

(2014) 01 KAR CK 0112

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 30315/2012 (MV)

The Manager

APPELLANT

Vs

Sunanda

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Citation : (2014) ILR 6767 : (2015) 4 KCCR 3318

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Sanjay M. Joshi, Advocate for the Appellant; Bapugouda Siddappa and S.V. Biradar, Advocate for the Respondent

Judgement

A.S. Pachhapure, J.—The appellant-insurer has approached this Court in appeal challenging the quantum of compensation granted by the Tribunal for the death of one Ashok in a motor vehicle accident.

2. The facts reveal that on 07.11.2008, Ashok (the deceased) was waiting for a bus on Toravi Tanda cross and at about 2.30 p.m., the motorcycle bearing Reg. No. KA28/TR5651 driven in a rash and negligent manner came from Tikota side and hit Ashok (the deceased); he sustained grievous injuries and was admitted in the hospital for treatment; he died during the treatment. The legal representatives i.e., his wife, mother and children made a claim for compensation for loss of dependency, medical expenses and other conventional heads.

3. On behalf of the claimants, PWs. 1 and 2 were examined and in their evidence, Exs. P1 to P11 were marked. The insurance policy was admitted in evidence as Ex. R1 with the consent of the learned counsel.

4. The Tribunal after hearing the learned counsel and appreciating the evidence on record, allowed the claim petition in part and granted compensation of Rs. 8,57,250/- with interest @ 6% p.a. Aggrieved by the amount awarded, the insurer has filed this appeal.

5. I have heard the learned counsel for both the parties.

6. The point that arise for my consideration is,

Whether the compensation awarded by the Tribunal is on the higher side? If so, what is the extent of reduction?

7. Learned counsel for the appellant-insurer would contend that the income assessed by the Tribunal is on the higher side and the compensation awarded on other heads is more. Therefore, he submits to modify the impugned judgment and award. On the other hand, learned counsel for the respondents 1 to 5 - claimants supporting the judgment and award of the Tribunal contend that the loss of prospects has not be considered by the Tribunal and if it is taken into consideration, the amount awarded by the Tribunal is just and proper.

8. It is not in dispute that the deceased was an agriculturist. To support his avocation, the claimants have produced Ex. P8 - the RTC Extract relating to the land held by the deceased.

9. Perusal of the record of rights would reveal that the deceased was owning 7 acres 15 guntas of agricultural land only and 4 acres of land was in the name of claimant No. 1. It is stated by the claimants in their evidence that the deceased was growing grapes in the land. Perusal of the record of rights produced does not reveal any crop mentioned in Ex. P8. The claimants have not produced any other documents to show that they were growing and selling grapes. If really it was so, they had at least produced the receipts having sold the grapes or the documents relating to the transaction of the grapes. In such circumstances, acceptance of the oral evidence of the claimants in the absence of any documents about the deceased growing grapes in the land cannot be accepted.

10. Anyhow, the accident is in the year 2008 and as accepted by the parties in the Lok Adalats, the income of a labourer is considered at Rs. 4,500/- per month. As the deceased was owning not less than 7 acres of land and as he was an agriculturist, the income will be bit more than that of a labourer. Hence, I think it just and proper to consider the income of the deceased at Rs. 5,000/- per month.

11. Learned counsel for the respondents 1 to 5 has placed reliance on the decision of the Apex Court reported in (2012) 6 Supreme Court Cases 421 (Santosh Devi Versus National Insurance Company Limited and Others). Perusal of the facts stated therein reveal a reference to the judgment rendered by the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , wherein, in respect of an employee who was getting salary, the loss of future prospects was taken into consideration on the basis of the age of the deceased. It has been held that the principle laid down by the Apex Court in Sarla Verma's case is also applicable to the cases where there is fixed salary or the income. This principle laid down by the Apex Court does not apply to the cases wherein the deceased is an agriculturist. It is relevant to note that the income of an agriculturist is depending on the crops that he grows in the land.

There will be variation in the prices of the food grains or the agricultural produce at all the times. It may be more in some circumstances and less in other. When there is variation in the income of an agriculturist, this principle does not apply. That apart, in case if in due course of time the prices of agricultural commodities are increased, an agriculturist will also get more income. Therefore, as the deceased was an agriculturist and the claimants have a choice to grow any crop they desire, the question of loss of prospects does not arise.

12. It is stated before this Court by referring to the School Certificate of the deceased that he was born on 15.08.1959 to mean he was aged 49 years at the time of the accident. Therefore, the multiplier to be applied is "13". As he has left behind five dependents, 1/4th of the income has to be deducted towards the personal expenses of the deceased. Thereby, the contribution per month would be Rs. 3,750/-. The net loss of dependency would be Rs. 5,85,000/- (3,750/- x 12 x 13).

13. The claimants have produced the medical bills worth Rs. 97,450/- and the Tribunal has granted that much of amount towards the medical expenses. There are no reasons to enhance the same. The deceased was in the hospital for a period of eight months; he was in Coma and it was necessary to look after him all the times till he died; at least one attendant is necessary to look after him. The Tribunal has not granted any compensation towards the attendant charges. A sum of Rs. 16,000/- on this head would be just and proper. Claimant No. 1 is the wife of the deceased, aged 35 years. As she has lost her husband, a sum of Rs. 20,000/- will have to be paid towards loss of consortium. The other claimants are the mother and the minor children. The mother has lost her son and the children have lost their father. Therefore, a sum of Rs. 26,000/- is payable towards loss of love and affection and a sum of Rs. 5,000/- is to be paid towards funeral expenses, whereas a sum of Rs. 10,000/- is payable towards the loss to estate. The transportation charges have not been granted by the Tribunal and hence, a sum of Rs. 5,000/- is payable on this head.

14. Thereby, the appellants are entitled to the compensation as under:

15. Therefore, the point raised is answered in the affirmative and the impugned judgment and award needs modification.

Consequently, the appeal is allowed in part. Modifying the judgment and award of the Tribunal, the respondents 1 to 5 - claimants are entitled to a total sum of Rs. 7,58,450/- with interest @ 6% p.a. from the date of petition till its payment.

Out of the compensation awarded, a sum of Rs. 1,00,000/- each shall be deposited in the name of the respondents 1 to 4 in any Nationalized Bank for a period of five years with liberty to the 1st respondent to withdraw the interest periodically for their welfare. A sum of Rs. 58,450/- shall be paid to respondent No. 5, the mother of the deceased and the excess amount shall be paid to respondent No. 1.

The amount in deposit is ordered to be transmitted to the jurisdictional Tribunal.