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Mallamma And Ors Vs. Rajendra And Anr

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Court : Karnataka Kalaburagi

Decided On : Feb-06-2023

Judge : Sreenivas Harish Kumar and T G Shivashankare Gowda

Appeal No. : MFA 201674/2019

Appellant : Mallamma And Ors

Respondent : Rajendra And Anr

Judgement :

R IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH DATED THIS THE6H DAY OF FEBRUARY 2023 PRESENT THE HONBLE MR. JUSTICE SREENIVAS HARISH KUMAR AND THE HONBLE MR. JUSTICE T.G. SHIVASHANKARE GOWDA MISC.FIRST APPEAL NO.200165/2019(MV) C/W. MISC.FIRST APPEAL NO.201674/2019(MV) IN MFA No.200165/2019 BETWEEN: The Branch Manager, The New India Assurance Co., Ltd., Gurukula Road, Vijayapura. Now represented by Its Divisional Manager. .. Appellant (By Sri S.S.Aspalli, Advocate) AND:

1. Mallamma W/o Yashawant Dafale, Age:

44. years, Occ: Household / Work & Coolie, 2. Ashwini D/o Yashawant Dafale, Age:

23. years, Occ: Education, 3. Anuja D/o Yashawant Dafale, Age:

21. years, Occ: Education, MFA No.200165/2019 C/w MFA No.201674/2019 2 4. Rahul S/o Yashawant Dafale, Age:

19. years, Occ: Education, All R/o Dobale Galli, Vijayapur-586101.

5. Rajendra S/o Mallappa Dafale, Age: Major, Occ: Owner of Motorcycle Regn.No.MH-13/CG-9355, R/o Shirdhonakar Galli, Barur Tq. South Solapur-413001. Respondents (By Sri.Basavaraj R.Math, Advocate for R1 to R4; Appeal against R5 is dismissed v/o dtd.20.02.2021) This Miscellaneous First Appeal is filed under Section 173(1) of MV Act, praying to set aside the judgment and award dated 16.11.2018 in MVC No.1772/2016 passed by the III addl. Senior Civil Judge & MACT-XII Vijayapur, by allowing the above appeal in the interest of justice and equity. IN MFA No.201674/2019 BETWEEN:

1. Mallamma W/o Yashawant Dafale, Age:

45. years, Occ: H.H.Work & Coolie, 2. Ashwini D/o Yashawant Dafale, Age:

24. years, Occ: Education, 3. Anuja D/o Yashawant Dafale, Age:

22. years, Occ: Education, 4. Rahul S/o Yashawant Dafale, Age:

20. years, Occ: Education, MFA No.200165/2019 C/w MFA No.201674/2019 3 All are R/o Dobale Galli, Vijayapura-586101. ... Appellants (By Sri Basavaraj R.Math, Advocate) AND:

1. Rajendra S/o Mallappa Dafale, Age: Major, Occ: Owner of Motor cycle No.MH-13/CG-9355, R/o Shirdhonakar Galli, Barur, Tq. South Solapur, Dist. Solapur-413204.

2. The Branch Manager, New India Assurance Company Ltd., Gurukul Road, Vijayapura-586101. Respondents (By Smt. Preeti Patil Melkundi, Advocate for R2; Notice to R1 dispensed with v/o dtd. 25.01.2023) This Miscellaneous First Appeal is filed under Section 173(1) of MV Act, praying to call for records and modify the impugned judgment and award dated 16.11.2018 passed by the III Addl. Senior Civil Judge & MACT No.XII, Vijaypur in MVC No.1772/2016, in the interest of justice and equity. These appeals having been heard through physical hearing /

video conference and reserved for Judgment on 25.01.2023, coming on for pronouncement of Judgment this day, T.G. Shivashankare Gowda, J., delivered the following: MFA No.200165/2019 C/w MFA No.201674/2019 4

JUDGMENT

In these appeals, the appellants have challenged the judgment dated 16.11.2018 passed in M.V.C.No.1772/2016 on the file of the III Additional Senior Civil Judge and Motor Accident Claims Tribunal No.XII, Vijaypur (hereinafter referred to as 'Tribunal' for short).

2. M.F.A.No.200165/2019 is filed by the Insurance Company. M.F.A.No.201674/2019 is by the petitioners claiming enhancement of compensation.

