
(2013) 08 KAR CK 0255

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 24121 of 2010 connected with
Miscellaneous First Appeal Cross-Objection No. 724 of 2011 (MV)

Divisional Controller, North-West Karnataka Road Transport Corporation APPELLANT

Vs

Smt. Sharada and Others RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Citation : (2014) 1 KarLJ 78

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : V.P. Kulkarni, for the Appellant; Anant R. Hegde, for the Respondent

Judgement

K.L. Manjunath, J.—NWKRTC has filed the appeal challenging the liability as well as quantum of compensation awarded by the MACT, Yellapur in M.V.C. No. 154 of 2007 dated 31-7-2009. Cross-Objection has been filed by the claimants 1 and 2 being not satisfied with the compensation awarded to them by the M.A.C.T. and also challenging the apportionment made in favour of the third claimant-mother of the deceased. Therefore, these two matters are heard together. The claimants are the widow, minor son and aged mother of one Seetharam Bhagwat, who died in a road traffic accident occurred on 21-7-2007 in front of APMC Yard in Yellapur. According to the claimants the deceased was riding his motorcycle bearing No. KA-27/J-4721 on Yellapur-Sirsi Road by observing the traffic rules. When he was near the APMC yard of Yellapur, a she-buffalo came across the road. In order to avoid the she-buffalo he took his vehicle to the right, suddenly the KSRTC bus bearing No. KA-31-F-894 which was coming from the opposite direction in a rash and negligent manner dashed against the deceased's vehicle, as a result of which, he succumbed to the injuries on the spot. According to the claimants, the deceased was hale and healthy aged about 41 years, was an agriculturist and also doing timber business earning Rs. 10,000/- per month. On the complaint lodged by an eye-witness, a criminal case was registered against the driver of the KSRTC bus and he was prosecuted before the Criminal Court.

2. NWKRTC contended that the accident occurred due to the negligence of the deceased and that the driver of the bus was no-way responsible for the cause of accident. In the circumstances, the NWKRTC requested the Court to dismiss the claim petition.

3. In order to prove the respective contentions the first claimant was examined as P.W. 1, one eye-witness--Ramachandra Naga Bhagwath was examined as P.W. 2 and one Thimmanna Narayan Bhat was examined as P.W. 3. To show that the deceased was an agriculturist and also doing timber business the claimants relied upon Ex. P. 1 to Ex. P. 9. The driver of the bus was examined as R.W. 1 and he relied upon a photograph-Ex. R. 1.

4. The Tribunal considering the evidence let in by the parties, came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the bus and awarded a sum of Rs. 7,07,000/- as total compensation by considering the income of the deceased at Rs. 6,000/- per month. This judgment and decree is called in question by the appellant-Corporation challenging the findings of the Tribunal in regard to the negligence and also the quantum.

5. Per contra the claimants 1 and 2 have filed the cross-objection contending that the income assessed by the Tribunal is on the lower side and that they are entitled for enhanced compensation based on the judgment of the Hon'ble Supreme Court. It is also contended that the apportionment made in favour of the aged mother of the deceased equally with that of a widow who was aged 35 years is incorrect and liable to be apportioned properly.

6. The main contention of the appellant-Corporation is that the Tribunal has committed an error in holding that the accident occurred due to the rash and negligent driving of the driver of the bus. According to him, on account of sudden crossing of a she-buffalo the deceased took his motorcycle towards right side and dashed against the on-coming bus as could be seen from Ex. R. 1-photograph produced by the driver. He further contended that the evidence of the driver of the bus has not been properly appreciated by the Court below. He further contends assessing the income of the deceased at Rs. 6,000/- per month is on the higher side and liable to be set aside.

7. Per contra, learned Counsel appearing for the Cross-Objectors submits that the Police based on the complaint lodged by P.W. 2-an eye-witness, criminal case was registered against the driver of the NWKRTC bus. The driver of the bus who has been examined as R.W. 1 has not explained the manner in which the accident occurred to show that he was in no-way responsible for the cause of the accident. The Counsel for the Cross-Objectors relied upon the evidence of R.W. 1 contends that the driver has not even whispered how the accident occurred and how he is no-way concerned with the cause of the accident. He further contends that the Tribunal is justified in holding that the accident occurred due to the rash and negligent driving of the driver of the bus. He submits that the claimants have produced the RTC extract to show that the deceased was growing areca and

paddy in his lands and that they have also produced documents to show that deceased was trading in timber and getting sufficient income, as such he was able to purchase and maintain a motorcycle. According to him, merely because the deceased was not an assessee under the Income Tax the Court cannot hold that the deceased was not getting an income of Rs. 10,000/- per month. According to him, the deceased need not pay income tax on his agriculture income and that he was getting sufficient income from the timber business. Therefore, the claim of the claimants that the income of the deceased at Rs. 10,000/- per month could not have been negated by the Tribunal.

