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Court : Karnataka

Decided On : Feb-16-2015

Judge : N.K. Patil

Appeal No. : M.F.A.No. 120 of 2014 (MV)

Appellant : Krishnappa and Others

Respondent : M/s. Rarewala Engineering Works and Another

Judgement :

(Prayer: This MFA is filed U/S 173(1) of MV Act, against the Judgment and Award dated:30/08/2013, passed in MVC No.1509/2012, on the file of the Member, Principal Motor Accident Claims Tribunal and Chief Judge, Court of Small Causes, Bangalore, partly allowing the claim petition for compensation and seeking enhancement of compensation.)

1. Though this matter is posted for admission, with the consent of the learned counsel for the parties, the same is taken up for final hearing and is disposed of as follows.

2. This appeal by the claimants is directed against the judgment and award dated 30th August 2013, passed in MVC No.1509/2012, by the Member, Principal Motor Accident Claims Tribunal and Chief Judge, Court of Small Causes, Bangalore, (for short, Tribunal) for enhancement of compensation on the ground that, the compensation of Rs.8,32,500/- awarded in favour of the claimants, after deducting

25% towards contributory negligence on the part of the deceased, as against their claim for Rs.20.00 Lakhs, is inadequate.

3. The facts in brief are that, the appellant Nos.1 and 2 are the parents, appellant No.3 is the wife and appellant No.4 is the minor daughter of deceased Satisha K. They filed the claim petition under Section 166 of the Motor Vehicles Act, contending that, at about 9:30 P.M, on 20-01-2012, when the deceased was riding the Bajaj Pulsar motor cycle bearing Registration No.KA-05/HE-8198, and proceeding slowly towards NICE Road from Kalena Agrahara Road, near Kabab Magic Hotel, on Bannerghatta Main Road, a medium Goods vehicle (Eicher) bearing Registration No.KA-04/B-6597 came from the opposite direction, at a high speed, in a rash and negligent manner and dashed against the motor cycle of the deceased. Due to the impact, the deceased sustained grievous injuries to his head and other injuries all over the body and immediately he was shifted to NIMHANS Hospital, where he was treated as in-patient, but unfortunately, he succumbed to the said injuries in the Hospital, on the following day, i.e. on 21-01-2012.

4. It is the case of the appellants that, the deceased was aged about 26 years and doing bar bending work in construction of building, earning a sum of Rs.15,000/- per month and hale and healthy prior to the accident. It is their further case that the deceased was the only source of livelihood and the entire family was dependent on them and that on account of his untimely death, the family has become haywire and they have lost the social and financial security in their life and therefore, they have to be compensated reasonably.

5. On account of the death of the deceased, the appellants filed the claim petition before the Tribunal, seeking compensation against the respondents. The said claim petition had come up for consideration before the Tribunal on 30th August, 2013. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs.8,32,500/- under different heads, with 6% interest per annum, from the date of petition till the date of payment, after deducting 25% towards contributory negligence fixed on the part of the deceased. Being dissatisfied with the quantum of compensation awarded by the Tribunal as well as

the contributory negligence fixed on the deceased, the appellants are in appeal before this Court, seeking enhancement of compensation and also to set aside the contributory negligence fixed on the deceased.

6. I have heard learned counsel for appellants and learned counsel appearing for second respondent / Insurer, for quite some time.

7. The submission of learned counsel appearing for appellant, Shri. Kalyan R, at the outset is that, the Tribunal grossly erred in not awarding reasonable compensation towards loss of dependency as well as the conventional heads and the income assessed by Tribunal is also on the lower side, considering the age, avocation and the year of accident, being 2012.

Regarding 25% contributory negligence on the part of the deceased, he submitted that the reasoning given by Tribunal at paragraph 9 of its judgment cannot be sustained and the same is liable to be set aside. To substantiate the same, he submitted that the Tribunal is not justified in entirely relying upon Ex.P6, spot sketch and Ex.P7, the spot Mahazar, for fixing 25% negligence on the part of the deceased rider of the motor cycle. The same cannot be the sole basis to arrive at such a conclusion. To further substantiate the said submission, he strongly relied upon the decision of the Honble Apex Court in the case of Jiju Kuruvila and others Vs. Kunjamma Mohan and others reported in (2013) 9 Supreme Court Cases 166 and drew my attention to paragraph 20.5 of the said judgment and submitted that, mere position of the vehicles after accident, as shown in the scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other and when two vehicles coming from opposite direction collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. Therefore, he submitted that the contributory negligence fixed at 25% on the part of the deceased rider of the motor cycle is liable to be set aside by modifying the impugned judgment and award passed by Tribunal.

8. As against this, learned counsel appearing for Insurer, Shri. A. Ravishankar inter alia, sought to substantiate the impugned judgment and award passed by Tribunal, stating that the same is passed after due appreciation of the oral and

documentary evidence available on file by assigning valid and cogent reasons at paragraph 9 of its judgment and interference in the same is not called for. He further submitted that looking at the fact that the vehicle driven by the deceased was a smaller vehicle when compared to the medium goods vehicle (Eicher) driven by its driver, the Tribunal has rightly fixed the contributory negligence at 25% on the part of the deceased rider of motor cycle and 75% on the part of the driver of the Eicher vehicle. Therefore, interference in the impugned judgment and award passed by Tribunal is uncalled for.

