

The Manager Vs. T. Chandranaika

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Court : Karnataka

Decided On : Jan-09-2018

Judge : K.Somashekar

Appeal No. : MFA 5465/2016

Appellant : The Manager

Respondent : T. Chandranaika

Judgement :

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1. : R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE9H DAY OF JANUARY, 2018 BEFORE THE HONBLE MR.JUSTICE K.SOMASHEKAR M.F.A. No.5465 OF2016(MV) BETWEEN THE MANAGER, NATIONAL INSURANCE CO. LTD., SHIVAMOGGA DIVISION, 1ST FLOOR, SS COMPLEX, ABOVE HARSHA, B.H.ROAD, SHIVAMOGGA REP. BY ASSISTANT MANAGER, NATIONAL INSURANCE CO. LTD., REGIONAL OFFICE, No.144, IST FLOOR, SHUBHARAM COMPLEX, M.G.ROAD, BENGALURU - 1. ... APPELLANT T. CHANDRANAIIKA S/O TAKRANAIIKA, AGE ABOUT37YEARS, AGRICULTURIST, (BY SMT. MANJULA N. TEJASWI, ADVOCATE) AND1 2. T. SHEKARNAIIKA S/O TAKRANAIIKA, AGE ABOUT40YEARS, AGRICULTURIST, :

2. : TAKRANAIIKA S/O LATE KRISHNANAIIKA, AGE: ABOUT62YEARS, AGRICULTURIST, 3. ALL RESIDENT OF HOSAHALLI TANDYA VILLAGE,

AMRUTHAPPA HOBLI, TARIKERE TALUK - 577228. BALAKRISHNA S/O LATE GANGANNA, AGE:

25. YEARS, RIDER OF MOTOR CYCLE, R/O BHAVIKERE VILLAGE, LAKKAVALLI HOBLI, TARIKERE TALUK - 577228.

4. 5. B. RAMESHA, S/O. BOREGOWDA, AGED ABOUT 26 YEARS, AGRICULTURIST, OWNER OF MOTOR CYCLE, R/O. BHAVIKERE KORE VILLAGE, LAKKAVALLI HOBLI, TARIKERE TALUK-577 228. ... RESPONDENTS (BY SRI. SRIKANTH N.V. FOR SRI. SACHIN B.S., ADVOCATE FOR R1 TO R3, R4 AND R5 - SERVED.) THIS MFA IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, AGAINST THE JUDGEMENT AND AWARD DATED 24.03.2016 PASSED IN MVC No.497/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE & PRINCIPAL JMFC, MEMBER, TARIKERE, AWARDED COMPENSATION OF RS. 7,96,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL DEPOSIT. ADDITIONAL MACT, :

3. : THIS MFA COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Heard the learned counsel for the appellant - Insurance Company and the learned counsel for the claimants-respondents 1 to 3 and perused the records.

2. The insurance company has preferred this appeal, challenging the quantum of compensation awarded by the Senior Civil Judge & MACT, Tarikere in M.V.C.No.497/2014 dated 24.03.2016. The only ground of challenge in this appeal is regarding the amount of Rs.7,56,000/- which has been awarded under the head Loss of dependency, without deducting any amount towards personal and living expenses of the deceased.

3. The facts of the case are that on 12.05.2014 at about 1.45 p.m., when the deceased Smt. Danibai, aged about 60 years was in the process of crossing the NH-206 road at Tarikere Town, to go to the :

4. : private bus stand, Respondent No.4 who was the rider of the motor cycle bearing Registration No.KA-18/Y-6046, had rode his motor cycle in a rash and negligent manner in high speed as a result of which he had lost control of his vehicle and had dashed his vehicle against the deceased. As a result, the said Danibai fell down and sustained injuries on her head and other parts of the body and was immediately shifted to the Government Hospital, Tarikere. Thereafter, she was shifted to Mc.Gann Hospital, Shivamogga, for treatment, but however she succumbed to the injuries.

4. After service of notice, the owner of the offending vehicle as well as the insurer had appeared and filed their written statements and contested the claim petition. During the enquiry before the Tribunal, the claimants have established the occurrence of the accident, actionable negligence on the part of the driver of the offending vehicle and its insurance coverage with the appellant herein. :

5. :

5. The Tribunal, after evaluation of the oral and documentary evidence has held that the accident had occurred due to rash and negligence of the offending vehicle. Hence, taking the notional income of the deceased at Rs.7,000/- per month and applying multiplier as 9 considering the age of the deceased who was 60 years, the Tribunal awarded total compensation of Rs.7,96,000/- with interest at 6% per annum from the date of petition till the date of realization under the following heads: Sl. No.1 2 3 4 5 Headings Loss of dependency (Rs.7,000 x 12 x

9) Consortium Funeral Ceremony Loss of Love & Affection Loss of Estate & Obsequies Total Amount Rs. Rs.7,56,000/- Rs. 10,000/- Rs. 10,000/- Rs. 10,000/- Rs. 10,000/- Rs.7,96,000/- The Tribunal while granting the above compensation, had ignored the claim of the sons of the deceased since they were majors who had their own income and had held that the compensation :

6. : awarded shall be payable only to the husband of the deceased who is the third respondent herein.