3. The parties will be referred with respect to their status before the Tribunal for the sake of convenience.

4. Briefly stated the facts are that, the petitioner No.1 is the wife, petitioner No.2, 3 and 4 are the children of Yashawant Dafale, the deceased. On 21.10.2016, as a pillion rider of a motor cycle MFA No.200165/2019 C/w MFA No.201674/2019 5 bearing No.MH-13/CG-9355, the deceased met with an accident, sustained fatal injuries and succumbed to said injuries on the next day.

5. The petitioners approached the Tribunal claiming compensation of Rs.57,00,000/-. The claim was opposed by the Insurance Company. The Tribunal awarded compensation of Rs.35,61,000/-. Pleading inadequacy of compensation, the petitioners are before this Court whereas, the Insurance Company contending that the principle of 'split multiplier' ought to have been adopted, tax component ought to have been deducted and that the Tribunal had no jurisdiction to try the matter, has come before this Court.

6. Heard the arguments of Sri.S.S.Aspalli, learned counsel for the Insurance Company and MFA No.200165/2019 C/w MFA No.201674/2019 6 Sri.Basavaraj R.Math, learned counsel for the petitioners and perused the records.

7. It is the contention of the learned counsel for petitioners that while calculating the income, the Tribunal ought to have considered future prospects of the deceased and inadequate compensation has been awarded on the conventional heads and he urged for re-assessment of materials and enhancement of compensation.

8. Per contra, learned counsel for the Insurance Company contended that the deceased was aged 54 years at the time of accident, he had only six years of service. The applicable multiplier is '11', but it ought to have been split in such a way that '6' should be applied for the full salary and '5' for the pension. It is also contended that though the tax component in the income has not been excluded and MFA No.200165/2019 C/w MFA No.201674/2019 7 that the compensation awarded is on the higher side. Though learned counsel initially contended about the jurisdiction of the Tribunal, at a later stage, he gave up that contention.

9. We have perused the impugned judgment. The Tribunal referring to Ex.P15/Service Book ascertained the age of the deceased as 54 years and considered the income at Rs.35,000/-, he was permanently employed as a Conductor in MSRTC. The Tribunal deducted 1/4th towards the personal expenses and applied '11' multiplier and determined the loss of dependency at Rs.34,65,000/-. The Tribunal awarded Rs.20,000/- towards loss of consortium to wife, Rs.10,000/- each towards love and affection to the minor children, Rs.10,000/- each towards funeral expenses and loss of estate and Rs.10,000/- towards transportation and Rs.16,080/- towards treatment. MFA No.200165/2019 C/w MFA No.201674/2019 8 10. As we notice, the tax component, i.e., professional tax at Rs.200/- and TDS of 10% towards income tax i.e., Rs.3,700/- was not excluded from salary of Rs.35,000/- drawn by the deceased. The Tribunal did not consider the said aspect, which requires to be rectified in the instant appeal.

11. Now the issue is regarding whether the principle of 'split multiplier' is applicable to this case or not. In this regard, both side Advocates put forth their contentions.

12. Learned counsel for the petitioners relied upon an unreported judgment of a Co-ordinate Bench of this Court of which one of us presided, in the matter of The

Divisional Manager, TATA AIG General Insurance Co.Ltd. -vs- Vijayalaxmi and Others in M.F.A.No.200348/2018 (MV) DD2107.2022. While discussing the application of split MFA No.200165/2019 C/w MFA No.201674/2019 9 multiplier, it was held that applying the principle of 'split multiplier' ran counter to the judgment in National Insurance Company Limited vs. Pranay Sethi and Others -2017 ACJ680 For application of split multiplier, the Co-ordinate Bench has placed reliance on R.Valli and others -vs- Tamil Nadu State Transport Corporation Limited - (2022) 5 SCC107 In Vijayalaxmi's case referred supra, the deceased was aged 52 years and working as Manager in the State Bank of Hyderabad.

13. Learned counsel for the Insurance Company has relied upon judgment of Co-ordinate Bench of this Court of which one of us presided, in the matter of The New India Assurance Co.Ltd. and Another -vs- Sri.Prithviraj and others in M.F.A.No.20727/2010 and connected appeals, which were decided on 08.12.2016. In the said case, deceased was a teacher in a school and had only six MFA No.200165/2019 C/w MFA No.201674/2019 10 years left for retirement. It was held that the split multiplier method has to be applied. The relevant portion at para-20 of the said judgment reads thus:

"20. Therefore, on considering the judgments referred to above what can be noticed very much is that for applying the split multiplier method, reasons must be given. Without assigning any reasons, the compensation towards "loss of dependency" cannot be determined by splitting the multiplier. In fact, this is the ratio laid down by the Hon'ble Supreme Court in the case of K.R.Madhusudhan and in the case of Puttamma, the same has been reiterated.

