

(2017) 04 KAR CK 0054
In the Karnataka High Court
Case No : 200501 of 2016 (MV)

Soniya W/o Late Sunil Mule

APPELLANT

Vs

Vishnukanth S/o Narasappa Jamadar

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Indian Penal Code, 1860, Section 279,
Section 304(A) - Rash driving or riding on a public way -
Punishment for culpable homicide not amounting to murder
Motor Vehicles Act,

Citation : (2017) 04 KAR CK 0054

Hon'ble Judges : B. Veerappa, B.A. Patil

Bench : DIVISION BENCH

Advocate : Sanjeevkumar C. Patil, C.S. Kalburgi

Judgement

1. Though the matter is listed for admission, with the consent of learned counsel appearing for both the parties, it is taken up for final disposal.
2. The claimants who are the wife, parents, brother and sister of the deceased have filed the present appeal for enhancement of compensation against the judgment and award dated 13.08.2015 made in MVC No.552/2012 on the file of II Addl. District and Sessions Court and Addl. MACT, Bidar, sitting at Basavakalyan (hereinafter referred to as "Tribunal" for short), awarding compensation of Rs.8,99,000/- with interest at 7% per annum from the date of petition till realization.
3. It is the case of claimants before the Tribunal that on 25.05.2013 at about 11.30 a.m., deceased Sunil was proceeding to his shop situated at Bhalki on his motorcycle bearing No.MH-14/AC-6759. When he reached near Dadgi village on Bhalki- Basavakalyan road, a lorry bearing No.KA-39/4467 came from back side in a rash and negligent manner, dashed against him and caused the accident. Due to the said impact, the deceased died on the spot.
4. It is the further case of the claimants that the jurisdictional police have

registered a case in Crime No.93/2013 for the offences punishable under Sections 279 and 304(A) of Indian Penal Code r/w Section 187 of Motor Vehicles Act.

5. It is the further case of the claimants that the deceased was being the only earning member in the family. In view of his sudden death, the claimants are suffering from mental agony and financial loss. Therefore, they have filed the claim petition.

6. The first respondent filed the written statement before the Tribunal denying the averments made in the claim petition and contended that the accident occurred not due to rash and negligent driving of the driver of the lorry, but due to rash and negligent driving of the deceased himself. The first respondent also denied the age, occupation, income of the deceased and contended that the lorry was insured with second respondent and the driver was having valid driving licence and the policy was in force as on the date of the accident.

7. The second respondent ? insurance company also filed the written statement denying the averments made in the claim petition and contended that the accident occurred not on account of rash and negligent driving of the driver of the lorry, but on account of rash and negligent driving of the deceased himself and further contended that the lorry was not having valid driving licence and the policy was not in force as on the date of accident. Therefore, sought for dismissal of the claim petition.

8. On the basis of the aforesaid pleadings, the Tribunal framed the following issues for its consideration : 1. Does petitioners prove that, on 25-05-2013 at about 11.30 AM, while deceased was proceeding in motor cycle bearing No.MH-14/AC-6759 near Dadagi Village, the driver of lorry bearing No.KA-39/4467 came from behind in high speed and in rash and negligent manner and dashed to the motor cycle of the deceased and caused accident?

2. Does petitioners are entitled for compensation? If so, to what extent?

3. Does respondents are liable to pay compensation?

4. What order?

9. In order to establish the claim, the wife of the deceased examined as PW.1 and one witness as PW.2 and got marked the documents as Exs.P1 to P26. The second respondent examined the ARTO as RW.1 and the Legal Manager as RW.2 and got marked the documents as Exs.R1 to R7.

10. After considering the entire material on record, the Tribunal has recorded a finding that the deceased was died on the spot on 25.05.2013 due to rash and negligent driving of the driver of the lorry bearing No.KA-39/4467. Thereby, the respondents are liable to pay the compensation and the claimants are entitled for compensation. The Tribunal, by the impugned judgment and award has awarded a total compensation of Rs.8,99,000/- with interest at 7% per annum from the

date of petition till the date of realization. Hence, the present appeal is filed by the claimants for enhancement.

11. Respondent No.2 ? insurance company has not filed any appeal against the impugned judgment and award passed by the Tribunal.

