**Kataiah Alias Durgada Kataiah and Others Vs. K.S. Riyazuddin and Another**

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**SooperKanoon Citation** : sooperkanoon.com/1177582

**Court** : Karnataka

**Decided On :** Aug-19-2015

**Judge** : N.K. Patil &Amp; P.S. Dinesh Kumar

**Appeal No.** : Miscellaneous First Appeal No. 4532 of 2013 (MV)

**Appellant** : Kataiah Alias Durgada Kataiah and Others

**Respondent** : K.S. Riyazuddin and Another

**Advocate for Pet/Ap.** : Sri. B.M. Sidd

**Judgement** :

N.K. Patil, J.

1. This appeal by the appellants-claimants is directed against the impugned judgment and award dated 1-3-2013, passed in MVC No. 30 of 2012, by the Senior Civil Judge, Challakere (hereinafter referred to as Tribunalfor short), for enhancement of compensation., on the ground that, a sum of Rs. 4,01,500/- awarded by the Tribunal under different heads with interest at 6% per annum from the date of petition till deposit, as against the claim Rs. 21,05,000/-, on account of the death of the deceased Sri Rajanna, in the road traffic accident is inadequate.

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

The appellants are the parents, wife and minor children of the deceased. They filed a claim petition before the Tribunal under Section 166 of Motor Vehicles Act, 1988, claiming compensation against the respondents, on account of the death of the deceased in the road traffic accident, contending that, on 9-12-2010 at 7.00 p.m. deceased and Nagaraja were taking the sheeps of deceased and of his father Durgada Kataiah from Sasalahatty to Giriyammanahally on SH 19 near Chikkammanahally near the garden of Khader Basha, at that time, the driver of Ashok Leyland lorry bearing Reg. No. KA.16.A.3122 came from Challakere side in a rash and negligent manner with high speed and dashed against the deceased Rajanna and ran over 100 sheeps which died at the spot and also at the house. Immediately, after the accident, deceased was taken to Challakere Government Hospital, after first aid, he was referred to District Hospital, Chitradurga, where he died at 9.30 p.m. on the same day.

3. It is the further case of the appellants that, deceased was aged about 39 years, hale and healthy prior to the accident and an agriculturist, sheep rearing and grazing and earning Rs. 10,000/- per month and looking after the welfare of the family by contributing his entire earnings to the family. Due to his untimely death, parents have lost their son, wife has lost her husband and minor children are deprived the love and affection, guidance and security of their father and also suffered financial loss as they have lost their bread earner, 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. 4,01,500/- under different heads with interest at 6% p.a., from the date of petition till deposit.

5. Being dissatisfied 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. The submission of the learned Counsel Sri. B.H. Shanthappa for Sri B.M. Siddappa, appearing for the appellants, at the outset is that, the income of the deceased assessed by the Tribunal at Rs. 3000/- per month is on the lower side and is liable to be enhanced, on the ground that, deceased was aged about 39 years, agriculturist by profession and also doing sheep rearing and grazing and earning Rs. 10,000/- per month and therefore, his income may be reassessed reasonably at Rs. 6000/- to Rs. 6,500/- per month, after deducting 1/5 th towards personal and living expenses and applying multiplier of 15', reasonable compensation may be awarded towards loss of dependency. Further, he submits that, the compensation awarded by the Tribunal towards conventional heads and the rate of interest is on the lower side and is liable to be enhanced reasonably in the light of the judgment of the Apex Court and this Court. Therefore, he submitted that the impugned judgm4ent and award is liable to be modified.

