

Geetha and Others Vs. M. Susheela and Others

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Court : Karnataka

Decided On : Nov-02-2015

Judge : N.K. Patil & Pradeep D. Waingankar

Appeal No. : M.F.A.No. 7899 of 2014 (MV)

Appellant : Geetha and Others

Respondent : M. Susheela and Others

Judgement :

(Prayer: This MFA is filed U/S 173(1) of MV against the Judgment and Award dated: 02/08/2014, passed in MVC No. 25/2013, on the file of the Senior Civil Judge, Member, Additional Motor Accident Claims Tribunal, Hiriya, partly allowing the claim petition for compensation and seeking enhancement of compensation.)

1. Though this matter is posted for Admission, the same is taken up for final disposal with the consent of the learned counsel appearing for the parties.

2. This appeal by the claimants is directed against the judgment and award dated 2nd August 2014, passed in MVC No. 25/2013, by the Senior Civil Judge, Member, Additional Motor Accident Claims Tribunal, Hiriya, (for short, Tribunal) for enhancement of compensation on the ground that, the compensation of a sum of Rs. 6,82,550/-, awarded by Tribunal, after deducting 15% towards contributory negligence on the part of the owner of the Motor Cycle, as against their claim for Rs.22,50,000/-, is inadequate.

3. The facts in brief are that, the claimants are the wife and two minor children of the deceased Eranna and Respondents 3 and 4 are the parents of deceased. The claimants filed the claim petition under Section 166 of the Motor Vehicles Act, contending that, at about 9:00 A.M, on 05-12-2012, when the deceased Eranna was moving in a Motor Cycle bearing Registration No. KA-06/EB-2018 as a pillion rider from his village to reach J.G. Hally, near Anesidri Gate, NH-4 road, Hiriyur Taluk, in a moderate speed, at that time, the driver of Car bearing Registration NO. KA-05/MG-4263 came from Hiriyur side towards Bangalore, in a rash and negligent manner and at a high speed and dashed against the aforesaid Motor Cycle. As a result, deceased Eranna sustained severe injuries to his vital parts and while he was being shifted in a 108 Ambulance, he succumbed to the injuries.

4. It is the case of the appellants that, the deceased was aged about 35 years, doing sheep business and also agricultural work, earning a sum of Rs. 15,000/- per month from sheep business and Rs. 2,00,000/- per annum from agriculture and hale and healthy prior to the accident and the entire family was dependent on his income. But, on account of the untimely and unnatural death of the deceased, the appellants have lost the love and affection, inspiration and guidance, apart from social, financial and moral support and therefore, it is their case that 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 2nd august, 2014. 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. 6,82,550/-, after deducting 15% towards contributory negligence on the part of the owner of the Motor Cycle, with 6% interest per annum, from the date of petition till the date of payment. Being dissatisfied with the quantum of compensation awarded by the Tribunal as also the contributory negligence fixed on the part of the owner of the Motor Cycle at 15%, the appellants are in appeal before this Court, seeking enhancement of compensation and also to set aside the contributory negligence fixed on the part of the owner of the Motor Cycle.

6. We have gone through the grounds urged in the memorandum of appeal and heard the learned counsel appearing for appellants and also learned counsel appearing for second respondent/Insurer, for quite some time.

7. Shri. R. Shashidhara, learned counsel appearing for claimants/appellants vehemently submitted that, the Tribunal grossly erred in taking the income of the deceased at only Rs. 4,500/- per month, even though the deceased was aged about 35 years and earning a sum of Rs. 15,000/- per month from sheep business and Rs. 2,00,000/- per annum from agriculture. Disbelieving the same, the Tribunal, without any basis has assessed the income of the deceased at only Rs. 4,500/- per month. The same is liable to be re-assessed.

