

Siddamma and Others Vs. Mahendra and Another

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Court : Karnataka Kalaburagi

Decided On : Apr-06-2017

Judge : B. Veerappa & B.A. Patil

Appeal No. : MFA No. 32882 of 2013 (MV)

Appellant : Siddamma and Others

Respondent : Mahendra and Another

Advocate for Def. : Sri. Basavaraj R. Math, Smt. Preeti Patil Melkundi

Advocate for Pet/Ap. : Sri. Sanganagouda V. Biradar

Judgement :

(Prayer: This Miscellaneous First Appeal is filed under Section 173 (1) of Motor Vehicle Act, against the judgment and award dated 31.01.2013 passed in MVC No.5/2011 on the file of MACT No.V, Bijapur, partly allowing the claim petition and seeking enhancement of compensation.)

B. Veerappa, J.

1. Though this appeal is listed for admission, with the consent of learned counsel for both the parties, the matter is taken up for final disposal.

2. The claimants who are the wife, children and mother of deceased have filed the present appeal for enhancement of compensation, against the judgment and award dated 31.01.2013 made in MVC No.5/2011 on the file of the Member, MACT-V, Bijapur, awarding compensation of Rs.17,68,000/- with interest at 6% per annum from the date of petition till deposit.

3. It is the case of the claimants that on 26.04.2010, when the deceased and another were proceeding on a motor cycle bearing registration No.MH-13/X-1443 towards Solapur from Barshi and reached near Kolekar petrol pump on Barshi-Vairag road, at about 2.30 pm, an Indigo car bearing registration No.MH-45/A-2746 came from Solapur side in high speed, in a rash and negligent manner driven by its driver and dashed against the motor cycle due to which the deceased succumbed to injuries. Vairag police registered a case in Crime No.70/2010 against the driver of the Indigo car. It is the further case of the claimants that, prior to the accident the deceased was hale and healthy, aged 35 years and was serving as a teacher in V.B. Shivadhare Prashala High School, Ingalagi, South Solapur Taluk and was getting monthly salary of Rs. 25,000/- contributing the same for maintenance of the family. The deceased was a permanent Government employee under the Government of Maharashtra and he had chances of promotion, hike in salary and other allowances, but due to his untimely death, the claimants have lost expected support and services of the deceased and they are deprived of source of income and thereby, they are put to financial difficulties and mental agony. Therefore, the claimants sought for compensation from the respondents/owner and insurer of the offending vehicle.

4. The respondent Nos. 1 and 2 filed statement of objections, denied the averments made in the claim petition with regard to age, occupation and earnings of the deceased and also denied the averment that the accident occurred due to rash and negligent driving of the car by its driver and contended that the accident occurred due to rash and negligent riding of the motor cycle. It was contended that the compensation claimed under various heads was highly exorbitant. The first respondent contended that the offending car was having valid insurance policy as on the date of the accident and therefore, the compensation is liable to be paid by the second respondent /insurance company and prayed for dismissal of the claim

petition against him. The second respondent contended that the Tribunal has no jurisdiction to entertain, try and decide the case and the insurance company cannot be held liable to pay compensation unless and until it is proved that the RC, FC, permit and DL were valid and effective at the time of the accident and therefore, sought to dismiss the claim petition.

5. Based on the aforesaid rival pleadings, the Tribunal framed the following issues:

(i) Whether the petitioners prove that, Beerappa @ Veerappa, S/o Vithoba Pujari @ Danagar died in the motor vehicle accident that occurred on 26.04.2010 at about 2.30 pm in front of Kolekar Patrol pump on Barshi to Vairag Road within the limits of Vairag police Station, on account of rash and negligent driving of the TATA indigo car bearing Reg.No.MH-45/ A-2746, by its driver, as alleged?

(ii) Whether the petitioners are entitled for compensation? If so, what is the quantum and from whom?

(iii) What order or award?

6. In order to sustain the claim, the wife of the deceased was examined as PW-2 and three witnesses were examined as PWs 3 to 5 and got marked the documents as Exs.P.1 to P.26. The respondent No. 1 examined himself as RW-1 and marked the documents Exs.R. 1 to 3. The second respondent/insurance company has not adduced evidence, but got marked copy of the insurance policy as per Ex.R.4, with consent.

