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Court : Karnataka

Decided On : Jun-18-1996

**Reported in : II(1996)ACC531; 1997ACJ704; ILR1996KAR2494;
1996(5)KarLJ483**

Judge : C.N. Aswathanarayana Rao, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110D; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

Appeal No. : M.F.A. No. 860/90

Appellant : Devamma Aithappa and anr.

Respondent : S.B. Nagarajaiah and ors.

Advocate for Def. : P.B. Raju, Adv. for R-3

Advocate for Pet/Ap. : S.S. Sripathy, Adv.

Judgement :

ORDER

C.N. Aswathanarayana Rao, J.

1. This is a Claimants' appeal. The appellant has filed these applications, I.A.No. IV under Order 6 Rule 17 read with 151 CPCpraying for permission to amend the

claim petition filed before the Tribunal and I.A.No. V, a similar application under Order 6 Rule 17 CPC praying for permission to amend the appeal memo.

2. The grounds urged in these applications are common. They are supported by the affidavit of the 1st Appellant. She has stated in the affidavit that she is the widow of the deceased Aithappa in this case. She has stated that at the time when the claim petition was filed before the Tribunal, she was advised by her advocate that she cannot claim more than Rs. 2,00,000/- as compensation. She has stated since she had lost her husband in the accident at a young age with a minor daughter, she could not think of the amount of compensation which she could claim. It is contended that the Tribunal has given a finding that the earning of her husband was more than Rs. 6,000/- per month but award is granted for Rs. 30,000/- only as compensation and therefore she has preferred this appeal. She has stated that in view of this finding, since the appellant can get more than Rs. 6,00,000/- as compensation, the claim made by her as Rs. 2,00,000/- in the claim petition needs to be amended. She has stated that she claimed Rs. 2,00,000/- only due to inadvertent advice of her Advocate in the Trial Court. It is contended that the delay in filing these applications is not intentional but for bona fide reasons. She has stated if the amendments are not allowed she would be put to hardship. Hence this application.

3. The 3rd respondent has filed common objections to these applications. In the objection statement, the 3rd respondent has contended the appellant has presumed that the Tribunal has given a finding that the earning of the deceased was Rs. 6,000/- per month. It is stated that the Tribunal has only stated in Para-5 of the judgment that the income from the shop earning have been Rs. 4,000/- per month. It is contended that this cannot be taken as earnings of the deceased at par with the salary earning of a person, it is only the loss of service of the deceased to the family which is to be considered and therefore the Tribunal has properly decided the matter. It is contended that the claimants have after lapse of 8 long years sought an amendment of the claim petition, and the Appeal Memo. The 3rd respondent has denied the other allegations in the applications and has prayed for the dismissal of the same.

4. I have heard the learned Counsel for the Appellants and the learned Counsel for the 3rd respondent. Counsel for other respondents is not present.

5. On a perusal of the award passed by the learned Tribunal it is seen that the Tribunal has come to a definite conclusion after taking into consideration, the evidence on record that the deceased Aithappa was earning Rs. 25,000/-per year from his agricultural lands and Rs. 4,000/- per month from the shop of Soft Drinks (vide Para-2 at page 4 of the Award). Therefore, this fact belies the contention of the 3rd respondent that there is no such finding by the Tribunal. In view of this fact there is much force in the contention of the learned Counsel for the appellants that the appellants could have claimed much more than Rs. 2,00,000/- before the Tribunal, and the lapse on the part of the appellants in this regard is on account of inadvertent advice of the advocate who was appearing for them before the Tribunal.

6. There is much force in the objections of the 3rd respondent that the applications are belated. While the appeal has been filed on 7.3,1990, the applications I.A. No. IV & V are filed on 15.12.1995. But it is well established that on the ground of mere delay the applications cannot be rejected if the prayer is otherwise justified. In the case on hand, the facts disclose that the first appellant was a young widow and the second appellant was a minor daughter of the 1st appellant at the time when the claim petition was filed. There is no reason to discard the grounds urged in the affidavit filed along with the applications, namely that on account of inadvertent advice of the Counsel, the appellants made a claim for a much lesser amount than what the appellants would have been otherwise entitled to. The inconvenience caused to the 3rd respondent on account of the delay in filing the application can be compensated by awarding costs. I therefore, find that it would be in, the interest of justice to allow these applications and permit the appellants to amend the claim petition and the appeal memo.

7. For the reasons aforesaid, I.A.No. IV & V are allowed on payment of costs of Rs. 500/- in all, by the appellants to the 3rd respondent. The appellants shall effect necessary amendments in the claim petition which was filed before the Tribunal, as well as in the Appeal memo. No costs on these applications.

