(2013) 12 KAR CK 0307

In the Karnataka High Court

Case No : M.F.A. No. 5418 of 2012 (MV)

Smt. Vidya Devi and Kum. R. Kousalya Tejasri — APPELLANT

Vs

Balaji Enterprises, Bajaj Alliance General Insurance Company Ltd., C. Raghupathy Naidu and Smt. R. Sogasu — RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0307

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : M.S. Chandrashekar Babu, for the Appellant; O. Mahesh, for R2, Sri N. Gopalakrishna, for R3 and R4 and Notice Dispensed With-R1, for the Respondent

Judgement

S. Abdul Nazeer, J.—This appeal by the claimants is directed against the judgment and award in MVC No. 6606/2008 dated 30.11.2010 on the file of the Motor Vehicles Accident Claims Tribunal, Bengaluru. The appellants are the wife and minor child of one Rajanikanth. Respondent Nos. 3 and 4 are his parents. Rajanikanth died in a motor vehicle accident occurred on 24.07.2008. The appellants and respondent Nos. 3 and 4 filed MVC No. 6606/2008 before the MACT, Bengaluru, seeking compensation on account of the death of Rajanikanth. Respondent No. 1 was placed ex parte before the Tribunal. Respondent No. 2 has entered appearance and filed the written statement opposing the claim petition.

2. On appreciation of the materials on record, the Tribunal has allowed the claim petition and granted total compensation of Rs. 7,75,000/- with interest at 6% per annum from the date of petition till the date of deposit. Feeling aggrieved by the said judgment and award, the appellants (claimants No. 1 and 2) have filed this appeal.

3. Learned counsel for the appellants would contend that the deceased was working as a Manager at M/s. Royal Coorg Facility Management Services Ltd. He was earning more than Rs. 33,000/- per month. The Tribunal has taken the

income of the deceased at Rs. 5,000/- per month for the purpose of computation of loss of dependency. The appellants could not produce the salary certificate and other materials before the Tribunal. It is argued that 1st appellant is a young widow and the 2nd appellant is 4 years old minor child of the deceased. The 3rd and 4th respondents are his aged parents. The court below has not considered award of compensation towards loss of future prospects. It has not awarded appropriate compensation towards loss of consortium or towards loss of love and affection.

4. The claimants have filed IA-2/13 seeking production of additional documents. They have produced the salary certificate of the deceased along with the application. The reasons assigned for the belated production of the documents is satisfactory. Hence, IA-2/13 seeking production of additional documents is allowed.

5. Learned counsel for respondent Nos. 3 and 4 have also made similar submission.

6. Learned counsel for respondent No. 2 submits that the award of the Tribunal is just and reasonable.

7. There is no dispute as to the occurrence of the accident and liability of the 2nd respondent insurance company to pay the compensation. Therefore, the finding of the Tribunal in so far as liability of the insurer to pay the compensation does not require any modification and the said finding stands confirmed.

8. Coming to the quantum of compensation is concerned, the Tribunal has taken the income of the deceased at Rs. 5,000/- per month. The certificate produced along with application IA-2/13 prima-facie establishes that the deceased was earning much higher amount. I have already allowed the application seeking production of additional documents. Since the application has already been allowed, the matter has to be remitted back to the Tribunal for redetermination of quantum of compensation.

9. At this stage, it is also necessary to note that appellants herein filed a claim petition in MVOP No. 351/2008 on the file of the IV Addl. District Judge, Tirupathi, Andhra Pradesh seeking compensation on account of the death of Rajanikanth. Learned counsel for the appellants submits that trial is going on in the said case. He has filed a memo stating that appellants will withdraw MVOP No. 351/2008 pending on the file of IV Addl. District Judge, Tirupathi, Andhra Pradesh with liberty to pursue the case MVC No. 6606/2008 before the Tribunal at Bangalore. The appellants have also stated in the memo that they are withdrawing the allegations made against respondent Nos. 3 and 4. The memo is placed on record.

10. The matter pertains to payment of just compensation. The Tribunal has taken the income of the deceased at Rs. 5,000/- per month. As stated above, the documents produced along with application IA-2/13 prima facie shows that his

income was much higher. The appellants have not effectively participated in the proceedings because of the sudden death of Rajanikanth, the husband of the 1st appellant. The contentions of the appellants that compensation has to be determined towards loss of future prospects, loss of consortium or loss of love and affection also needs consideration.

11. In the result, the appeal succeeds and it is accordingly allowed in part. The finding of the Tribunal in MVC No. 6606/2008 on issue No. 2 relating to determination of compensation alone is set aside. The finding of the Tribunal regarding issue No. 1 stands unaltered.

12. The Tribunal is directed to re-determine the compensation. Liberty is reserved to the parties to lead further evidence and also produce additional documents including documents produced along with IA-2/13 before the Tribunal.

13. The appellants are permitted to withdraw MVOP No. 351/2008 pending on the file of the IV Addl. District Judge, Tirupathi, Andhra Pradesh with liberty to pursue MVC No. 6606/2008 pending before the MACT, Bengaluru.

14. Pursuant to the impugned judgment and award, the 2nd respondent insurance company has deposited Rs. 7,75,000/- with accrued interest thereon before the Tribunal. The total amount deposited by the insurance company is Rs. 8,88,628/-. Out of the aforesaid amount, a sum of Rs. 2,00,000/- each has been deposited in Fixed Deposit in a Nationalised Bank in the name of 1st and 2nd appellants. A sum of Rs. 1,00,000/- each has been deposited in Fixed Deposit in the name of respondent Nos. 3 and 4 in a Nationalised Bank. Balance of the amount comes to Rs. 2,88,628/-, out of which, respondent Nos. 3 and 4 herein have withdrawn their 2/3rd share from the Tribunal. A sum of Rs. 96,209/- is still in deposit before the Tribunal, which is the share of the 1st appellant (wife of the deceased.) The 1st appellant is permitted to withdraw the said amount. The amount in Fixed Deposit shall not be withdrawn until further orders.

15. After re-determination of the compensation, the amounts withdrawn by 3rd and 4th respondents and amount which may be withdrawn by appellant No. 1 pursuant to this order shall be adjusted to their share of compensation, so also the amount in fixed deposit.

16. The Tribunal is directed to dispose of the matter within a period of three months from the date of receipt of copy of this order. The Registry is directed to send the records back to the Tribunal forthwith. The parties are directed to appear before the Tribunal on 10.01.2014 without any further notice from the Tribunal to the parties concerned. No costs.