7. The Tribunal, considering the entire material on record, recorded a finding that the accident occurred on 26.04.2010 due to rash and negligent driving of the car bearing registration No.MH-45/A-2746 by its driver and the claimants are entitled to compensation. Accordingly, the Tribunal, by the impugned judgment and award, awarded compensation of Rs. 17,68,000/- with interest at 6% per annum from the date of petition till realization. Hence the present appeal is filed by the claimants for further enhancement of compensation.

8. The second respondent/insurance company has not filed any appeal or cross objection challenging the impugned judgment and award.

9. We have heard the learned counsel for the parties to the lis.

10. Sri Sangnagouda V. Biradar, learned counsel for the appellants/claimants contended that the compensation awarded by the Tribunal is very much on the lower side, the deceased was aged 35 years, he was hale and healthy and was working as a school teacher getting salary of Rs.12,121/- per month as per the salary certificate which fact has been spoken by PWs 1 and 2 and therefore, the Tribunal ought to have taken the income of the deceased at Rs. 12,000/- per month and ought to have added 50% of the salary to calculate loss of future prospects. Learned counsel further contended that the compensation awarded by the Tribunal under conventional heads is very much on lower side and ought to have awarded interest at the rate of 9% per annum. Therefore, he sought for modification of the impugned judgment and award passed by the Tribunal by allowing the appeal as prayed for.

11. Per contra, Sri Basavaraj R. Math, learned counsel for the respondent No. 1 and Smt. Preeti Patil Melkundi, learned counsel for the respondent No.2/ insurance company sought to justify the impugned judgment and award passed by the Tribunal and contended that the claimants have not produced any independent evidence to prove that the deceased was working as a high school teacher, except self serving statement of the claimants. Therefore, sought for dismissal of the appeal.

12. In view of the aforesaid rival contentions urged by the learned counsel for the parties, the points that arise for our consideration are:

(i) Whether the Tribunal is justified in awarding compensation of Rs.17,68,000/-, with interest at 6% per annum from the date of petition till deposit?

(ii) Whether the claimants have made out a case for further enhancement of compensation, in the facts and circumstances of the present case?

13. We have given our anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record, carefully.

14. It is an undisputed fact that the deceased who was proceeding on motor cycle bearing registration No.MH- 13/X-1443 succumbed to the injuries in the road traffic accident that occurred on 26.04.2010, due to rash and negligent driving of the Indigo car bearing registration No.MH-45/A-2746, by its driver. P.W.2, wife of the deceased has stated on oath that her husband was hale and healthy, aged 35 years and was working as a high school teacher in V. B. Shivadhare Prashala High School, Ingalagi, South Solapur Taluk and was getting monthly salary of Rs.12,121/-. On account of the accident occurred due to rash and negligent driving of the offending car by its driver, her husband died. The claimants have produced Ex.P.7/ post mortem report which shows the age of the deceased as 34 years. Whereas, claimants contended that the deceased was aged 35 years as on the date of accident and death. In the absence of any documentary evidence, age of the deceased was taken as 35 years. The head master of the school in which the deceased was working was examined as P.W.2 who stated on oath that the deceased was working as an assistant teacher and issued Ex. P.11, the register which is Marathi language and his signature is marked as Ex.P. 11(b). He also stated that he has issued salary certificate/Ex.P. 14 and signature is marked as Ex.P. 14(a). The deceased was getting salary of Rs. 12,121/- per month. Considering the evidence and material on record, the Tribunal has taken income of the deceased at 12,000/- per month and deducting 1/4th towards personal expenses of the deceased, applying the multiplier 16, awarded Rs. 17,28,000/- towards loss of dependency. The Tribunal also recorded a finding that the evidence of RW-1 indicates that he is the owner of the car bearing registration No.MH-45/A-2746 and the driver was holding a valid and effective driving licence as on the date of accident and the vehicle was insured with the second respondent and the policy was in force.

