(2011) 12 KAR CK 0114

In the Karnataka High Court

Case No : M.F.A. No. 9014 of 2007 (MV)

Sri. Ram Mohan B.S. and Smt. Shamala K.R	APPELLANT
Vs	
The Managing Director, KSRTC., K.H. Road, Shanthi Nagar, Bangalore-27	RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2013) ACJ 185 : (2012) ILR (Kar) 2315

Hon'ble Judges : V. Suri Appa Rao, J;N.K. Patil, J

Bench : Division Bench

Advocate : B.J. Mahesh, for the Appellant; F.S. Dabali, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the claimants is directed against the impugned judgment and award dated 8th February 2007, passed in MVC No. 2879/2005 by the VI Additional Judge, Court of Small Causes, Member, MACT, Metropolitan Area, Bangalore, (SCCH-2), (for short, ''Tribunal'') for enhancement of compensation on the ground that, the compensation of Rs. 9,67,500/- awarded in favour of the claimants, after deducting contributory negligence at 10% on the part of the deceased, as against their claim for Rs. 95.00 Lakhs, is inadequate. The facts in brief are that, the claimants appellants are the parents of the deceased Late Mahesh Koushik B.R.. They filed the claim petition u/s 166 of the Motor Vehicles Act, contending that at about 02:20 P.M. on 21-02-2005, when the deceased Babu Rajendra Prasad @ B.R. Prasad along with his colleague was moving extremely on the left side of the road, near R.T. Nagar mobile Police Station, a KSRTC bus, bearing No.KA-01/F-7695 dashed against the deceased. Due to the impact, he sustained grievous injuries and later, succumbed to the same.

2. It is the case of the appellants that, the deceased was aged about 27 years, working as Development Engineer at Epiance Software Pvt. Ltd., drawing salary of Rs. 34,000/- per month and he was contributing the entire sum towards the

family requirements and on account of his untimely death, the family has become haywire and they have lost the social and financial security and also the hopes and aspirations in life and are also deprived of seeing the future prospects of the deceased and therefore, they have to be compensated reasonably.

3. On account of the death of the deceased, the appellants filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. 95.00 lakhs against the respondent - Corporation. The said claim petition had come up for consideration before the Tribunal on 8th February 2007. 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. 9,67,500/- under different heads, with 7% interest per annum, from the date of petition till the date of realisation, after deducting 10% towards contributory negligence on the part of the deceased. Being dissatisfied with the quantum of compensation awarded by the Tribunal as also the contributory negligence of 10% fixed on the deceased, the appellants are in appeal before this Court, seeking enhancement of compensation and to set aside the contributory negligence.

4. We have heard learned counsel for appellants and learned counsel for Corporation for considerable length of time.

5. Learned counsel appearing for appellants vehemently submits that the Tribunal grossly erred in fixing contributory negligence at 10% on the deceased and that the Tribunal also erred in not awarding reasonable compensation towards loss of dependency. Therefore, he submits that the impugned judgment and award passed by Tribunal is liable to be modified by enhancing the compensation and by setting aside the contributory negligence of 10% fixed on the deceased.

6. As against this, learned counsel appearing for Corporation, inter alia, substantiated the impugned judgment and award passed by Tribunal, stating that the same is passed after due consideration of the oral and documentary evidence available on file and hence, interference in the same is not called for.

7. After hearing learned counsel for the parties, after careful perusal of the judgment and award passed by the Tribunal and after going through the original records made available, the points that arise for our consideration in this appeal are:

I) Whether the Tribunal is justified infixing the contributory negligence at 10% on the deceased?