Regarding quantum of compensation also, he submitted that the Tribunal is justified in awarding compensation towards loss of dependency as also towards conventional heads. However, after going through the decision of the Honble Apex Court and this Court, he fairly submitted that reasonable enhancement may be made in accordance with law, by modifying the impugned judgment and award passed by Tribunal.

9. After hearing learned counsel appearing for the parties, and after careful perusal of the judgment and award passed by the Tribunal, the points that arise for my consideration in this appeal are:

[1] Whether the Tribunal is justified in fixing contributory negligence on the part of the deceased rider of the motor cycle at 25%?

[2] Whether the quantum of compensation awarded by Tribunal is just and reasonable?

Re-Point [1]:

10. After going through the entire material available on file, it emerges that occurrence of accident and the resultant death of deceased are not in dispute.

11. It is significant to note the appellant No.3, wife of deceased has led her evidence by filing affidavit as evidence in chief, narrating as to how exactly the accident has occurred, but she is not an eye witness to the occurrence of accident. However she has got marked the copies of FIR with complaint, P.M. report of the deceased, Charge Sheet, Inquest Panchanama, Police Intimation, Spot sketch,

spot mahazar, IMV report as per Ex.P.1 to P.8. From the FIR, it could be seen that the jurisdictional police have conducted investigation and filed charge sheet against the driver of the offending lorry/Eicher holding that he was responsible for the cause of accident. In this connection if we peruse the contents of Spot Mahazar at Ex.P.7 and Ex.P.6-spot sketch, we can clearly make out that the road in question where the accident had occurred measures 30ft. width. It also reveals that on the middle of the road the accident had occurred. Because from the place of accident, the width of the road towards other side is shown as 15 feet and naturally the other side of the road measures 15ft. in a road totally measuring 30 ft. in width. As per the police record, deceased was proceeding towards NICE road from Karena Agrahara Road and the offending vehicle was proceeding in the opposite direction towards the deceased. The contents of Ex.P.6 and P.7 tally with each other regarding the location of the accident spot. It is no doubt true that the offending vehicle is a bigger vehicle and the motorcycle of the deceased is a smaller vehicle. But still the drivers of both the vehicles should have taken utmost caution on the road which measures only 30 ft. in width. The fact that the accident spot has been located on the middle of the road as shown in Ex.P.6 and P.7 gives rise to the presumption that there was some contribution of negligence on the part of the deceased towards the cause of accident. Having come to the said conclusion, the Tribunal is not justified in fixing 25% contributory negligence on the part of the deceased rider of the motor cycle. It ought to have taken note that the offending vehicle is a Medium Goods Vehicle, bigger in size and cubic capacity, when compared to motor cycle. It further ought to have taken into consideration the nature of damage caused to both the vehicles to find out the negligence of both the drivers instead of relying entirely on Exs.P6 and P7. Therefore, after re-appreciation of the oral and documentary evidence available on file, I am inclined to modify the contributory negligence fixed by Tribunal in the ratio of 25:75 to 10:90 on the part of the deceased rider of the motor cycle and the driver of the offending Eicher, respectively.

12. Further, the reliance placed by the learned counsel appearing for appellants on paragraph 20.5 of the Apex Court judgment cited supra is of no avail to him and the same cannot be made applicable to the facts and circumstances of the case on hand, for the reason that the Tribunal, after critical evaluation of the oral and

documentary evidence available on file, has recorded a specific finding of fact, that the accident has occurred on the middle of the road as per Exs.P6 and P7 and that the width of the road is 30 ft. As rightly observed in the aforesaid judgment, mere position of the vehicles after accident, cannot give a substantial proof as to the rash and negligent driving on the part of the driver and it depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other etc. The same has to be corroborated by oral or documentary evidence. Therefore, considering the facts and circumstances of the case, to meet the ends of justice, I re-fix the contributory negligence in the ratio of 10:90 on the part of the deceased rider of motor cycle and the driver of the offending Either vehicle, respectively and accordingly, answer the point No.1 in the negative.

Re-Point [2]:

13. Regarding quantum of compensation awarded by Tribunal, it reveals that the Tribunal has grossly erred in not awarding reasonable compensation on account of the death of the deceased in the road traffic accident.

