

Narayan and Others Vs. M/s. Sundaram Pvt. Ltd., and Another

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Court : Karnataka Kalaburagi

Decided On : Apr-05-2017

Judge : B. Veerappa & B.A. Patil

Appeal No. : MFA No. 201172 of 2014 (MV)

Appellant : Narayan and Others

Respondent : M/s. Sundaram Pvt. Ltd., and Another

Advocate for Def. : Sri. Sudarshan.M

Advocate for Pet/Ap. : Sri. S.S. Mamadapur

Judgement :

(Prayer: This Miscellaneous First Appeal is filed under Section 173(1) of Motor Vehicle Act, praying to enhance the compensation amount payable to the appellant by suitably modifying the judgment and award dated 28.06.2014 passed by the learned Member, MACT and FTC, Bijapur, in MVC No.578/2010.)

B. Veerappa, J.

1. Claimants who are father, mother and younger brother of the deceased are before this court for enhancement of compensation against the Judgment and Award dated 28.06.2014 made in MVC.No.578/2010 on the file of Member of Motor Accident Claims Tribunal and Fast Track Court, Vijayapur awarding

compensation of Rs.10,05,000/- with 6% interest per annum from the date of the petition till realization.

2. It is the case of the claimants before Tribunal that on 30.03.2010 deceased Kiran Narayan Pawar and the injured were travelling in Motor Cycle bearing Reg.No.MH-13/AP-9468 at about 02.15 P.M. from Sholapur to Pandharpur and near Kamati village, a Container bearing Reg.No.TN-01/AD-3143 came in a rash and negligent manner and dashed against the Motor Cycle due to which the deceased sustained severe injuries and died on the spot. It is further case of the claimants that the deceased was hale and healthy and he was working as a journalist/reporter and he was earning more than Rs.25,000/- per month. Therefore, sought for the compensation as prayed for.

3. The respondent No.1 remained absent and was placed ex-parte. The Insurance Company-respondent No.2 filed written statement denying the entire claim averments made in the claim petition and admitted that the Container in question was insured with respondent No.2 as on the date of accident. Respondent No.2 denied the age, income and occupation of the deceased. It is specifically contended that accident has taken place in Maharashtra State and petitioners are residing in Maharashtra State cause of action arise in the same State. Hence under the provisions of Section 166 (2) of Motor Vehicle Act, the court has no jurisdiction to entertain the petition. Therefore, sought for dismissal of claim petition.

4. Based on the pleadings, the Tribunal has framed following issues;

1. Whether petitioners prove that on 30.03.2010 at 02.15 P.M. near Kamati village on Solapur-Pandharpur road, the road traffics accident took place due to actionable negligence of driver of the vehicle i.e., HGV Double Decker (Container) bearing its Reg.No.TN-01/AD-3143 by which deceased Kiran Narayan Pawar, sustained injuries and succumbed to the said injuries?

2. Whether petitioner is entitled for compensation? If so, how much and from whom?

3. What Order or award?

5. The claimant No.1/father of the deceased was examined as PW.1 and marked the documents Exs.P.1 to P.18. Respondent No.2 neither led evidence nor produced any documents.

6. The Tribunal considering the entire material on record, recorded the findings that the claimants proved that the accident occurred on 30.03.2010 was due to the rash and negligent driving of the driver of offending vehicle i.e., HGV Double Decker (Container) bearing its Reg.No.TN-01/AD-3143 and they are entitled compensation. Accordingly, by the impugned judgment and award, awarded compensation of Rs.10,05,000/- with 6% interest p.a. from the date of petition till realization. Hence, the present appeal is filed by the claimants for further enhancement.

7. The Insurance Company has not filed any appeal against the impugned judgment and award passed by the Tribunal.

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

9. Sri S.S. Mamadapur, learned counsel for the appellants vehemently contended that the impugned judgment and award passed by the Tribunal awarding compensation Rs.10,05,000/- with 6% interest p.a. is on the lower side and same is contrary to the material on record. He further contended that the Tribunal has not taken into consideration the Ex.P.12/appointment letter which clearly indicates that the deceased was earning Rs.25,000/- per month. Therefore, Tribunal is not justified in taking monthly income of the deceased at Rs.10,000/-. He further contended that the Tribunal has awarded only meager compensation under the other heads which requires further enhancement and that the Tribunal has committed an error in applying the multiplier 15 taking into consideration the age of the mother of the deceased which is contrary to the law declared by the Hon ble Supreme Court in the case of U.P. State Road Transport Corporation and others V/s Trilok Chandra and others, reported in (1996) 4 SCC 362. Therefore, he sought to allow the present appeal by modifying the impugned judgment and award passed by the Tribunal.

