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Subramani Vs. The Divisional Manager

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Court : Karnataka

Decided On : Feb-27-2015

Judge : B.Veerappa

Appeal No. : MFA 382/2012

Appellant : Subramani

Respondent : The Divisional Manager

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE27H DAY OF FEBRUARY, 2015 BEFORE THE HON' BLE MR. JUSTICE B. VEERAPPA MISCELLANEOUS FIRST APPEAL No.382/2012 (MV) SUBRAMANI, BETWEEN:

1. S/O. LATE. MURUGAN AGED ABOUT40YEARS2 SMT. ARAYA W/O. SUBRAMANI AGED ABOUT35YEARS BOTH ARE R/AT NO.52, GURAPPA GARDEN NEW QUARTERS H. SIDDAIAH ROAD VINOBHANAGAR BANGALORE - 560 027. ... APPELLANTS (BY SRI VENKATESH C.R., ADV. FOR SRI A. LOURDU MARIYAPPA, ADV.) AND:

1. THE DIVISIONAL MANAGER NATIONAL INSURANCE COMPANY LTD., OPP.HDFC BANK NEAR IM.PROVEMENT TRUST MARKET OUTSIDE DHURI GATE SANGRUR2PUNJAB - 148 001 2. SRI RAJINDER SINGH S/O. BALDEV SINGH RAMPURA ROAD BHAWANIGARH SANGRUR DISTRICT PUNJAB - 148

026. ... RESPONDENTS (BY SRI. H.S. LINGARAJU, ADV. FOR R-1) THIS MFA IS FILED UNDER SECTION1731) OF MV ACT AGAINST THE

JUDGMENT
AND AWARD DATED:

15. 10.2011 PASSED IN MVC NO.8628/2010 ON THE FILE OF THE V ADDITIONAL JUDGE, MEMBER MACT, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. DAY, THE COURT DELIVERED THE FOLLOWING: THIS MFA COMING ON FOR ADMISSION THIS

JUDGMENT
This is a claimants appeal i.e., the parents of the deceased have filed the above appeal against the impugned judgment and award dated 15.10.2011 passed in MVC No.8628/2010 by the V3Addl. Judge, Member MACT, Mayohal Unit, Bangalore, (SCCH-

20) seeking enhancement of compensation.

2. Even though the matter has come up for admission, with the consent of learned counsel for the parties, it is taken up for final disposal.

3. For the sake of convenience the parties are referred to as per their ranking before the Tribunal.

4. It is the case of the unfortunate parents before the Tribunal that on 22.8.2010 at about 2.50 p.m. when the deceased was going as a pillion rider in Motor Cycle bearing No.KA-02 EV - 4180 near Kalasipalya, Bangalore, the driver of the Lorry bearing No.PB-13-S-7007 drove the same in a rash and negligent manner and dashed against the motor cycle. As a result the deceased fell on the right side of the road and the wheel of the lorry ran over him and the Doctor declared that the boy was brought dead. According to the claimants the deceased son was aged about 12 years and he was a student and they have lost their son for ever. 4 The petitioners who are the parents of the deceased have suffered mentally and physically due to the death of the deceased and therefore, have sought for

compensation of Rs.10,00,000/-.

5. Upon service of notice the 2nd respondent - owner of the vehicle has not chosen to appear before the Tribunal and he was placed ex-parte. The 1st respondent - Insurance Company filed the statement of objections contending the accident had occurred due to the negligence on the part of the rider of the motor cycle and contended the compensation claimed is exorbitant and without any basis etc., and prays for dismissal of the claim petition.

6. Based on the pleadings the Tribunal framed the following issues :- 1. Whether the petitioner proves that the death of Master Arjun in the motor accident that occurred on 22.08.2010 at about 2.50 p.m. on N.R. Road, 1st Cross, infront of Mohammadia Mosque, Mothinagar, Kalasipalya, Bangalore, when deceased was standing on the left side on the above said road?. 5 2. Whether petitioners further proves that the above said accident occurred due to rash and negligent driving of the driver of lorry bearing No.PB-13-S-7007 ?.

3. Whether the petitioners are entitled to the compensation ?. if so, to what amount and from whom ?.

4. What order or award ?. In order to establish their case, the 1st claimant - father has examined as P.W.1 and got marked documents Exs.P.1 to P.10(a). The respondent has not adduced any evidence except producing Ex.R-1 - the Insurance Policy, which was in force as on the date of the accident. After considering the entire material on record, the Tribunal awarded global compensation of Rs.1,50,000/- with interest at 6% p.a. relying on the law declared by this Court in the case of NORTH WEST KARNATAKA ROAD TRANSPORT CORPORATION CENTRAL OFFICE AND OTHERS Vs. KARIYAPPA AND OTHERS reported in ILR62003 (2) Kar.1521. Hence the parents have filed the above appeal for enhancement of compensation.

7. I have heard the learned counsel appearing for the parties to the lis and perused the entire records carefully.

8. Sri K. Venkatesh C.R., learned counsel appearing for the appellant has contended that the award passed by the Tribunal granting compensation of Rs.1,50,000/- is very meager and contrary to the dictum of the Honble Supreme Court and the interest granted by the Tribunal is on the lower side, etc., therefore, sought for enhancement of compensation.