12. We have heard the learned counsel for the parties to the lis.

13. Sri Sanjeev Kumar C. Patil, learned counsel for the appellants vehemently contended that the compensation of Rs.8,99,000/- awarded by the Tribunal is very much on the lower side. The Tribunal has not considered the fact that the deceased was doing business of sales of dress material and Exs.P22 and P23 documents produced clearly indicate that the firm was registered and the firm registration certificate and the partnership deed also clearly indicate that the deceased was doing business in Mumbai and he should have earn atleast Rs.30,000/- per month. The Tribunal was not justified in taking income of the deceased at Rs.6,000/- per month. He also contended that the Tribunal was not justified in deducting 1/3 of the income towards personal expenses of the deceased and it should be only 1/4. He further contended that the amount awarded by the Tribunal under the conventional heads is also on the lower side. Therefore, he sought to allow the appeal by modifying the judgment and award passed by the Tribunal.

14. Per contra, Sri Manjunath Mallayya Shetty, learned counsel appearing for Sri C.S. Kalburgi, learned counsel for respondent No.2 ? insurance company sought to justify the impugned judgment and award. He also contended that though the appellants/claimants claimed that the deceased was earning Rs.30,000/- per month, absolutely no documents are produced to prove the same. Appellants have not produced Income Tax returns of the deceased. In the absence of any material document produced, the Tribunal was justified in taking the income of the deceased at Rs.6,000/- per month. He further contended that the Tribunal also justified in taking deduction of 1/3 towards personal expenses of the deceased taking into consideration that appellant Nos.4 and 5 are majors and they are not dependents. Therefore, he sought for dismissal of the appeal.

15. In view of the aforesaid rival contentions urged by both the learned counsel, the points that arise for our consideration are: 1. Whether the Tribunal is justified in awarding the compensation of Rs.8,99,000/- with interest at the rate of 7% per annum in the facts of the resent case?

2. Whether the appellants/claimants have made out a case for enhancement of compensation in the facts and circumstances of the present case ?

16. We have given our thoughtful consideration to the argument advanced by the learned counsel for the parties and perused the entire material carefully.

17. It is the specific case of the appellants that the deceased was a businessman. He was doing business in Mumbai having registration of the firm as per Exs.P22 and P23, he was also the holder of pan cards as per Exs.P24 and P25 and he was

earning Rs.30,000/- per month.

18. It is the specific case of the respondent insurance company that except business transaction, the appellants have not produced any material documents to prove that what was the income the deceased was earning. Though PW.1 ? the wife of the deceased stated on oath that deceased was earning Rs.30,000/- per month, no material documents i.e., either any income tax returns or any documents are produced to show the exact income of the deceased. In the absence of any material produced by the appellants to show the income of the deceased, taking into consideration the date of the accident on 25.05.2013 and the age of the deceased as 25 years, we deem it proper to take the income of the deceased at Rs.7,000/- per month. After deducting 1/3 i.e., Rs.2,333/- towards his personal expenses (only two dependents), the deceased would getting income of Rs.4,667/- per month. In view of the dictum of Hon"ble Supreme Court in the case of Sarala Verma vs. Delhi Transport

Corporation and Anr. reported in 2009 ACJ 1298, the Tribunal has adopted the multiplier of 18 which is just and proper. Thereby, the appellants are entitled to a total sum of Rs.10,08,072/- (Rs.4,667 x 12 x 18) towards loss of dependency.

19. It is also clear from the records that the accident has occurred due to the rash and negligent driving of the driver of the lorry as could be seen from Exs.P1 to P17. Though contention was taken before the Tribunal that the first respondent has not hold driving licence and the policy was not in force, the same cannot be taken into consideration. In view of the documents Exs.P18 and P19, it clearly indicates that the first respondent was holding licence and the policy was in force as on the date of the accident.

20. Taking into consideration the age of the deceased as 25 years and the accident occurred on 25.05.2013, the Tribunal was not justified in granting compensation towards conventional heads which is on the lower side.