Further, he submitted that the claimants are none other than the wife, aged about 28 years and two minor children aged about 8 years and 6 years and all are dependents on the income of the deceased as he was the sole bread winner of the family. Respondents 3 and 4 are the parents of the deceased aged about 55 years and 50 years respectively and they were also dependent on the income of the deceased. In support of the income of the deceased, the claimants have also produced the RTC extracts, etc.. But, the Tribunal has disbelieved the same on the sole ground that the RTCs stand in the name of the mother of the deceased. But, the same is not justifiable nor a good ground for assessing the income of the deceased at only Rs. 4,500/- per month. This aspect has been completely lost sight of by the Tribunal while awarding compensation on account of the death of the deceased in the road traffic accident.

Regarding contributory negligence fixed on the part of the owner of the Motor Cycle, he vehemently submitted that the Tribunal grossly erred in coming to the conclusion that the owner of the Motor Cycle contributed to an extent of 15% for the occurrence of accident. The reasoning given and the finding of fact recorded by Tribunal at paragraph 12 of its judgment, for fixing 15% contributory negligence on the deceased is contrary to the material on record and therefore, the same is liable to be set aside and the entire negligence is liable to be fixed on the part of the driver of the Car insured with the second respondent/Insurer of the offending vehicle.

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 05-12-2012. In view of the ratio of law laid down by the Hon'ble Apex Court and this Court in catena of decisions, at least 9% to 10% interest per annum may be awarded, to meet the ends of justice and the impugned judgment and award be modified accordingly.

Therefore, he submitted that the impugned judgment and award passed by Tribunal is liable to be modified by enhancing reasonable compensation, setting aside the contributory negligence fixed at 15% on the part of the owner of the Motor Cycle and also enhancing the rate of interest.

8. As against this, Shri. O. Mahesh, learned counsel appearing for second respondent/Insurer vehemently submitted that the compensation awarded by Tribunal is after due appreciation of the oral and documentary evidence available on file and that in the absence of any credible oral and documentary evidence available on file, the Tribunal is justified in assessing the monthly income of the deceased at Rs. 4,500/- and awarding just and reasonable compensation towards loss of dependency and also conventional heads. Hence, interference in the same is unwarranted.

Regarding contributory negligence fixed at 15% on the part of the owner of the Motor Cycle, learned counsel appearing for Insurer vehemently submitted that the submission of the learned counsel appearing for claimants cannot be accepted and the reasoning given by Tribunal at paragraph 12 of its judgment is just and proper and it does not call for interference. To substantiate his submission, he drew our specific attention to the evidence of PW2, who has deposed that three persons had been going on the Motor Cycle in question and that the Motor Cycle is not expected to Carry three persons and therefore, the Tribunal has rightly observed at paragraph 13 that the owner of the Motor Cycle is also liable to pay some percentage of award amount. Therefore he submitted that interference in the finding of fact recorded by Tribunal for fixing contributory negligence on the part of the owner of the Motor Cycle at 15%, is uncalled for.

9. After hearing learned counsel for the parties, and after Careful perusal of the judgment and award passed by the Tribunal including the original records placed before us, the points that arise for our consideration in this appeal are,

1] Whether the Tribunal is justified in fixing contributory negligence at 15% on the part of the owner of the Motor Cycle?

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

Re-Point 1]: Occurrence of accident at about 9:00 A.M. on 05-12-2012 and resultant death of deceased Eranna in the road traffic accident are not in dispute. It is also not in dispute that there is involvement of two vehicles in the accident. i.e. Motor Cycle bearing No. KA-06/EV-2018, in which, the deceased was riding pillion and Car bearing Registration No. KA-05/MG-4263.

PW1, appellant No. 1 has deposed that the accident took place on account of negligence of Car bearing Registration No. KA-05/MG-4263. But, the Insurer cross examined PW1 at considerable length. The claimants, in support of their case, have examined one eyewitness as PW-2, who was riding the Motor Cycle. PW-2 deposed that on 05-12-2012 at about 9-30 A.M., he was crossing the NH-4 road at U Turn in J.G. Hally to go to Kolatadahatty, along with deceased Eranna and at that time, a Car bearing Registration No. KA-05/MG-4263 came from Hiriyur side in a rash and negligent manner and hit their Motor Cycle, on account of which, he sustained injuries and pillion rider, i.e. Eranna son of Chikkanna, the deceased in question also sustained grievous injuries. Immediately he was taken to Government Hospital, Hiriyur through Ambulance, but, he died while being shifted to Hospital. PW-2 was also cross-examined at considerable length of time by the Insurer. PW-2 fairly admits that he himself, one Dasappa and deceased Eranna were going on the Motor Cycle in question. That means totally said three persons were going on the Motor Cycle. Hence, Insurer contended that there was gross negligence on the part of the owner of the said Motor Cycle also and on account of the negligent act in carrying three persons, accident took place. During course of Cross-examination, PW-2 stated that the very accident took place in the middle of road i.e., bifurcator, in between two National Highways at UTurn. The Insurer