9. Per contra, Sri H. S. Lingaraju, learned counsel appearing for the 2nd respondent sought to justify the impugned judgment and award passed by the Tribunal.

10. It is an admitted fact that the deceased Master Arjun, who is the son of the claimants died in a road accident on 28.2.2010, in view of the rash and negligent driving by the driver of the Lorry, 7 which is admittedly insured with the 1st respondent - Insurance Company. Exs.P1 to P10 clearly indicates the accident occurred due to rash and negligent driving of the lorry, as rightly recorded by the Tribunal. Admittedly the respondent - Insurance Company has not adduced any oral evidence nor produced any contra material. It is also not in dispute that deceased was young boy aged about 12 years, who had bright future, of course, the future prospects of advancement in life and career should also be awarded in terms of money to augment the multiplicand. Many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The Tribunal ought to have taken into account what measures of safety are required to be adopted to protect the interest of the minors. Even in respect of the claimants, who are sui juris, their interests, if they are illiterate or semi-literate must also be protected from possible exploitation. Thereby the parents have to suffer through out their life and no amount of compensation will substitute their sufferings. The Tribunal 8 granted global compensation of Rs.1,50,000/- mainly relying on the law laid down by this Honble Court cited supra, is inadequate.

11. It is an admitted fact that the said case was decided in the year 2003 and now we are in the year 2015. When the material documents clearly goes to show that the deceased was aged 12 years as on the date of the accident and material produced by the claimants clearly shows that the accident occurred due to rash

and negligent driving on the part of the driver of the lorry, which is insured with the 1st respondent - Insurance Company and therefore, it is a fit case to enhance further compensation in view of the law declared by the Apex Court in the case of KISHAN GOPAL AND ANOTHER VS.LAL AND OTHERS reported in 2014(1) SCC224while deciding the quantum of compensation under the provisions of Sections 166, 168, 170B, 171 and 173 of the Motor Vehicles Act, 1988, has held that in respect of death of children between the age group of 10 to 15 years, the Honble Supreme Court held that the compensation 9 Rs.5,00,000/- with 9% interest has to be awarded which reads as under :- 35. The relevant portion of clause No.6 states as under :

"6. Notional income for compensation to those who had no income prior to accident - * * * (a) Non-earning persons - 15,000/- p.a."

The aforesaid clause of the Second Schedule to Section 163-A of the M.V. Act , is considered by this Court in the case of Lata Wadhwa & Ors. v. State of Bihar & Ors., 2001(4) R.C.R.(Civil) 673 : (2001)8 SCC197 while examining the tortuous liability of the tort-feasor has examined the criteria for awarding compensation for death of children in accidents between age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs.12,000/- p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs.25,000/- was awarded. Thus, a total sum of Rs. 1,57,000/- was awarded in that case. After noting the submission made on behalf of TISCO in Lata Wadhwa case that the compensation determined for the children of all age 10 groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecoupable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs.50,000/- should be added and thus total amount in each case would be Rs.2 lakhs. Further, in the case referred to supra it has observed that in

so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs.12,000/- p.a. appears to be on the lower side and held that the contribution of such children should be Rs.24,000/- p.a.

38. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was 11 assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non- earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard.

39. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs. 30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma v. Delhi Transport Corporation, 2009(3) R.C.R.(Civil) 77 :

2009.

3) Recent Apex Judgments (R.A.J.) 373 : (2009) 6 SCC121 the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas, (1994)2 SCC176 which is referred to in Lata Wadhwa's case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional 12 heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants. The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of

Municipal Council of Delhi v. Association of Victims of Uphaar Tragedy, 2012(3) R.C.R.(Civil) 203 :

2012.

3) Recent Apex Judgments (R.A.J.) 92 : (2011)14 SCC481 for the reason that the Insurance Company has been contesting the claim of the appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if - the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the appellants is legally justified.

41. Accordingly, we pass the following order :

41. 1 The appeal is allowed and the impugned judgments and awards of both the Tribunal and High Court are set aside. 41.2 The awarded amount of Rs. 5,00,000/- with interest at the rate of 9% per annum should be paid to the appellants 13 from the date of filing of the application till the date of payment.

12. Admittedly in the present case, the deceased was aged 12 years. Taking into consideration the entire facts and circumstances of the case and the law laid down by the Honble Supreme Court and having regard to the fact that the petitioners have five children, it is appropriate to grant global compensation of Rs.4,00,000/- with interest at the rate of 8% p.a. from the date of petition till the date of payment.

13. Accordingly the appeal is allowed in part. The impugned judgment and award passed by the Tribunal is modified and the unfortunate parents/appellants are entitled to global compensation of Rs.4,00,000/- with interest at 8% p.a. from the date of petition till the date of realization.

14. Out of the enhanced compensation of Rs.2,50,000/-, a sum of Rs.1,00,000/- each shall be deposited in the name of 1st appellant and 2nd appellant with interest accrued thereon, in any 14 Nationalized or Scheduled Bank for a period of 5 years and periodical interest accrued thereon may be disbursed to the

appellants. Remaining enhanced compensation of Rs.50,000/- shall be disbursed to the appellants in equal proportion. The deposit shall be made by the Insurance Company within a period of 8 weeks from today. Registry to draw the award accordingly. Sd/- JUDGE NG*

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