
(2016) 03 KAR CK 0146

In the Karnataka High Court

Case No : M.F.A. Nos. 5273 and 5284 of 2015 (MV)

Surfaraz Ahmed Shah and Others

APPELLANT

Vs

Shankrappa and Others

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 03 KAR CK 0146

Hon'ble Judges : N.K. Patil and Rathnakala, JJ.

Bench : Division Bench

Advocate : Sudeep Bangera, Advocate, for the Appellant;

Final Decision : Disposed Off

Judgement

N.K. Patil, J.—1. These two appeals respectively by the claimants and by the insurer are directed against the same judgment and award dated 19/02/2015, passed in MVC No. 54/2013, by the Principal Judge, Court of Small Causes, Mysuru, in concurrent charge of Additional Court of Small Causes, Mysuru, as a Presiding Officer, Motor Accident Claims Tribunal, Mysuru, (for short "Tribunal").

2. The Tribunal by its judgment and award has awarded a sum of Rs. 8,75,000/- under different heads with interest at 9% per annum from the date of petition till its realization, as against the claim of the claimants for a sum of Rs. 98,10,000/-, on account of the death the deceased Sri. Sheraaz Ahmed Shah M., in the road traffic accident.

3. It is the case of the claimants that the quantum of compensation awarded by the Tribunal is inadequate and it requires to be enhanced. Whereas, it is the case of the Insurer that, compensation awarded by the Tribunal towards loss of dependency is on the higher side and is liable to be reduced reasonably.

4. In brief, the facts of the case are:

"The claimants are the parents of the deceased. On account of the death of the

deceased in the road traffic accident, they filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the driver, owner and Insurer of the offending vehicle, contending that, on 10.5.2012 at 8.30 a.m. deceased was riding his motorcycle bearing Reg. No. KA.09.EJ.5488 and when he reached near Pushpashrama Junction, at that time, driver of Tipper lorry bearing Reg. No. KA.05.D.4519 came in a rash and negligent manner with high speed from Bannur road side and dashed against the motorcycle of the deceased. Due to which, deceased sustained injuries all over his body and he succumbed to fatal injuries while on the way to the hospital."

5. It is the further case of the claimants that, deceased was aged about 22 years, only son to his parents, hale and healthy prior to the accident, studying in 8th Semester of B.E. in Industrial and Production Engineering Course at Jayachamarajendra College of Engineering, Mysuru. Due to his untimely death, claimants have lost their only son and put to great hardship, apart from mental shock and agony.

6. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence, has allowed the claim petition in part, awarding the compensation of Rs. 8,75,000/- under different heads with interest at 9% p.a., from the date of petition till its realization.

7. Being aggrieved by the said judgment and award, both the claimants and Insurer have presented these appeals.

8. We have heard the learned counsel appearing for the claimants and the learned counsel appearing for Insurer in these appeals.

9. The submission of learned counsel Sri. Sudeep Bangera, appearing for claimants, is that, the Tribunal has grossly erred in assessing the income of the deceased at Rs. 60,000/- per annum which is on the lower side and is liable to be re-assessed reasonably. To substantiate the said submission, he submitted that deceased was aged about 22 years, studying in 8th Semester B.E. course, was a very bright student through out his career only son to his parents and on account of his untimely death, parents have suffered mental shock and agony. Further, he submits that deceased has been selected in Campus Interview in I.B.M. India Pvt. Ltd. and he was offered Rs. 3,40,000/- per annum. But this aspect of the matter has not been considered or appreciated or assessed reasonable income of the deceased. Further, he submits that the compensation awarded by the Tribunal towards conventional heads is also on the lower side and is liable to be enhanced. Therefore, he submitted that, the impugned judgment and award passed by the Tribunal is liable to be modified by awarding reasonable compensation towards loss of dependency and towards conventional heads.

10. Per contra, learned counsel appearing for the Insurer, inter-alia, vehemently submitted that, the Tribunal has erred in applying the multiplier of "18" taking the age of the deceased instead of taking the age of the younger parent, mother

while calculating loss of dependency. Therefore, he submitted that the impugned judgment and award passed by the Tribunal is liable to be modified by reducing the compensation reasonably.

