

(2015) 08 KAR CK 0224

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 23337 and 23741/2010(MV)

Soter R. Barreto and Others

APPELLANT

Vs

New Age Painters and Others

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Citation : (2015) 08 KAR CK 0224

Hon'ble Judges : Anand Byrareddy, J;S. Sujatha, J

Bench : Division Bench

Advocate : Ashok A. Naik, for the Appellant; Gurukumar V.A., Advocates for the Respondent

Judgement

Anand Byrareddy, J—The appellant, in first of these appeals, in M.F.A. No. 23337/2010, was said to be a distant relative of a victim of a road accident and had claimed compensation as a legal representative of the deceased. The Tribunal having awarded a compensation of Rs. 1,40,000/- with interest at 9% per annum, the appellant is before the court seeking enhancement.

2. However, it is pointed out by the learned counsel appearing for the respondent - insurance company, that the award of compensation amount itself is bad in law, as the appellant was claiming as a distant relative and not as a dependant on the earnings of the deceased.

3. The mere fact that the appellant claims as the legal representative of the deceased would not enable the appellant to have claimed compensation on the basis of dependency. As laid down by this court, the income of the deceased if accepted, the appellant would only be entitled to loss of estate, which is to be assessed at 15% of the income of the deceased, in which event, the compensation would have to be appropriately reduced and restricted to 15% of the income of the deceased.

4. In the second of these appeals, in M.F.A. No. 23741/2010, the appellant - National Insurance Company Limited, has questioned the correctness of the legal

position in the tribunal having proceeded to award compensation in favour of the appellant. The learned counsel for the appellant places reliance on a decision in *A. Manavalagan Vs. A. Krishnamurthy and Others*, (2005) 1 ACC 304 : (2005) ACJ 992 : (2004) ILR (Kar) 3268 : (2004) 5 KarLJ 321 , in this regard, wherein after a review of the entire case law, a division bench of this court, has summarised the principles enunciated as follows:

"19. We may summarise the principles enunciated, thus:

(i) The law contemplates two categories of damages on the death of a person. The first is the pecuniary loss sustained by the dependant members of his family as a result of such death. The second is the loss caused to the estate of the deceased as a result of such death. In the first category, the action is brought by the legal representatives, as trustees for the dependants beneficially entitled. In the second category, the action is brought by the legal representatives, on behalf of the estate of the deceased and the compensation, when recovered, forms part of the assets of the estate. In the first category of cases, the Tribunal in exercise of power under Section 168 of the Act, can specify the persons to whom compensation should be paid and also specify how it should be distributed (Note: for example, if the dependants of a deceased Hindu are a widow aged 35 years and mother aged 75 years, irrespective of the fact that they succeed equally under Hindu Succession Act, the Tribunal may award a larger share to the widow and a smaller share to the mother, as the widow is likely to live longer). But in the second category of cases, no such adjustments or alternation of shares is permissible and the entire amount has to be awarded to the benefit of the estate. Even if the Tribunal wants to specify the sharing of the compensation amount, it may have to divide the amount strictly in accordance with the personal law governing succession, as the amount awarded and recovered forms part of the estate of the deceased.

(ii) Where the claim is by the dependants, the basis for award of compensation is the loss of dependency, that is loss of what was contributed by the deceased to such claimants. A conventional amount is awarded towards loss of expectation of life, under the head of loss to estate.

(iii) Where the claim by the legal representatives of the deceased who were not dependants of the deceased, then the basis for award of compensation is the loss to the estate, that is the loss of savings by the deceased.

A conventional sum for loss of expectation of life, is added.

(iv) The procedure for determination of loss to estate is broadly the same as the procedure for determination of the loss of dependency. Both involve ascertaining the multiplicand and capitalising it by multiplying it by an appropriate multiplier. But, the significant difference is in the figure arrived at as multiplicand in cases where the claimants who are dependants claim loss of dependency, and in cases where the claimants who are not dependents claim loss to estate. The annual contribution to the family constitutes the multiplicand in the case of loss of

dependency, whereas the annual savings of the deceased becomes the multiplicand in the case of loss to estate. The method of selection of multiplier is however the same in both cases.