6. It is the contention of the learned counsel for the appellant - Insurance Company Smt. Manjula N. Tejaswi, that the deceased was aged 60 years at the time of the accident and hence, the multiplier having been applied at 9 is justifiable. Further, the income of the deceased having been taken at Rs.7,000/- considering her to be a housewife where there was no proof of income, is also justifiable. But however, it is her contention that the Tribunal has failed to deduct any amount towards the personal and living expenditure of the deceased out of the income which has been taken at Rs.7,000/- per month, while awarding the amount of Rs.7,56,000/- (Rs.7,000 x 12 x

9) under the head Loss of dependency. The counsel further contends that taking into consideration the age of the deceased and her only dependant being her husband, the deduction towards her personal and living expenses ought to be taken at :

7. :

50. in order to determine the compensation to be awarded under the head Loss of dependency. Since the said aspect has been overlooked, she submits that the judgment of the Tribunal requires to be re- visited on this aspect.

7. Per Contra, the learned counsel appearing for the respondents - claimants seeks to justifies the order of the Tribunal and seeks that the compensation awarded does not calls for interference and prays for dismissal of the appeal.

8. On going through the judgment rendered by the Tribunal and taking into consideration the contentions put forth by the learned counsel for both the parties, it is seen that PW-1 is the claimant who had filed a petition before the Tribunal seeking compensation in respect of the death of his mother in a road accident. Exhibit P-12 is the letter produced by the claimant evidencing the fact that the deceased was doing milk vending business. However, there was no material produced to establish the income of :

8. : the deceased. Hence, the Tribunal has taken the notional income of the deceased at Rs.7,000/- per month in respect of the accident which had occurred in

the year 2014, which is not disputed.

9. As emphasized by the learned counsel for the appellant Smt. Manjula N. Tejaswi, it is seen that the Tribunal has not deducted any amount towards personal and living expenses of the deceased, out of her income of Rs.7,000/- per month. Though the deceased was a married woman, she has left behind only a single dependant, namely her husband. Her both sons are majors aged above 35 years and are independently earning and looking after their families. Hence, since the deceased has left behind a sole dependant - her husband, the deduction to be adopted towards personal and living expenses ought to be taken at 1/2. This view is supported by the decision of the Honble Apex Court in the case of Sarla Verma vs. Delhi Transport Corporation (2009) 6 SCC121 :

9. : The relevant paragraph of the said judgment reads as under: 30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one- third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six. (emphasis supplied) This implies that when there is only one dependant of the deceased, the deduction towards personal and living expenses of the deceased should be taken as 1/2. Applying the above view in Sarla Verma, the law has been succinctly laid down in the case of New :

10. : India Assurance Co. Ltd. vs. Sri. David T and Another (ILR 2012 KAR2859, wherein the relevant paragraph reads as under: 7. After going through the impugned judgment and award passed by Tribunal and after re-appreciation of the oral and documentary evidence available on file, I am of the considered view that the Tribunal has rightly assessed the monthly income of the deceased at Rs.3,000/-, but erred in deducting 1/3rd towards the personal expenses of the deceased and taking the age of the deceased for adopting the multiplier instead of

deducting 50% towards the personal expenses and adopting multiplier on the basis of the age of the husband of the deceased, as rightly pointed out by Learned Counsel for appellant - Insurer. In the light of the well settled law laid down by the Honble Apex Court and this Court, in hosts of cases, whenever there is a sole claimant, 50% is to be deducted. Accordingly, I accept the monthly income of the deceased at Rs.3,000/- and deduct 50% towards the personal expenses of the deceased. Accordingly, if 50% (i.e. Rs.1,500/-) is deducted from Rs.3,000/- towards her personal expenses, the net income would be Rs.1,500/- per month. Since :

11. : the husband of the deceased was aged about 70 years, the proper multiplier applicable is 5 as per the decision of the Honble Apex Court SARLA VERMAS CASE as against 10 adopted by Tribunal. Thus, the compensation towards loss of dependency would work out to Rs.90,000/- (i.e., Rs.1,500/- x 12 x 5) as against Rs.2,40,000/- awarded by Tribunal. 10. In view of the above decisions, I find that the judgment of the Tribunal requires to be revisited on the aspect of compensation awarded under the head Loss of dependency and the deduction towards personal and living expenses shall be taken at 50%. Hence, the compensation payable towards loss of dependency would come to Rs.3,78,000/- $(\frac{1}{2} \times 7000 \times 9 \times$

12) as against Rs.7,56,000/- awarded by the tribunal. However, the compensation awarded by the tribunal under other conventional heads is just and proper and does not call for interference by this Court. Thus, the claimants-respondents are entitled to a total compensation of Rs.4,18,000/- (Rupees :

12. : four lakh eighteen thousand only) as against Rs. 7,96,000/- awarded by the Tribunal.

11. Accordingly, the appeal is allowed in part. In modification of the impugned Judgment and award dated 24.03.2016 passed by the Senior Civil Judge & Principal JMFC, Tarikere in M.V.C.497/2014, the compensation payable to the claimant is reduced from Rs.7,96,000/- to Rs.4,18,000/-. The appellant-insurer has already deposited a sum of Rs.3,73,000/- by way of Cheque dated 23.11.2016 before this Court. The remaining amount along with interest shall be deposited

with the Tribunal within four weeks from the date of receipt of certified copy of this Judgment and on such deposit, the same shall be disbursed to the claimant - third respondent, on proper identification. However, the impugned judgment and award, in so far as it relates to the rate of interest and deposit is concerned, shall remain unaltered. The amount already deposited, if any, shall be adjusted. The statutory amount deposited :

13. : before this Court and the lower Court records shall be transmitted to the Tribunal forthwith. There shall be no order as to the costs. Office to draw the decree accordingly. KS Sd/- JUDGE

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