

Thippanna Vs. Hanumantha

Thippanna Vs. Hanumantha

SooperKanoon Citation : sooperkanoon.com/383963

Court : Karnataka

Decided On : Feb-22-1995

Reported in : ILR1995KAR2218

Judge : M.F. Saldanha, J.

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

Appeal No. : M.F.A. No. 1199 of 1994

Appellant : Thippanna

Respondent : Hanumantha

Advocate for Def. : S.V. Prakash, Adv. for R-1 and ;G. Narayana Rao, Adv.

Advocate for Pet/Ap. : B.C. Seetharama Rao, Adv.

Judgement :

M.F. Saldanha, J.

1. Heard learned Advocates on both sides.

2. This Appeal which has been preferred by the owner and Insurance Company is directed against an award in M.V.C.No.501/1991 which has been made by the M.A.C.T. Shimoga. The incident in question took place on 27.4.1991 when the wife of the deceased by name Surikamma and her infant child were travelling by

an Auto Rickshaw bearing No. CTS.8127 which collided with a bus. In the incident that ensued, the Auto turned turtle, the wife of the claimant was trapped under the vehicle and the record indicates that she died on the spot. The child was also thrown out and was hospitalised and died after one week. The present Claim Petition however is confined for some strange reasons to compensation in relation to the death of the wife only. The claimant is the husband who was aged 25 years. He had submitted that his wife was only 18 years old when the incident happened, that she was working as a Basket Weaver and earning about Rs. 500/- to Rs. 600/- per month. The learned trial Judge has discarded this claim and has ultimately for purposes of consideration taken only a figure of Rs. 200/- per month. Applying the conventional multiplier method, he has awarded a sum of Rs. 36,000/- under Head-1 namely, loss of income resulting in the death of Sunkamma. The learned trial Judge has thereafter awarded a sum of Rs. 30,000/- under the head, loss of life, mental agony, pain and suffering. It is this head that is seriously assailed.

3. Appellants' learned Advocate points out that the evidence recorded is minimal. There is only a bare recital of the fact that the claimant's wife lost her life and that he is aggrieved by the incident. The record does indicate that this is not a case where she was seriously injured or where she underwent some long period of treatment and hospitalisation. The argument therefore is that unlike in an injury case the claimant would not qualify for any compensation under this head. It is further submitted that the aspect of pain and suffering etc., is something which the party who has undergone the trauma alone is entitled to. In this case, the claimant is the husband. Admittedly, he was not present on the scene of the incident, there was no period of agony that he had to undergo watching his young wife in a hospital or in a precarious condition and therefore, according to the appellants' learned Advocate, the claimant is totally disqualified from any compensation under this head. Strong reliance is placed on a Division Bench Decision of the Gauhati High Court reported in 1994 A.C.J. 1117 1. J.R. Saha v. National Insurance Co. Ltd. and Ors.. Among other aspects of the case, the Division Bench had the occasion to examine in great detail the English Law as also the Indian Law with regard to this aspect of the matter and the Court came to the conclusion that the facts in that case where the mother was admittedly not present when the incident

took place, where the death was instantaneous and where therefore, there was no specific evidence of any period of pain and suffering etc., having been undergone, that no compensation could be awarded under this head. On an analogy, appellants' learned Advocate submits that the present case being identical on facts, the claimant would not qualify for compensation on this ground.

4. This submission is vehemently opposed by the respondents' learned Advocate. He submits in the first instance that in Sana's case referred to above, the Court did not lay down any inflexible rule, that in a situation of an instantaneous death, the head of pain and suffering can never arise. On the other hand, he laid emphasis on the fact that a Division Bench of this Court in the Decision reported in 1991 Kar.L.J. 37 2. *Angels Travels v. K. Chikkayya Naik and Ors.*, had occasion to consider this very aspect of the matter and to observe that it is wrong to conclude that parents and other relatives of the deceased do not undergo any amount of pain and suffering merely because the death may be instantaneous or because there is no period of hospitalisation involved. In that case the Division Bench did hold that such a claim was permissible. It is therefore submitted that in these circumstances, the order passed by the trial Court as far as this head of compensation is concerned does not require any interference with.

