

S.D. Sheetal and Others Vs. Devaraj and Others

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Court : Karnataka

Decided On : Feb-18-2016

Judge : N.K. Patil & The Honourable Mrs. Justice Rathnakala

Appeal No. : M.F.A.No. 7386 of 2015 (MV)

Appellant : S.D. Sheetal and Others

Respondent : Devaraj and Others

Advocate for Pet/Ap. : Sri. M.V. Maheswar

Judgement :

N.K. Patil, J.

1. This appeal by the appellants-claimants is directed against the impugned judgment and award dated 03/07/2014, passed in MVC No. 926/2012, by the C/c. Senior Civil Judge JMFC. Additional Motor Accident Claims Tribunal-11, Bhadravathi, (hereinafter referred to as 'Tribunal' for short), for enhancement of compensation, on the ground that, a sum of Rs. 24,25,000/- awarded by the Tribunal under different heads with interest at 6% per annum from the date of petition till payment, as against the claim Rs. 46,00,000/- on account of the death of the deceased Sri. Santhosh Kumar, in the road traffic accident is inadequate.

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

The appellants are the wife, minor son and younger sister and brother of the deceased. 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 18.5.2012 at about 1.00 p.m. deceased was going towards Subramanyeshwara temple in his motor bike bearing Reg.No.KA.25/X-4702 and when he was moving slowly on the left side of the road near Ganapathi temple, Kempegowda Nagara, at that time, the driver of the tractor bearing Reg.No.KA. 14.T.9075 came from opposite direction in a rash and negligent manner and dashed against his motorcycle. Due to which, he was thrown out of the bike, fell down and sustained severe injuries all over the body and he died at KMC Hospital on 18.6.2012. It is the further case of the appellants that, deceased was aged about 38 years, hale and healthy prior to the accident and carrying Mobile sales and services business under the name and style as 'Abhilash Communications' at Bhadravathi and earning Rs. 30,000/- per month and looking after the welfare of the family by contributing his entire earnings to the family.

3. 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. 24,25,000/- under different heads with interest at 6% p.a., from the date of petition till its payment.

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

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

6. The submission of the learned counsel Sri. M.V. Maheswarappa, appearing for the appellants, at the outset is that, the Tribunal has erred in not awarding reasonable compensation towards conventional heads and the rate of interest and what is awarded is inadequate and it requires to be enhanced reasonably. To substantiate the said submission, he submitted that deceased was aged about 38

years, Businessmen by profession and only earning member in the family and on account of his untimely death, wife has lost her companion at her young age, minor son is deprived of the love and affection, guidance and security of his father and the young sister and brother have lost the love and affection and guidance of their brother and this aspect of the matter has not been considered or appreciated by the Tribunal while awarding compensation towards conventional heads. Further he submits that the rate of interest awarded at 6% p.a. is on the lower side and is liable to be awarded at least at 9% p.a. in the light of the law laid down by the Apex Court and this Court. Therefore, he submitted that the impugned judgment and award is liable to be modified.

7. 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.

8. 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.

9. The occurrence of the accident and the resultant death of the deceased are not in dispute. It is the case of the appellants that deceased was aged about 38 years, hale and healthy prior to the accident, only earning member in the family and doing Mobile business. The Tribunal, after evaluation of the oral and documentary evidence available on file has justified in assessing the income of deceased at Rs. 16,800/- per month, after deducting rd towards personal and living expenses of the deceased, adopting multiplier of '15' as he was aged about 38 years, has awarded a sum of Rs. 20,16,000/- towards of dependency by assigning cogent and valid reasons in paras-18, 19 and 20 and a sum of Rs. 3,87,848/- towards medical expenses as per medical bills produced by the appellants since deceased had met with an accident on 18.5.2012 and died on 18.6.2012 has taken treatment. Therefore, interference by this a Court is not called for.

10. However, the compensation awarded to wards conventional heads and 6% interest awarded by the Tribunal is on the lower side as rightly submitted by the learned counsel appearing for appellants. The same is liable to be enhanced, having regard to the fact that account of the untimely death of the deceased who was the only earning member in the family, appellant No. 1, wife, has lost companion at young age of 26 years, appellant No. 2, minor son is deprived of the love and affection guidance and security of his mother and appellant Nos. 3 and 4, younger brother and sister of the deceased have lost the love and affection, guidance of their brother. Therefore having regard to the facts and circumstances of the case and in the light of the law laid down by the Apex Court and this Court, we deem it fit to award a sum of Rs. 1,00,000/- towards loss of consortium, Rs. 1,00,000/- towards loss of love and affection at the rate of Rs. 25,000/- to each of the appellant Nos. 1 to 4, Rs. 25,000/- towards loss of estate and Rs. 25000/- towards transportation and funeral expenses. In all, the appellants are entitled to a total coral compensation of Rs. 26,53,848/- instead of Rs. 24,25,000/- as awarded by the Tribunal.

11. 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 2012. In the light of the judgment of Apex Court and this Court, we award the rate of interest at 9% per annum on the entire compensation instead of 6% awarded by the Tribunal.

There would be an enhancement of Rs. 2,28,848/- with interest at 9% p.a., on the entire compensation awarded from the date of petition till its realisation (excluding interest for the delayed period of 362 days in filing the appeal).

12. For the foregoing reasons, the appeal filed by the appellants is allowed in part. The impugned judgment and award dated 03/07/2014, passed in MVC No. 926/2012, by the C/c. Senior Civil Judge JMFC Additional Motor Accident Claims Tribunal-11, Bhadravathi, is hereby modified, awarding a sum of Rs. 2,28,848/- in addition to the compensation awarded by the Tribunal, with interest at 9% p.a., on the entire compensation from the date of petition till its realisation (excluding interest for the delayed period of 362 days in filing the appeal).

The 3rd respondent-Insurer is directed to deposit the enhanced compensation with interest at 9% p.a., on the entire compensation from the date of petition till its realisation (excluding interest for the delayed period of 362 days in filing the appeal), within a period of three weeks from the date of receipt of a copy of this judgment.

Immediately on such deposit by the Insurer, out of the enhanced compensation of Rs. 2,28,848/-, a sum of Rs. 1,00,000/- with proportionate interest shall be invested in the Fixed Deposit in the name of appellant No. 1, wife of the deceased, in any Nationalized or Scheduled or Grameena Bank, for a period of 10 years, renewable by another 15 years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

Out of the remaining amount of Rs. 1,28,848/-, a sum of Rs. 25,000/- each with proportionate interest shall be released in favour appellant Nos. 3 and 4 and remaining sum of Rs. 78,848/- with proportionate interest shall be released in favour of appellant No. 1 immediately.

Draw the award accordingly.

Appeal partly allowed.

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