8. Relying upon the judgment of the Hon"ble Supreme Court in the case of Rajesh and Others Vs. Rajbir Singh and Others, , he contends that, since the deceased was having an assured income from his lands and business the claimants are also entitled to 30% of the total income towards the loss of dependency towards the future prospects. He also contends that the first claimant being a widow is entitled to claim a sum of Rs. 1,00,000/- under the head loss of consortium and Rs. 25,000/- towards funeral expenses.

9. Per contra, learned Counsel for the appellant relied upon the judgment of the Hon"ble Supreme Court in the case of Reshma Kumari and Others Vs. Madan Mohan and Another, , and submits that this Court has to follow the judgment of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and therefore, there is no necessity to interfere with the findings of the Tribunal.

10. Having heard the Counsel for the parties the Court has to consider the following points in the appeal and cross-objections:

(1) Whether the finding of the Tribunal on the question of negligence is required to be interfered with?

(2) Whether the quantum of compensation awarded by the Tribunal requires to be reduced/enhanced/confirmed?

(3) Whether the mother of the deceased can claim equal compensation with the widow of the deceased?

11. So far as the point No. 1 is concerned, the claimants have pleaded in the petition that when a she-buffalo suddenly crossed the road the deceased in order to avoid the she-buffalo turn his motorcycle towards right side and at that point of time the NWKRTC bus coming from the opposite direction in a rash and negligent manner dashed against the motorcycle of the deceased, as a result of which the deceased succumbed to the injuries. Criminal case is registered against the driver of the bus on a complaint lodged by P.W. 2 whose evidence is not seriously challenged by the appellant. To show that R.W. 1 was not negligent in driving the bus the appellant has relied upon the evidence of R.W. 1. The Court has perused the entire evidence of R.W. 1. It is unfortunate that the NWKRTC bus driver has not explained the manner in which the accident occurred

by explaining the topography and width of the road, place of impact between the bus and the motorcycle. According to me, R.W. 1 was the best person to explain the manner in which the accident occurred, because he was driving the bus. Without explaining the manner in which the accident occurred by producing Ex. R. 1-photo the appellant is trying to contend that the accident occurred due to the rash and negligent driving of the deceased.

12. R.W. 1 has admitted in his evidence that photograph-Ex. R. 1 was taken after the accident. By that time the bus and motorcycle were removed from the place of impact. By looking into the photograph one cannot say who was negligent in driving the vehicle and it cannot be inferred whether it was possible for the R.W. 1 or the deceased to avoid the accident. In such circumstances, the Tribunal based on the charge sheet filed against the driver and considering the evidence of P.W. 2-eye-witness has given a finding against the appellant and this Court cannot reverse the finding of the Tribunal. Accordingly, point No. 1 is held against the appellant.

13. So far as point No. 2 is concerned, admittedly the deceased was 41 years old, he was hale and healthy, to show that he was an agriculturist and growing areca and paddy, the claimants have produced documentary evidence, R.T.C. extract shows the nature of crop grown by him. Documents are also produced to show that he was a timber merchant. There is no positive evidence to show that the actual income of the deceased from the timber business, but the income from the areca and paddy cannot be ignored by this Court. Though he was not an assessee under the Income Tax if the claimants have claimed income at Rs. 10,000/- per month it cannot be ruled out easily. Simultaneously burden of proof is also on the claimants to show the actual income of the deceased. The very fact that the deceased was maintaining his wife, minor son and mother and also owning a motorcycle shows that he was getting sufficient income and he could not have purchased a motorcycle and maintained the same without a sufficient income. The accident has taken place while riding his motorcycle. In such circumstances, the income of such a person could not be less than Rs. 7,000/- per month. In addition to that, in view of the judgment of the Hon'ble Supreme Court in Rajesh's case as he had an avocation of his own 30% of the income has to be considered for assessing the loss of dependency. If it is so, the income of the deceased has to be considered at Rs. 9,100/- per month and Rs. 1,09,200/- per annum, out of which 1/3rd of his income has to be deducted towards his personal expenditure and a sum of Rs. 36,400/- has to be deducted towards personal expenditure of the deceased. Therefore, the loss of dependency has to be assessed at Rs. 72,600/- p.a. Considering his age the same has to be multiplied by 14 and the loss of dependency is assessed at Rs. 10,19,200/-.

