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Court : Karnataka Kalaburagi

Decided On : Apr-05-2017

Judge : B. Veerappa &Amp; B.A. Patil

Appeal No. : MFA No. 202027 of 2014 (MV)

Appellant : Laxmi and Others

Respondent : Maruthi and Another

Advocate for Pet/Ap. : Sri. Santhosh H. Patil

Judgement :

(Prayer: This Miscellaneous First Appeal is filed under Section 173 (1) of Motor Vehicles Act 1988, praying to call for records and allow the appeal and enhance the compensation as claimed in the claim petition by modifying the Judgment and Award dated 30.7.2014 passed in M.V.C.No.357/2013 by the Addl. Senior Civil Judge and Addl. MACT-II, Bidar.)

B. Veerappa, J.

1. By consent the learned counsel appearing for both the parties, this appeal is taken up for final disposal.

2. The unfortunate appellants are before this court seeking enhancement of compensation against the judgment and award dated 30.7.2014 made in MVC

No.357/2013 on the file of the Prl. Senior Civil Judge and CJM and MACT-II, Bidar awarding compensation of Rs.9,68,000/- with interest at 6% p.a. from the date of petition till the date of realization.

3. The 1st appellant is the wife, appellants No.2 to 5 are the children and appellant No.6 is the mother of the deceased Sidram @ Sidramappa contending that on 25 11.2012 at about 9:15 hours, the deceased was proceeding in his motorcycle bearing Reg. No.KA- 39/3153 from Bidar to Markal village for attending Dipawali Pooja along with one Shri. Mallikarjun Mulge as pillion rider and when the deceased came near Chikpet village on the left side of the road with a normal speed at that point of time, in the opposite direction the rider of the offending vehicle i.e., Hero Honda Splendor motorcycle bearing Reg.No.KA-27/J-176 came with a high speed in a rash and negligent manner and dashed against the motorcycle of the deceased as a result of the said accident and impact the deceased fell on the road and suffered grievous injuries and died on the spot.

4. The jurisdictional police have registered a criminal case against the rider of the offending vehicle bearing Reg.No.KA-27/J-176. The Medical Officer conducted post-mortem in the BRIMS Hospital, Bidar and handed over the dead body to the appellants. It is the specific case of the appellants that the deceased was the Manager and he was earning Rs.20,000/- per month. He was holding agricultural land to an extent of 15 acres and they have further contended that they have spent more than Rs.25,000/- towards funeral and obsequies ceremonies. Because of the unfortunate death of deceased Sidram @ Sidramappa, his wife appellant No.1 lost her companion throughout her entire life and lost love and affection. The children and mother of the deceased have also lost their love and affection towards the deceased. Therefore, they sought for compensation as prayed for.

5. 2nd respondent-insurer appeared before the Tribunal and filed its written statement and denied the averments made in the claim petition and contended that on account of rash and negligent act on the part of the deceased, the accident occurred. It is also denied the age and income of the deceased and also the expenses spent therein. On these grounds, sought for dismissal of the claim petition.

6. Based on the aforesaid pleadings, the Tribunal framed the following issues;

ISSUES

1. Whether petitioners prove that, deceased Sidram @ Sidramappa died in a motor vehicle accident, that was taken place on 25-11-2012 at about 19.15 hours on Bidar-Aurad road, in the limits of Chikpet village due to user of Hero Honda bearing Reg.No.KA-27/J-176 being driven by its driver in an actionable negligence?

2. Whether the petitioner is entitled for compensation? If so, from which respondent, to what extent?

3. What order or Award?

7. In order to establish the case of the appellants, appellant No.1 the wife of the deceased got examined herself as P. W. 1 and got examined one witness as P.W.2 besides marking fourteen documents as Ex.P-1 to 15.

8. The respondents have not adduced either oral or documentary evidence. After considering the entire material on record, the Tribunal recorded a finding that the deceased Sidram @ Sidramappa died on 25.11.2012 on account of unfortunate road traffic accident occurred due to the rash and negligent riding of the rider of the Herohonda motorcycle and accordingly awarded compensation of Rs.9,68,000/ with interest @ 6% p.a. Hence, the present appeal is filed for enhancement of compensation.

9. The respondent No. 2 - Insurance Company has not filed any appeal against the impugned judgment and award.

10. We have heard the learned counsels for the parties to the Us.

11. Learned counsel Sri. Santhosh H. Patil, appearing for the appellants contended that the impugned compensation of Rs.9,68,000/- passed by the Tribunal is very much on the lower side. Having regard to the facts and circumstances of the case, the appellants are entitled for enhancement of

compensation by modifying the judgment and award dated 30.7.2014. He further contended that the Tribunal has granted meager compensation on conventional heads. He would further contend that the Tribunal has not considered the income of the deceased that he was owning more than 15 acres of agricultural land and has taken only Rs.6000/- p.m. which is erroneous. He further contended that the interest awarded by the Tribunal is at 6%, lowerside and it has to be enhanced to 9% interest.

12. Per contra, Sri. J. Augstin, learned counsel appearing for the respondent No.2 sought to justify the impugned judgment and award, and has strenuously contended that except the statement of P.W.1 the appellants have not produced any material documents to show that the deceased was earning Rs.20,000/- p.m. In the absence of any material document, the Tribunal was justified in taking into consideration the income of the deceased at Rs.6,000/- p.m. He further contended that the impugned judgment and award is just and appropriate, does not call for any interference.