5. I need to observe that certain well defined principles have emerged over the years with regard to the justification for compensation which must be carefully and judiciously applied to the special facts of each and every incident. There is no general law that can be made applicable because the situation will always vary from case to case. The philosophy behind the award of compensation as far as pain and suffering is concerned, proceeds on the footing that even though no monetary loss is occasioned because of this situation that it is because of the psychological aspect which the law takes cognisance of and which has been dealt with in some detail in Saha's case, where both the English and Indian law has been analysed in some detail that a Court is obliged to compensate the party to whom such pain and suffering may have been caused, to the extent that is necessary. It is ultimately this principle which prevails and it is for this reason that both in Saha's case as also in the *Angels Travels'* case, that the Court refused to accept the contention that no compensation was admissible under this head. To

my mind, the pain and suffering may get aggravated if the claimant happens to be present when the gory incident did take place and there is no dispute about the fact that these factors could get extenuated in a case where the victim undergoes a long period of hospitalisation, treatment etc. As rightly observed by the Division Bench of this Court in Angels Travels' case, the bonds that exist between the claimant and the deceased, if they happen to be close relatives or a spouse, cannot be ignored while assessing this head of damages. The immense mental trauma which a near relative undergoes when the shocking distressing news is received that the person who was alive and healthy very shortly earlier has suddenly been killed and what follows thereafter, even though during a short period of time is pain and suffering of an immensely high gravity which to my mind not certainly qualifies for the award of compensation.

6. The principles on the basis of which compensations have been awarded have been growing and have been modified over the years, some of them have been discarded and some new concepts have been provided to activate the law. It shall therefore be no argument to say that for certain reasons, only small amounts be awarded under a particular head because to my mind, if the head is justified it must qualify for compensation.

7. I do however concede, as pointed out by the appellants' learned Advocate that the Court awarding compensation should not mechanically split up the different heads for purposes of consideration which thereby inevitably gives rise to the argument that the heads are essentially overlapping which in fact they are and that therefore, even something that has been awarded under one head gets disqualified under the other. Since that procedure has been followed in this case, the question has been raised and perhaps justifiably by the appellants' learned Advocate that even if the claimant did qualify for compensation under this head having regard to the facts of the case, that the figure of Rs. 30,000/- that was awarded was excessive. There is nothing on record to show the degree of anguish and one ordinarily presumes that the young husband was in fact immensely shocked and aggrieved in relation to the major head of pain and suffering. However, he has been compensated otherwise and on a careful assessment of the material in this case, I am of the view that an amount of Rs. 10,000/- under this

head would have been more than fair and justifiable.

8. The next head of dispute is with regard to the award of a sum of Rs. 20,000/- under the ground of loss of expectancy of life. The argument however proceeds on the footing that where the Court assess the loss of estate at Rs. 10,000/-, that it was totally unjustified to carve out a separate head and award an amount of Rs. 20,000/- under the head of loss of life expectancy. In other words, what the learned Advocate submitted was that quite apart from the loss of earning capacity etc., that when a notional assessment is drawn in relation to the loss of estate, it really means translating into money terms what one is deprived of as a result of the death. This has been assessed separately at Rs. 10,000/- and the learned Advocate submits that the loss of life expectancy therefore is virtually a duplication of the ground from some other head and therefore requires to be set-aside. In reply, the respondents' learned Advocate has relied on a Decision of the Supreme Court reported in I.L.R. 1994(2) KAR 969 3. General Manager, Kerala State Road Transport Corporation v. Mrs. Susamma Thomas, wherein, the Supreme Court had occasion to uphold this separate head. It is true that as pointed out by the appellants' learned Advocate, this particular aspect of the matter did not come up specifically either for discussion or consideration in that Decision. The limited ground on which it is relied upon by the respondents' learned Advocate is because in that case, the Supreme Court did award Rs. 15,000/- under a separate head. He has however placed reliance on a Division Bench Decision of this Court reported in 1990(3) Kar.L.J 278 4. Karnataka State Road Transport Corporation v. Smt. Jayalakshmi and Ors., wherein, after applying the multiplier method and awarding the compensation under the head of loss of earning, the Court did confirm the award of Rs. 5,000/- under the head 'loss of life expectancy'. Respondents' learned Advocate therefore submits that in appropriate cases, it would be permissible to make such an award.