contended that PW-2 took his Motor Cycle in Uturn without observing the flying vehicle on both sides and that deceased Eranna had been driving the vehicle who had no driving licence and a false case was being fixed against PW-2.

10. Further, it is evident from the charge sheet that, the evidence of PW2 is substantiated by the charge sheet, as per which, the deceased Eranna, Son of Chikkanna, PW-2 and one Dasanna were going on the Motor Cycle and at that time accident took place in Uturn and the Motor Cycle is not expected to carry three persons. PW-2 has clearly admitted that three persons had been going on the said Motor Cycle before accident, and therefore, the Tribunal held that there is some contributory negligence on the part of PW-2 also and came to the conclusion that the owner of the Motor Cycle is liable to pay some percentage of award amount, since its owner has let his Motor Cycle to that effect. The Insurer has also cross-examined the very Investigation Officer as RW-1 and the Insurer has specifically contended that the very Motor Cycle was being ridden by deceased Eranna son of Chikkanna. In this regard, it is worth to extract the contents of Ex.R1 as under:

(KANNADAM ?)

Ex.R-2, the statement of Sannerappa reads as under:

(KANNADAM ?)

(emphasis supplied)

11. After appreciation of the aforesaid evidence coupled with the documentary evidence, particularly the evidence of Sannerappa at Ex.R2, categorically denying that deceased Eranna son of Chikkanna had been driving the Motor Cycle at the time of accident, the Tribunal observed that Exs.R1 and R2 do not specifically disclose that the deceased Eranna was himself riding the Motor Cycle at the time of accident. There is no delay in lodging the complaint and the very investigation is started immediately after accident and hence there is no material to suspect fixing of false case against other persons. Therefore, the Tribunal observed that the Investigating Officer has rightly investigated the matter and filed charge sheet

against the driver of the Car. The very investigation is not challenged and there is no independent investigation by the Insurance Company to substantiate their defence. Therefore, the Tribunal came to the conclusion that the owner of the Motor Cycle is liable to pay 15% of the award amount. The said finding of fact recorded by Tribunal at paragraphs 10, 11 and 13 of its judgment is just and proper and it does not call for interference and we uphold the contributory negligence fixed on the part of the owner of the Motor Cycle at 15%. Accordingly, we answer point No. 1 in the affirmative'.

Re-Point 2]: The undisputed facts of the case are, the occurrence of accident and the resultant death of the deceased. It is stated that the deceased was aged about 35 years and earning Rs. 15,000/- per month from sheep business and Rs. 2,00,000/- per annum from agriculture from the agricultural land owned by him. But, to substantiate the same, the appellants have not produced any credible documentary evidence, except the RTC extracts, which are in the name of the mother of the deceased. But, it can be seen that the Tribunal is also not justified in assessing the income of the deceased at only Rs. 4,500/- per month. The same is on the lower side and needs to be re-assessed. The accident is of the year 2012 and the deceased was young and energetic man, aged about 35 years and doing sheep business and also agriculture and maintaining the family, consisting of his wife, two minor children and parents. Therefore, having regard to the age, avocations and also the year of accident, we re-assess the income of the deceased at Rs. 6,500/- per month. Further, as the claimants are none other than the wife, two minor children (appellants herein) and parents of deceased (respondents 3 and 4), totally five in number, we deduct $\frac{1}{4}$ th towards the personal expenses of the deceased. Accordingly, If $\frac{1}{4}$ th (i.e. Rs. 1,625/-) is deducted from Rs. 6,500/- towards his personal expenses, the net income would be Rs. 4,875/- per month. Further, the age of the deceased was 35 years as on the date of accident. Therefore, for the said age, the proper multiplier applicable is 16 as per the decision of the Hon'ble Apex Court Sarla Verma's case (2009 ACJ 1298), as rightly adopted by Tribunal. Thus, the compensation towards loss of dependency would work out to Rs. 9,36,000/- (i.e. Rs. 4,875/- x 12 x 16') as against Rs. 6,48,000/- awarded by Tribunal.

