(2015) 01 KAR CK 0088

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5075/2012 (MV)

Suguna and Others — APPELLANT

Vs

Sathish Mogaveera and Others — RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 01 KAR CK 0088

Hon'ble Judges : N.K. Patil, J.

Bench : Single Bench

Advocate : S. Naveen Kumar for Pavana Chandra Shetty H., Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the claimants is arising out of the impugned judgment and award dated 01.03.2012 passed in MVC No. 939/2009 on the file of the Presiding Officer, Fast Track Court & Motor Vehicle Accidents Claims Tribunal at Kundapura (hereinafter referred to as Tribunal'' for short).

2. The Tribunal by its impugned judgment and award, awarded a sum of Rs. 3,21,000/- with interest at 6% p.a., from the date of the petition till the date of deposit of the award amount as against the claim made by the claimants on account of the death of the deceased Suresh in the road traffic accident. Being aggrieved by the quantum of compensation awarded by the Tribunal as inadequate and requires enhancement, they felt necessitated to present this appeal.

3. In brief, the facts of the case are as under: Claimants are none other than the parents and the sister of the deceased Suresh, who was aged 22 years and working at Saligrama Town Panchayath and earning Rs. 130/- per day. Be that as it may, the deceased met with an accident on 27.11.2008 at about 6.00 p.m., near Hegde International Factory, Gundmi Village, over NH-17 while he was

riding his bicycle from Saligrama to Sasthana, over NH-17 on extreme left side of the road. At that time, the driver of the Lorry bearing Registration No. KA-20-B-1727 drove the same in a rash and negligent manner by overtaking one bus and dashed against the bicycle, by which the deceased sustained injuries and succumbed to the said injuries.

4. It is contended that, the deceased was the only earning member in the family and was aged about 22 years at the time of accident. On account of the untimely death of the deceased, the claimants have lost security, guidance and inspiration in life and the mother of the deceased has suffered mental agony. His death has affected the social and economic condition of the family. The claimants have examined one person from Saligrama Town Panchayath regarding his earnings. Thus, the claimants filed a claim petition under Section 166 of the Motor Vehicles Act, before the Tribunal and the said claim petition had come up for consideration before the Tribunal. The Tribunal after appreciating the oral and documentary evidence and considering the age, avocation and number of the dependents has allowed the claim petition in part and awarded the compensation of Rs. 3,21,000/- under different heads with interest at 6% p.a., from the date of petition till the date of deposit of the award amount. Being dissatisfied with the judgment and award passed by the Tribunal, the claimants have presented this appeal.

5. The submission of Sri S. Naveen Kumar, learned Counsel appearing for the claimants, at the outset is that, the Tribunal has committed an error in taking the income of the deceased at only Rs. 3,500/- per month, which is on the lower side. To substantiate the same, he is quick to submit that the deceased was aged about 22 years; and hale and healthy at the time of the accident and was working at Saligrama Town Panchayath and earning Rs. 130/- per day and the Tribunal has not taken appropriate multiplier while awarding compensation towards loss of dependency. Further, the claimants are put to mental agony and misery. It is further contended that, whatever the deceased used to earn, he used to spend the same towards the welfare of the family. This aspect of the matter has not been considered by the Tribunal. Therefore, he submitted that the income of the deceased may be reassessed reasonably and reasonable compensation be awarded towards loss of dependency and also under conventional heads.

6. Per contra, the learned Counsel appearing for the third respondent-insurer, inter alia, contended and sought to substantiate the impugned judgment and award passed by the Tribunal stating that it is passed after due appreciation of the oral and documentary evidence available on record. Therefore, the impugned Judgment and award does not call for interference and prays for dismissal of the appeal. However, he submits, as per the law laid down in the case of Santosh Devi Vs. National Insurance Company Ltd. and Others, , another 30% of income may be added towards loss of future prospects while calculating the loss of dependency.

7. After considering the submissions made by the learned Counsel appearing for both the parties and on perusal of the material available on record, including the impugned judgment and award passed by the Tribunal, the only point that arise for consideration is:

"Whether the quantum of compensation awarded by the Tribunal is just and reasonable?"

8. The occurrence of the accident resulting in the death of deceased is not in dispute. Further it is not in dispute that, the claimants are none other than the parents and the sister of the deceased. It is stated that, the deceased was aged 22 years at the time of accident working at Saligrama Town Panchayath and earning Rs. 42,000/- per annum. Be that as it may, he met with an accident on 27.11.2008 at about 6.00 p.m. due to rash and negligent driving by the driver of lorry bearing Registration No. KA-20-B-1727 from Udupi side towards Kundapura side over NH-7. It dashed against the deceased Suresh who was coming in his bicycle. Due to the said accident, deceased sustained fatal injuries and died on the spot. The claimants have not produced any credible proof regarding income. Therefore, the Tribunal has taken the income at Rs. 3,500/- per month. As rightly pointed out by the learned Counsel appearing for the Insurer, in the light of the decision in Santosh Devi''s case, as stated supra, another 30% is to be added towards future prospects of the deceased. Accordingly, if 30% of Rs. 42,000/- is added to the income of the deceased, it comes to Rs. 54,600/- per annum. Out of Rs. 54,600/-, if 50% is deducted towards personal expenses of the deceased, the remaining amount would be Rs. 27,300/- per annum. The age of the mother of the deceased was 42 years at the time of the accident and the appropriate multiplier applicable is 14. Accordingly, the claimants are entitled towards loss of dependency'' at Rs. 3,82,200/- (Rs. 27,300/-x14).

9. Having regard to the facts and circumstances of the case, compensation of Rs. 50,000/- is awarded towards conventional heads such as loss of love and affection'', loss of estate'' and ''transportation, funeral and obsequies expenses''. Thus, in all, the claimants would be entitled to Rs. 4,32,200/- as against Rs. 3,21,000/- awarded by the Tribunal with interest at 6% p.a. on the enhanced compensation amount from the date of petition till the date of realization.

10. Having regard to the facts and circumstances of the case, as stated above, the appeal filed by the claimants is allowed in part. The impugned judgment and award dated 01.03.2012 passed in MVC No. 939/2009 on the file of the Presiding Officer, Fast Track Court & Motor Vehicle Accidents Claims Tribunal, Kundapura is hereby modified. There will be an enhancement of Rs. 1,11,200/- with interest at 6% p.a. from the date of petition till the date of realization.

The third respondent -Insurer is directed to deposit the enhanced compensation amount of Rs. 1,11,200/- with interest at 6% p.a. from the date of petition till the date of realization, within a period of three weeks from the date of receipt of a copy of this judgment.

Out of the enhanced compensation, Rs. 50,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, in the name of the 1st appellant for a period of five years and renewable for another five years, with liberty to appellant No. 1 to withdraw the periodical interest accrued on it.

The remaining amount of Rs. 61,200/- with proportionate interest shall be released in favour of the appellant Nos. 1 & 2, in equal proportion, immediately, on deposit by the Insurer.

Draw up the award, accordingly.

