(2003) 01 KAR CK 0018

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3696 of 1996

Sri. Gangappa and Another APPELLANT

Vs

S.N. Basha and Another RESPONDENT

Date of Decision : 02-01-2003

Acts Referred:

Citation : (2003) 3 KCCR 1905

Hon'ble Judges : M.S. Rajendra Prasad, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : S.G. Hegde, for the Appellant; Rajanna Shetty, for Respondent 1 and R.L. Patil, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—We have heard the Appellant''s learned Advocate. The Respondents had not appeared before the Tribunal and were placed exparte. The duty of this Court, therefore, would be to review the order passed by the Tribunal and to consider the submission of the Appellant''s learned Advocate who has urged that the compensation awarded should be stepped up.

2. The deceased in this case was injured in the National Highway No. 4 by a Military Truck, while he was riding his scooter. He was seriously injured and he was moved to Manipal Hospital, where he continued to be under treatment though in a state of coma for over three months until he finally passed away. The parents, who are the claimants before the Tribunal, had contended that they are solely depending on him for their livelihood, that the deceased was conducting milk vending business and that he had substantial turn over, whereby he used to earn approximately Rs. 4,500/- per month. The Tribunal has discarded this evidence only because not a scrap of material was produced in support of this contention nor nay oral evidence adduced. Appellant''s learned Advocate submitted that there was no reason that the Tribunal should have disbelieved it.

3. Firstly, our answer is that there is no reason as to why the learned Advocate

who conducted the case before the Tribunal could not have produced whatever secondary evidence that was normally available in support of the fact that the deceased was supposes to have been doing milk vending business in order to indicate to the Tribunal, whether, in fact, this plea was at all true. Secondly, what was the volume of the business and thirdly, what was, in fact, the average earning from that business. The total absence of any material, whether it was Bank Pass Books or the like or even simple Account Books or even oral evidence of the persons who are assisting the deceased in conducting the so called business, leads one to the conclusion that the Tribunal was justified in rejecting that plea.

4. We must say in fairness to the learned Judge that he has taken an alternate possibility, since the deceased was a young man, that he must have doing some work even as an agriculturist and the learned Judge had assuming that he would be earning not less than Rs. 30/- per day. We have while reviewing the findings, however, been generous to the applicants by doubling this figure to Rs. 60/- per day, despite there being zero evidence from the Advocate who conducted the case, and applying the correct multiplier, we have reviewed the Head No. 1 under which the Tribunal had awarded an amount of Rs. 96,000/-. That amount stands enhanced to Rs. 1,40,4000/-. To this, we have added the three conventional heads and in addition to that on the basis of the submissions canvassed by the Appellant''s learned Advocate we have also reviewed Head No. 6 which relates to medical and other incidental expenses. The Tribunal, is again required to be complimented to the effect that despite the bills having been produced totalling an amount of Rs. 85,777.90ps. in the aggregate, has awarded Rs. 1 lakh towards that head, which covers everything including medicines. Further the learned Member took into account that the Appellants would have made several trips from Nelamangala to Bangalore, considering the fact that their son was in a serious condition in the Hospital, and should be thankful to the learned Judge for awarding an amount of Rs. 1 lakh. We have accepted the submission of the Appellant''s learned Advocate and enhance this figure to Rs. 1,23,6000/-, thereby altering the original aggregate compensation from Rs. 2,10,000/- to Rs. 2,80,000/-.

5. Considering the status of the parents and other facts and circumstances of the case, we also accept the plea that the rate of interest be enhanced from 6% to 8% PA. This figure of 8% PA will apply to the enhanced compensation awardable from the date of application up to the date of payment.

6. The record indicates to us that the entire compensation amount, though part of it was ordered to be invested for a short period, has been released. In our considered view, it is very necessary to ensure that these amount of money which are awarded are not spent away or lost because the fundamental object of awarding compensation is in order to provide for maintenance of the applicants and in keeping with this principle, we direct that out of the aggregate enhanced amount that will now be available with the Tribunal, to deposit a sum of Rs. 1

lakh in the joint names of the two parents along with the nominee of their choice in a Post Office Savings Bank Account at a Post Office close to the place where the parents are residing. In order to ensure that the income is tax free, the Tribunal shall direct the Post Office to Invest the amount in the Post Office Monthly Income Scheme with the mandate that the interest accrued from month to month shall go to the SB account and may be released to the applicants, who are Appellants before us. The principal amount, however, shall continued for a term of 12 years, which is the length of two schemes and shall not be withdrawn or released under any circumstances prior to the expiry of that period. The balance of the enhanced amount shall be released to the Appellants.

7. The Respondents are directed to deposit the balance amount with the Tribunal within an outer limit of 12 weeks from today. On receipt of the said amount the Tribunal to follow the directions of this Court.

8. The appeal succeeds to this extent and stands disposed of. No order as to costs.