9. In the present instance, it is the sum of Rs. 20,000/- that is awarded under the head of loss of life expectancy that is called into question principally because the loss to the estate of Rs. 10,000/- has been separately granted. The real issue is whether this is an act of duplication and secondly, whether the two heads would be justifiable. To my mind, the two concepts are distinct and separable. Loss to

estate is basically a notional assessment of what one may reasonably assume to be the financial benefits that would have accrued to the estate at the present point of time had the deceased continued to earn. The loss of earnings in future which basically goes into the aspect of dependency is a different head from the over all assessment of the contribution to the estate by the deceased person which is a slightly larger or broader concept. On the ground of life expectancy, the Court looks into another angle of the matter which normally comes under the head of loss of consortium and in so doing, the Court takes into account the concept of unwritten factors such as the direct personal benefits that would have accrued to the spouse of the other person had the deceased continued to be alive. To argue therefore that they form one and the same concept is incorrect and to my mind, if they are separable and distinct, then they could qualify in appropriate cases for the award of separate compensation. In this case, it is demonstrated that the claimant was an ordinary middle class person. His wife was a Basket Weaver. Obviously, the reason why she was working is because of economic necessity. Having regard to the status in life of the couple, the Court has to consider for determining from a variety of aspects the award of monetary compensation under heads such as loss of earning, loss to the estate etc., on economic considerations, whereas, this particular head would essentially qualify for classification under the head of domestic consideration. I do feel that there is a discretion in these cases and having regard to the facts of the present case that there also was a justification in the award of compensation. Necessarily, the Court has to do a broad judicial appraisal of all these factors for purposes of deciding as to what would have been a reasonable compensation.

10. The unusual aspect of this case is that the appellants' learned Advocate submitted that the investigation did indicate that the present claimant who was a young man and who had lost his wife and child has remarried thereafter and he therefore submitted that while the Tribunal was assessing the aspect under this head, that the Court should not have overlooked this crucial aspect of the matter. Nobody can find fault with the claimant for having remarried after the tragic incident, insofar as after having lost his young wife he was fully entitled to remake his life. However, while assessing damages in terms of monetary value to my mind, without meaning any disrespect to the claimant, it could certainly be argued

that the claimant cannot justify asking for a separate head under the ground of loss of life expectancy only because but for the incident in question the deceased wife would have continued to provide him with consortium for several years. That position is highly theoretical whereas the facts indicate otherwise. At the very highest this head would be sustainable only for that limited period of time during which he was deprived of the companionship of his wife. On the unusual facts of the case therefore, though the head is admissible, admittedly it will have to be scaled down from Rs. 20,000/- to Rs. 5,000/-.

11. Lastly, I need to observe that Tribunals and Courts while dealing with this class of cases are required to be cautious and judicious even with regard to the application of well settled principles. The appellants' learned Advocate did argue with considerable justification that the approach of the Court which is necessarily helpful and to a target extent generous while dealing with such incident where the bread-winner of the family has died is required to be necessarily modified while dealing with a different type of case where the person who has died is not the sole bread winner and where no young dependants are left behind. That aspect of the matter to my mind, requires to be taken into consideration because even the principles of law that can be culled out from Judicial Decisions are required to be applied to each case with a degree of circumspection and justification.

12. The Appeal therefore partially succeeds. The award passed by the Tribunal stands modified to the extent that the compensation awarded stands reduced by a sum of Rs. 35,000/-. The rest of the directions in respect of interest, costs etc., are upheld.

13. The amount of Rs. 50,000/- deposited with the M.A.C.T. shall be permitted to be withdrawn by the respondent-1. The Insurance Company has deposited a further amount of Rs. 25,000/- in this Court. The Office shall refund that amount to the Insurance Company. In the light of the modified award, a fresh computation shall be done with regard to the over-all amount payable to the respondent-1 and the Insurance Company shall deposit the balance amount with the Tribunal within a period of 8 weeks from today. The respondent-1 shall be permitted to withdraw the amount immediately on deposit. In the circumstances of the case, there shall

be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com