(2013) 12 KAR CK 0165

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7790 of 2011 (MV)

Smt. Suganthi, Selvan Sowmiya Parveen and Selvan Sriram APPELLANT

Vs

National Insurance Co. Ltd. RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0165

Hon'ble Judges : N.K. Patil, J;Budihal R.B., J

Bench : Division Bench

Advocate : D.L. Suresh, for the Appellant; A.N. Krishna Swamy, for R-1, for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the claimants is directed against the impugned judgment and award dated 13.4.2011 passed in MVC No. 4678/2008 on the file of the Principal Motor Accident Claims Tribunal, Court of Small Causes, Bangalore. The Tribunal by its impugned judgment and award has awarded a sum of Rs. 24,91,620/- with interest at 6% p.a. from the date of petition till its realization, on account of the death of Sri C. Murugavel in the road traffic accident.

2. The claimants on the ground that the quantum of compensation awarded by the Tribunal is inadequate and it requires enhancement, have presented this appeal.

3. The brief facts of the case on hand are, appellant No. 1 is the wife and appellants 2 and 3 are the minor children of deceased. They have filed the claim petition u/s 166 of the M.V. Act claiming compensation against the respondents/ owner and insurer of the offending vehicle on account of death of the deceased in the road traffic accident that occurred on 30.05.2007 when deceased was waiting for the bus by the side of NH 13 near Kadagi Halla, Opposite Raichur road. At that time, the driver of the lorry bearing registration No. KA-01/B 6286

drove the same in a rash and negligent manner and dashed against the deceased, due to the impact, he sustained fatal injuries and succumbed to the injuries. It is contended that deceased was aged about 37 years. By profession he was an Assistant Manager working in M/s. Field Fresh Foods Pvt. Ltd., drawing gross salary of Rs. 22,929/- per month. He is the only earning member of the family. On account of untimely death, the wife has lost her life partner at an young age and the minor children have lost love and affection, inspiration and guidance. The said matter had come up before the Tribunal for consideration. The Tribunal after hearing both sides and after appreciating the oral and documentary evidence on record, by taking the income of the deceased at Rs. 20,639/- per month and after deducting 1/3rd towards personal expenses and by applying the appropriate multiplier of 15, has allowed the claim petition awarding Rs. 24,76,620/- towards loss of dependency and Rs. 15,000/- towards conventional heads. In all, Rs. 24,91,620/- with 6% interest from the date of petition till its realization. Being dissatisfied with the impugned judgment and award passed, the appellants/claimants have filed this appeal seeking enhancement of compensation.

4. It is the submission of the Sri. D.L. Suresh, learned counsel for the appellants at the outset that the Tribunal has erred in not assessing reasonable income of the deceased. The deceased was aged about 37 years. He was working as a Assistant Manager in a private limited company drawing a salary of Rs. 22,929/- per month. He has placed reliance on the judgment of the apex Court in the case of Santosh Devi Vs. National Insurance Company Ltd. and Others, and submitted that another 30% towards future prospects should be added to the income of the deceased out of which, by deducting income tax and professional tax and also after deducting 1/3rd towards personal expenses and by applying the appropriate multiplier of 15, the compensation towards loss of dependency and also conventional heads may be redetermined, by modifying the impugned judgment and award.

5. As against this, learned counsel appearing for the 1st respondent-Insurer inter alia contended that substantial amount has been awarded by the Tribunal, after due consideration of the oral, documentary and other evidence on record and also by considering the age of the deceased, his avocation and date of the accident. Therefore, interference is uncalled for. However, he has not disputed the law laid down by the Apex Court in Santosh Devi''s case (supra) and submitted that 30% towards future prospects may be added to the income of the deceased and reasonable compensation be awarded, by modifying the judgment and award.

6. After careful consideration of the submissions of learned counsel for both the parties and after perusal of the impugned judgment and award the only point that would arise for consideration is:

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

7. The occurrence of the accident resulting in death of the deceased in the road traffic accident is not in dispute. Further, it is not in dispute that the claimants are none other than the wife and two minor children of the deceased. It is also not in dispute that deceased was aged 37 years and was working as Assistant Manager in a private Limited Company and was drawing Rs. 22,929/- per month. The wife has lost the husband at the age of 36 years and children have lost love and affection, inspiration, guidance and security. As rightly pointed out by the learned counsel for both the parties, another 30% is to be added towards future prospects of the deceased to his income of Rs. 22,929/- following the judgment of the Apex Court (supra), which would come to Rs. 29,807/- per month or per annum it would be Rs. 3,57,684/- out of which, if 20% is deducted towards income tax i.e., on Rs. 2,57,684/- after statutory exemption of Rs. 1, 10,000/-, the remaining amount would be Rs. 3,08,14.8/- and if an amount of Rs. 2,400/- is deducted towards professional tax, the remaining amount would be Rs. 3,05,748/-, out of which, if 1/3rd is deducted towards personal expenses i.e., Rs. 1,01,916/-, the remaining amount would be Rs. 2,03,832/- per annum. Since deceased was aged 37 years the appropriate multiplier would be 15 (Rs. 2,03,832 x ''15''). Accordingly, we re- determine the loss of dependency at Rs. 30,57,480/- as against 24,76,625/- awarded by the Tribunal.

8. Having regard to the facts and circumstances, we deem it appropriate to award Rs. 50,000/- towards conventional heads i.e., loss of consortium, loss of estate, loss of love and affection, transportation and funeral expenses. In all claimants would be entitled to Rs. 31,07,480/- as against Rs. 24,91,620/-. There would be enhancement of Rs. 6,15,860/-. Thus, the claimants are entitled for a compensation of Rs. 6,15,860/- with interest at 6% from the date of petition till its realization, in addition to the compensation awarded by the Tribunal. In the light of the above facts and circumstances, appeal is allowed in part. The impugned judgment and award dated 13.4.2011 passed in MVC No. 4678/2008 on the file of Prl. Motor Accident Claims Tribunal, Bangalore is hereby modified awarding additional compensation of Rs. 6,15,860/- with 6% interest from the date of petition till its realization.

The 1st respondent-Insurer is directed to deposit the enhanced compensation with interest within a period of three weeks from the date of receipt of the copy of the judgment.

Out of the enhanced compensation, Rs. 2,00,000/- with proportionate interest shall be invested in the name of the appellant No. 1 for a period of 10 years renewable for another 10 years in any of the nationalized or scheduled bank and she is entitled to withdraw the interest periodically. Rs. 1,50,000/- with proportionate interest each shall be invested in the name of appellants 2 and 3 till they attain the age of 30 years and appellant No. 1 is entitled to withdraw the interest periodically till they attain the age of 21 years for their welfare. From 22-30 years appellants 2 and 3 are entitled to withdraw the periodical interest.

Remaining Rs. 1,15,860/- with proportionate interest shall be released in favour of appellant No. 1 immediately, after deposit by the 1st respondent-Insurer.

Draw the award, accordingly.

