rs. 50,000/- towards loss of consortium, Rs. 30,000/- towards loss of love and affection at the rate of Rs. 10,000/- to each claimant, Rs. 10,000/- towards transportation and funeral expenses and Rs. 10,000/- towards loss of estate as against Rs. 18,000/- awarded by Tribunal towards conventional heads.

15. Thus, the total compensation would come to Rs. 9,78,904/- as against Rs. 4,34,000/- awarded by Tribunal, with interest at 8% per annum on the enhanced sum, from the date of petition till the date of realization. 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 16th March 2012, passed in MVC No. 420/2010, by the Presiding Officer, Fast Track Court-I, Member, Additional Motor Accident Claims Tribunal, Mysore, is hereby modified, awarding a sum of Rs. 5,44,904/-, with interest at 8% per annum, from the date of petition till the date of realization, in addition to the compensation awarded by Tribunal;

The liability fixed by Tribunal is modified, by refixing the same in the ratio of 50:50 on the part of the drivers of both the vehicles involved in the accident;

Accordingly, the second respondent/Corporation and fifth respondent/Insurer are directed to deposit the compensation awarded by Tribunal and also the enhanced compensation of Rs. 5,44,904/-, with interest thereon at 8% per annum, from the date of petition till the date of realization, in the ratio of 50:50, within three weeks from the date of receipt of copy of the judgment and award.

Immediately on such deposit by the second "respondent/Corporation and fifth respondent/Insurer, out of the enhanced compensation of a sum of Rs. 5,44,904/-, a sum of Rs. 3,00,000/- with proportionate interest shall be invested in the name of the first appellant-wife of deceased, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of ten years, renewable by another ten years, with liberty reserved to her to withdraw the periodical interest.

A sum of Rs. 1,00,000/- with proportionate interest shall be invested in the name of the third appellant-daughter of deceased, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of ten years, renewable by five years, with liberty reserved to her to withdraw the periodical interest.

Remaining sum of Rs. 1,44,904/- with proportionate interest shall be released in

favour of the appellant No. 1, immediately.

Office to draw award, accordingly.