12. Further, the Tribunal has erred in not awarding reasonable compensation towards conventional heads. The claimants are wife, aged about 28 years, two minor children aged about eight years and six years and parents aged about 55 years and 50 years as on the date of accident and the wife has to bring-up the minor children single handedly. Because of the untimely and unnatural death of the deceased, the wife has lost her life partner, children have lost the love and affection, inspiration and special guidance and parents have lost the security in life and are deprived to see the future of their son. The death of the deceased has affected the family, socially, morally and financially. Therefore, in the light of the decision of the Apex Court and this Court in host of judgments, we award Rs. 1,00,000/- towards loss of consortium as against Rs. 50,000/-; Rs. 1,25,000/- towards loss of love and affection as against Rs. 50,000/-; Rs. 25,000/- towards transportation of dead body and funeral expenses as against Rs. 30,000/- awarded by Tribunal and a sum of Rs. 25,000/- awarded by Tribunal towards loss of estate is just and proper and it does not call for interference. Thus, the total compensation payable to claimants works out to Rs. 12,11,000/- as against Rs. 8,03,000/- awarded by the Tribunal. Thus, we answer point No. [2] in the Negative and enhance the compensation.

13. Further, 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 05-12-2012. Therefore, as per the ratio of law laid down by the Hon'ble Apex Court and this Court in catena of decisions and also considering the facts and circumstances of the case, we deem it fit and proper to award rate of interest at 9% per annum as against 6% per annum, awarded by Tribunal, on the enhanced compensation.

14. 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 2nd August 2014, passed in MVC No. 25/2013, by the Senior Civil Judge, Member, Additional Motor Accident Claims Tribunal, Hiriya, is hereby modified, awarding a sum of Rs. 12,11,000/- as against Rs. 8,03,000/- awarded by the Tribunal, with interest at 9% per annum on the

enhanced sum, from the date of petition till the date of realization.

The contributory negligence fixed by Tribunal at 15% on the part of the owner of the Motor Cycle is held to be just and proper as discussed above while answering point No. [1]. Therefore, the appellants are held entitled to only 85% of total compensation of a sum of Rs. 12,11,000/-, i.e. Rs. 10,29,350/- as against Rs. 6,82,550/- awarded by Tribunal, with interest at 9% per annum, on the enhanced sum, from the date of petition till the date of realization.

Thus, there would be enhancement of compensation by a sum of Rs. 3,46,800/- with 9% interest per annum from the date of petition till the date of realization.

The Insurance Company is directed to deposit the enhanced compensation of Rs. 3,46,800/-, with interest thereon at 9% per annum, from the date of claim petition till the date of realization, within three weeks from the date of receipt of copy of the judgment.

Immediately on such deposit by the Insurance Company, a sum of Rs. 1,00,000/- with proportionate interest shall be invested in the name of appellant No. 1 " wife of deceased, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of fifteen years, renewable by fifteen years, with liberty reserved to her to withdraw the periodical interest.

A sum of Rs. 50,000/- each with proportionate interest shall be invested in the names of appellant Nos. 2 and 3/ minor children of deceased, in Fixed Deposit, in any scheduled/Nationalized Bank, till they attain the age of 30 years, with liberty reserved to the appellant No. 1/mother and natural guardian to withdraw the interest periodically for their welfare till they attain the age of 21 years and from 22 years to 30 years, they are entitled to withdraw the periodical interest.

Remaining sum of Rs. 1,46,800/- with proportionate interest shall be released in favour of appellant No. 1, Respondent Nos. 3 and 4, in equal proportion, immediately.

Office to draw award accordingly.