

Mallamma and Another Vs. Dawalsab and Others

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Court : Karnataka Dharwad

Decided On : Feb-27-2013

Judge : The Honourable Mrs. Justice B.V. Nagarathna

Appeal No. : M.F.A No. 15510 of 2007(MV)

Appellant : Mallamma and Another

Respondent : Dawalsab and Others

Judgement :

(Prayer: Mfa Filed U/S 173(1) Of Mv Act, against the Judgement and Award Dated 24.09.2007 Passed In Mvc No.08/2006 on the File of Civil Judge (Sr.Dn.) and Mact, Gangavathi, dismissing the Claim Petition for Compensation.)

1. The claimants being aggrieved by the dismissal of their claim petition have filed this appeal, assailing the judgment and award passed in MVC No.8/2006 dated 24.09.2007, by the MACT at Gangavathi. They have also sought for enhancement of compensation.

2. It is not in dispute that, on 06.07.2005, Yellamma who was returning along with Hanumantha from a temple after performing pooja, on the left side of Raichur-Gangavathi road at about 4.00 pm, succumbed to fatal injuries on account of vehicle bearing No.KA-35/MD-3333 belonging to the 2nd respondent, being driven in a rash and negligent manner. Yellamma's daughter and daughter-in-law filed the claim petition seeking compensation on account of the death of Yellamma.

Though the Tribunal assessed the compensation to be awarded in the claim petition, nevertheless, dismissed the claim petition since the claimants No.2 - Hanumavva had filed MVC No.418/2005 before the Fast Track Court at Koppal and since the said claim petition had been dismissed on 30.03.2007.

3. At this stage, only it is relevant to mention that MVC No.418/2005 was dismissed on 30.03.2007 on account of pendency of MVC No.8/2006, out of which this appeal arises. On account of two claim petitions being filed and both the claim petitions being dismissed, the claimants have been denied compensation. Hence this appeal.

4. I have heard the learned counsel for the appellants and the learned counsel for the respondent-Insurance Company and perused the material on record.

5. It is contended on behalf of the appellants that the dismissal of the claim petition is erroneous, since in this claim petition, there was a detailed recording of evidence and the assessment of compensation has also been made by the Tribunal. But simply because MVC No.418/2005 is dismissed, this claim petition also was dismissed. He therefore would submit that this appeal to be allowed by setting aside the dismissal of the claim petition and enhancing the compensation.

6. Per contra, learned counsel for the respondent- Insurer has stated that the claimants are not entitled to any compensation on the head of 'loss of dependency' as they are the daughter-in-law and daughter of the deceased and therefore, at best, they would be entitled to compensation on the head of 'loss of estate'.

7. Having heard the learned counsel for the parties, the following points would arise for my consideration:

i. Whether the Tribunal was right in dismissing the claim petition?

ii. Whether the appellants are entitled to additional compensation?

8. From the material on record, it is noted that, the dismissal of the claim petition is in view of dismissal of MVC No.418/2005 by the MACT and Fast Track Court-II at Koppal on 30.03.2007. As a result, the claimants have not been granted any

compensation in both the claim petitions. In view of dismissal of MVC No.418/2005, the Tribunal ought to have awarded compensation in MVC No.8/2006. This is not a case where there is duplication of award. On the other hand, this is a case where two claim petitions filed by claimant No.2 have been dismissed. The denial of compensation by the Tribunal to the claimants is on account of the fault of claimant No.2 in filing two claim petitions. Since MVC No.418/2005 has been dismissed without going into the merits, as it turns out on perusal of copy of the judgment dated 30.03.2007, which has been submitted during the course of the arguments by the Counsel for the appellants, it would be necessary to consider this claim petition on merits. Accordingly, point No.1 is answered.

9. As far as the quantum of compensation awarded by the Tribunal is concerned, it is noted that the Tribunal, on being satisfied that the deceased Yellamma who was about 50 years of age was earning a sum of Rs.3,000/- per month, has awarded compensation on the head of 'loss of dependency' to an extent of Rs.2,88,000/-. A sum of Rs.12,000/- has been awarded towards 'funeral expenses' and a total compensation of Rs.3,00,000/- has been awarded.

10. The contention Insurance Company that the claimants would not be entitled to any compensation on the head of 'loss of dependency' cannot be accepted for the reason that the claimants are the daughter and daughter-in-law of the deceased and they have to be considered to be legal representatives dependant on the earnings of the deceased. In this context, reliance could be placed on the decision of the Hon'ble Supreme Court in the case of Gujarat State Road Transport Corporation Vs. Ramanbhai Prabhatbhai and Anr. (AIR 1987 SC 1690), wherein it has been stated that, in an Indian family, brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation. In the instant case, it is noted that the claimants who are daughter and daughter-in-law of the deceased were living together with the deceased.

11. In that view of the matter, the compensation on the head of 'loss of dependency' would have to be assessed. The deceased was earning Rs.3,000/- per month as a coolie. In terms of the latest decision of the Apex Court in case of Santosh Devi Vs. National Insurance Company Ltd., (2012 ACJ 1428), 30% of the earnings would have to be considered towards future prospects. Therefore, the notional monthly income has to be assessed at Rs.3,900/- per month. 1/3rd of the said amount to be deducted towards personal expenses of the deceased. The appropriate multiplier of 13 has to be applied. Compensation on the head of 'loss of dependency' would be Rs.4,05,600/- ($\frac{1}{3}$ rd of 3900 = 2600 x 12 x 13). In addition, a sum of Rs.30,000/- is awarded towards conventional heads, such as 'loss of love and affection' , 'loss of estate', 'funeral and obsequies expenses'.

12. Thus the total compensation would be Rs.4,35,600/-. The said compensation shall carry interest at the rate of 6% p.a. from the date of claim petition till realisation. The compensation shall be apportioned to an extent of 30% to Hanumavva, the daughter of the deceased and to an extent of 35% each to the legal representatives of Mallamma, who are the sons of Mallamma and grand sons of the deceased Yallamma. The claimants shall deposit 60% of the compensation amount with proportionate interest in any nationalised bank for an initial period of 10 years. They shall be entitled to draw periodical interest on the said deposit. The balance compensation shall be released to the appellants.

The appeal is allowed in the aforesaid terms. No costs. The compensation shall be deposited jointly and severally by the insured as well as the insurer.

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