14. The occurrence of accident at about 9:30 P.M. on 20-01-2012 and the resultant death of deceased Satisha K. are not in dispute. It is further not in dispute that the claimants are none other than the parents, wife and minor daughter aged about two years, at the time of accident. It is further not disputed that the deceased was aged about 26 years, working as a bar bender in construction of building and had also completed his SSLC. It is stated that the deceased was earning a sum of Rs.15,000/- per month. But, the same is not supported by any documentary evident. But, the Tribunal grossly erred in not assessing the reasonable income of the deceased. What is assessed is inadequate and needs to be re-assessed. Admittedly, the deceased was aged about 26 years, and doing bar bending work. Having regard to the age, avocation and the year of accident being 2012, I re-assess the monthly income of the deceased at Rs.8,000/-, to meet the ends of justice. Having regard to the number of dependents being five, I deduct 1/4th living expenses. Accordingly, if 1/4th towards his personal and (i.e. Rs.2,000/-) is deducted from out of Rs.8,000/-, the

net income comes to Rs.6,000/-. Since the deceased was aged about 26 years, the proper multiplier applicable is 17, as per the decision of the Honble Apex Court in Sarla Verma's case (2009 ACJ 1298). Accordingly, taking the monthly income of the deceased at Rs.6,000/-, adopting the multiplier of 17, I award a sum of Rs.12,24,000/- (i.e. Rs.6,000/- x 12 x 17) towards loss of dependency as against Rs.10,20,000/- awarded by Tribunal.

15. Further, the Tribunal erred in not awarding reasonable compensation towards conventional heads. The claimants are none other than the parents, wife aged about only 22 years and minor daughter aged about only two years, at the time of accident, and considering the fact that the deceased was the only earning member in the family and the wife has lost her life partner at a young age, the minor child has lost the love and affection, inspiration, guidance of its father and the parents are deprived of seeing the progress of their son, and the whole family has lost the security, I deem it fit and proper to award a sum of Rs.1,00,000/- towards loss of consortium, Rs.40,000/- towards loss of love and affection at the rate of Rs.10,000/- to each claimant; Rs.25,000/- towards loss of estate and Rs.25,000/- towards transportation and funeral expenses. Thus, the total compensation would work out to Rs.14,14,000/- as against Rs.11,10,000/- awarded by Tribunal.

16. Further, learned counsel appearing for claimants vehemently submitted that the rate of interest awarded by Tribunal at 6% p.a. is also on the lower side as the accident has occurred on 20-01-2012. In view of the ratio of law laid down by the Honble Apex Court and this Court in catena of decisions, at least 8% to 10% interest may be awarded in the instant case, to meet the ends of justice and the impugned judgment and award be modified accordingly.

17. As rightly pointed out by learned counsel appearing for claimants, the rate of interest at 6% per annum awarded by Tribunal is on the lower side, as the accident has occurred on 20-01-2012. Therefore, as per the ratio of law laid down by the Honble Apex Court and this Court in catena of decisions and also considering the facts and circumstances of the case, I deem it fit and proper to award rate of interest at 9% per annum on the enhanced compensation.

18. Since I have re-fixed the contributory negligence at 10% on the part of the deceased rider of motor cycle, instead of 25% fixed by Tribunal, the claimants/appellants are entitled to only 90% of the total compensation. Accordingly, 90% of total compensation, i.e. Rs.14,14,000/- works out to Rs.12,72,600/-. Thus, the appellants are entitled to Rs.12,72,600/- as against Rs.8,32,500/- awarded by Tribunal. The enhanced compensation comes to Rs.4,40,100/- with interest at 9% per annum from the date of petition till realization.

19. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellants is allowed in part. The impugned judgment and award dated 30th August 2013, passed in MVC No.1509/2012, by the Member, Principal Motor Accident Claims Tribunal and Chief Judge, Court of Small Causes, Bangalore, is hereby modified, awarding additional compensation of a sum of Rs.4,40,100/-, with interest at 9% per annum, from the date of petition till the date of realization.

The contributory negligence fixed by Tribunal at 25% on the part of the deceased rider of motor cycle is hereby modified and the same is re-fixed at 10% and remaining 90% is fixed on the part of the driver of Eicher vehicle.

The second respondent /Insurer is directed to deposit the enhanced compensation of Rs.4,40,100/-, with interest thereon at 9% per annum, within three weeks from the date of receipt of copy of the judgment and award.

Immediately on such deposit by the Insurer, a sum of Rs.1,00,000/- with proportionate interest shall be deposited in Fixed Deposit in the name of the appellant No.3-wife of the deceased, in any Nationalized/ Scheduled/Grameena Bank, for a period of ten years, renewable for another ten years, with liberty reserved to her to withdraw the periodical interest.

A sum of Rs.50,000/- with proportionate interest shall be deposited in Fixed Deposit in the name of the appellant No.2-mother of the deceased, in any Nationalized/Scheduled/Grameena Bank, for a period of ten years, renewable for another five years, with liberty reserved to her to withdraw the periodical interest.

A sum of Rs.2,00,000/- with proportionate interest shall be deposited in Fixed Deposit in the name of the appellant No.4-minor daughter of the deceased, in any Nationalized/Scheduled/Grameena Bank, till she attains the age of 30 years, with liberty reserved to the appellant No.3, mother and natural guardian to withdraw the periodical interest, for her welfare, till she attains the age of 21 years and from 22 years, appellant No.4 is entitled to withdraw the periodical interest.

Remaining sum of Rs.90,100/- with proportionate interest shall be released in favour of appellant Nos.1 and 3, in equal proportion, immediately.

Office to draw award, accordingly.

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