14. The Hon'ble Apex Court in N.Jayasree and Others -vs- Cholamandalam MS General Insurance Co.Ltd. reported in 2021 SCC Online SC967while dealing with a case where the age of the deceased was 52 years and who was an Assistant Professor of Mathematics having qualification M.Sc., M.Phil, observed that Mathematics teachers awould be employed even after their retirement in coaching centers and they may also conduct private tuition MFA No.200165/2019 C/w MFA No.201674/2019 11 classes and this would increase their income manifold after retirement. For these reasons, it has been held that the split multiplier cannot be

applied. While holding so, it has considered the case in Sarla Verma -vs- Delhi Transport Corporation (2009)6 SCC121 15. Now, in the instant case, the deceased was a MSRTC Conductor, left with six years of service. If the contention of the counsel for the petitioner that split multiplier cannot be applied is to be considered, the deceased should have been a highly skilled person or Professor or a Manager of a Bank or a professional of great demand having chances of earning post- retirement; but in this case, the deceased was a bus conductor. It is impossible that a bus conductor comes under the category of professionals having chances of re-employment elsewhere post-retirement. Hence, the principles laid down in Vijayalaxmi's case MFA No.200165/2019 C/w MFA No.201674/2019 12 in M.F.A.No.200348/2018 (supra) are not applicable to the fact of this case. The principles laid down in Prithviraj's case in M.F.A.No.20727/2010 and connected appeals (supra) are aptly applicable to the case on hand.

16. Therefore, we are of the considered opinion that the principle of 'split multiplier' if applied to the case on hand, it will not controvert the principles laid down in Sarla Verma and Pranay Sethi's cases. Hence, it is a fit case to apply 'split multiplier' i.e., '6' for the full salary and '5' for the pension and accordingly, the compensation has to be determined.

17. If all these factors are taken into consideration, the determination of loss of dependency would be: The salary of the deceased was Rs.35,000/- per month and if tax component at Rs.3,700/- is excluded, the net income will come to Rs.31,300/- per MFA No.200165/2019 C/w MFA No.201674/2019 13 month. 1/4th is to be deducted towards personal expenses because of four dependants on the deceased. 1/4th comes to Rs.7,825/-. Then the income comes to Rs.23,475/-. If the principles of Pranay Sethi and Sarla Verma (supra) are applied, for the age between 50 and 60 years, the future prospects of 15% has to be taken. If future prospects of 15% is added, it comes to Rs.3,521/-. Then the income comes to Rs.26,996/-x12=Rs.3,23,952/- per annum.

18. Now, the split multiplier is applied, i.e., '6', it comes to Rs.19,43,712/- (Rs.3,23,952/-x6) and by applying the split multiplier of '5' x Rs.3,23,952x50% comes to Rs.8,09,880/-. If both are added up, the loss of dependency would come

to Rs.27,53,592/- . The deceased left behind his wife and three children. Hence, towards loss of consortium to wife and loss of love and affection to the children, Rs.40,000/- each is MFA No.200165/2019 C/w MFA No.201674/2019 14 to be added and it comes to Rs.1,60,000/-. Towards loss of estate and funeral expenses Rs.15,000/- each has to be added. The petitioners have spent Rs.16,080/- towards treatment of the deceased as he died on the next day of the accident in the hospital. Hence, Rs.16,080/- has to be reimbursed towards medical expenses. Thus, if all these heads are computed, the total compensation works out at Rs.29,59,672/- as against Rs.35,61,000/- awarded by the Tribunal, thereby the compensation is decreased by Rs.6,01,328/-. Accordingly, the appeal filed by the Insurance Company deserves to be allowed and the appeal filed by the petitioners has to be dismissed.

19. In the result, we pass the following;

ORDER

(i) M.F.A.No.200165/2019 filed by the Insurance Company is allowed. (ii) M.F.A.No.201674/2019 filed by the petitioners is dismissed. MFA No.200165/2019 C/w MFA No.201674/2019 15 (iii) The impugned judgment and award passed by the Tribunal stands modified by reducing the compensation awarded to the petitioners. (iv) The petitioners are entitled to total compensation of Rs.29,59,672/- as against Rs.35,61,000/- awarded by the Tribunal. (v) Rest of the judgment of the Tribunal stands unaltered. (vi) The amount in deposit shall be refunded to the Insurance Company. Sd/- JUDGE Sd/- JUDGE KNM/-

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