20. The following illustrations with reference to the case of a deceased who was aged 40 years with a monthly income of Rs. 9,000/- will bring out the difference between cases where claimants are dependents and cases where claimants are not dependents.

(i) If the family of the deceased consists of a dependant wife and child, normally one-third will be deducted towards the personal and living expenses of the deceased. The balance of Rs. 6000/- per month (or Rs. 72000/- per annum) will be treated as contribution to the dependent family. The loss of dependency will be arrived by applying a multiplier of 14. The loss of dependency will be Rs. 10,08,000/- plus Rs. 10,000/- under the head of loss of Estate.

(ii) If the family of the deceased was larger, say consisting of dependent parents, wife and two children, necessarily the deceased would spend more on his family and the deduction towards personal and living expenses of the deceased will shrink to one-fifth instead of one-third (Note: In *Gulam Khader and Another Vs. United India Insurance Company Limited and Another*, (2001) ACJ 163 : (2000) ILR (Kar) 4416 : (2001) 1 KarLJ 340 : (2000) 3 KCCR 2241 details of this illustration have been given). Therefore the deduction towards personal and living expense would be Rs. 1800/- per month (one-fifth of Rs. 9000/-) and contribution to the family would be Rs. 7200/- per month or Rs. 86,400/- per annum. Thus loss of dependency will be Rs. 12,09,600/- (by applying the multiplier of 14). The award under the head of loss of estate would be Rs. 10000/-.

(iii) If the deceased was a bachelor with dependent parents aged 65 and 60 years, normally 50% will be deducted towards personal and living expenses of the deceased. This is because a bachelor will be more care free as he had not yet acquired a wife or child and therefore would tend to spend more on himself. There was also a possibility of the bachelor getting married in which event the contribution to parents will get reduced. Therefore the contribution to the family (parents) will be Rs. 4500/- per month or Rs. 54000/- per annum. As the multiplier will be 10 with reference to age of the mother, the loss of dependency will be Rs. 5,40,000/-. Loss of Estate would be a conventional sum of Rs. 10,000/-.

Note: The above three illustrations relate to cases where the claimants are dependants. The said illustration demonstrate that even though the income of the deceased and age of the deceased are the same, the "loss of dependency" will vary, having regard to the number of dependants, age of the dependants and nature of dependency. The ensuing illustrations relate to cases where the legal heirs of the deceased are not dependants.

(iv) If the deceased is survived by an educated employed wife earning an

amount almost equal to that of her husband and if each was maintaining a separate establishment, the question of "loss of dependency" may not arise. Each will be spending from his/her earning towards his living and personal expenses. Even if both pool their income and spend from the common income pool, the position will be the same. In such a case the amount spent for personal and living expenses by each spouse from his/her income will be comparatively higher, that is three-fourth of his/her income. Each would be saving only the balance, that is one fourth (which may be pooled or maintained separately). If the saving is taken as one-fourth (that is 25%), the loss to the estate would be Rs. 2250/- per month or Rs. 27000/- per annum, By adopting the multiplier of 14, the loss to estate will be Rs. 3,78,000/-.

Note: The position would be different if the husband and wife, were both earning and living together under a common roof, sharing the expenses. As stated in *BURGESS v. FLORENCE NIGHTINGALE HOSPITAL* (1955(1) Q.B. 349), "when a husband and wife, with separate incomes are living together and sharing their expenses, and in consequence of that fact, their joint living expenses are less than twice the expenses of each one living separately, then each, by the fact of sharing, is conferring a benefit on the other". This results in a higher savings, say, one-third of the income; In addition each spouse loses the benefit of services rendered by the other in managing the household, which can be evaluated at say Rs. 1,000/- per month or Rs. 12,000/- per annum). In such a situation, the claimant (surviving spouse) will be entitled to compensation both under the head of loss of dependency (for loss of services rendered in managing the household) and loss to estate (savings to an extent of one-third of the income that is Rs. 3,000/- per month or Rs. 36000/- per annum). Therefore, the loss of dependency would be $12000 \times 14 : 168,000/-$ and loss to estate would be $36000 \times 14 : 504,000/-$. In all Rs. 6,72,000/- will be the compensation.

