

Karnataka High Court

Munirathnamma vs K G Venkateshwarulu on 25 September, 2008

Author: Subhash B.Adi

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 25375 DAY OF SEPTEMBER 200f\$""<_

BEFORE

Smt. Munirathnamma,

W/O. Late Ashwathappa,

Aged about 4-8 years,

Residing at No.151/12, ~ -- .V " V

Behind James English " _

Avalahalli, Baugalon: SouthfI'_aiu,k» __ L . _ APPELLANT

(By Sue. Shripad V. Amy': if A.

AND:

1. K. G:,'i'i?§ia1:a§§:sh§=§ia3V"r..%' I

S/o. ' '

N0-BIA-58. B, camp,%%. %

Kuenook =A'1ld.;ap:ra_adtsh,' "

V 2. Tm: NafionalV"in:é.fijafi§:c Co. Ltd.,

_ Iiuin-391 Branch,' Complex,

, *{ }a1)dlu'13ag"a:, Kurniil,

._ Byits'vManagt:1'L .. RESPONDENTS

{By Sm s. ziegde Mulkhand, Adv. for 122) 1 'mas "Misc. First Appeal is filed under Section 173(1) of "M.V.A.:t'against the judgment and award cit. 16.01.2006 passed MVC No.700/3000 on the file -of the II Add}. Civil Judge '(VS:r_...: Dix), MAC'i'~V, Bangalore Rural Dist, Bangalore, partly the claim petition' for compensation and sccidng A " enhancement of compensation.

This Appeal coming on for Hearing this day. the Court éelivered the following:

.2-

J U Q G g Q E I This is an appeal by the claimant for enhancement of compensation.

2. Claimant is mother of the deceased. =.:§ra;...

travelling in a tempo. when the ° Ammavarapalli. a lorry bearing NoeAAA«t\$'7§SV.d□vee e negligent manner dashed 'Dee u1V;V1VV1e said impact, the elajmanfs 8o3\$' and was taken to the Government and from there he was shifted inpatient from 17.9.2000 to he succumbed to the injury.

3. It ie ateted' was aged about 23 years and was »earnA mt g. per month. The Tribunal Zeee□3ide1i:{ig5}* .the eneemfeund that, the income of the deceased

-. however. deducting 50% of the income

-- calculated the loss of dependency.

'A " --*¢-.e.. 'al. 'he"on]y contention urged by the learned Coamsei for the is that, the deduction of 50% is unreasonable. Though T was bachelor. however. it is not neecessazy that the xe1ecIue1ion could be always 50%.

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5. in this case. the deceased was aged 23 years and claimant being mother of 42 years and deceased could pct have been expected to spend more than 1/3*" of the 'UH:

submitted that, 5096 (ieduction. is adopted on the bacis of a Division Bench of this Court reported ILRM V' ' in the matter of GULAM KHADER & msumzvce CQLTD. & ANO?¥IE. 'l._V'w};erein cut * the earlier decision in case cf bachelcjf 12 as under: .. V 1 .

'12. Invso fa3"""asf baclaelcrs concerned, normally, is; fpatsqfnal and living expenses ii.i's cacnsidered a bachelor will be more as acquired a wife and children and'»-!lsgrefc.~re,-. tend 'to more on himself '!?1erc"lis«.¢;L'«;o 'of the bachelor getting manfied in' '□ng, it: which event also the con111?)uicn!'c i} 'r,e.'pcz1*ei2.l/ siblings is likely to be cut drac\$iiically;w.. subject 29 evidence to the contrary, e4!\$zevfatlaerwil£_~i1az:e his own income and will In)! be corwidered ca. defemlcmt and only the mother alcbjrte "w:'lI mn.f3_idered as a. Similarly A eezbjéci. tcxa.-pidermce to the contrary, brothers and skiers . are noi«_cQnsidered as dependents, because they will eviiaziejgentend and earning, or married, or be ~. cnthe father. Thus even if the deceased is Qunrived by parents and siblings, the fam□y is taken as cxirastlr-:ltingf;"of only two members, that is the bachelor and the mother, who is considered as the cnly .. dafetzeiaxzi, and 50% is treated as the personal and Vlizkfng expenses of the bachelor and 50% as the Vamiribution to thefamxly. However, where family of the gbClC}I8tOT was latge and defendant on the income of £129

-Ideceased, as in at case where he has a widowed mcther and large number of younger new-eaming sisters or brothers, the contribution to the family will be taken either as two-third, or calculated by adopting unit method.' .41..

This Court has held that, 50% could be deducted towards personal expenses. Learned Counsel submitted that, against the said decision, a special leave was filed before the Apex Court in a decision reported in (SZ(8)-4) matter of BILKISH vs. UNITED STATES OF AMERICA. The Apex Court has now reasonable deduction instead decision, he submitted that, the said decision is unreasonable. The Apex Court

6. Learned Counsel submitted that, in cases of deduction given is 50% and the has considered the said matter and the deduction is reasonable in case of bachelor. The Apex Court in the case of GULAM KHADER (supra) fell for the Apex Court and the Apex Court against the of GULAM KHADER in the decision of has observed at para-4 as under:

After hearing learned counsel for the parties, we are of the opinion that the view taken by the High Court and the Tribunal is not correct. The incumbent was a bachelor and he could not have spent more than 1/3 of his total income for personal use and rest of the amount earned by him would certainly go to the family kitty. Therefore, determining the loss of dependency by 50% was not correct. Therefore, we assess that he must be spending 1/3 towards personal use and contributing 2/3 of his income to his family. The same judgment of the Division Bench of for consideration before the Apex Court and the same judgment has held that, "The deduction could be 1/3 and not, in my opinion, that, the said the Apex Court and has case of bachelor is reasonable.

of 50% is concerned, it is the compensation is enhanced to 1/3 and above the compensation awarded by the Tribunal at 6% per annum.

Sd/- Judge