(2017) 07 KAR CK 0093

In the Karnataka High Court

Case No : 4903 of 2016 (MV-D)

UNITED INDIA INSURANCE CO., LTD. — APPELLANT

Vs

SMT. M.H.UMA MAHESHWARI, & ORS. — RESPONDENT

Date of Decision : 20-07-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 166, Section 166 - Application for compensation

Citation : (2017) 07 KAR CK 0093

Hon'ble Judges : H.G.Ramesh, K.S.Mudagal

Bench : DIVISION BENCH

Advocate : B.C.SEETHA RAMA RAO, B.R.GURUPRASAD

Final Decision : Allowed

Judgement

1. This appeal arises out of the judgment and award passed by the III Addl. Sr. Civil Judge & MACT - VI, Mangalore, Dakshina Kannada in MVC No.1639/2012. By the impugned award, the Tribunal has awarded compensation of Rs.65,60,347/- to the claimants.

2. Respondents 1 to 3 are the claimants/petitioners and respondent no.4 is the owner/first respondent and the appellant is the second respondent before the Tribunal. For the purpose of convenience, the parties will be referred to hereafter with their ranks before the Tribunal.

3. Claimant no.1 is the wife and claimant no.2 and 3 are the sons of deceased S T Devaraju. On 16.07.2012 at 6.30 AM when S T Devaraju was traveling in car bearing Regn.No.KA-19-MC-5879, the said car met with an accident near Gokul Cross, Hiriyur Taluk, Chitradurga causing his death. The claimants filed MVC No.1639/2012 before the Tribunal contending that the accident occurred due to the rash and negligent driving of the driver of the car and such untimely death of S T Devaraju has subjected them to destitution. They claimed that at the time of death, S T Devaraju was serving as Commissioner of Raichur City Municipal

Corporation and drawing salary of Rs.55,000/- per month and claimed compensation of Rs.2,00,00,000/- on different heads.

4. The respondents contested the petition denying the rashness and negligence on the part of the driver, age, occupation and income of the deceased and the dependency of the claimants. The second respondent contended that its liability if any is subject to the validity of insurance policy and denied that the driver of the offending car was holding a valid driving licence.

5. Petitioners alone adduced oral evidence and got marked Exs.P.1 to P.24. The respondents got marked the insurance policy as Ex.R.1. The Tribunal after hearing the parties awarded compensation with interest @ 6% p.a. payable by the second respondent with the following breakups:

Heads of Compensation Amount (Rs.)

(1) Loss of dependency and future Prospects 61,40,347.20

(2) Loss of consortium 1,00,000.00

(3) Loss of love and affection 3,00,000.00

(4) Funeral expenses & other Incidental Charges 20,000.00

TOTAL 65,60,347.20

6. Sri B C Seetharama Rao, learned counsel appearing for the second respondent/ insurance company seeks to assail the award on the following grounds:

(i) As the deceased was over 50 years of age, the Tribunal committed error in computing future prospects @ 30%.

(ii) On the death of S T Devaraju, the first claimant draws family pension. Therefore, that should have been deducted in computing loss of dependency.

(iii) There is duplication of award by granting Rs.1,00,000/- towards consortium to the 1st petitioner as well as again granting Rs.3,00,000/- on the head of loss of love and affection.

7. It is settled position of law that in a petition under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to award just compensation. The second respondent has no grievance against the findings on the occurrence of the accident due to rashness and negligence of the driver of the offending vehicle, its liability to indemnify the damages as the insurer, claimants relationship with the deceased, his age, occupation and salary at the time of his death.

8. The contention that the first claimant gets family pension, therefore, while computing the income the deduction should have been given to that, carries no merit having regard to the Judgment of the Apex Court in VIMAL KANWAR & Ors. Vs KISHORE DHAN & Ors.(2013)7 SCC 476. In the said Judgment the Supreme Court referring to its earlier Judgment in HELEN C REBELLO VS MAHARASHTRA

SRTC ((1999) 1 SCC 90), has held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, compassionate ground appointment etc. have no correlation with the amount receivable under a statute occasioned only on account of accidental death.

