(2017) 07 KAR CK 0107

In the Karnataka High Court

Case No : 5688 of 2015 [MV]

THE MANAGER RELIANCE GENERAL INSURANCE CO. LTD. APPELLANT

Vs

SRI.DENITUS KAGOO S/O LATE PATRICK KAGOO, & ORS. RESPONDENT

Date of Decision : 25-07-2017

Acts Referred:

Citation : (2017) 07 KAR CK 0107

Hon'ble Judges : S.Sujatha

Bench : SINGLE BENCH

Advocate : B.PRADEEP, K.T.GURUDEVAPRASAD

Final Decision : Allowed

Judgement

1. This appeal is directed against the Judgment and Order passed by the V Additional Small Causes Judge, Court of Small Causes, Mayo Hall Unit, Member, Motor Accident Claims Tribunal, Bengaluru (SCCH.20) [the ''Tribunal'', for short] in MVC No.2667/2014.

2. The facts in brief are:

That the claimants being the parents of the deceased Patrick Dylan, approached the Tribunal claiming compensation for the death of said Patrick Dylan in the road traffic accident which occurred on 21.04.2014, contending that the deceased while riding motorcycle bearing registration No.KA-03-HT-5755, at Ramamurthynagar ring road underpass, the driver of the Tempo Traveler bearing registration No.KA-53-A- 5871 drove the vehicle in a rash and negligent manner and dashed against the motorcycle on which the deceased was proceeding. Owing to the said impact, he sustained grievous injuries and succumbed to the same on the spot. On issuance of process, the insurance company was represented by its counsel and the claim was refuted. The Tribunal considering the evidence on record, awarded total compensation of Rs.26,68,000/- with interest at the rate of 6% per annum from the date of petition till the date of realization. Being aggrieved by the same, the insurer is in appeal challenging the quantum of compensation awarded being excessive.

3. Learned counsel Sri.B.Pradeep, appearing for the appellant contended that the deceased was aged about 24 years at the time of the accident. The Tribunal determining the monthly income at Rs.12,000/-, grossly erred in adding 50% of the income towards the future prospects. It was further contended that the compensation awarded under the head - loss of love and affection at Rs.2,00,000/- is on the higher side.

4. Learned counsel Sri.K.T.Gurudevaprasad, appearing for the claimants justifying the impugned judgment and order, submitted that the Tribunal appreciating the material evidence on record, awarded compensation which is just and reasonable and the same do not call for any interference by this Court.

5. Heard the learned counsel for the parties and perused the material on record.

6. The factum of accident and the death of the victim in the road traffic accident are not in dispute. Indisputably, the deceased was aged about 24 years and was working as Service Engineer. Appointment letter at Ex.P9 discloses that the deceased was working as Trainee Engineer in Operation Department at Bengaluru in Grade G4A. Four pay slips for the month of January 2014 to April 2014 marked as Ex.P10 were produced by the claimants which clearly discloses that, the total earning of the deceased was Rs.12,000/-p.m. Ex.P11 is the ID card issued by the Hephzi Elevators International Co. Pvt., Ltd., with which the deceased was working. In support of their contention, the claimants examined one witness - PW-3 Sri.Daniel Shashi Kiran.S., H.R. Executive of the said company. Considering these aspects, the Tribunal determined the monthly income of Rs.12,000/-, added 50% of income towards future prospects. The grievance of the insurance company is that awarding of future prospects at 50% is erroneous. The issue of awarding future prospects has been considered in catena of judgments rendered by this Court as well as Hon''ble Apex Court. In the judgment of Division Bench of this Court reported in ILR 2017 KAR 1437 in the matter of ROYAL SUNDARAM ALIANCE INSURANCE COMPANY LIMITED V/S. MR.DORAIRAJ PILLAY AND OTHERS, this Court has categorically held that the increase in the case of self employed and the persons on fixed wages, is not always 30%. It will have reference to the age as the victim therein was 25, the addition towards future prospects was declared to be 50%, placing reliance on the judgment of the Hon''ble Apex Court in SANTOSH DEVI V/S. NATIONAL INSURANCE CO. LTD [(2012) 6 SCC 421]..

7. The Co-ordinate Bench of this Court in the case of SMT.AYESHA BEGUM V/S. SARADARULLA KHAN AND OTHERS in M.F.A.No.9119/2008 (D.D.28.07.2016), considering the judgments holding the field on the issue of future prospects, has held that additional amount towards future prospects is required to be awarded where evidence discloses that the victim was young person having potential to earn higher income and was having steady income at the time of accident. Merely because the matter regarding award of additional amount towards future

prospects had been referred to the Larger Bench, this Court will not award any compensation under the said head, was rejected.

8. In view of these judgments, it can be held that the aspect of awarding future prospects depends on the evidence let in by the parties. The evidence on record clearly establishes that the deceased was aged 24 and was an engineer by profession. He had the steady income and bright future. In such circumstances, adding 50% to the income determined towards future prospects is justifiable. However, considering the fact that the deceased was a bachelor at the time of the accident, 50% of the income requires to be deducted towards the personal expenses of the deceased in terms of the judgment of the Hon''ble Apex Court in the case of SARLA VERMA AND OTHERS vs. DELHI TRANSPORT CORPORATION AND ANOTHER, reported in [2009] 6 SCC 121. Appropriate multiplier would be 18 considering the age of the deceased. Hence, applying the same, loss of dependency would work out to Rs.19,44,000/- (18,000 x 12 x 18 x 1/2).

9. However, the compensation awarded by the Tribunal towards loss of love and affection at Rs.2,00,000/- prima facie appears to be on the higher side. Considering the totality of circumstances of the case, this Court finds it appropriate to reduce the same to Rs.1,00,000/-. A sum of Rs.25,000/- would be reasonable compensation towards funeral and obsequies etc. A sum of Rs.10,000/- would be appropriate compensation towards loss of estate. Thus in all, total compensation awarded by the Tribunal is modified as under:

Sl.No. Particulars Amount [in Rs.]

1 Loss of dependency 19,44,000

2 Loss of love and affection 1,00,000

3 Loss of Funeral & Obsequies 25,000

4 Loss of estate 10,000

TOTAL 20,79,000

10. Thus, the compensation awarded by the Tribunal is modified to Rs.20,79,000/- as against Rs.26,68,000/-, which shall carry interest at 6% per annum from the date of the petition till the realization.

11. The appeal stands allowed to the extent indicated above.

The award amount in deposit shall be transferred to the jurisdictional Tribunal for disbursement. If found in excess, shall be refunded to the appellant-insurance company forthwith.

