(2011) 07 KAR CK 0262

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 30083 of 2011 (MV)

United India Insurance Co. Ltd., Divisional Manager APPELLANT

Vs

Revappa Jogi and Others RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 07 KAR CK 0262

Hon'ble Judges : N.K. Patil, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : Shivanand Patil, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the insurer is directed against the impugned common judgment and award dated 28.8.2010 passed in MVC No. 147/2007 on the file of the Motor Accident Claims Tribunal No. VIII at Muddebihal. The Tribunal by its impugned judgment and award awarded a sum of 16,16,920/- with interest 6% per annum from the date of petition till the date of realization. The appellant-insurer contending that the quantum of compensation awarded by the Tribunal is on the higher side, has presented this appeal. The brief facts of the case are the respondent Nos. 1 and 2 are the claimants, who are none other than the parents of the deceased. They have filed petition u/s 166 of the M.V. Act claiming compensation against the appellant-insurer, owner and driver of the offending vehicle. It is contended that due to rash and negligent driving by the driver of the vehicle the deceased met with an accident on 14.5.2007. Due to grievous injuries sustained, inspite of making all efforts, they could not save the deceased. Thereafter, he succumbed to the injuries. It is the farther case of the respondent Nos.1 and 2 that the deceased was aged about 25 years. He was working as Sales Executive in INFO COM Network Limited, New Delhi and he was drawing a gross salary of 10,050/- per month. He was the sole bread earner of the family. Due to untimely death of the deceased, the family is affected severely socially and economically. Therefore, they were constrained to file a claim petition claiming compensation against the appellant-insurer and others. The said matter has come up for consideration before the Tribunal. The Tribunal in turn after assessing the oral and documentary evidence allowed the same in part by awarding a sum of 16,19,920/- with interest 6% per annum.

2. It is the specific case of the appellant-insurer that tribunal has committed error in deducting l/3rd towards personal expenses of the deceased and has further erred in applying multiplier 18 for taking the age of the deceased and determining the compensation towards loss or dependency and therefore, the same is required to be modified. Being aggrieved by the impugned judgment and award passed by the Tribunal, the appellant-insurer has presented this appeal.

3. The learned counsel appearing for the appellant-insurer at the outset submitted that the Tribunal has committed grave error in deducting 1/3rd towards personal expenses of the deceased, when it ought to have deducted 50% towards personal expenses of the deceased as he was a bachelor and further erred in applying the multiplier 18 taking the age of the deceased. As the deceased was age of the younger parents has to be taken for determining a bachelor, the compensation. Therefore, he submitted that, the impugned judgment and award passed by the Tribunal is liable to be modified.

4. The respondent Nos. 1 and 2, the claimants are served unrepresented.

5. After careful perusal of the impugned judgment and award by the Tribunal, what emerges is that the deceased was aged about 25 years. He was working as Sales Executive in private limited as stated supra. He was drawing salary of 10,050/- per month as per Ex. P-9. The same is accepted and it does not call for interference. The Tribunal has justified in deducting l/3rd towards personal expenses of the deceased. Having, regard to the age, occupation and dependants who are none other than the parents aged between 40 and 50 years as on the date of accident. The learned counsel appearing for the appellant-insurer submitted that Tribunal has committed error in taking the multiplier of 18, considering the age of the deceased and the same is not sustainable. There is some substance in his submission, it requires consideration. After microscopic evaluation of the original records available in file, what emerges is that the deceased was a Sales Executive, aged about 25 years, working in private limited company INFOCOM Network Limited, C/1 Main Shopping Centre, Vasant Vihar, New Delhi and he was drawing gross salary of 10,050/- per month. After seeing the salary certificate at Ex. P-9 for the month of April, the accident has occurred in the month of May 2007. In view of the judgment of the Apex Court in the case of Sarla Varma and others vs. Delhi Transport Corporation and Another reported in 2009 ACJ Page 1298. We must add 50% to hold future prospects. Accordingly, if 50% (i.e., 5,025/-) is added, the net income comes to 15,075/- and out of this 1/3rd is deducted towards personal expenses of the deceased, following the latest judgment of the Apex Court, wherein the Court has taken 1/3rd unilaterally and it is settled that he being a bachelor would make more

investment to the family rather than married person in a joint family. In the instant case, the deceased was born and brought up in a remote village of Sarur Village, Muddebihal Taluk. Bijapur District and due to his conviction and commitment and having regard to his qualification he has been working at a capital city New Delhi in a private company INFOCOM Network Limited. Taking this factor into consideration, we add 50% of the salary of the deceased towards prospective income and redetermine the compensation towards loss of dependency. Thus, if we deduct 1/3rd (5,025/-) towards personal expenses of the deceased out of 15,075/- the remaining net amount comes to 10,050/- rounded off to 10,000/- per month. As rightly pointed out by the learned counsel appearing for the appellant-insurer, the age of the younger parent should be taken. In the instant case, the age of the young parent mother was 40 years. We apply appropriate multiplier of 15 as against 18 applied by the tribunal and accordingly redetermine the compensation towards loss of dependency at a sum of 18,00,000/- (10,000/-xl2xl5) and accordingly award the same towards loss of dependency.

5. Having regard to the facts and circumstances of the case, we deem it fit to award of 45,000/- towards conventional heads, as it is, the loss of love and affection, loss of estate and funeral expenses. In all the respondents-parents are entitled to a sum of 18,45,000/- as against 16,16,920/ awarded by the Tribunal. There will be enhancement of compensation of 2,28,080/-.

7. After taking judicial note even the parents of the deceased come from rural background in as much as they are the residents of Sarur Village, Muddebihal Taluk, Bijapur District, in spite of service of notice, they have not engaged the services of the counsel this itself shows beyond reasonable doubt that they are not acquainted about the entitlement of compensation for the untimely death of the deceased in the road traffic accident and thus taking judicial note and awarding reasonable compensation what was entitled is well supported and well established law lay down by this Court and Apex Court in catna of judgments. Having regard to the peculiar facts and circumstances of the case referred above, even though we if take judicial note that the respondent Nos. 1 and 2 claimant-parents of the deceased are entitled to more compensation but unfortunately due to lack of legal knowledge, they have not represented nor filed any cross objection. Having regard to the peculiar facts and circumstances of the case, we do not find any justification or good ground to interfere in the impugned judgment and award. The appeal filed by the appellant-insurer stands dismissed and the judgment and award passed by the Tribunal is confirmed.

The amount in deposit by the appellant shall be transmitted to the jurisdictional Tribunal Court, forthwith.

Draw the award accordingly.