9. As per Ex.P.23, the service record the deceased was 23.03.1962 born. Therefore, at the time of the death his age was 50 years and 3 months. He was drawing salary of Rs.50,463/-. As per the Judgment of the Apex Court in RAJESH & ORS. Vs RAJBIR SINGH & ORS. (2013)9 SCC 54, the actual Income is the income after deduction of Income Tax, if any. The Tribunal has deducted 10% of the salary as tax and claimants have no grievance against that. Therefore, his salary comes to Rs.45,417/- rounded to Rs.45,420/-.

10. Sri Seetharama Rao, learned counsel relying on the Judgments G.VATSALA RANI vs SELECTION COMMITTEE (AIR 1967 Mysore 135) and PRABHU DAYAL SESMA vs STATE OF RAJASTHAN (AIR 1986 SC 1948) contends that in reckoning the age of a person, his running age should be taken as his age and with that yardstick, the age of the deceased should be taken as 51 years and the addition of 30% towards future prospects and application of 13 multiplier is erroneous. In those Judgments, the questions which were considered are, "What is the meaning of attaining a particular age and completing a particular age?". They are not helpful to hold that in this case in computing the age, the running age of the deceased to be considered.

11. Even otherwise, it is held in Rajesh''s case referred to supra that where the victim is between the age group of 50-60 years there should be an addition of 15% towards future prospects to the salary of the deceased. Therefore, addition of 30% future prospects need to be reduced to 15%. In SARALA VERMA & Ors. Vs DELHI TRANSPORT CORPORATION & ANR. (2009)6 SCC 121, at paragraph 32, the multiplier applicable to the age group of 46-50 years is held as 13 and 51-55 years is held as 11. The deceased had not completed the age of 51 years. Therefore, the 13 multiplier applied by the Tribunal does not warrant any interference.

12. With 15% future prospects, the monthly income of the deceased comes to (45420+6813) Rs.52,233/- which is rounded to 52,240/-. Since, there are three dependents on the deceased, as per the judgment of the Apex Court in SARALA VERMA''s case, one third(1/3) has to be deducted from the salary towards his personal expenses which comes to (Rs.52,240-17,413)Rs.34,826.6/- rounded to Rs.34,830/- per month.

13. The Apex Court in MUNNALAL JAIN & ANR. Vs VIPIN KUMAR SHARMA & ORS. (2015 AIR SCW 3105) has held that computation of multiplier depends upon the age of the deceased alone. Applying the multiplier of 13 as held in Sarla Verma''s case referred to supra, the loss of dependency comes to (Rs.34830x12x13) Rs.54,33,480/-.

14. The Tribunal has awarded loss of consortium of Rs.1,00,000/- to the widow

and also Rs.3,00,000/- to all the claimants towards loss of love and affection. On granting consortium, again award to the wife on the head of loss of love and affection is duplication. Therefore, the head of ''loss of love and affection'' has to be reduced to Rs.2,00,000/-.

15. Towards funeral expenses Rs.25,000/- has to be awarded instead of Rs.20,000/-. Towards the expenses of transportation dead body Rs.20,000/- has to be awarded. Therefore, the compensation payable has to be recalculated as under:

(1) Loss of dependency Rs. 54,33,480

(2) Loss of consortium Rs. 1,00,000

(3) Loss of love and affection to Children Rs. 2,00,000

(4) Funeral expenses Rs. 25,000

(5) Transportation of dead body Rs. 20,000

Total Rs. 57,78,480/-

16. Therefore, the award of the Tribunal is excess to the tune of (Rs.65,60,347 - Rs.57,78,480) Rs.7,81,867/-. Therefore, the appeal is allowed partly. The impugned award is reduced to Rs.57,78,480/-. The rest of the award regarding interest, apportionment etc. is maintained. No order as to costs. The statutory deposit, if any, made before this Court, shall be transmitted to the Tribunal forthwith. In view of the disposal of the appeal, I.A.2/2016 for interim stay does not survive. Disposed of accordingly.