10. Per contra Sri. Sudarshan.M, learned counsel for the respondent No.2 sought to justify the impugned judgment and award passed by the Tribunal and strenuously contended that except Ex.P.12 and the evidence of PW.1, the claimants have not produced any other material documents to show that the deceased was earning Rs.25,000/- per month. He also contended that the deceased was unmarried and therefore age of the parents is taken into consideration by the Tribunal. Therefore, he sought for dismissal of the appeal.

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

1. Whether the Tribunal is justified in awarding compensation of Rs.10,05,000/- with 6% interest in the facts of the present case?

2. Whether the claimants have made out a case for enhancement in the facts and circumstances of the present case?

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

13. It is undisputed fact that the deceased Kiran Narayan Pawar died in a road traffic accident that occurred on 30.03.2010 due to rash and negligent driving of the driver of HGV Double Decker (Container) bearing Reg.No.TN-01/AD-3143. It is also not in dispute that the deceased was working as journalist/reporter as per Ex.P.12 and was aged 25 years as on the date of accident and death. The jurisdictional police have also registered a criminal case against the driver of the offending vehicle for the offences punishable under Sections 279, 337, 338, 304 (A) of IPC and Sections 184, 134 (B), 177 of Motor Vehicle Act.

14. PW.1, father of the deceased has specifically stated on oath that deceased was working as journalist/reporter and he was earning Rs.25,000/- per month. Admittedly the respondent No.2-Insurance Company has not adduced any evidence or produced any documents to disprove the oral and documentary evidence adduced and produced by PW.1. Taking into consideration the oral and

documentary evidence available on record the Tribunal was not justified in taking income of the deceased at Rs.10,000/- per month. Taking into consideration the specific statement made by PW.1 and Ex.P.12 that the deceased was earning Rs.25,000/- per month, we are of the considered opinion that, it is just and proper to take the income of the deceased at Rs.15,000/- per month. In the light of the dictum of the Hon ble Supreme Court in the case of Sarla Verma Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 50% has to be deducted from the income of the deceased towards his personal expenses. Therefore, the income of the deceased could be taken at Rs.7,500/-.

15. The Tribunal, taking into consideration the age 40 of the mother of deceased, applied the multiplier 15 which is contrary to the dictum of Hon ble Supreme Court in the case of Amrit Bhanu Shali and others /vs. National Insurance Company Limited and others, reported in 2012 AIR SCW 3901, wherein it is held as under;

17. The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased whose age may be different and; therefore, the age of dependents has no nexus with the computation of compensation.

16. In view of the dictum of the Hon ble Supreme Court stated above, taking into consideration the age of the deceased 25 years, the appropriate multiplier would be 18. Hence, the claimants are entitled to Rs.16,20,000/- ($\text{Rs.7,500} \times 12 \times 18 = 16,20,000/-$) towards loss of dependency.

17. The material on record clearly indicates that the deceased died on the spot. The claimants have spent some money. The Tribunal while awarding compensation under other conventional heads granted Rs.25,000/- towards transportation of dead body Rs.30,000/- towards love and affection and Rs.50,000/- towards loss to estate. In view of the dictum of the Hon ble Supreme Court in the case of Vimal Kanwar and others V/s Kishore Dan and others, reported in (2013) 7 SCC 476. Claimants are entitled loss of dependency at Rs.16,20,000/-, Rs.25,000/- towards transpiration, Rs.75,000/- towards love and affection and Rs.50,000/- towards loss to estate. Thus, in all the claimants are entitled Rs.17,70,000/- with 6% interest p.a. from the date of petition till realization.

For the reasons stated Supra, the 1st point raised is answered in negative holding that the Tribunal is not justified in awarding compensation is on lower side and the appellants have made out a case further enhancement. Accordingly answered point No.2 affirmative.

18. In view of the aforesaid reasons the appeal is allowed in part. The impugned judgment and award dated 28.06.2014 made in MVC No.578/2010 on the file of Motor Accidents of Claims Tribunal and Fast Track Court, Vijayapura is modified and the appellants are entitled total compensation of Rs.17,70,000/- with 6% interest p.a. from the date of petition till realization, as against Rs.10,05,000/- awarded by the Tribunal. $\text{Rs.17,70,000} - \text{Rs.10,05,000} = \text{Rs.7,65,000/-}$.

19. Thus the claimants are entitled the enhanced compensation of Rs.7,65,000/- with 6% interest p.a. from the date of petition till realization.

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