13. In view of the aforesaid rival contentions urged by both the learned counsels the following points that arise for our consideration are that;

1. Whether the Tribunal is justified in awarding the compensation of Rs.9,68,000/- with interest at the rate of 6% p.a.?

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

14. 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.

15. It is an undisputed fact that the deceased Sidram @ Sidramappa died in a road traffic accident that occurred on 25.11.2012 due to the rash and negligent riding of the rider of the Hero Honda bearing Reg.No.KA-27/J-176. It is the specific case of the appellants that they have examined the wife of the deceased as P.W. 1, who deposed that her husband was earning Rs.20,000/- p.m and in order to substantiate the same, Ex.P-10 to 14 (RORs) came to be marked through P.W. 1.

With regard to age, the post mortem report clearly indicates that the deceased was aged about 28 years. Oral evidence and material document produced at Ex.P-1 to 15 not contravened by the respondents by producing any contra material nor adducing any contra evidence. In the absence of any contra material produced by the respondent, the Tribunal ought to have taken into consideration the material on record and fixed the income of the deceased appropriately. Admittedly, the Tribunal ignoring the material evidence of P.W.1 and material documents at Ex. P-1 to 15 has proceeded to take the income of the deceased only Rs.6,000/- p.m. Taking into consideration the age of the deceased 28 years and the accident took place on 25.11.2012 and taking into consideration the ROR Ex.P-10 to 15, we are of the considered opinion that the deceased should have earning at least Rs.8,000/- p.m. Considering the law declared by the Hon'ble Supreme Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another reported in AIK 2009 SC 3104, the appropriate multiplier would be '17'. Tribunal was justified in deducting l /4t^{h}. If the income of the deceased is taken at Rs.8,000/- (8000X12X17 = 16,32,000/-) after deducting 1 /4th, the appellants would be entitled to Rs.12,24,000/- towards loss of dependency.

16. It is the specific case of the appellants that the deceased was aged about 28 years. The wife as on the date of the death of the deceased was aged about 24 years and the appellants No.2 to 5 are the minor children and appellant No.6 is old aged mother of the deceased. They have lost the company of the deceased at the young age and the wife has to suffer throughout her life. Therefore, the Tribunal was not justified in granting Rs. 15,000/- towards love and affection. Taking into consideration the surrounding circumstances, we are of the considered opinion that the appellants No.2 to 6 are entitled to Rs.25,000/- each, that is to say that they are all entitled in all Rs. 1,25,000/- towards love and affection. The Tribunal has awarded only Rs. 10.000/- towards transportation of dead body, funeral and obsequies ceremonies which is on the lower side. Taking into consideration in view of the law declared by the Hon'ble Supreme Court in the case of Munnalal Jain and Anr. Vs. Vipin Kumar Sharma and Ors. reported in (2015) 6 SCC 347, we are of the considered view that the appellants are entitled to Rs.25,000/- towards funeral, transportation and obsequies ceremonies. The tribunal has proceeded to award only Rs. 15,000/- towards loss of consortium. In view of the dictum laid

down by the Hon ble Supreme Court in the case of Vimal Kanwar V. Kishore Dan reported in (2013) 7 SCC 476 the wife is entitled to Rs. 1,00,000/- towards consortium as she has to suffer life long and the age of the wife of the deceased is only 24 years. Towards loss of estate, the Tribunal proceeded to award Rs. 10,000/-, which requires another Rs. 15,000/- i.e., Rs.25,000/- the amount for which the appellants are entitled towards loss of estate.

17. After considering both oral and documentary evidence placed on record and after reassessing the entire material on record, we are of the considered opinion that the appellants are entitled for compensation as under;

Sl. No.	Heads	Amount Rs.
1.	Towards loss of dependency	12,24,000/-
2.	Towards loss of love and affection towards appellants No.2 to 5	1,25,000/-
3.	Transportation of dead body and funeral expenses	25,000/-
4.	Loss of Consortium	1,00,000/-
5.	Loss of Estate	25,000/-
	Total	14,99,000/-
	Awarded by Tribunal	- 9,68,000/-
	Total	5,31,000/-

In all the appellants are entitled for enhanced compensation of Rs.5,31,000/-.

18. For the reasons stated above, the first point raised in the present appeal has to be answered in the Negative, holding that the Tribunal has not justified in awarding only Rs.9,68,000/- with interest @ 6% p.a. and the 2nd point answered in affirmative holding that the appellants are entitled for further enhanced compensation of Rs.5,31,000/-.

19. For the reasons stated above, the appeal is allowed in part.

20. The impugned judgment and award dated 30.7.2014 made in MVC No.357/2013 on the file of Prl. Senior Civil Judge and CJM and MACT-II, Bidar is modified holding that the appellants are entitled for enhanced compensation of Rs.5,31,000/- with interest at rate of 6% p.a.

21. 2nd respondent-insurer shall deposit the enhanced compensation with interest before the jurisdictional Tribunal within an outer limit of six weeks from the date of receipt of copy of this order.

22. Payment and apportionment of enhanced compensation shall be made in terms of the Judgment and award of the Tribunal.

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