

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF NOVEMBER, 2013

:PRESENT:

THE HON'BLE MR.JUSTICE N.K.PATIL

AND

THE HON'BLE MR.JUSTICE RUDIHAL R.B.

M.F.A.No.4624 OF 2010 (MV)

Between:

1. Smt. Sharadha,
W/o. Late R.D. Nagabhushan,
Aged about 35 years.
2. Kumari R.N.Vijayashree,
D/o. Late R.D. Nagabhushan,
Aged about 16 years.
3. Kumari R.N.Sushmashree,
D/o. Late R.D. Nagabhushan,
Aged about 13 years.
4. Kumari R.N.Nayanashree,
D/o. Late R.D.Nagabhushan,
Aged about 12 years.
5. Smt. Mari Nanjamma,
W/o. Late R.K.Doddaiah,
Aged about 73 years.

Appellant Nos. 2, 3 & 4 are minors,
Duly rep. by their mother i.e.,
Appellant No.1 as natural guardian.

All are R/at. No.47,
17th 'B' Cross,
Papaiah Garden,
KHB Colony,
Bangalore-79.

...Appellants

(By Sri. Srikanth.M, for Sri. Guru Ganesh Associates)

And :

1. The Oriental Insurance Co., Ltd.,
No.1188, I Floor, Ragigudda
Temple Main Road,
26th Main Road,
Jayanagar 9th Block,
Bangalore-69.
2. Sri. S.N.Balasubramaniam,
S/o. Late M. Shamanna,
No.1, AGA Garden,
Food Gowdan Road,
A.T.Halli Layout,
Shanthinagar,
Bangalore-27.

...Respondents

(By Sri. K.K. Vasanth, Advocate for R1;
Sri. Dayanand.B.Patil, Advocate for R2)

This MFA is filed U/S 173(1) of MV Act against the judgment and award dated: 16/10/2009 passed in MVC No. 4698/2008 on the file of the XVIII Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal-4, Bangalore (SCCH-4), partly allowing the claim petition for compensation and seeking enhancement of compensation.

This M.F.A. coming on for Admission this day,
N.K. PATIL J, delivered the following:

:JUDGMENT:

This appeal by the appellants-claimants is directed against the impugned judgment and award dated 16/10/2009 passed in MVC No.4698/2008, by the XVIII Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal-4, Bangalore (SCCH-4), (hereinafter referred to as 'Tribunal' for short), for enhancement of compensation.

2. The Tribunal by its judgment and award has awarded a sum of ₹5,69,000/- 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 appellants for a sum of ₹37,00,000/-, on account of the death the deceased Sri. R.D.Nagabushan, in the road traffic accident.

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

The appellant No.1 is the wife, appellant Nos. 2 to 4 are the children and appellant No.5 is the mother of the deceased Sri. R.D.Nagabushan. They filed a claim

petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the respondents, on account of the death of the deceased in the road traffic accident, contending that, on 2.6.2007 at about 6.45 p.m. when the deceased had parked his taxi No.KA.02.D.2520 near M.S. Bar and Restaurant and was standing right side of his taxi, at that time, all of a sudden, the driver of the Mini Lorry bearing No.AP.03.T.6899 came from back side with high speed in a rash and negligent manner and dashed against the taxi and also to him. As a result, he sustained grievous injuries. Immediately, he was shifted to St. John's Hospital, Bangalore, where he took treatment as inpatient from 2.6.2007 to 14.6.2007 and he succumbed to the injuries on 14.6.2007 at 4.45 a.m.

4. It is the further case of the appellants that, deceased was aged about 42 years, hale and healthy prior to the accident and car driver by profession and earning ₹10,000/- per month and looking after the

welfare of the family by contributing his entire earnings to the family. Due to his untimely death, appellants have suffered financial loss as they have lost their bread earner, apart from mental shock and agony.

5. 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 file, has allowed the claim petition in part and awarded the compensation of ₹5,69,000/- under different heads with interest at 6% p.a., from the date of petition till the date of deposit.

