

A.C. Syamala and Others Vs. Smt. Devaki Gopal and Others

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Court : Karnataka

Decided On : Jul-17-2000

Reported in : I(2001)ACC513; 2001ACJ1432; ILR2001KAR306; 2001(4)KarLJ145

Judge : Hari Nath Tilhari, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 168 and 171

Appeal No. : Miscellaneous First Appeal No. 386 of 1990

Appellant : A.C. Syamala and Others

Respondent : Smt. Devaki Gopal and Others

Advocate for Def. : Sri P.B. Raju and ;Sri M.S. Mandanna, Adv.

Advocate for Pet/Ap. : Sri S.M. Chandrashekhar, Adv.

Judgement :

Hari Nath Tilhari, J.

1. This appeal is directed against the judgment and award dated 30th September, 1989, delivered by the Additional District Judge, II-Motor Accidents Claims Tribunal, Chitradurga, in Motor Accidental Claims Case No. MVC 348 of 1986, awarding in total sum of Rs. 3,43,000/-, as compensation.

Claimants feeling aggrieved have come up before us by way of this appeal :

2. The facts of the case in nutshell are that on 19-4-1986, one Alakananda Swamymath, alleged to be aged about 43 years at the time of death, who was the Principal of S.J.V.P. College, Harihar, and Secretary of Priyadarshini Education Society at Lakshmeswar, met with an accident and died thereon on the spot.

Claimant's case is, due to rash and negligent driving of the Lorry number bearing TNA 1749 and car bearing number MEU 5556, the deceased met with the accident and died on the spot at 2 a.m. According to the claimant's case, on account of death of Alakananda Swamymath, there was nobody to look after the family and they were left with only lands. According to claimant's case, the deceased was working as Principal, and Secretary, as mentioned earlier in Priyadarshini Education Society, and was getting a sum of Rs. 4,000/- and Rs. 2,000/-, from these respective institutions. The claimants made a claim in total for a sum of Rs. 9,75,000/-. The petitioners claimed Rs. 8,40,000/-, towards loss of dependency, and a sum of Rs. 50,000/-, towards general damages and mental agony, Rs. 50,000/- towards special damages, Rs. 3,000/-, towards transportation of dead body and Rs. 2,000/-, towards funeral expenses, as well as Rs. 5,000/-, towards loss of consortium, petitioners also claimed towards future maintenance of the deceased mother, a sum of Rs. 25,000/-.

3. Objections were filed on behalf of the opposite parties, namely, on behalf of the respondents denying the allegation that there was any negligence of their respective vehicles. It was alleged that it is false to assert that on 19-4-1986, at 2 a.m. near Lakshmisagar gate, lorry No. TNA 1.749 and car No. MEU 5556, were involved in the accident and at that time the deceased Alakananda Swamymath, was travelling in the car, and due to accident, he sustained injuries and died on account of injuries. The driver of the lorry denied that accident was on account of any rash and negligent driving of the driver. In the same way, on behalf of the lorry owner it was alleged that accident was due to rash and negligent driving of the car MEU 5556 of Alakananda Swamymath. It was also asserted that the claim of compensation to the tune of Rs. 9,75,000/-, was on higher side and excessive.

The respondent 5, also filed objections alleging that claim was highly excessive, and that it is wrong to say that accident was due to rash and negligent driving of

car MEU 5556.

The respondent 5, alleged that accident was due to rash and negligent driving of the lorry and respondent 1, was not found responsible. Respondent 6, in his objections asserted that accident was not due to the rash and negligent driving of the car, and it denied its liability. It is alleged that the car was being driven slowly on correct side, and but so far as lorry is concerned it was being driven in a rash and negligent manner.

4. On the basis of the pleadings of the parties, the Tribunal framed the following:

ISSUES

(1) Whether the petitioners prove that one C.F. Alakananda Swamymath died in motor vehicle accident on T9-4-1986 at 2.00 a.m., near Lakshmisagar gate due to rash and negligent driving of the vehicles namely lorry No. TNA 1749 and car No. MEU 5556 by respondents 2 and 5 respectively as alleged?

(2) Whether the petitioners prove that they are entitled to compensation, if so to what extent and from whom?

(3) What order?

5. The Tribunal after examining the record and the material evidence, held that the accident in question on the date, and at the time alleged had taken place, on account of rash and negligent driving of the car in question.

The Tribunal considering the material evidence further found that average monthly income of the deceased was Rs. 3,500/- per month. He further observed that he would have required Rs. 1,000/- for himself, and rest of that sum of Rs. 2,500/-, would have been utilised by him towards the maintenance of the family, the children and the wife etc. The Court further observed that multiplied by 12 months yearly loss of dependency came to Rs. 30,000/-. The Court further opined that age of the claimant, being as 45, the proper multiplier would be 11, and multiplying 30,000/- by 11, the Tribunal held that the total loss of dependency and maintenance would come to Rs. 3,30,000/- in addition thereto, the Tribunal

awarded a sum of Rs. 5,000/-, towards consortium, and Rs. 5,000/-, towards the loss of expectancy of life. The Tribunal further awarded a sum of Rs. 3,000/- towards the funeral and other customary expenses. Thus the Tribunal, in all awarded a sum of Rs. 3,43,000/-, towards total compensation, and awarded interest at the rate of 6% per annum.

