

CASE NO.:
Appeal (civil) 6313 of 2001

PETITIONER:
Bilkish

RESPONDENT:
United India Insurance Co.Ltd.& Anr

DATE OF JUDGMENT: 12/03/2008

BENCH:
A.K.MATHUR & ALTAMAS KABIR

JUDGMENT:
JUDGMENT

CIVIL APPEAL NO. 6313 of 2001

A.K.MATHUR, J.

1. This appeal is directed against the order dated 11.7.2000 passed by the Division Bench of the Karnataka High Court whereby the Division Bench has ordered the compensation in sum of Rs. 1,65,000/- towards dependency and Rs. 10,000/- for the loss of estate & funeral expenses. Aggrieved against this order, the present appeal was preferred by the appellant for suitable enhancement of the compensation.

Brief facts which are necessary for the disposal of this appeal are as under:

2. That one Hazi Mohammed Haneef died in a motor accident on 30.3.1993 when a tempo bearing No. CAA 6591 dashed against the motorcycle (KA-01-H-7054) which he was riding. He ultimately succumbed to injuries and died. Therefore, the claimants (the parents of the deceased) filed MVC No. 1039/1993 claiming compensation of Rs.15,12,000/- under the various heads. The Tribunal allowed the claim petition in part by judgment and award dated 23.9.1996 and held that accident took place due to negligent driving of the tempo bearing No. CAA 6591 and held that claimants were entitled to compensation of Rs.1,75,000/- with interest at 6% p.a. from the date of petition to the date of realization. The compensation amount awarded in sum of Rs. 1,65,000/- towards loss of dependency and Rs. 10,000/- towards loss of estate & funeral expenses.

3. Learned counsel for the appellant submitted that the deceased was 20 years of age and was a bachelor. His parents were aged 47 years and 42 years respectively. The deceased was studying in First Year B.Com. course and he was also the proprietor of a business carried under the name and style of H.S. Traders and was an income-tax assessee. The deceased had an income of Rs. 31,494/- in his business and had paid the income-tax on that. The Tribunal had erroneously deducted 50% towards his personal, living expenses and the contribution to the family/dependency worked out to Rs. 15,000/- per annum. The Tribunal applied multiplier of 11, looking to the age of the parents and arrived at the total loss of dependency at Rs. 1,65,000/-. Learned counsel submitted that the assessment made by the Tribunal and affirmed by the High Court was totally erroneous. The incumbent was a bachelor, therefore, he could not spend 50% of his income on himself. But three-fourth of the income was contributed to the family and, therefore, the dependency assessed by the Tribunal and by the High Court for a sum of Rs. 15,000/- was not correct. It was also submitted that the multiplier of 11 applied by the Tribunal was also not correct.

4. After hearing learned counsel for the parties, we are of the

opinion that the view taken by the High Court & Tribunal is not correct. The incumbent was a bachelor and he could not have spent more than 1/3rd 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 1/3rd towards personal use and contributing 2/3rd of his income to his family. Therefore, we work out that Rs. 30,000/- earned by him per annum. The loss of dependency was 2/3rd i.e. Rs. 20,000/- . The multiplier of '11' applied for loss of dependency was also not correct and as per schedule appended to the Motor Vehicles Act, 1988 it should be '12'. Applying the multiplier of 12 the total loss of dependency will be Rs. 20,000/- x 12 = Rs. 2,40,000/- and Rs, 10,000/- towards loss of estate & funeral expenses, the total compensation comes to Rs. 2,50,000/- and incumbent is entitled for interest @ 9% per annum from the date of the petition. The appeal is allowed with the aforesaid modification. If any amount had already been paid to the claimant then that amount may be deducted from the total amount. Consequently, the appeal is allowed in part with no order as to costs.