(2015) 02 KAR CK 0343

In the Karnataka High Court

Case No : M.F.A. No. 10815 of 2011 (MV)

Thimmarajamma APPELLANT

Vs

Shriram General Insurance Company Limited and Others RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Citation : (2015) 02 KAR CK 0343

Hon'ble Judges : B. Sreenivas Gowda, J.

Bench : Single Bench

Advocate : D.J. Govindaraju, for the Appellant; B. Pradeep, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

B. Sreenivas Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. Heard. The appeal is admitted and with the consent of learned Counsel appearing for the parties, it is taken up for final disposal.

3. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.

4. As there is no dispute regarding death of one Hanumakka in a road traffic accident that occurred on 06.11.2009 due to rash and negligent driving of a private bus bearing registration No. KA-16-D-5777 by its driver and liability of the insurer of the offending vehicle, the only point that arises for my consideration in the appeal is:

"Whether quantum of compensation awarded by the Tribunal is just and reasonable or does it call for enhancement?" 5. After hearing the learned counsel appearing for parties and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and hence it is required to be enhanced.

6. Sri D.J. Govindaraju, learned counsel appearing for the claimant submits income of the deceased assessed by the Tribunal at Rs. 5,500/- p.m. is on the lower side. Consequently, the quantum of compensation awarded by the Tribunal towards loss of dependency is on the lower side. He submits the compensation awarded under conventional heads is also on the lower side. Therefore, he prays to enhance the compensation awarded by the Tribunal, whereas, Sri B. Pradeep, learned counsel for the insurer submits since, claimant has continued the business of her deceased mother as admitted by her in her evidence, the tribunal is justified in taking the income of the deceased at Rs. 1,500/- p.m. and awarding compensation, as such, it does not require enhancement and he prays for dismissal of the appeal.

7. It is the case of death of a mother who was aged about 51 years. The claim petition is filed by her unmarried daughter. A perusal of complete evidence of the parties would show claimant and her deceased mother were living together and they were doing vegetable vending business for their livelihood. It is no doubt true claimant in her evidence has admitted that she has continued the business of vegetable. What the Tribunal has lost sight of is that whether when deceased was alive was exclusively doing vegetable business from morning to evening and her daughter i.e., claimant was attending house work including carrying food to her deceased mother. After death of deceased, the surviving daughter has to do both household work as well as the business and it cannot be said that she would get the same income that her mother was earning and she was not depending on the income of her mother. In the process, the income of the daughter has been substantially reduced after the death of her mother. That should be taken as loss of income of the daughter. Considering the age of mother as 53 years, year of accident as 2009 and her avocation as vegetable vending her income could easily be assessed at Rs. 5,000/- p.m. and 50% is to be deducted towards her personal expenses and remaining 50% can be taken as contribution towards her daughter. As the deceased had no other legal representative other than the claimant, the multiplier ''11'' applied by the Tribunal based on the age of the deceased is sound and proper. If so, loss of dependency would work out to Rs. 3,30,000/- (5000 x 1/2 x 12 x 11) and it is awarded. In addition to that a sum of Rs. 40,000/- is awarded under conventional heads such as loss of love and affection and transportation of dead body and funeral expenses.

8. Thus, the claimant is entitled for the following compensation:-

9. Accordingly, the appeal is allowed in part. The judgment and award passed by the Tribunal is modified to the extent stated herein above. The claimant is entitled for a total compensation of Rs. 3,70,000/- as against Rs. 1,57,000/- awarded by the Tribunal with interest at 6% p.a. The claimant is entitled for an additional compensation of Rs. 2,13,000/- with interest at 6% p.a. from the date of claim petition till the date of realisation.

10. The Corporation is directed to deposit the enhanced compensation amount with interest within two months from the date of receipt of a copy of this judgment.

11. Out of the enhanced compensation, Rs. 1,50,000/- with proportionate interest is ordered to be invested in F.D. in any nationalized or scheduled Grameena Bank in the name of the claimant for a period of 3 years and the remaining amount with proportionate interest is ordered to be released in favour of the claimant.

12. The Tribunal while releasing the remaining amount of Rs. 63,000/- is also directed to issue FD slip/s in favour of the claimant so that she can withdraw fixed deposit amount on the date of maturity. The Bank/Post office in which amount is kept in FD shall release FD amount on maturity without insisting further orders from the Tribunal.

No order as to costs.