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Court : Karnataka

Decided On : Jul-08-2014

Judge : N.K. Patil & B. Sreenivase Gowda

Appeal No. : M.F.A. No. 3844 of 2012 (MV)

Appellant : K.C. Shanthi and Others

Respondent : A.M. Joyappa @ Jaya and Others

Judgement :

(Prayer: This MFA is filed U/S 173(1) of MV Act against the judgment and award dated: 04/10/2011 passed in MVC No. 130/2010 on the file of the Civil Judge (Sr.Dn) and Motor Accident Claims Tribunal, Virajpet, partly allowing the claim petition for compensation and seeking enhancement of compensation.)

1. This appeal by the appellants-claimants is arising out of the impugned judgment and award dated 04/10/2011 passed in MVC No.130/2010, by the Civil Judge (Sr.Dn) and Motor Accident Claims Tribunal, Virajpet, (hereinafter referred to as 'Tribunal' for short), for enhancement of compensation, on the ground that a sum of Rs.2,79,000/- awarded by the Tribunal under different heads, with interest at 6% per annum against the claim of Rs.76,30,000/-, on account of the death of the deceased Sri. Dilip, in the road traffic accident is inadequate.

2. In brief, the facts of the case are:

The appellant Nos.1 to 3 are the mother and sisters of the deceased Sri. Dilip. They filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the respondents, on account of the death of the deceased in the road traffic accident, contending that, on 11.5.2010 at about 5.15 a.m. one Choorira Devaiah @ Raja was driving his autorickshaw bearing Reg.No.KA.12.A.681 from Virajpet to Kirgoor and when he came near Bittangala Grama Panchayath i.e. Gonikoppa-Virajpet main road, at that time, the driver of the bus bearing Reg.No.KA.12.A.2911 came from opposite direction in a rash and negligent manner and dashed to the autorickshaw. Due to which, deceased who was travelling in the said auto, including its driver died at the spot.

3. It is the further case of the appellants that, deceased was aged about 22 years, hale and healthy prior to the accident and used to manage and cultivate the land belonging to him apart from that, he used to cultivate ginger on lease basis by obtaining 8 acres of land for lease from K.K.Ravi of Mathoor village and earning substantially. Due to his untimely death, appellant Nos. 1 to 3 who were completely depending upon his earnings have lost their bread earner, who was their future hopes and security, apart from mental shock and agony.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petition in part and awarded the compensation of Rs. 2,79,000/- under different heads, with interest at 6% per annum from the date of petition till its realization.

5. Being dis-satisfied with the quantum of compensation awarded by the Tribunal, the appellants have presented this appeal, for enhancement of compensation.

6. We have heard the learned counsel appearing for the appellants and learned counsel for Insurer.

7. Learned counsel for the appellants submitted that, the Tribunal has erred in assessing the income of the deceased at Rs.3,000/- per month, which is on the lower side and is liable to be enhanced, on the ground that, deceased was aged about 22 years, only earning member in the family, he used to manage and

cultivate the land and his untimely death has affected the financial and economic condition of the family. Further, she submits that the compensation awarded by the Tribunal towards conventional heads is inadequate and is liable to be enhanced. Therefore, she submitted that the impugned judgment and award is liable to be modified.

8. As against this, learned counsel appearing for the Insurer, inter-alia, contended and substantiated that the compensation awarded by the Tribunal is just and reasonable and after due appreciation of the oral and documentary evidence available on file and therefore, it does not call for interference.

9. After hearing the learned counsel for the parties and after perusing the materials available on record, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

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

10. The occurrence of the accident and the resultant death of the deceased are not in dispute. The dependants are the mother and sisters of the deceased. On account of his untimely death, appellants have lost their earning member and it has affected the financial condition of the family. It is the case of the appellants that, deceased was aged about 22 years, he used to manage and cultivate the lands belonging to them, apart from that, he used to cultivate ginger on lease basis after obtained 8 acres of land for lease from K.K.Ravi of Mathoor village and earning substantially. But they have not produced any documents to show what was the income of the deceased. Further, it emerges that, the Tribunal has assessed the income of the deceased at Rs.3,000/- per month which is on lower side and it needs to be enhanced. Having regard to the age and occupation of the deceased and year of the accident, we re-assess his income at Rs.6,000/- per month instead of Rs.3,000/- per month as assessed by the Tribunal. Out of which, if 50% (Rs.3,000/-) is deducted towards his personal expenses since he was a bachelor, his remaining income comes to Rs.3,000/- per month. The proper multiplier applicable taking the age of the younger parent-mother of the deceased as 45 years, is '14', in view of the law laid down by the Apex Court in Sarla

Verma's case reported in 2009 ACJ 1298 instead of '13' adopted by the Tribunal. Therefore, we re-determine the loss of dependency at Rs.5,04,000/- (Rs.3,000/- x 12 x 14) instead of Rs.2,34,000/- awarded by the Tribunal and accordingly, it is awarded.

11. Having regard to the facts and circumstances of the case, we award a sum of Rs.30,000/- towards loss of love and affection at the rate of Rs.10,000/- each to the appellants, Rs.25,000/- towards loss of estate and Rs.25,000/- towards transportation of dead body and funeral expenses i. In all, the appellants are entitled to a total compensation of Rs.5,84,000/- instead of Rs.2,79,000/- awarded by the Tribunal. There would be an enhancement of Rs.3,05,000/- with interest at 8% p.a., from the date of petition till its realization.

12. For the foregoing reasons, the appeal filed by the appellants is allowed in part and the impugned judgment and award dated 04/10/2011 passed in MVC No. 130/2010 on the file of the Civil Judge (Sr.Dn) and Motor Accident Claims Tribunal, Virajpet, is hereby modified, awarding the compensation of Rs.3,05,000/- with interest at 8% p.a., from the date of petition till its realization, in addition to the compensation awarded by the Tribunal.

The third respondent- Insurer is directed to deposit the enhanced compensation of Rs.3,05,000/- with interest at 6% p.a., from the date of petition till the date of realization, within a period of three weeks from the date of receipt of a copy of this judgment and award.

Immediately on such deposit by the third respondent-Insurer, out of the enhanced compensation of Rs.3,05,000/-, a sum of Rs.2,50,000/- with proportionate interest shall be invested in Fixed Deposit, in the name of appellant No.1 in any Nationalized or Scheduled Bank, for a period of ten years and renewable by another ten years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

The remaining sum of Rs.55,000/- with proportionate interest shall be released in favour of the appellant No.1, immediately.

Draw the award, accordingly.

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