8. As against this, learned Counsel appearing for the Insurer, inter alia, contended and substantiated that the impugned judgment and award passed by the Tribunal is just and proper 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 appearing for the parties and after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

Whether the 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. Further, it is not in dispute that deceased was aged about 39 years, hale and healthy prior to the accident, agriculturist and also doing sheep rearing and the dependants are his parents, wife and children. The Tribunal has assessed the income of the deceased at Rs. 3,000/- per month, which is on the lower side and it needs to be enhanced. Having regard to the age and occupation of the deceased, number of dependants and the year of accident, we reassess his income at Rs. 6,000/- per month instead of Rs. 3,000/- per month as assessed by the Tribunal. Out of which, if 1/5$^{th}$ (Rs. 1,200/-) is deducted towards the personal

and living expenses of the deceased instead of 1/3rd deducted by the Tribunal, his net income comes to Rs. 4,800/- per month. The appropriate multiplier applicable is 15since deceased was aged about 39 years in view of the law laid down by the Apex Court in Smt. Sarla Verma and Others v Delhi Transport Corporation and Another (AIR 2009 SC 3104: (2009) 6 SCC 121 : (2009) 2 SCC (Cri.) 1002: 2009 AIR SCW 4992 : 2009 ACJ 1298 (SC)) instead 12adopted by the Tribunal. Therefore, we redetermine the loss of dependency at Rs. 8,64,000/- (Rs. 4,800/- x 12 x 15) instead of Rs. 3,60,000/- awarded by the Tribunal and accordingly, it is awarded.

11. Having regard to the facts and circumstances of the case, on account of the untimely death of the deceased, parents have lost their son, wife has lost her husband and minor children are deprived of the love and affection, guidance and security of their father and following the judgments of the Apex Court and this Court, we deem it fit to award a sum of Rs. 1,00,000/- towards loss of consortium, Rs. 1,75,000/- towards loss of love and affection at the rate of Rs. 25,000/- to the each of the appellants 1 to 7, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses. In all, the appellants are entitled to a total compensation of Rs. 11,89,000/- instead of Rs. 4,01,500/- as awarded by the Tribunal.

12. Regarding rate of interest, as rightly pointed out by the learned Counsel appearing for the appellants, 6% interest per annum awarded by the Tribunal is on the lower side, since the accident is of the year 2010. In the light of the judgment of Apex Court and this Court, we award the rate of interest at 8% per annum on the enhanced compensation instead of 6% awarded by the Tribunal.

There would be an enhancement of Rs. 7,87,500/- with interest at 8% p.a., from the date of petition till its realisation.

13. For the foregoing reasons, the appeal filed by the appellants is allowed in part. The impugned common judgment and award dated 1-3-2013, passed in MVC No. 30 of 2012, by the Senior Civil Judge, Challakere, is hereby modified, awarding a sum of Rs. 7,87,500/- with interest at 8% p.a., from the date of petition till its realisation, in additional to the compensation awarded by the Tribunal.

The Insurer is directed to deposit the enhanced compensation of Rs. 7,87,500/- with interest at 8% p.a., from the date of petition till the date of realisation, within a period of three weeks from the date of receipt of a copy of this judgment.

Immediately on deposit by the Insurer, the enhanced compensation of Rs. 7,87,500/-, a sum of Rs. 2,00,000/- with interest shall be invested in the Fixed Deposit in the name of appellant 3-wife of the deceased, in any Nationalised or Scheduled or Grameena Bank, for a period of 15 years, renewable by another 10 years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

A sum of Rs. 1,00,000/- with proportionate interest shall be invested in the Fixed Deposit in the names of each of the appellants 4, 5, 6 and 7, in any Nationalised or Scheduled or Grameena Bank, till they attain 30 years, with liberty reserved to the appellant 3 “ wife of the deceased to withdraw the interest accrued on it, periodically, till they attain 21 years for their welfare and from 22 years to 30 years, they are at liberty to withdraw the interest accrued on it periodically.

A sum of Rs. 1,00,000/- with proportionate interest shall be invested in Fixed Deposit in the name of appellant 2 “ mother of the deceased, in any Nationalised or Scheduled or Grameena Bank, for a period of 05 years, renewable by another 5 years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

Remaining sum of Rs. 87,500/- with proportionate interest shall be released in favour of appellants 1 to 3 in equal proportion.

Draw the award accordingly.