(2014) 11 KAR CK 0228

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 22409/2009 (MV)

Uppar Thayanna APPELLANT

Vs

B. Gopal RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2014) 11 KAR CK 0228

Hon'ble Judges : K.N. Phaneendra, J

Bench : Single Bench

Advocate : Y. Lakshmikant Reddy, Advocate for the Appellant; Nagaraj C. Kolloori, Advocate for the Respondent

Judgement

K.N. Phaneendra, J.—The claimants (appellants herein) are before the Court, having dissatisfied with the quantum of the award passed by the M.A.C.T.VII at Hospet, in MVC No. 1139/2008. The respondent No. 1 herein is the owner of the offending vehicle bearing registration No. AP-2/U-7192 and the second respondent is the Insurance Company indemnified the liability of the first respondent. The notice to respondent No. 1 was dispensed with by this Court, vide order dated 2-7-2014.

2. I have heard the arguments of Sri. Y. Lakshimikant Reddy, the learned Counsel for the appellants and Sri. Nagraj C. Kolloori for R2-Insurance Company.

3. The appeal is only with regard to the inadequacy of the compensation awarded by the trial Court. There is absolutely no dispute by the Insurance Company with regard to its liability and it appears that it has already satisfied the award passed by the trial Court.

4. The appellants being the legal heirs of the deceased by name Uppar Devendrappa have claimed the compensation. It is a case that on 29/7/2008, at about 4.30am, near SJK Steel Plant on Tadlpathri-Cuddapah road, the deceased met with an accident, he was hit by a lorry, bearing its registration No. AP-2/ U-7192, driven by its driver in a rash and negligent manner. The said lorry is

being owned by the first respondent herein. It is the contention that the deceased was working as a cleaner and earning Rs. 4,500/- per month, as a salary and Rs. 100/- as bata per day. Therefore, the claimants have claimed that his monthly income was Rs. 7,500/-. But, the trial Court has taken the income as Rs. 3,000/- per month and deducted 50% towards the personal expenses of the deceased. Further, it is contended by the learned Counsel that the monthly income of the deceased taken by the trial Court was very meager. The trial Court should have taken at least Rs. 7,000/- per month. The learned Counsel also contended that the age of the deceased has to be taken into consideration. But, the trial Court has taken the age of the youngest of the parents of the deceased and calculated the annual income with the multiplier of ''15'' and awarded only Rs. 2,70,000/- towards the loss of dependency, which is also erroneous. He also contended that the trial Court, in all, awarded an amount of Rs. 28,000/- on other conventional heads, which is also very meager, when compare to the circumstances of this particular case. Hence, he requested the Court to enhance the compensation.

5. Per contra, the learned Counsel for the Insurance Company supported the judgment of the trial Court and agreed that the trial Court has properly assessed the compensation and awarded, just and reasonable compensation. Therefore, there is no ground made out to interfere with the judgment and award passed by the trial Court.

6. On perusal of the judgment of the trial Court and the materials on record, there is no dispute that the deceased was working as a cleaner in a lorry, though the employer of the deceased was not examined. But, it goes without saying that his status is above the coolie worker. Therefore, taking an amount of Rs. 3,000/- per month, comparing as if a coolie, in my opinion, is not proper. However, in the absence of any materials placed before the trial Court, Rs. 7,500/- per month also cannot be taken as monthly income of the deceased. Therefore, striking the balance between two, in my opinion, if I take an amount of Rs. 6,000/- as monthly income of the deceased, it would meet the ends of justice. But, the trial Court has also not taken into consideration the future prospects. Though the learned Counsel has contended that 50% towards future prospect has to be taken into consideration, but, there is no materials to show that he was a permanent employee. The nature of the work that he was doing was a cleaner. Therefore, at any stretch of imagination, it cannot be said that he would continue as a cleaner throughout his life and the nature of the work itself shows that he cannot be said to be a permanent employee. Therefore, if 30% towards future prospects has to be taken it would be appropriate. Then it would come down to Rs. 9,000/- per month, as his income.

7. Out of the above said calculated amount, the learned Counsel contended that only 30% has to be deducted towards the personal expenditure of the deceased and not 50% as deducted by the trial Court. In this regard, it is worth to mention a decision of the Apex Court reported in Amrit Banu Shali & Others v. National

Insurance Company Ltd. and Others, reported in 2012 AIR SCW 3901. Discussing the various decisions, the Apex Court has considered with regard to the deductions to be made sofaras the deceased is concerned. It is said in the following manner.

"30. Though in some cases, the deduction to be made towards personal and living expenses is calculated on the basis of the units indicated in Trilok Chandra, the general practice is to apply standardize deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-forth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the numbers of dependent family members exceed six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% has to be deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent or earning, or married or be dependants on the father.

32. Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to dependent, and 50% would be treated as personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where, he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

8. If the above said principle is applied to the facts of this case, it is an undisputed fact that the deceased has left behind his parents and minor brothers. Therefore, his deduction should be towards his personal expenses reasonably to be taken as 30% and not 50% as ordered by the trial Court. If 30% is removed from the amount of Rs. 9,000/-, it will come down to Rs. 6,000/- per month, as the income of the deceased.

9. Now, coming to the multiplier applied by the trial Court, which is ''15''. The learned Counsel drawn my attention to the several rulings that in some of the cases, the Supreme Court has observed that the age of the deceased has to be taken into consideration. However, divergent views have also been expressed in

several rulings that the youngest of the parent''s age should be taken into consideration for the purpose of considering the multiplier. In this particular case, there are two minor brothers, parents having different ages. In my opinion, average age of the all the persons has to be taken into consideration. In my opinion, it would come down to the age of 30. Therefore, if I apply the multiplier ''17'', it would be adequate multiplier under the facts and circumstances of this case. Therefore, if ''17'' multiplier is applied the loss of dependency would come down to 17 ? 6,000 ? 12 = 12,24,000. If I add another amount of Rs. 48,000/- towards other conventional heads, the total enhanced compensation would come around to Rs. 10,02,000/- in addition to the amount already awarded by the trial Court. Therefore, the petitioner is entitled to enhanced compensation of Rs. 10,02,000/- along with interest at the rate of 6% p.a. in addition to the award already passed by the trial Court. Accordingly, the compensation is enhanced. The second respondent is directed to deposit the said amount within three months from the date of this order.

Accordingly, the appeal is partly allowed.

