(2011) 04 KAR CK 0174

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7527 of 2005 (MV)

Smt. Sundaramma and Sri. T.S. Rajashekar — APPELLANT

Vs

Naresh Kumar Agarwal and Others — RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Citation : (2011) 04 KAR CK 0174

Hon'ble Judges : S. Abdul Nazeer, J;K. Govindarajulu, J

Bench : Division Bench

Advocate : A.R. Sharodamba, for the Appellant; L. Mallesh, for R1 and R3, Sri. P.B. Raju, for R5 Sri. S. Stishaila, for R2, for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—This appeal is directed against the judgment and award in MVC No.2296/2003 dated 26.4.2005 on the file of the Motor Accident Claims Tribunal, Bangalore. The appellants were the petitioners/claimants before the Tribunal and respondent Nos.2 and 3 were the owner and insurer of the offending vehicle. There is no dispute as to the occurrence of the accident and the liability of the second respondent-Insurance Company to pay the compensation.

2. Learned Counsel for the appellants contends that the deceased was the son of the appellants. He was aged 28 years at the time of the accident. He was working as a Commercial Executive at ACE Manufacturing Systems Limited at Peenya and he was drawing gross salary of Rs. 13,350/- per month. The Tribunal has taken his income at Rs. 9,100/- per month for the purpose of computation of loss of dependency. It is argued that taking into consideration the age of the mother of the deceased, the multiplier applicable to the case was 13. It is further contended that the deceased was holding a stable job. Since the deceased was aged 28 years at the time of the accident, the Tribunal ought to have awarded 50% of his income towards his future prospectus.

3. On the other hand, learned Counsel appearing for the second respondent-

Insurance Company has sought to justify the impugned judgment and award. It is argued that the yearly bonus and yearly incentive cannot be added for the purpose of computation of loss of dependency

4. We have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

5. It is not in dispute that the deceased was aged 28 years at the time of the accident. Having regard to the materials on record, the Tribunal has held that the age of the mother of the deceased was 48 years, which is just and reasonable. The Tribunal ought to have applied 13 multiplier instead of 12. Ex.P14 is the salary certificate issued by the employer of the deceased. The Executive HRD of ACE Manufacturing Systems Limited, the employer of the deceased was examined as P.W3. The salary certificate at Ex. P 14 was marked through him. A perusal of the salary certificate would clearly indicate that the gross salary of the deceased was Rs. 10,400/-. The employer had also granted yearly benefits and yearly bonus at 20% of basic + D.A. and yearly incentive/extragia at 30% on basic + D.A. It is not the case of the appellants that incentive has been granted by the employer. Having perused (he entire evidence on record, we are of the view that the said incentive cannot be added for computation of total income of the deceased. Thus, the total income of the deceased has to be considered as under:

Gross salary = Rs. . 10,400 x 12 = Rs. 1,24,800/-

+ other benefits Rs. 17,400/-

Total Rs. 1,42,200/-

6. It is evident from the evidence of the parties that the deceased had the bright chance of promotion in future. He was holding a stable job. We are of the view that 50% of the income has to be awarded towards his future prospectus. Thus, the total income comes to Rs. 2,13,300/- (Rs. 1,42,200 + Rs. 71,100). A sum of Rs. 19,200/- has to be deducted out of the aforesaid amount towards profession tax and income tax. Thus, the balance comes to Rs. 1,94.100/-. The multiplier applicable to the case was 13. The total loss of dependency is Rs. 25,23,300/-. 50% of the same has to be deducted towards personal expenses of the deceased, as he was a bachelor. The loss of dependency comes to Rs. 12,61,650/-. A sum of Rs. 30,000/-has to be added under other conventional heads. Thus, the claimants are entitled for a total sum of Rs. 12,91,650/-. The Tribunal has awarded a sum of Rs. 6,70,000/-, which has to be deducted from the aforesaid sum. Therefore, the claimants are entitled for a sum of Rs. 6,21,650/-. The said sum shall carry interest at the rate of 6% per annum from the date of the petition till the date of deposit.

7. In the result, the appeal succeeds and it is accordingly allowed in part. The second respondent-Insurance Company is directed to deposit a sum of Rs. 6,21,650/- with interest at the rate of 6% per annum within eight weeks from

today. On such deposit, the Tribunal is directed to deposit 60% of the amount in a Nationalised Bank for a period of five years. The claimants are entitled for withdrawal of half-yearly interest. The balance of the amount shall be disbursed to the claimants. No costs.

