

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 28th day of September, 2006

BEFORE


THE HON'BLE MR. JUSTICE N KUMAR

MFA No. 315 of 2005

BETWEEN:

- 1 Smt. Mangamma
A/a 53 years
W/o late Pasupuleti Lakshmanna
- 2 Pasupuleti Nagappa
A/a 33 years
s/o late Pasupuleti Lakshmanna
- 3 Nagaraja
A/a 28 years
s/o late Pasupuleti Lakshmanna
- 4 Anantha
A/a 25 years
s/o late Pasupuleti Lakshmanna
- 5 Lakshmiddevamma
A/a 23 years
s/o late Pasupuleti Lakshmanna

All are residents of Agrahara
Arabiddagaripalli
Nimmalapalle Mandal
Madanapalle Taluk
Chittoor District



Andhra Pradesh
Now r/at Sonnasettihalli
Chintamani Taluk

...Appellants

(By Ms. S. Susheela, & Chethan Prasad.P
Advocates)

AND:

1 Mohammed Ibrahim
A/a 41 years
S/o late Mohammed Yousuf
No.26, Old Bamboo Bazaar Road
Shivaji Nagar
Bangalore


2 Srinivasareddy
A/a 28 years
S/o Venkataramanareddy
Pathakote Village
Lakshmipura Post
Srinivasapura Taluk
Kolar District

3 The New India Assurance Co. Ltd.,
No.47, Gopal Complex, II Floor
Bazaar Street
Yeshwanthpur
Bangalore - 560 022

... Respondents

(By Sri M S Mandanna & Associates, Advocate for R3;
Respondent-1 and 2 are served)

This MFA filed under section 173 (1) of MV Act against the judgment and award dated 19-7-2004 passed in MVC No.70/2001 on the file of the Civil Judge (Sr.Dn.) and JMFC, Chintamani, partly allowing the claim petition for compensation and seeking further enhancement of compensation.



This MFA coming on for admission this day, the Court delivered the following :

J U D G M E N T

It is a claimant's appeal seeking enhancement of compensation for the death of head of the family.

2. The first claimant is the widow and claimants-2 to 5 are the children of deceased one Pasupuleti Lakshman. On 30.09.2001 at about 3.20 pm, when the deceased was proceeding towards Talagavara, a Canter bearing Regn.No.KA 25 1092 came from Bangalore side in a rash and negligent manner and dashed against deceased Lakshman. As a result, he sustained grievous injuries to head, legs and body. He was immediately taken to Government Hospital at Chintamani for treatment, where he was declared dead.

3. The deceased was an agricultural coolie, aged about 60 years. He was earning Rs.100-00 per day. The claimants have preferred this petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of




Rs.4,00,000-00 for the death of deceased Lakshmanna. To the said claim petition they have made the owner, the driver of the Canter and the Insurance company which had insured the said vehicle as parties. The owner and the driver did not appear before the Court and they were placed *exparte*. Therefore, the Insurance company filed detailed statement contesting the claim on all grounds. However, they did not dispute the Insurance coverage.

4. On the aforesaid pleadings, the Tribunal framed the following issues:

"1. Whether the petitioners prove that they are the legal heirs of deceased Lakshmanna who died in road traffic accident?"

2. Whether the petitioners prove that deceased Lakshmanna died on 30.09.2001 at about 3.20 p.m. near Thalagavara due to rash and negligent driving of the driver of Canter bearing registration No.KA 25 1092?"

3. Is the petitioners are entitled for compensation. If so, from whom and how much?"




4. What order and award?

5. The claimant examined the widow as P.W-1. Another witness was examined as P.W-2 and produced 9 documents which are marked as Ex.P-1 to 9. On behalf of respondents, no evidence was adduced.

6. The Tribunal, on consideration of the aforesaid material, held that the accident was on account of rash and negligent driving by the driver of the Canter in which the deceased sustained bleeding injuries due to which later he succumbed. Therefore, actionable negligence is established and the claimant is entitled to compensation.

7. In assessing the loss of dependency, the Tribunal took note of the fact that the deceased was aged 60 years, he was an agricultural coolie and the accident was of the year 2001. The Tribunal assessed Rs.50-00 as his income per day and applied the correct multiplier of 10 and after deducting 1/3rd towards his personal expenses, awarded a sum of



Rs.1,20,000-00 as compensation under the head of loss of dependency. It awarded a sum of Rs.3,000-00 towards funeral expenses, Rs.5,000-00 towards loss of consortium and Rs.5,000-00 towards loss of estate. Thus, in all a sum of Rs.1,33,000-00 was awarded as compensation.


8. Aggrieved by the said award of the Tribunal dated 19th July, 2004, the claimants are in appeal seeking enhancement.

9. The learned Counsel for the appellant contended that in the year 2001, the deceased was earning a sum of Rs.100-00 per day as coolie and the Tribunal was not justified in taking only Rs.50-00 as earning per day. Further he submitted that the amount awarded under conventional head is on the lower side and no amount is awarded under the head of love and affection to the children of the deceased. Therefore he submits that the claimants are entitled to substantial enhancement of compensation. ✓

10. I have gone through the judgment and award and the other material on record.

11. The deceased was aged 60 years. He was the head of the family. He was an agricultural coolie. The accident is of the year 2001. The Tribunal was in error in taking Rs.50-00 as earning per day. In my view, it would be appropriate to take Rs.75-00 as earning per day of the deceased. The Tribunal has applied correct multiplier and if Rs.75-00 is taken as the loss of earning per day, the claimants would be entitled to a sum of Rs.1,80,000-00 as compensation under the head of loss of dependency. Thus, he would be entitled to a sum of Rs.60,000-00 in addition to what is awarded by the Tribunal.

12. Rs.3,000-00 awarded towards funeral expenses is on the lower side. The claimants are entitled to another sum of Rs.2,000-00. Similarly, Rs.5,000-00 awarded under the head of loss of consortium is also on the lower side and the claimants are entitled to another sum of Rs.5,000-00 under the aforesaid head. The award of Rs.5,000-00 towards loss of



estate is also on the lower side and hence the claimants are entitled to an additional amount of Rs.5,000-00. The deceased has three children. Nothing is awarded to them under the head of loss of love and affection. Therefore, they are entitled to a sum of Rs.10,000-00. Thus, the claimants would be entitled to an additional compensation of Rs.82,000-00, in addition to what has been awarded by the Tribunal. Hence, I pass the following order:

Appeal is allowed in part. The claimants are entitled to a sum of Rs.82,000-00 as additional compensation in addition to what has been awarded by the Tribunal. The additional amount of compensation shall also carry interest at 6% from the date of petition till the date of payment. Parties to bear their own costs.

Sd/-
Judge

ksp/-