

(2004) 07 KAR CK 0008

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2429 of 2003

Chatrappa and Another

APPELLANT

Vs

Niyaj Ahmed Khan and Another

RESPONDENT

Date of Decision : 16-07-2004

Acts Referred:

Citation : (2005) 1 ACC 330 : (2004) 6 KarLJ 190 : (2004) 4 KCCR 2329

Hon'ble Judges : S.R. Nayak, J; Manjula Chellur, J

Bench : Division Bench

Advocate : Prakash Yeli, for the Appellant; Sumangala A. Swamy, for Respondent-2, for the Respondent

Judgement

S.R. Nayak, J.—This miscellaneous first appeal is preferred against the judgment and award dated 1-8-2002 passed in M.V.C. No. 134 of 2000 on the file of the Court of the Civil Judge, Senior Division and MACT, Koppal awarding total compensation of Rs. 1,25,000/- with interest at 6%.

2. The deceased Prameela, a female child died in an accident occurred on 28-3-2000 due to rash and negligent driving of the motor vehicle owned by the Karnataka State Road Transport Corporation and driven by the first respondent. There is no dispute between the parties that the minor child died in the accident due to rash and negligent driving of the Karnataka State Road Transport Corporation bus by its driver. Therefore, there is no need for us to review the finding recorded by the MACT on the issue relating to actionable negligence. The appeal is preferred seeking enhancement of compensation. Before the MACT, the claimants who are the parents of the deceased claimed total compensation of Rs. 3,40,000/-. The MACT having considered the judgments in Annappa Gundappa Kumbar v. G. Subramanyam ILR 2001 Kar. 2329; Smt. Puttamma and Another Vs. D.V. Krishnappa and Another, and Papa Nayaka and Another Vs. Krishnamurthy and Others, , thought it appropriate to award total compensation of Rs. 1,25,000/- taking into account the age of the deceased with interest at 6% per annum.

3. When this appeal was heard by a learned Single Judge of this Court (A.M. Farooq, J.), His Lordship having noticed the judgment of the Division Bench of this Court in Puttamma's case, thought it appropriate to refer the appeal to the Division Bench for decision making. That is how this appeal is placed before us for final hearing and disposal.

4. We have heard Sri Prakash Yeli, learned Counsel for the appellants and Smt. Sumangla, learned Standing Counsel for the KSRTC. Learned Counsel for the appellants would contend that after the new Act came into force, in case of death, the minimum compensation required to be awarded, under any circumstances is not less than Rs. 1,50,000/- in addition to compensation under other permissible heads. Learned Counsel would also contend that the rate of interest awarded by the MACT is not in conformity with the rate of interest awarded by this Court. Learned Standing Counsel for the KSRTC, per contra, placing reliance on the judgment of the learned Single Judge of this Court in North West Karnataka Road Transport Corporation Central Office v. Kariyappa ILR 2003 Kar. 1521, would contend that what is awarded by the MACT is just and reasonable and there is no warrant to enhance the compensation. Learned Standing Counsel would also contend that though it was claimed that the deceased was earning Rs. 2,000/- by milk-vending, there is absolutely no evidence on record to support that plea.

5. Having heard the learned Counsels for the parties, the only point that arises for decision is whether the compensation of Rs. 1,25,000/- awarded by the MACT with interest at 6% per annum in the facts and circumstances and evidence on record is just and reasonable compensation and if not what is just and reasonable compensation.

6. On the date of accident and death the deceased was 9 years of age. Though it was claimed that she was earning Rs. 2,000/- per month by milk-vending, we do not find any evidence to support that plea. Therefore, we take it for the purpose of computation of the compensation that the deceased was not earning any income except helping the parents in the day-to-day house-keeping. Even if the deceased was not earning any income, in terms of the judgment of the Division Bench of this Court in Puttamma's case, after the new Act came into force the parents of the deceased are entitled to minimum compensation of Rs. 1,50,000/- as a statutory minimum. In addition, they are also entitled to statutory minimum of Rs. 2,000/- towards funeral expenses and also the medical expenses, if incurred before the death of their child. In this case, the accident took place at Kanakapur Cross near Kanakagiri, Tavergere road and that place is nearly 50 kms. away from Gangavathi Government Hospital. She was removed to Hospital by hiring a taxi and she breathed her last in the hospital. The dead body was taken from Gangavathi Government Hospital to her native place which is stated to be 60 kms. away from the Hospital. So the claimants had to hire a taxi to cover 110 kms. Since she was admitted to hospital and only after her admission, she died, it is reasonable to expect that the claimants must have spent some

money towards medical treatment and must have undergone pain and suffering. In that view of the matter, we think that a sum of Rs. 5,000/- would be reasonable compensation towards transportation, treatment and pain and suffering. A Division Bench of this Court in Smt. Sanjeevini Ananda Awate and Others Vs. The Managing Director, Hiranyakeshi Sahakari Sakkare Karkhane and Another, , has held that the rate of interest to be awarded in injury cases as well as fatal accidents is 8%. We do not find any weighty or substantive ground to make any departure in the instant case.

7. In the result and for the foregoing reasons, we allow the appeal in part with costs and in substitution of the award passed by the MACT, we award total compensation of Rs. 1,57,000/- under the following heads:

(i) Compensation Rs. 1,50,000/- (ii) Funeral Expenses Rs. 2,000/- (iii) Transportation, treatment Rs. 5,000/- and pain and suffering -----
Total Rs. 1,57,000/-

with interest at 8% from the date of claim petition till payment.

8. The Corporation shall deposit the compensation money in terms of this award minus (-) the money already paid or deposited within one month from today and on such deposit being made the MACT is directed to deposit a sum of Rs. 1,00,000/- in a fixed deposit initially for a period of 5 years in any Nationalised Bank and the appellant-claimants are entitled to withdraw the interest accrued on that deposit from time to time. The balance of compensation money, if left, be paid to the claimants. Advocate's fee is fixed at Rs. 1,500/-.