21. The Hon"ble Supreme Court in the case of VIMAL KANWAR AND OTHERS vs. KISHORE DAN AND OTHERS Reported in (2013) 7 SCC 476 at paragraphs 32 to 37 held as under: "32. Admittedly, the date of birth of deceased Sajjan Singh being 1-2-1968; the submission that he would have continued in service up to 1-2-2026, if 58 years is the age of retirement or 1-2-2028, if 60 years is the age of retirement is accepted. He was only 28 years 7? month old at the time of death. In normal course, he would have served the State Government minimum for about 30 years. Even if we do not take into consideration the future prospect of promotion to which the deceased was otherwise entitled and the actual pay revisions taken effect from 1-1-1996 and 1-1-2006, it cannot be denied that the pay of the deceased would have doubled if he would have continued in services of the State till the date of retirement. Hence, this was a fit case in which 100% increase in the future income of the deceased should have been allowed by the Tribunal and the High Court, which they failed to do.

33. Having regard to the facts and evidence on record, we estimate the monthly

income of the deceased Sajjan Singh at Rs.9000x2 = Rs 18,000 per month. From this his personal living expenses, which should be 1/3rd, there being three dependents has to be deducted. Thereby, the "actual salary" will come to Rs.18,000/- - Rs 6000 = Rs 12,000 per month or Rs 12,000 x 12 = Rs 1,44,000 per annum. As the deceased was 28? years old at the time of death the multiplier of 17 is applied, which is appropriate to the age of the deceased. The normal compensation would then work out to be Rs 1,44,000 x 17 = Rs 24,48,000 to which we add the usual award for loss of consortium and loss of the estate by providing a conventional sum of Rs 1,00,000; loss of love and affection for the daughter Rs 2,00,000, loss of love and affection for the widow and the mother at Rs 1,00,000 each i.e. Rs 2,00,000 and funeral expenses of Rs 25,000.

34. Thus, according to us, in all a sum of Rs.29,73,000 would be a fair, just and reasonable award in the circumstances of this case.

35. The rate of interest of 12% is allowed from the date of the petition filed before the Tribunal till payment is made.

36. Respondent 3 is directed to pay the total award with interest (minus the amount if already paid) within three months. Appellant 2 daughter who was aged about 2 years at the time of accident of the deceased has already attained majority; money may be required for her education and marriage. In the circumstances, we direct Respondent 3 to deposit 25% of the due amount in the account of Appellant 1, the wife. Out of the rest 75% of the due amount, 35% of the amount be invested in a nationalised bank by fixed deposit for a period of one year in the name of the daughter, Appellant 2. Out of the rest 40% of the due amount, 20% each be invested in a nationalised bank by fixed deposit for a period of one year in the name of Appellants 1 and 3, the wife and the mother respectively.

37. The award passed by the Tribunal dated 21-6-2003 and the judgment dated 29-7-2011 of the Rajasthan High Court stand modified to the extent above. The appeal is allowed with the aforesaid observation and direction. No separate order as to costs."

22. In view of the dictum of Hon"ble Supreme Court stated supra, we are of the considered opinion that the appellants are entitled to higher compensation under conventional heads.

23. For the reasons stated above, point No.1 is answered in negative holding that the Tribunal was not justified in awarding the compensation at Rs.8,99,000/- with interest at 7% per annum and point No.2 is answered in affirmative holding that the claimants have made out a case for enhancement.

24. After reassessing the entire material on record, we are of the considered opinion that the appellants are entitled to the compensation as under:

Sl. No. Heads Amount Rs.

1. Loss of dependency 10,08,072/-
2. Loss of consortium (to the wife) 1,00,000/-
3. Loss of love and affection (to the mother) 25,000/-
4. Funeral expenses 25,000/-

Total 11,58,072/-

Compensation awarded by the Tribunal - 8,99,000/-

Total 2,59,072/-

In all, the appellants/claimants are entitled to the enhanced compensation of Rs.2,59,072/- with interest at the rate of 7% per annum from the date of petition till the date of realisation.

25. In view of the aforesaid reasons, the appeal is allowed in part. The judgment and award passed by the Tribunal dated 13.08.2015 in M.V.C.No.552/2012 is modified. The appellants/claimants are entitled to the enhanced compensation of Rs.2,59,072/- with interest at 7% per annum from the date of petition till realization.