6. Being dis-satisfied with the quantum of compensation awarded by the Tribunal, the appellants have presented this appeal, for enhancement of compensation.

7. We have heard the learned counsel appearing for the appellants and learned counsel for second respondent-Insurance Company.

8. The submission of the learned counsel appearing for the appellants, at the outset is that, the income of the deceased assessed by the Tribunal at ₹3,000/- per month is on lower side and it needs to be enhanced, on the ground that, deceased was a car driver by profession and earning ₹10,000/- per month and therefore, his income may be reassessed reasonably. Further, he submits that, the compensation awarded by the Tribunal towards conventional heads is on lower side and it needs to be enhanced. Therefore, he submitted that the impugned judgment and award is liable to be modified by awarding reasonable compensation towards loss of dependency and towards conventional heads..

9. As against this, 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 and after due appreciation

of the oral and documentary evidence available on file and therefore, it does not call for interference.

10. After hearing the learned counsel appearing for the parties and after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

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

11. The occurrence of the accident and the resultant death of the deceased are not in dispute. Further, it is not in dispute that deceased was aged about 42 years, hale and healthy prior to the accident, working as car driver and the dependants are his wife, three children and mother. Further, it emerges that, the Tribunal has assessed the income of the deceased at ₹3,000/- per month, which is on lower side and it needs to be enhanced. Having regard to the age and occupation of the deceased and the year of accident, we

re-assess his income at ₹4,500/- per month instead of ₹3,000/- per month as assessed by the Tribunal. Out of which, if 1/4th (₹1,125/-) is deducted towards the personal and living expenses of the deceased, his net income comes to ₹3,375/- per month. The proper multiplier applicable is '14' since the deceased was aged about 42 years. Therefore, we re-determine the loss of dependency at ₹5,67,000/- instead of ₹3,78,000/- as awarded by the Tribunal and accordingly, it is awarded.

12. Having regard to the facts and circumstances of the case, we award a sum of ₹45,000/- towards conventional heads such as, loss of consortium ;loss of love and affection, loss of estate and transportation and funeral expenses instead of ₹30,000/- awarded by the Tribunal. However, a sum of ₹1,61,000/- awarded by the Tribunal towards medical expenses is just and proper and therefore, it does not call for interference. Thus, in all, the appellants are entitled to a total

compensation of ₹7,73,000/- instead of ₹5,69,000/-. There would be an enhancement of ₹2,04,000/- with interest at 6% p.a., from the date of petition till its realization.

13. For the foregoing reasons, the appeal filed by the appellants is allowed in part. The impugned common judgment and award dated 16/10/2009 passed in MVC No.4698/2008, by the XVIII Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal-4, Bangalore (SCCH-4), is hereby modified, awarding a sum of ₹2,04,000/- with interest at 6% p.a., from the date of petition till its realization, in addition to the compensation awarded by the Tribunal.

The 1st respondent-Insurer is directed to deposit the enhanced compensation of ₹2,04,000/- with interest at 6% p.a., from the date of petition till the date of realization, within a period of three weeks from the date of receipt of a copy of this judgment.

Immediately on deposit by the Insurer, out of the enhanced compensation of ₹2,04,000/-, a sum of ₹1,00,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, in the name of appellant No. 1 for a period of ten years and renewable by another ten years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

A sum of ₹40,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, in the names of each of the appellant Nos. 3 and 4, till they attain 30 years, with liberty reserved to the appellant No. 1 to withdraw the interest accrued on it, periodically, for the welfare of appellant Nos.3 and 4 till they attain 21 years and from 22 years to 30 years, they are at liberty to withdraw the interest accrued on it periodically.

The remaining sum of ₹24,000/- with proportionate interest shall be released in favour of the appellant Nos.1 and 5 in equal proportion immediately.

Draw the award, accordingly.

SD/-
JUDGE

*tsn**

SD/-
JUDGE