(v) If the deceased was a bachelor and the claimants are two non-dependent brothers/sisters aged 47 years and 45 years with independent income, the position would be different. As the deceased did not have a "family", the tendency would be to spend more on oneself and the savings would be hardly 15%. If the saving is taken as 15% (Rs. 1350/- per month), the annual savings would be Rs. 16,200/- which would be the multiplicand. The multiplier will be 13 with reference to the age of the claimants and the loss of estate would be Rs. 2,10,600/- per annum.

Though the quantum of savings will vary from person to person, there is a need to standardise the quantum of savings for determining the loss to estate (where the claimants are not dependants) in the absence of pacific evidence to the contrary. The quantum of savings can be taken as one-third of the income of the deceased where the spouses are having a common establishment and one-fourth where the spouses are having independent establishments. The above will apply where the family consists of non-dependant spouse/"children/parents. Where the claimants are non-dependant brothers/sisters claiming on behalf of the estate,

the savings can be taken as 15% of the income. The above percentages, one of course, subject to any specific evidence to the contrary led by the claimants."

5. The basis of computation of compensation insofar as the legal representatives are concerned, is indicated in the highlighted portion above, which the learned counsel seeks to rely upon in contending that the appellant was at best, entitled to loss of estate to the extent of 15% of the income of the deceased.

6. It is further contended that the appellant was also not entitled to claim compensation under several heads exceeding Rs. 50,000/- which the Tribunal has awarded. The learned counsel would contend that the only other head, under which the appellant could claim compensation is towards loss of expectation of life, which may be awarded on a global scale of Rs. 20,000/-.

7. The further ground raised is to the effect that there was contributory negligence on the part of the other vehicle involved in the accident., apart from the vehicle insured by the deceased. Since the claimant was the legal heir of the deceased passenger in the car, it would not be relevant as to the contributory negligence sought to be alleged. It is the law laid down by this court in Karnataka State Road Transport Corporation Vs. Arun alias Aravind, (2004) 2 ACC 53 : (2004) ACJ 249 : AIR 2004 Kar 149 : (2004) ILR (Kar) 26 : (2004) 1 KarLJ 338 : (2004) 1 KCCR 379 .

8. On the other hand, it would be for the appellant to raise such a contention before the very Tribunal that decided the claim, in order to apportion the liability on the other vehicle involved or the insurance company which had insured the other vehicle. It is open for the appellant to raise such a claim before the tribunal, which shall adjudicate upon the same.

9. Since the learned counsel appearing for the respondent No. 4, who is the insurer of the other vehicle involved, would seek to point out that there are already findings by the tribunal that it was the fault committed by the driver of the car, which has been insured by the appellant, which was the cause of the accident and therefore it would be open for the tribunal to reject such a claim if any such claim is raised and it is not necessary to reserve any opportunity to the appellant. Since there is no adjudication insofar as the claim of the appellant - insurer is concerned, it is open for the insurer to approach the tribunal seeking such adjudication, which the tribunal may consider on merits if and when such claim is made and in the light of the full bench decision, the tribunal is obliged to consider the claim in that very proceeding and the insurance company need not initiate any fresh proceedings in this regard.

10. On consideration of the rival contentions, there is no material produced to indicate that the appellant was depending on the earnings of the deceased. The only evidence forthcoming is that of certain inventory proceedings, whereby the property of the deceased has come to the hands of the appellant. This, by itself, would not establish the dependency. The only circumstance that is established is that the appellant was the sole surviving legal heir of the deceased and it could

not be established in the absence of independent evidence. Therefore, the law as laid down in *Manavalagan, supra*, would have to be applied.

11. The appellant is held entitled to 15% of the income of the deceased on the basis that the income of the deceased was Rs. 36,000/- per annum. Therefore, applying the multiplier of "5" having regard to the age of the deceased, the appellant would be entitled to a sum of Rs. 27,000/- In addition, the appellant would be entitled to a global award of Rs. 23,000/-, which the insurance company would suggest, towards the loss of estate. The appellant thus would be entitled to Rs. 70,000/- with interest at 6% per annum, from the date of the petition till the date of realisation.

The appeal in MFA 23337/2010 is dismissed and the appeal in MFA 23741/2010 is partly allowed.

The amount, if any, in deposit shall be refunded to the appellant.