(2019) 06 KAR CK 0002

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 9871 Of 2012 (Mv)

Smt. Siddamma APPELLANT

Vs

National Insurance Company Limited RESPONDENT

Date of Decision : 03-06-2019

Acts Referred:

Citation : (2019) 06 KAR CK 0002

Hon'ble Judges : K.Somashekar, J

Bench : Single Bench

Advocate : M V Maheswarappa, Ravish Benni

Judgement

1. Though this appeal is listed for admission, with the consent of learned counsel on both sides, the matter is heard for final disposal.

2. This appeal is preferred against the judgment and award dated 5.5.2010 rendered by the Tribunal in MVC No.867/2008 seeking enhancement of compensation.

3. The factual matrix of the appeal is as under:

It is stated in the claim petition that on 29.01.2008 at about 11.30 a.m. deceased Hanumanthaiah was traveling to Sangenahalli from Pochakatte along with one P.H.Ngaraju in an auto bearing Regn.KA-06 B 4231 and when the said auto was moving in Doddabidra - Chikkabidare road, at that time the driver of the said auto drove the same in a rash and negligent manner with high speed as a result the auto capsized and caused the accident. Due the said impact, Hanumanthaiah died in the hospital. Prior to the accident, Hanumanthaiah was hale and healthy, he was carrying agriculture work and used to earn Rs.8,000/- p.m. The entire family was depending upon his income. Due to the untimely death of Hanumanthaiah, the claimants being the wife, daughters and sons of the deceased, filed the claim petition seeking compensation.

4. After service of notice, second respondent appeared before the Tribunal but

did not file written statement. First respondent being the insurer of the offending vehicle, filed written statement, denying the petition averments and sought for dismissal of the claim petition.

5. On the basis of pleadings, the Tribunal framed issues. In order to substantiate their case, first claimant got examined herself as PW.1 and examined one eye witness as PW.2 and got marked 15 documents as per Ex.P1 to P15. On behalf of the respondents, RW.1 was examined and Exs.R1 and R2 were got marked. After hearing the arguments advanced by learned counsel for the parties and on appreciation of oral and documentary evidence on record, the Tribunal passed the impugned judgment, awarding compensation of Rs.3,91,000/- with interest @ 6% p.a. from the date of petition till payment. Further, the liability was fastened on second respondent being the owner and the petition against the first respondent insurer came to be dismissed. Being not satisfied with the compensation awarded by the Tribunal, the claimants are before this Court seeking enhancement by urging various grounds.

6. Learned counsel for appellants has taken me through the evidence of PW.1 - Siddamma, wife of the deceased and the documents relied upon by them for seeking enhancement of compensation. He contends that the award passed by the Tribunal is on lower side, inadequate and contrary to the facts, evidence and probabilities of the case. Hence, the same is liable to be enhanced by this Court. Further, he contends that the compensation by the Tribunal in a sum of Rs.3,51,000/-towards loss of dependency is very much on lower side having regard to the avocation of the deceased and that he was the only earning member in the family. Further, the compensation awarded under the conventional heads is also inadequate and the same needs to be enhanced, keeping in view the age of the children of the deceased.

7. Further, he contends that the accident is not disputed by the insurer, but the dispute is only with regard to the permit of the auto at the time of accident. The Tribunal has gone unnoticed of the law laid down by the Hon'ble Apex Court in catina of cases and has fixed the responsibility only on the driver of the offending auto at the time of passing the award. Further, he contends that the Tribunal has not followed schedule-II of M.V.Act and Rules. On all these grounds, learned counsel for the appellants seeks for interference of this Court and prays for allowing the appeal by enhancing the compensation.

8. Per contra, learned counsel for the insurance company contends that the driver of the offending auto was not holding valid driving licence to drive the vehicle on the date of accident. Ex.R1 is the permit and Ex.R2 is the insurance policy. According to it, the permit was given to first respondent to ply his vehicle only in Madhugiri town Municipal limits upto a radius of 5kms and the accident occurred near about 300 meter distance from Pochakatte gate which was not the permitted route to ply the vehicle as permit. Hence, there is clear violation of policy conditions. Further, it is contended that the amount claimed is high and exorbitant. It is further contended that the Tribunal, on appreciation of oral and

documentary evidence on record, has rightly assessed the income and awarded just and fair compensation, and the same does not call for any interference and prays for dismissal of the appeals.

9. In the context of the contentions as taken by the learned counsel for the appellants and so also, learned counsel for respondent - insurance company, it is not in dispute that the accident occurred due to actionable negligence on the part of the auto by its driver, due to the said accident, Hanumanthaiah died in the hospital. PW.2 is the eyewitness to the incident and has stated that the accident in question occurred due to rash and negligent driving of the Auto by its driver.

