

Karnataka High Court Smt Shashikala vs Gangalakshamma on 15 July, 2013
Author: N.K.Patil And B.Manohar 1

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 15TH DAY OF JULY 2013

PRESENT

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

AND

THE HON'BLE MR.JUSTICE B.MANO HAR

MFA.NO.136/2009(MV)

BETWEEN:

1. Smt.Shashikala, W/o.Late H.S.Ravi, Hindu, now aged 40 years.
2. R.Nithin S/o.Late H.S.Ravi, Hindu, now aged 20 years.
3. R.Nikhil, S/o.Late H.S.Ravi, Hindu, now aged 15 years.
4. R.Nishchal, S/o.Late H.S.Ravi, Hindu, now aged 11 years. 2

Appellants No.3 and 4 are minors and are represented by their mother as natural guardian.

Appellants 1 to 4 are residing at No.91, 1st Main Road, 4th Cross, Lakshminagara, Near Basaveshwaranagar, Bangalore - 560 079.

5. Sadappa, S/o.Honnurappa, Hindu, now aged 76 years.
6. Smt.Lakshamma, W/o.Sadappa, Hindu, now aged 69 years, Appellants 5 and 6 are r/at Kattamnallur, Bidarahalli Hobli, Hoskote Taluk, Bangalore Rural District.Appellants

(By Sri.T.C.Satishkumar, Advocate)

AND:

1. Gangalakshamma, W/o.B.T.Rangappa, Hindu, Major, R/at No.58, Bet-tahalli Sree Giri Post, Kudur Hobli, Magadi Taluk, Bangalore Rural District. 3

2. The Branch Manager, Iffco-Tokyo General Insurance Co., Ltd., No.28, 1st Floor, Citi Centre, Church Street, Bangalore-1. ... Respondents

(By Sri.A.C.Balaraj, Advocate for R.1, Sri.A.N.Krishna Swamy, Advocate for R.2)

This MFA is filed U/S.173(1) of MV Act against the

Judgment and award dated 18.8.2008 passed in MVC.No.6168/2007 on the file of the XIV Addl. Judge, Court of Small Causes, MACT, Bangalore, (SCCH.No.10), partly allowing the claim petition for compensation and seeking enhancement of compensation.

This Appeal coming on for Hearing this day,

N.K.PATIL, J., Delivered the following:

JUDGMENT

This is claimants appeal filed against the impugned judgment and award dated 18-08-2008 passed in MVC No.6168/2007 on the file of the IVX Additional Judge, Court of Small Causes, Motor Accident Claims Tribunal, Bangalore (SCCH.10) (hereinafter referred to as 'the Tribunal'), seeking enhancement of compensation. 2. The Tribunal by its judgment and award awarded a sum of Rs.7,85,000/- with interest at 6% p.a. from the date of petition till the date of deposit, on account of death of the deceased, in the road traffic accident. 3. The brief facts of the case are: Appellant No.1 is the wife, appellants 2 to 4 are children and appellants 5 and 6 are the parents of the deceased Late Sri.H.S.Ravi and they have filed a claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.33,90,000/- on account of death of the deceased in the road traffic accident contending that the deceased met with an accident on the ill-fated day i.e. on 14-12-2006 at about 11.00 p.m. on N.H.48 Kunigal-Bangalore Road near Marulasiddaiahna Palya Gate within the limits of Nelamangala Police Station, due to the rash and negligent driving by the driver of the bus. The deceased was a pillion rider in the motorbike bearing registration No.KA-03/EX-4147. Due to the accident, the deceased sustained grievous injuries. Immediately, he was admitted to the hospital. However, after six days of the accident, the deceased succumbed to injuries. In spite of providing all medications, he could not be saved and he died on 20-12-2006. On account of untimely death of the deceased, the claimants filed a claim petition against the owner and Insurer of the vehicle. 4. The appellants have contended that the deceased was aged about 45 years, doing transport business of supplying the newspapers from one destination to another. Further contended that he was hale and healthy prior to the accident. He was paying tax and has filed

income tax returns and he is the only earning member of the family. On account of untimely death of the deceased, the wife has lost her husband, appellants 2 to 4 have lost their father's love and affection, inspiration and guidance at the young age and appellants 5 and 6, parents of the deceased have lost their son who was their security and aspiration and their future is jeopardised. Due to the untimely death of the deceased, the social and economic condition of the family is affected. Further contended that the deceased had filed income tax returns, showing the gross income as Rs.1,08,713/- for the assessment year 2005-06 and Rs.2,02,911/- for the assessment year 2006-07. Taking all these factors into consideration, the claimants filed the claim petition seeking compensation. 5. The said matter had come up for consideration before the Tribunal. The Tribunal in turn, after appreciating the oral and documentary evidence and other relevant materials available on file, has allowed the claim petition in part and awarded the compensation of Rs.7,85,000/- under different heads, with interest at the rate of 6% p.a. from the date of filing of the claim petition till realization. Being dissatisfied with the compensation awarded by the Tribunal, the appellants have presented this appeal for enhancement of compensation. 6. We have heard the learned counsel appearing for the appellants and respondents. 7. The submission of the learned counsel appearing for the appellants is that the Tribunal has erred in not awarding reasonable compensation towards loss of dependency and conventional heads and what is awarded is very meager and requires to be enhanced. Further, the Tribunal has also erred in not awarding the medical expenses in full amounting to Rs.1,82,150/- and what is awarded is only Rs.1,00,000/-. It is further submitted that the deceased was an income tax assessee and was paying income tax. He has also filed income tax returns for the assessment years 2005-06 and 2006-07 showing the total income as Rs.1,08,713/- and Rs.2,02,911/- respectively. The total amount works out to Rs.3,11,624/- and the average works out to Rs.1,55,812/- out of which, professional tax of Rs.2,400/- has to be deducted. 8. As against this, Sri.A.N.Krishna Swamy, learned counsel appearing for the Insurer, inter alia, contended that impugned judgment and award was passed by the Tribunal after due consideration of the oral and documentary evidence and other materials available on file and the same does not call for interference by this Court. 9. After careful consideration of the submissions made by the learned counsel appearing for both the parties and on perusal of the materials available on record, including the impugned judgment and award passed by the Tribunal, the only point that arise for consideration in this appeal is: Whether the quantum of compensation awarded by the Tribunal is just and reasonable? 10. Occurrence of the accident resulting in the death of deceased in the road traffic accident is not in dispute. Further, it is not disputed that the deceased was aged about 45 years as on the date of the accident and was doing transport business of supplying newspapers from the Head Office to other destinations as per the agreement entered into between the Corporate of Newspapers and himself. It is also not in dispute that the deceased was an income tax assessee and he has filed income tax returns for the assessment years 2005- 06 and 2006-07. The deceased met with an accident on 14-12-2006 and sustained grievous injuries. In spite of giving all medications,

