**(2013) 11 KAR CK 0300**

**In the Karnataka High Court**

**Case No :** M.F.A. No. 8547 of 2011 (MV)

Smt. Varalakshmi and Others — APPELLANT

Vs

The Proprietor, M/s. K.N.R. construction Ltd. and The Regional Manager, New India Assurance Co. Ltd. — RESPONDENT

**Date of Decision :** 11-11-2013

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 166

**Citation :** (2013) 11 KAR CK 0300

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

**Bench :** Division Bench

**Advocate :** N.S. Bhat, for the Appellant; K.M. Srinivasa, Advocate for R2, for the Respondent

## Judgement

N.K. Patil, J.—This appeal by the claimants is directed against the judgment and award dated 10th June 2011, passed in MVC No. 1061/2009, by the X Additional Judge & Member, Motor Accident Claims Tribunal, Bangalore (SCCH-16), (for short, ''Tribunal'') for enhancement of compensation on the ground that, the compensation of Rs. 6,45,000/- awarded in favour of the claimants as against their claim for Rs. 25,00,000/-, is inadequate. The facts in brief are that, the claimants are the wife, minor daughter, parents and two brothers of the deceased P. Veeregowda. They filed the claim petition u/s 166 of the Motor Vehicles Act, contending that, at about 6:00 P.M., on 02-01-2009, when the deceased was coming from Devanahalli in a motor cycle bearing Registration No. KA-43/H-4035 on Bangalore-Bellary Main Road, NH-7, near Tattamachanahalli Tank Bed, a Goods Lorry bearing Registration No. KA-50/1698 being driven by its driver in a rash and negligent manner, so as to endanger human life and property, came and dashed against the deceased and due to the impact, the deceased sustained grievous injuries to head, hands legs with bleeding and the motor cycle was also extensively damaged. Immediately he was shifted to Government Hospital, Devanahalli, after examination.

2. It is the case of the appellants that, the deceased was aged about 38 years and an agriculturist by profession, growing grapes and also doing sericulture business, earning not less than a sum of Rs. 25,500/- per month and was 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, apart from social, financial and moral support and therefore, they have to be compensated reasonably.

3. On account of the death of the deceased P. Veeregowda, 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 10th June, 2011. 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. 6,45,000/- 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 gone through the grounds urged in the memorandum of appeal and heard the learned counsel appearing for appellants and also the Insurer, for quite some time.

5. Learned counsel appearing for claimants/appellants vehemently submitted that, the Tribunal grossly erred in not assessing the reasonable income of the deceased for the reason that the deceased was aged about 38 years, a progressive agriculturist and also doing sericulture business to maintain the big joint family being the eldest brother and was earning a sum of Rs. 25,500/- per month. He specifically submitted that, after completing his first year B.E. he took up agriculture, as a dynamic person, having innovative thinking, and chosen his profession as agriculture to improve the village and maintain his large family. The accident is of the year 2009 and therefore, the Tribunal ought to have assessed the reasonable income of the deceased instead of assessing at only a sum of Rs. 5,000/- per month. Further, since the claimants are six in number, 1/4th is to be deducted instead of 1/3rd deducted by Tribunal towards the personal expenses of the deceased. Therefore, he submitted that, reasonable compensation may be awarded, by adopting proper multiplier and deducting 1/4th towards the personal expenses of the deceased and the impugned judgment and award passed by Tribunal may be modified.

6. As against this, learned counsel appearing for Insurer vehemently submitted that the compensation awarded by Tribunal is after due appreciation of the oral and documentary evidence available on file. Further, he submitted that the Tribunal is justified in assessing the income of the deceased at Rs. 5,000/- per month for the reason that the appellants have not produced an iota of document to substantiate that there is loss in agricultural income and the same would continue to come. Further, he vehemently submitted that the Tribunal is also

 

justified in deducting 1/3rd towards the personal expenses of the deceased for the reason that, all the claimants are major except the daughter who was aged about 5 years as on the date of accident. The two brothers are already majors and are able to maintain the family and there is no actual loss of dependency in respect of father and two brothers and the actual claimants, who were dependent on the income of the deceased are wife, minor daughter and mother. Therefore, the Tribunal is right in deducting 1/3rd towards the personal expenses of the deceased. He also submitted that the Tribunal is also highly justified in awarding compensation towards the conventional heads as per the decision of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Hence, interference in the impugned judgment and award passed by Tribunal is not called for.