14. Following the decision of the Apex Court in Smt. Sarla Verma's case this Court usually awards Rs. 10,000/- under the head of loss of consortium and the same is reiterated by the Hon'ble Supreme Court in Reshma Kumari's case. But the Hon'ble Supreme Court in Rajesh's case has ruled that a sum of Rs.

1,00,000/- has to be paid towards consortium to the widow but each case has to be considered separately based on the age of the deceased and the age of the widow and considering the age of the deceased in this appeal I am inclined to award a sum of Rs. 30,000/- towards loss of consortium and Rs. 10,000/- towards loss of love and affection and Rs. 10,000/- towards loss to the estate and Rs. 15,000/- towards funeral expenses. In all, a sum of Rs. 65,000/- has to be awarded under the conventional heads. Thus in all the claimants are entitled to Rs. 10,84,200/- as total compensation. Accordingly, the claimants are entitled for enhanced compensation of Rs. 3,77,200/- after deducting the compensation awarded by the Tribunal. In regard to apportionment of compensation between the widow and aged mother is concerned, there cannot be any straightjacket formula to be applied by the Tribunal. Each case has to be examined based on the facts of the case. By applying the personal law treating the widow and mother as legal heirs, cannot apportion the compensation determining the share considering it as suit for partition and arrive any share.

The Tribunal has to consider the age of the widow, age of the mother and has to find out whether the aged mother is having other children to look after her; whether she is getting any family pension or any other source, rental income or agricultural income or any bank interest. Court is also bound to look into the ailments of mother, necessary expenditure that may be required for medical expenditure.

Similarly, the Court is also bound to look into the income of the widow; if she is gainfully employed prior to the death of her husband or if she has secured any appointment on compassionate ground and family pension, if any, getting. Similarly, rental income, agricultural income or any other source of income for her and after considering the case of the widow and the mother, the Court is bound to apportion the compensation keeping in view the age of the widow and age of the mother. Court shall also take into account if the mother is also having other children who are also duty-bound to maintain the mother.

So far as the present case is concerned, out of Rs. 7,07,000/- the Tribunal has apportioned Rs. 4,00,000/- in favour of the minor son and has ordered to deposit the same. Out of the remaining Rs. 3,07,000/-, a sum of Rs. 1,50,000/- has been apportioned in favour of the mother and an equal amount has been apportioned in favour of the widow. The mother is having two other sons and are bound to maintain the mother and she is old. When she is old and having two other sons to look after, apportionment of compensation equally between the widow and aged mother by the Tribunal is held to be incorrect and liable to be modified. However, in the cross-objection the compensation awarded by the Tribunal has been enhanced from Rs. 7,07,000/- to Rs. 10,84,200/- and there is an enhancement of Rs. 3,77,200/-. If the enhanced compensation is entirely awarded to the widow, no injustice will be caused to the mother, because the amount apportioned by the Tribunal in her favour would be nearly 15% out of the total compensation awarded by this Court. Accordingly, this Court is of the

opinion that the Tribunal shall be very careful while apportioning the compensation between the aged parents and the widow. Considering the surrounding circumstances the Tribunal shall apportion the compensation accordingly.

Considering the total compensation awarded by this Court in a sum of Rs. 10,84,200/- apportioning Rs. 1,50,000/- to the mother cannot be stated to be on the higher side since the remaining amount has been apportioned in favour of the minor son and the widow. Accordingly, the said point is answered.

In the result, the appeal filed by the appellant-Corporation is dismissed. Cross-objection filed by the claimants 1 and 2 is allowed in part. The claimants 1 and 2 are entitled for enhanced compensation of Rs. 3,77,200/-. The enhanced compensation shall carry interest at 7.5% p.a. in view of the decision of the Hon''ble Supreme Court in Rajesh''s case.

Out of the enhanced compensation a sum of Rs. 3,00,000/- with accrued interest thereon shall be invested in the name of the widow for a period of five years. She is entitled to withdraw interest periodically. Remaining amount shall be released in her favour. Since Rs. 4,00,000/- has been deposited in the name of the minor there is no necessity to apportion any further sum to him.

Amount if any in deposit in this appeal is ordered to be transmitted to the Tribunal.