

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT GULBARGA

DATED THIS THE 16TH DAY OF APRIL, 2013

BEFORE

THE HON'BLE Dr.JUSTICE JAWAD RAHIM

MFA No.30909/2009(MV)

BETWEEN

1. NAGAPPA S/O IRAPPA HANEGAVE
AGE:44 YEARS
OCC: LABOUR
2. REKHA W/O IMMANUEL NADUVENODDI
AGE:24 YEARS
OCC: HOUSE HOLD
3. SANGEETA W/O SUBHASH
AGE:23 YEARS
OCC: HOUSE HOLD

ALL R/O: KADWAD
TQ AND DIST.BIDAR

... APPELLANTS

(BY SMT. ARATI BURKPALLI, ADV)

AND

1. BABA MIYAN S/O IBRAHIM SHAIKH
R/O DEVALGAN GONDA
TQ: DAUND, DIST: PUNE- 411001
MAHARASHTRA

OWNER OF THE MARUTHI VAN

2. THE NEW INDIA ASSURANCE CO., LTD.,
DIVISION OFFICE KARVE ROAD, PUNE
MAHARASHTRA, THROUGH ITS
DIVISIONAL MANAGER
DIVISION OFFICE, S.B.TEMPLE ROAD
GULBARGA

... RESPONDENTS

(BY SMT. SUMITRA H, ADV FOR R2
R1 SERVED)

THIS MISCELLANEOUS FIRST APPEAL FILED UNDER SECTION 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED 10.10.2008 PASSED IN MVC NO.205/2006 ON THE FILE OF THE PRL. CIVIL JUDGE (SR.DN) & MACT II BIDAR, PARTLY ALLOWING THE CLAIM PETITION AND SEEKING FOR ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR ORDERS THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

JUDGMENT

Claimants are in appeal seeking enhancement of compensation.

2. Heard. Perused the records.

3. The occurrence of accident on 29.04.2006 involving Maruthi van bearing Reg.No.MH-12/P-4181 and consequent death of one Naveen Kumar is not in dispute.

4. The finding of the Tribunal that accident was result of negligent driving of the driver of the Maruthi van and the validity of the insurance policy has reached finality as same is not brought in question by the insured or the insurer.

5. The claimants are dissatisfied as Tribunal has disbelieved their version that the deceased was a driver and had income of Rs.5000/- per month and batta Rs.75/- per day. The Tribunal took his income and fixed it at Rs.1200/- per month and on that basis quantified Rs.14,400/- annually and again subjected it to 50% deduction as he was bachelor and thus fixed multiplicand at Rs.7,200/- and granted at Rs.15,200/- towards loss of dependency.

6. As rightly urged by the appellant counsel the award is niggardly low against all norms for quantification of award in fatal accident.

7. Learned member of the Tribunal appears to have kept himself ignorant of the methodology approved for compensation in cases of victims who are employed in skilled job as driver, cleaner or the like. The notional income taken by the Tribunal is neither supported by the facts nor law. Thus entire award needs redetermination.

8. From the evidence on record, it is seen Naveen Kumar was working as a driver driving tractor bearing Reg.No.KA-38-T-973-974 and trailer owned by one Chandrappa. Ocular testimony of PW.1-Rekha proves her brother was working as a driver on the salary of Rs.5,000/- per month with Rs.75/- batta. No doubt it is questioned by the insurance company but they could not salvage in anything worthy to support their defence that he had no income at all, consequently there was no reason for the Tribunal to disbelieve her version which has stood

test of cross-examination and supported the claim. As the Tribunal has accepted the contention that victim was a driver, Tribunal could not have unreasonably taken his income at Rs.1,200/- per month. Therefore the income of the deceased to be fixed in consideration normal wages paid to persons engaged in driving commercial vehicle. The income of the deceased would not have been less than Rs.5,000/- per month and therefore in this case it is appropriate to take his income at Rs.5,000/- and as he was age of 30 years, 50% has to be added to proved income towards loss of future prospects which gives us Rs.7,500/- per month. The claimants are three in numbers and therefore towards his personal expenses it will be reasonable to deduct 1/3rd or 50%. The decision shall depend on the number of dependants.

9. On behalf of insurance once again it is contended that, amongst claimant, first claimant is father while claimants 2 and 3 are the sisters who are now married and well settled. Taking these factors, the contention of

insurance company to deduct 50% would be justified and hence 50% of Rs.7,500/- would be Rs.3,750/- per month annually it will be Rs.45,000/-. The age of the claimant No.1 is 42 years and the multiplier applicable would be '14'. It gives us Rs.6,30,000/- to which has to be added Rs.25,000/- towards loss of care and protection to first claimant; and Rs.15,000/- each to claimant No.2 and 3 towards loss of love and affection; Rs.25,000/- towards loss to estate and Rs.10,000/- towards funeral and other ceremonies.

In the result, the appeal succeeds in part and award of the tribunal is enhanced from Rs.1,35,200/- to Rs.**7,20,000/-** which shall carry interest at the rate of 6% as fixed by the tribunal. The insurance company shall discharge the award amount within 8 weeks.

The statutory amount in deposit is directed to be transmitted to the Tribunal for disbursement.

SD/-
JUDGE

sdu