7. After hearing learned counsel for the parties, and after careful perusal of the judgment and award passed by the Tribunal, the only point that arise for our consideration in this appeal is,

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

The undisputed facts of the case are the occurrence of accident and the resultant death of the deceased P. Veeregowda. It is also not in dispute that the deceased was aged about 38 years, a progressive agriculturist, growing grapes and also doing sericulture business. It is stated that he was earning Rs. 25,500/- per month. But, to substantiate the same, the appellants have not produced any credible documentary evidence. It is relevant to note that there is no loss of agricultural income. But, it should also be seen that the Tribunal is also not justified in assessing the income of the deceased at only Rs. 5,000/- per month. The same is on the lower side and needs to be re-assessed. The accident is of the year 2009 and the deceased was an young and energetic man aged about 38 years, a progressive agriculturist growing grapes and also doing sericulture business. Therefore, having regard to the age, avocation and also the year of accident, we re-assess the income of the deceased at Rs. 6,500/- per month. Further, even though the claimants are six in number, the two brothers are major. The claimants are the wife, minor daughter and parents. Therefore, as rightly pointed out by learned counsel appearing for appellants, the Tribunal ought to have deducted 1/4th towards the personal expenses of the deceased instead of 1/3rd towards personal expenses of the deceased. Accordingly. If 1/4th (i.e. Rs. 1,625/-) is deducted from Rs. 6,500/- towards his personal expenses, the net income would be Rs. 4,875/- per month. Further, it is stated that the deceased was aged about 38 years as on the date of accident. Therefore, for the said age, the proper multiplier applicable is ''15'' 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. Thus, the compensation towards loss of dependency would work out to Rs. 8,77,500/- (i.e. Rs. 4,875/- x 12 x ''15'') as against Rs. 6,00,000/- awarded by Tribunal.

 

8. However, it can be seen that, the Tribunal is highly justified in awarding compensation of Rs. 45,000/- towards conventional heads, viz. loss of consortium, loss of love and affection, loss of estate and transportation of dead body and funeral expenses and the same is in accordance with the decision of the Apex Court in Sarla Verma''s case (supra). Hence, interference in the same is uncalled for. Thus, the total compensation payable to claimants works out to Rs. 9,22,500/- as against Rs. 6,45,000/- awarded by the Tribunal. There would be enhancement of compensation by a sum of Rs. 2,77,500/- with interest at 6% per annum, 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 10th June 2011, passed in MVC No. 1061/2009, by the X Additional Judge & Member, Motor Accident Claims Tribunal, Bangalore (SCCH-16), is hereby modified, awarding a sum of Rs. 9,22,500/- as against Rs. 6,45,000/- awarded by the Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition till the date of realization. Thus, there would be enhancement of compensation by a sum of Rs. 2,77,500/- with 6% interest per annum from the date of petition till the date of realization.

The Insurance Company is directed to deposit the enhanced compensation of Rs. 2,77,500/-, with interest thereon at 6% per annum, within three weeks from the date of receipt of copy of the judgment.

Immediately on such deposit by the Insurance Company, a sum of Rs. 1,00,000/- with proportionate interest shall be invested in the name of appellant No. 1-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 appellant No. 2-minor daughter of deceased, in Fixed Deposit, in any scheduled/Nationalized Bank, till she attains 30 years, with liberty reserved to the first appellant to withdraw the periodical interest for her welfare till the appellant No. 2 attains 21 years of age and from 22 to 30 years, the appellant No. 2 is entitled to withdraw the periodical interest.

Remaining sum of Rs. 77,500/- with proportionate interest shall be released in favour of the appellant Nos. 1 and 3 - wife and mother of deceased, in equal proportion, immediately.

Office to draw award, accordingly.