he could not be saved. The deceased succumbed to injuries after six days of the accident and the appellants have spent huge amount towards, conveyance, attendant charges, medical bills etc. As rightly pointed out by the appellants, the deceased had filed income tax returns as per Ex.P36, for the assessment years 2005-06 and 2006-07 with gross total income of Rs.1,08,713/- and 2,02,911/- respectively, including the income from house property. The total of both the years comes to Rs.3,11,624/-. Average of it comes to Rs.1,55,812/-. If 10% of the said amount i.e, Rs.15,581/- is deducted towards income tax, the remaining amount comes to Rs.1,40,231/-. Further, Rs.2,400/- has to be deducted towards professional tax and the net amount comes to Rs.1,37,831/-. Out of which, income from the house property is shown as Rs.20,000/- for the assessment year 2006-07. Therefore, the said amount should be deducted out of the said income and the net amount comes to Rs.1,17,831/-. Since the claimants are 6 in number, viz wife, children and parents of the deceased, 1/4th should be deducted towards personal expenses as per the decision in the case of SARLA VERMA AND OTHERS v/s DELHI TRANSPORT CORPORATION LTD., AND ANOTHER reported in 2009 ACJ 1298, after deduction of which, the remaining amount comes to Rs.88,373/-. The deceased was aged about 45 years and the appropriate multiplier to be adopted is 14. Accordingly, we re-determine the loss of dependency at Rs.12,37,222/- as against Rs.6,50,000/- and accordingly, it is awarded. 11. Having regard to the facts and circumstances of the case, we deem it fit to award Rs.45,000/- towards conventional heads such as, loss of estate, loss of love and affection, loss of consortium, transportation of dead body and funeral expenses. The Tribunal has erred in awarding only Rs.1,00,000/- towards medical expenses. However, after going through the original records and the medical bills, learned counsel for both the parties fairly submitted that the appellants are entitled to a sum of Rs.1,87,150/- towards medical expenses as per the medical bills. In the light of the submission made by the learned counsel appearing for both the parties and having regard to the medical bills produced by the appellants, we deem fit to award a sum of Rs.1,87,150/- as against Rs.1,00,000/- awarded by the Tribunal. The appellants are entitled to total compensation of Rs.,14,69,372/- as against Rs.7,85,000/- awarded by the Tribunal. There will be enhancement of Rs.6,84,372/- with interest at 6% from the date of petition till realization. 12. Having regard to the facts and circumstances of the case as stated above, the appeal filed by the appellants is allowed in part and the impugned judgment and award dated 18-08-2008 in Court of Small Causes, MVC No.6168/2007 passed by the XIV Addl. Judge, Court of Small Causes, MACT, Bangalore, (SCCH.No.10) is modified by awarding enhanced compensation of Rs.6,84,372/- with interest at the rate of 6% p.a. from the date of filing of the claim petition till realization. The second respondent-Insurer is directed to deposit the enhanced compensation of Rs.6,84,372/- with interest at 6% p.a. from the date of petition till realization, within three weeks from the date of receipt of a copy of this judgment. Out of the enhanced compensation, Rs.2,00,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalised or Scheduled Bank in the name of the first appellant for a period of 10 years and renewable for another ten years, with

liberty to her to withdraw the interest accrued on it periodically. Rs.50,000/- each with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank in the name of appellants 5 and 6 for a period of 5 years renewable for another 5 years with liberty to them to withdraw the interest periodically. Rs.1,00,000/- with proportionate interest shall be deposited in the name of the 4th appellant in the Fixed Deposit in any Nationalized or Scheduled Bank for a period of 30 years with liberty to the first appellant to withdraw the interest accrued on it periodically till the 4th appellant attains the age of 21 years and from 22 years to 30 years, he is entitled to withdraw the interest periodically. Rs.50,000/- each with proportionate interest shall be invested in the name of appellants 2 and 3 for a period of 10 years renewable for another 10 years with liberty to them to withdraw the interest periodically. The remaining amount of Rs.1,84,372/- with proportionate interest shall be released in favour of the first appellant and appellant No.6, in equal proportion, immediately, on deposit by the Insurer. Office is directed to draw the award, accordingly. Sd/- JUDGE Sd/- JUDGE mpk/-*