
(2015) 01 KAR CK 0071

Karnataka High Court

Case No: MFA No. 4260/2013 (MV)

Tulasamma and Others

APPELLANT

Vs

Mariyappa and Others

RESPONDENT

Date of Decision: Jan. 19, 2015

Acts Referred:

Motor Vehicles Act, 1988 - Section 166

Citation: (2015) 01 KAR CK 0071

Hon'ble Judges: N.K. Patil and G. Narendra, JJ.

Bench: Division Bench

Advocate: N. Gopalkrishna, Advocate, for the Appellant

Final Decision: Partly Allowed

Judgement

N.K. Patil, J.

This is claimants' appeal filed against the impugned judgment and award dated 23rd December 2011 passed in MVC No.

7633/2010 on the file of the VIII Additional Judge, Motor Accident Claims Tribunal-V Court of Small Causes, Bangalore City, (hereinafter

referred to as Tribunal" for short), for enhancement of compensation.

2. The Tribunal by its judgment and award has awarded a sum of Rs. 5,32,500/- under different heads with interest at 6% per annum from the

date of petition till the date of deposit, as against the claim of the claimants for a sum of Rs. 25,00,000/-, on account of the death of the deceased

late Sri Rajanna @ Rajappa, in the road traffic accident.

3. In brief, the facts of the case are:

The 1st appellant is the wife, 2nd and 3rd appellants are minor children of the deceased and 4th appellant is the mother of the deceased and they

have filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation of Rs. 25,00,000/- on account of the death

of the deceased in the road traffic accident, contending that, when the deceased by name Rajanna @ Rajappa on 18.09.2010 at about 7.00 p.m

was going on Hero Honda motorcycle bearing registration No. KA.08.K.4449, near Abbenahalli village, on Malur-Abbenahalli road, one Tractor

and Tractor bearing registration No. KA.07.T.4711 came in a rash and negligent manner and dashed against the deceased. Due to impact of the

said accident, he sustained grievous injuries and succumbed to the injuries on the spot and due to the injuries sustained in the accident, pillion rider

died at the spot. It is the further case of the appellants that, the deceased was aged about 36 years at the time of accident, hale and healthy and

was a mason getting income of Rs. 9,000/- p.m and looking after the welfare of the family and due to his untimely death, they suffered socially and

economically. The said claim petition had come up for consideration before the Tribunal. The Tribunal after appreciating the oral and documentary

evidence and other material available on record, has allowed the claim petition in part and awarded the compensation of Rs. 5,32,500/- under

different heads with interest at 6% p.a., from the date of petition till the date of deposit. Not being satisfied with the compensation awarded by the

Tribunal the appellants have presented this appeal, for enhancement of compensation.

4. The submission of the learned counsel appearing for the appellant at the outset is that, the Tribunal has failed to assess the just and reasonable

income of the deceased and the income of Rs. 3,500/-per month is on the lower side since the accident has occurred on 18.9.2010 and by

profession he was mason and proper multiplier applicable is 15 and proper deduction applicable is 1/4th towards personal expenses of the

deceased. Therefore, he submitted that the income of the deceased may be reassessed at Rs. 10,000/-p.m. Due to his un-timely death, claimants

have lost their only breadwinner and facing great mental shock and monetary loss and also submitted that the rate of interest awarded at 6% per

annum is also on the lower side since the accident is of the year 2010 and the same may be enhanced to 9% to 10% per annum. Therefore, the

impugned judgment and award passed by the Tribunal is liable to modified.

5. Per contra, the learned counsel appearing for the Insurer inter alia contended and substantiated that, the impugned judgment and award passed

by the Tribunal is just and proper. It is passed after considering the oral and documentary evidence and interference by this Court is not called for.

However, he submitted that the impugned judgment and award passed by the Tribunal may be modified in accordance with law.

6. After considering the submissions made by the learned counsel appearing for both the parties and on perusal of the material available on record,

including the impugned judgment and award passed by the Tribunal, the only point that arise for consideration is:

Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

7. It is not in dispute that the deceased died in the road traffic accident. Further it is not in dispute that, the deceased was aged about 36 years at

the time of accident, hale and healthy and looking after the welfare of the appellants. The claimants are none other than the wife, minor children and

mother of the deceased, who have lost their future security due to his untimely death.

Having regard to the age, avocation and year of accident, we

can safely reassess the income of the deceased at Rs. 6,500/- per month to meet the ends of justice as against the income assessed by the

Tribunal. Out of it, if 1/4th is deducted towards the personal expenses of the deceased, it comes Rs. 4,875/-. In the light of the decision in Sarla

Verma's case, the appropriate multiplier applicable is 15. Accordingly, the appellants are entitled towards loss of dependency at Rs. 8,77,500/-

(Rs. 4,875x12x15).

8. Considering the facts and circumstances of the case that, the wife has lost her life partner at an young age and the minor children have lost the

love and affection, inspiration and guidance in life and mother has lost future security, we deem it fit to award Rs. 50,000/- towards loss of

consortium, Rs. 25,000/- towards loss of estate, Rs. 40,000/-towards loss of love and affection at the rate of Rs. 10,000/- to each appellant and

Rs. 25,000/-towards funeral and transportation expenses. In all, the claimants are entitled for Rs. 10,17,500/- as against Rs. 5,32,500/- awarded

by the Tribunal.

9. Having regard to the facts and circumstances of the case as stated above, appeal is allowed in part. The impugned judgment and award passed

by the Tribunal dated 23rd December 2011 in MVC No. 7633/2010 is hereby modified. The total compensation payable comes to Rs.

10,17,500/- as against Rs. 5,32,500/- awarded by the Tribunal. There will be an enhancement of Rs. 4,85,000/- with 8% interest per annum.

The 2nd respondent-Insurer is directed to deposit the enhanced compensation of Rs. 4,85,000/- with interest at 8% p.a., from the date of petition

till the date of realisation, within three weeks from the date of receipt of a copy of this judgment.

The respondent No. 2-Insurer is directed to deposit the enhanced compensation with interest at 8% p.a., from the date of petition till the date of

realization, excluding interest for the delayed period of 395 days in filing the appeal, within three weeks from the date of receipt of a copy of this

judgment and award.

Out of the enhanced compensation, Rs. 1,00,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or

Scheduled Bank, in the name of the 1st appellant/wife for a period of ten years and renewable for another ten years, with liberty to her to withdraw

the interest accrued on it.

Rs. 1,00,000/- each with proportionate interest shall be invested in the name of 2nd and 3rd appellants till they attain the age of 30 years with

liberty to the 1st appellant to withdraw the periodical interest accrued on it till they attain the age of 21 years for their welfare and thereafter they

are at liberty to withdraw the interest accrued on it periodically.

Rs. 1,00,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, in the name of the 4th

appellant/mother for a period of five years and renewable for another five years, with liberty to her to withdraw the interest accrued on it.

The remaining Rs. 85,000/- with proportionate interest shall be released in favour of the 1st and 4th appellants, immediately, on deposit by the 2nd

respondent-Insurer in equal proportions.

Draw the award, accordingly.