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

Re-Point I) : It is seen that the occurrence of accident and the resultant death of the deceased are not in serious dispute. As rightly pointed out by the learned counsel appearing for claimants appellants, the Tribunal is not justified in fixing the contributory negligence of 10% on the deceased, for the reason that, the Tribunal has observed that as per the sketch, the accident has occurred just in front of the police station and it is the duty of every citizen to move on the foot path and that the deceased was walking on the National High way, though there is foot path and therefore, there was certain amount of contributory negligence on the part of the deceased also in the occurrence of road traffic accident. The said reasoning given by the Tribunal for fixing the contributory negligence on the part of the deceased is not in its proper perspective nor the same can be appreciated for the reason that, first of all, the road where the accident has occurred is not a National Highway. Further, adjacent to the Police Station, there are commercial complexes. It is stated that the deceased along with his colleague was going on the extreme left side of the road and when they reached near R.T. Nagar Mobile Police Station, a KSRTC bus bearing No.KA-01/F-7695, came at high speed, in a rash and negligent manner and dashed against the deceased. The Tribunal, after appreciation of the documentary evidence such as notice, FIR, intimation of death, crime details form, sketch, mahazar, inquest, P.M. Report and charge sheet, has come to the conclusion that the said documents clearly show that the accident has occurred due to the negligent driving by the driver of the KSRTC Bus. Further, the Tribunal has observed that the acquittal of the driver in the criminal case has no bearing in the civil case. The spot of the accident I about 2 ft from the edge of the road and road is about 74 ft in width. Thereafter, after re-appreciation of the oral and documentary evidence available on file, we are of the firm opinion that, if the driver of the bus had been cautious, he could have very well avoided the accident. Therefore, having regard to this aspect, we are of the considered view that the Tribunal ought not to have fixed the contributory negligence of 10% on the deceased. Accordingly, we hereby set aside the said contributory negligence of 10% fixed on the deceased and re-fix the entire liability/negligence on the part of the driver of the offending bus.

Re-Point II) : So far as the quantum of compensation awarded by Tribunal is concerned, it is not in dispute that the deceased was aged about 27 years and working as Development Engineer at Epiance Software Pvt. Ltd. It is stated that he was drawing gross salary of Rs. 32,779/- per month, as per Ex.P17, Salary Certificate. But, the Tribunal, after critical evaluation of the oral and documentary evidence, on the basis of Form No. 16 produced at Ex.26, and after deducting necessary allowances and income tax, has assessed the annual income of the deceased at Rs. 2,00,000/- . Since the dependents are parents and the deceased was a bachelor, 50% is to be deducted from the same, towards the personal and living expenses of the deceased. Accordingly, if 50% (Rs. 1,00,000/-) is deducted towards his personal and living expenses, the net annual income comes to Rs. 1,00,000/- . As the deceased was bachelor, the age of the younger parent has to be taken into consideration. In the case on hand, the age of the younger parent, mother, was 47 years at the time of accident. Therefore, the appropriate multiplier is ''13'' as per the decision of the Hon''ble Apex Court in Smt. Sarla

Verma and Others Vs. Delhi Transport Corporation and Another, . But, the Tribunal, even though has come to the conclusion that the proper multiplier is ''13'', for the age of the younger parent, inadvertently has adopted multiplier of ''10'' while actually computing the compensation towards loss of dependency. Therefore, we re-determine compensation payable towards loss of dependency at Rs. 13,00,000/- (i.e. Rs. 1,00,000/- x ''13'') as against Rs. 10,00,000/- awarded by Tribunal.

8. Further, a sum of Rs. 75,000/- awarded by Tribunal towards the conventional heads is on the higher side and needs to be reduced. Having regard to the facts and circumstances of the case, we award a sum of Rs. 45,000/- towards conventional heads, viz. loss of love and affection, loss of estate and transportation of dead body and funeral expenses. Thus, the claimants appellants, in all, would be entitled to compensation of Rs. 13,45,000/- as against Rs. 9,67,500/- awarded by Tribunal.

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 8th February 2007, passed in MVC No. 2879/2005, by the VI Additional Judge, Court of Small Causes, Member, MACT, Metropolitan Area, Bangalore, (SCCH-2), is hereby modified.

The contributory negligence of 10% fixed on the deceased, by the Tribunal, is hereby set aside and the entire negligence is fixed on the Corporation;

The appellants are entitled to a total compensation of Rs. 13,45,000/- as against Rs. 9,67,500/- awarded by the Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition till the date of realization;

The Corporation is directed to deposit the enhanced compensation of Rs. 3,77,500/- , with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment and award.

Out of the enhanced compensation, a sum of Rs. 1,50,000/- with proportionate interest, shall be invested in Fixed Deposit, in any Nationalized or Scheduled Bank, in the name of the second appellant - mother of the deceased, for a period of ten years, renewable for another five years, with liberty reserved to the second appellant to withdraw the interest, periodically.

A sum of Rs. 1,00,000/- with proportionate interest, shall be invested in Fixed Deposit, in any Nationalized or Scheduled Bank, in the name of the first appellant - father of the deceased, for a period of five years, renewable for another five years, with liberty reserved to the first appellant to withdraw the interest, periodically.

Remaining sum of Rs. 1,27,500/- with proportionate interest, shall be released in favour of appellant Nos. 1 & 2, in equal proportion, immediately.

Office to draw award, accordingly.