10. PW.1 is the wife, claimants 2 to 5 are the children of deceased Hanumanthaiah. Exs.P7 to P9 are the voter list, electro identity card and ration card. Ex.P3 is the P.M report and Ex.P6 is the inquest report. At the time of accident deceased was aged 50 years. Deceased - Hanumanthaiah is said to be doing agricultural and coolie work and used to earn Rs.8,000 p.m. In proof of income of deceased, claimants have produced two pahani extracts and salary certificate as per Exs.P14 and P15. But the same does not disclose exact monthly income of the deceased. However, the Tribunal while assessing the income of the deceased has taken Rs.3,000/- p.m. and by deducting ¼ of his income towards personal expenses and applying multiplier of 13 has awarded a sum of Rs.3,51,000/- towards loss of dependency. But, however, having regard to the year of accident i.e., 2008 and the evidence of PW.1 and the avocation of deceased as agriculture coolie, the appropriate income for the said year would be Rs.4,500/-p.m. Accordingly, the compensation under the head loss of dependency is re-worked out as under:

Rs.4,500 x 12 x ¾ x 13 = 5,26,500/-

Thus, under the head 'loss of dependency' the claimants are entitled for Rs.5,26,500/- as against Rs.3,51,000/- awarded by the Tribunal and the enhanced compensation under this head would be Rs.1,75,500/-.

11. In so far as compensation under the conventional heads, the Hon'ble Apex Court in National Insurance Co.Ltd vs. Pranay Sethi (AIR 2017 SC 5157), has awarded in all a sum of Rs.70,000/-. But the Tribunal under the conventional heads has awarded in all a sum of Rs.40,000/-. Therefore, another sum of Rs.30,000/- is awarded under this head.

12. In the case of MAGMA GENERAL INSURANCE CO. LTD. vs. NANU RAM (2018 SCC ONLINE SC 1546), the Hon'ble Apex Court has held that "parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training". At the time of accident, claimant Nos. 2 to 5 were minors. They have lost their father at the tender age and have lost love and affection of the deceased and there is a reciprocity in between the family and deceased. Hence, in accordance with the said ruling, a sum of Rs.40,000/- each is awarded to claimants 2 to 5 towards loss of filial consortium totaling to Rs.1,60,000/-.

13. In view of the discussion made above and with the altered factors, the compensation is re-worked out as under:-

Compensation

Compensation

Particulars

awarded by

by this Court

MACT

Loss of dependency

3,51,000

5,26,500

Loss of consortium

10,000

70,000

Loss of love and

10,000

affection

Loss of estate

10,000

Transportation and

10,000

funeral expenses

Loss of filial

-

1,60,000

consortium

Total

3,91,000

7,56,500

Thus, in all, the claimants are entitled to total compensation of Rs.7,56,500/- as against Rs.3,91,000/-awarded by the tribunal. The enhanced compensation would be Rs.3,65,500/-.

14. With regard to the finding of the Tribunal in fastening the liability on respondent No.2 to pay the compensation, the Tribunal has held so based on the fact that the offending vehicle did not possess a valid permit to ply the vehicle in the area where the accident took place. In that connection, it is useful to refer to the decision of the Apex Court in the case of RANI & OTHERS VS NATIONAL INSURANCE COMPANY LIMITED & OTHERS - (2018) 8 SCC 492, wherein it is held that even in case where the offending vehicle did not possess a valid permit to operate in the State concerned, the compensation determined must be first paid by the insurer, who could thereafter recover the same from the owner of the offending vehicle. Therefore, the said ratio laid down is squarely applicable to the present case, and therefore, respondent No.1 -National Insurance Co. Ld., shall first pay the compensation determined and thereafter, recover the same from the owner.

For the reasons and findings as stated above, I proceed to pass the following:

ORDER

The appeal filed by the appellants/claimants is allowed in part. The appellants/ claimants are entitled for enhanced compensation of Rs.3,65,500/- with interest @ 6% p.a. from the date of petition, till realisation. The impugned judgment and award dated 05.05.2010 passed by the Tribunal in MVC No.867/2008, is modified accordingly. However, it is made clear that the appellants are not entitled for any interest for the delay period, if any.

Respondent/National Insurance Co.Ltd. shall deposit the entire amount awarded by the Tribunal as well as the compensation enhanced by this Court, along with interest accrued, within a period of six weeks from the date of receipt of copy of this judgment and on such deposit, the same shall be disbursed to the claimants, on proper identification. However, the impugned judgment and award, in so far as it relates to rate of interest, apportionment and deposit is concerned, shall remain unaltered.

Office to draw the decree accordingly.