6. Feeling dissatisfied with the award of amount of compensation, the claimants have come before this Court by way of appeal. Sri S.M. Chan-drashekar, learned Counsel for the appellants submitted that the loss of dependency per month assessed at the sum of Rs. 2,500/-, is too low, he submitted that it should have been assessed at, at least Rs. 3,500/- because the income was Rs. 5,000. He further submitted that appliance of multiplier of 11 is unjustified, and not in accordance with law, learned Counsel contended that proper multiplier to be applied to have been 15.

Learned Counsel further contended that the award of Rs. 5,000/- towards loss of consortium is on the lower side. He further submitted that award also of Rs. 5,000/- towards the loss of expectancy of life is on the lower side. The learned Counsel for the appellants raised the contention, that even the award of 10% interest is on too lower side.

These contentions of the learned Counsel have hotly been contested on behalf of the respondents. The learned Counsel contended that so far as consortium is concerned, petitioners claimed loss of consortium only to the extent of Rs. 5,000/-, and therefore there is no good ground for him to challenge it. So far as this argument of the learned Counsel for the respondents is concerned, there appears to be some force. Therefore award of consortium of Rs. 5,000/-, does not call for any interference at the stage.

7. Loss of dependency so far as is concerned, in our opinion, Tribunal's assessment at the rate of Rs. 2,500/-, per month cannot be said to be unjustified, we affirm the finding of the Trial Court, and we are of view as well that loss of dependency, at the rate of Rs. 2,500/- p.m. to be Rs. 30,000/- per year (i.e., Rs. 2,500 x 12 months), to be justified one.

The age of the deceased at the time of death, no doubt in the claim petition is alleged to be 43 years, but the Tribunal, on consideration of the matter and material, has found him to be 45 years of age, at the time of death. The learned Counsel for the respondents, pointed out that it is based on post-mortem report, that is Ex. P. 48. In that Ex. P. 48, his age is mentioned as 45 years. The learned Counsel for the appellants on this basis tried to contend that 45 years of age is mentioned in post-mortem certificate, and it is not mentioned as above 45 years, as such the multiplier of 15 should be adopted.

8. The age of 45 years is a guess-work. It may also be above 45 or it may also be lower. Looking to the circumstances, we think it just and proper, that when it has been assessed as 45 years it may be above 45, and in such a case, where the age is above 45 or crossing 45 and below 50, the proper multiplier to be applied should be 13 and not 15, thus we take the 13 to be the proper multiplier to be applied because the appellants have not filed any Birth Certificate or age certificate of the deceased. In case of persons above 45, the multiplier of 13 is applicable. So when we apply 13 multiplier, then the sum of Rs. 30,000/- as multiplicand multiplied by 13, the loss of dependency comes to Rs. 3,90,000/- and in our opinion, the claimants are entitled to a sum of Rs. 3,90,000/- towards loss of dependency, and we do so award. As regards loss of consortium a sum of Rs. 5,000/-, has been awarded, and as we have found that it is correct, and we do not think just and proper to interfere with this. That for loss of expectation of life has been assessed and awarded by Tribunal at Rs. 5,000/-, in our view the award of Rs. 5,000/-, as compensation under this head is on too lower a side and needs to be modified and enhanced. That, as regards loss of expectation of life the amount of Rs. 5,000/-, as mentioned above, being on lower side, we do enhance it to a sum of Rs. 15,000/-. Rupees 3,000/- has justifiably been awarded by the Tribunal towards funeral and other expenses. Thus total compensation comes out to be Rs. 4,18,000/-, rounded upto Rs. 4,20,000/- and in our opinion claimants-appellants are entitled to be awarded a sum of Rs. 4,20,000/-, as the total amount of compensation. We, accordingly award in total, a sum of Rupees four lakh twenty thousand (Rs. 4,20,000/-).

As regards the interest, the claimants have claimed interest at the rate of 12%. The Tribunal has awarded interest at the rate of 6% per annum, which in our opinion is too lower, and it has to be enhanced, but the question is how and from what date it has to be granted?

9. The amount of compensation of Rs. 3,43,000/-, has been deposited within the period allowed by the Tribunal. Learned Counsel states that the entire amount of Rs. 3,43,000/-, with 6% interest granted by Tribunal has been deposited.

10. Looking to the conduct of the respondents, it appears proper, that so far as enhanced amount is concerned, they are directed to pay and deposit the balance of the enhanced amount of compensation, i.e., Rs. 77,000/-, with interest at the rate of 9% per annum from the date of the application till the date of payment.

11. The appeal is allowed with costs.

The respondent 6, is required to deposit the enhanced amount, i.e., additional sum of Rupees seventy-seven thousand with interest at the rate of 9% p.a. from the date of application upto the date of payment.

That the above balance of enhanced amount of compensation, i.e., sum of Rs. 77,000/- with interest @ 9% after its deposit along with the sum of Rs. 3,43,000/- and the interest thereon at 6% per annum from the date of claim till the date of deposit, as granted above by the Tribunal, shall be invested in the interest earning long term deposits in the Nationalised Bank, for a further period of 5 years. The appellants through their mother 1st appellant, are entitled to withdraw and realise interest earned thereon every month or every quarterly from that Nationalised Bank.

This additional amount of Rs. 77,000/- along with interest at the rate of 9% per annum, as mentioned above, shall be invested in the same Bank in which Rs. 3,43,000/-, as above-mentioned has been invested under the orders of the Tribunal.