11. After hearing the learned counsel for the parties and after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, the point that arises for our consideration are:

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

12. Occurrence of the accident and the resultant death of the deceased are not in dispute. It is also not in dispute that claimants are the parents of the deceased. It is the case of the claimants that, deceased was aged about 22 years, studying in 8th Semester Engineering course in Industrial and Production Engineering at Jayachamarajendra College of Engineering, Mysuru. He was a very bright student through out his studies. It is the submission of the learned counsel appearing for the claimants that, the Tribunal has erred in not assessing the income of the deceased for calculating loss of dependency and also erred in not awarding reasonable compensation towards conventional heads and therefore, it is liable to be enhanced reasonably. We find some substance in the said submission. Having regard to the age, qualification of the deceased, year of the accident and as he was only son to his parents and on account of his untimely death, parents have suffered mental shock and agony and taking into consideration that, he was selected in the Campus interview for IBM India Pvt. Ltd., we re-assess his income at Rs. 16,000/- per month to meet the ends of justice. As on the date of the accident, deceased was a bachelor, therefore, 50% should be deducted towards personal and living expenses of the deceased. If 50% (Rs. 8,000/-) is deducted out of Rs. 16,000/-, his remaining income comes to Rs. 8,000/- per month. In the light of the latest judgment of the Apex Court and deceased was the only son to his parents and they have lost the security and suffered mental shock and agony and also having regard to the peculiar facts and circumstances of the case, we accept the multiplier of "18" adopted by the Tribunal, taking the age of the deceased and therefore, it does not call for interference, nor we find any good grounds, as such made out by the learned counsel appearing for the Insurer that multiplier has to be adopted taking the age of the younger parent, mother of the deceased. Taking all these factors into consideration, we redetermine the loss of dependency at Rs. 17,28,000/- (Rs. 8,000/- x 12 x 18) instead of Rs. 8,10,000/- awarded by the Tribunal and accordingly, it is awarded.

13. Having regard to the facts and circumstances of the case, we award a sum of Rs. 1,00,000/- towards loss of love and affection at the rate of Rs. 50,000/- each to the claimant Nos. 1 and 2, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses. Thus, the claimants are entitled for the total compensation of Rs. 18,78,000/- instead of Rs. 8,75,000/- awarded by the Tribunal. There would be an enhancement of Rs. 10,03,000/- with interest at 9% p.a., from the date of petition till its realization.

14. For the foregoing reasons, the appeal filed by the claimants is allowed in part and the appeal filed by the Insurer is dismissed as devoid of merits.

The impugned judgment and award dated 19/02/2015, passed in MVC No. 54/2013, by the Principal Judge, Court of Small Causes, Mysuru, in concurrent charge of Additional Court of Small Causes, Mysuru, as a Presiding Officer, Motor Accident Claims Tribunal, Mysuru, is hereby modified, awarding a sum of Rs. 10,03,000/- with interest at 9% p.a., from the date of petition till its realization, in addition to the compensation awarded by the Tribunal.

The Insurer is directed to deposit the enhanced compensation of Rs. 10,03,000/- with interest at 9% p.a., from the date of petition till its realization, within three weeks from the date of receipt of the copy of this judgment.

Immediately on such deposit by the Insurer, out of the enhanced compensation of Rs. 10,03,000/-, a sum of Rs. 5,00,000/- with proportionate interest shall be invested in the Fixed Deposit in the name of the claimant No. 2, mother of the deceased, in any Nationalised or scheduled or Grameena bank, for a period of 5 years and renewable by another 5 years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

A sum of Rs. 3,00,000/- with proportionate interest shall be invested in the Fixed Deposit in the name of the claimant No. 1, father of the deceased, in any Nationalized or scheduled or Grameena bank, for a period of 5 years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

Remaining sum of Rs. 2,03,000/- with proportionate interest shall be released in favour of claimant Nos. 1 and 2 in equal proportion immediately.

The amount deposited by the Insurer shall be transmitted to the jurisdictional Tribunal forthwith.

Draw the award, accordingly.

In view of disposal of main matter, relief sought by the Insurer in I.A. No. 2/2016 in M.F.A. No. 5284/2015 does not survive for consideration. Hence, I.A. No. 2/2016 is disposed of as having become infructuous.