15. The Tribunal considering the entire material on record, has not added loss of future prospects, as rightly contended the learned counsel for the appellants. In view of the salary certificate, Ex.P. 14 and taking into consideration the age 35 of the deceased who was working as a teacher, 40% has to be added. Thus, taking salary at Rs.12,121/-, less professional tax Rs. 200/-, the salary would be Rs. 11,921/-. By adding 40% towards future prospects, i.e., Rs. 4,768.40, the total income would be Rs. 16,685.80 per month. Since there are four dependents,

deducting 1/4th towards personal expenses of the deceased, the monthly income would be Rs.12,514.35 and the loss of dependency would be Rs. 24,02,755/- (Rs. 12,514. Rs. 5 x 12 x 16). The compensation awarded by the Tribunal under conventional heads is on lower side. The Hon ble Supreme Court in the case of Vimal Kanwar and others vs. Kishore Dan and others reported in (2013)7 SCC 476 has held as under:

32. Admittedly, the date of birth of deceased Safari Singh being 1-2-1968; the submission that he would have continued in service up to 1-2-2026, if 58 years is the age of retirement or 1-2-2028, if 60 years is the age of retirement is accepted. He was only 28 years 7 month old at the time of death. In normal course, he would have served the State Government minimum for about 30 years. Even if we do not take into consideration the future prospect of promotion to which the deceased was otherwise entitled and the actual pay revisions taken effect from 1-1-1996 and 1-1-2006, it cannot be denied that the pay of the deceased would have doubled if he would have continued in services of the State till the date of retirement. Hence, this was a fit case in which 100% increase in future income of the deceased should have been allowed by the Tribunal and High Court, which they failed to do.

33. Having regard to the fact and evidence on record, we estimate the monthly income of deceased Sajjan Singh at Rs. 9000x2=Rs. 18,000 per month. From this his personal living expenses, which should be 1/3rd, there being three dependants has to be deducted. Thereby, the actual salary will come to Rs. 18,000 - Rs. 6000 = Rs. 12,000 per month or Rs. 12,000 x 12 = Rs. 1,44,000 per annum. As the deceased was 28 years old at the time of death the multiplier of 17 is applied, which is appropriate to the age of the deceased. The normal compensation would then work out to be Rs. 1,44,000 x 17 = Rs. 24,48,000 to which we add the usual award for loss of consortium and loss of the estate by providing a conventional sum of Rs. 1,00,000; loss of love and affection for the daughter Rs. 2,00,000, loss of love and affection for the widow and the mother at Rs. 1,00,000 each i.e Rs. 2,00,000 and funeral expenses of Rs. 25,000/-.

34. Thus, according to us, in all a sum of Rs. 29,73,000 would be a fair, just and reasonable award in the circumstances of this case.

35. The rate of interest of 12% is allowed from the date of the petition filed before the Tribunal till payment is made.

36. Respondent 3 is directed to pay the total award with interest (minus the amount if already paid) within three months. Appellant 2 daughter who was aged about 2 years at the time of accident of the deceased has already attained majority; money may be required for her education and marriage. In the circumstances, we direct Respondent 3 to deposit 25% of the due amount in the account of Appellant 1, the wife. Out of the rest 75% of the due amount, 35% of the amount be invested in a nationalised bank by fixed deposit for a period of one year in the name of the daughter Appellant 2. Out of the rest 40% of the due amount, 20% each be invested, in a nationalised bank by fixed deposit for a period of one year in the name of Appellants 1 and 3, the wife and the mother respectively.

37. The award passed by the Tribunal dated 21-06-2003 and judgment dated 29-07-2011 of the Rajasthan High Court stand modified to the extent above, The appeal is allowed with the aforesaid observation and direction. No separate order as to costs.

16. In dew of the law declared by the Hon ble Supreme Court, the claimants are entitled to enhancement of compensation. For the reasons stated above, the first point raised for consideration is answered in the negative and second point is answered in the affirmative holding that the claimants are entitled for enhancement of compensation.

17. After reassessing the entire material on record, the claimants are entitled to compensation as under:

(i)	Loss of dependency	Rs. 24,02,755/-
(ii)	Towards transportation of dead body	Rs. 25,000/-
(iii)	Towards loss of love and affection	Rs. 75,000/-

(iv)	Towards loss of consortium	Rs. 1,00,000/-
(v)	Towards loss to estate	Rs. 25,000/-
	Total	Rs. 26,27,755/-

18. Thus the claimant is entitled to total compensation of Rs. 26,27,755/- as against Rs. 17,68,000/- awarded by the Tribunal.

19. For the reasons stated above, the appeal is allowed in part. The impugned judgment and award dated 31.01.2013 made in MVC No.5/2011 on the file of the Member, MACT-V, Bijapur, is modified holding that the claimant is entitled to total compensation of Rs. 26,27,755/- as against Rs. 17,68,000/- awarded by the Tribunal and therefore, the enhanced compensation would be Rs. 8,59,755/- with interest at 6% per annum from the date of petition till realization.

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