(1998) 03 KAR CK 0062

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2236 of 1993

D.M. Gayatri and Others — APPELLANT

Vs

Divisional COntroller, Karnataka State Road Transport Corporation, Bellary and Another — RESPONDENT

Date of Decision : 17-03-1998

Acts Referred:

Citation : (1999) 1 ACC 624 : (1999) ACJ 1474 : AIR 1998 Kar 323 : (1999) ILR (Kar) 277 : (1998) 4 KarLJ 1

Hon'ble Judges : Mohamed Anwar, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Sri Praveen Kumar Raokote, for the Appellant; Sri H.B. Narayana, for the Respondent

Judgement

Ashok Bhan, J.—Aggrieved by the judgment and award dated 5-6-1991 passed by the Motor Accident Claims Tribunal, Raichur (hereinafter referred to as the ''Tribunal'') on his file in M.V.C. No. 179 of 1989, the present appeal has been filed by the widow and two minor children of deceased D. Mahadev seeking modification of the award by increasing the compensation. By the Judgment under appeal Tribunal has awarded a sum of Rs. 2,45,000/- as compensation for the death of Mahadev.

2. The facts of the case are that the deceased D. Mahadev was the employee working as an Accountant in the State Bank of Mysore, at Hospet Branch. He was aged about 35 years and was drawing a salary of Rs. 4,275/- per month. On 27-5-1989 deceased Mahadev and P.W. 2, J. Laxminarayana had gone to Hubli in connection with their official work on a motor-cycle bearing registration No. CNY 4751. Alter attending the work at Hubli, they started their journey back to Hospet. Deceased Mahadev was driving the motor-cycle and J. Laxminarayana was travelling as a pillion rider. At about 4 p.m. while they were passing on Koppal-Hospet Main Road they saw the Bus coming from the opposite direction. Deceased took the motor-cycle towards left side of the road and at that time

another bus which was coming from the Koppal side behind them bearing Registration No. MEF 8370 came and dashed the motor-cycle. It is alleged that the said bus was driven by respondent 1 in a rash and negligent manner, as a result of which it dashed against the motor-cycle. As a result of the dashing of the bus with the motor-cycle P.W. 2 was thrown away and the motor-cycle and the deceased were struck under the bus. The vehicle as well as the deceased were dragged upto a distance of about 70 feet resulting in multiple injuries causing the spot death. P.W. 2-J. Laxminarayana sustained minor injuries. Another employee of Grameen Bank who was also travelling on the same road, seeing the accident and having seen P.W. 2 sustaining injuries, took him to Koppal Hospital where at his instance a complaint was lodged. Appellant in their claim petition averred that as a result of the death of the deceased the appellants lost love and affection of the deceased. They lost their dependency as well. It was alleged that the deceased would have survived upto 70 years of age. For the loss of dependency, mental shock and suffering undergone as well as the funeral expenses the claim for Rs. 20 lakhs and odd was put up.

3. Respondent 2 filed his written statement denying the allegations of the appellants made in the claim petition. It was pleaded that the Bus No. MEF 8370 was going at a normal speed on its left side. At that time, the deceased was driving the motor-cycle Yamaha came from behind in High speed trying to overtake the bus. At that point of time and at that juncture another vehicle came from the opposite direction seeing which the deceased immediately tried to take his motor-cycle towards left side of the road and in that attempt the vehicle skidded and fell in front of the bus bearing No. MEF 8370. The pillion rider of the motor-cycle escaped but the deceased sustained fatal injuries. It was claimed that there was no negligence on the part of the driver of the vehicle as the deceased himself was responsible for the alleged accident. The age and income as alleged by the appellants was denied. It was contended that the claim for compensation is highly exorbitant, unreasonable.

4. Respondents 1 and 3 adopted the written statement filed by the respondent 2.

5. In view of the pleadings of the parties, the following issues were framed by the Tribunal.

"1. Whether the accident on 27-5-1989 at about 4 p.m. on Hospet-Koppal Main Road, near Koppal involving motor-cycle No. CNY 4751 and the bus No. MEF 8370 resulting in the death of D. Mahadev was due to the rash and negligent driving of the bus bearing No. MEF 8370 by its driver/respondent 1.

2. Whether the deceased himself was responsible for the accident?

3. Are the petitioners entitled to compensation? If yes, to what amount and from whom?

4. What order or award?"

6. Appellants lead their evidence. Respondents inspite of opportunity given to

them did not lead any evidence. P.Ws. 1 and 2 were examined by the appellants in support of their claim petition. Tribunal answered Issue No. 1 in the affirmative and held that the bus bearing No. MEF 8370 was being run in a rash and negligent manner resulting in the accident thereby causing the death of the deceased. Issue No. 2 was decided in the negative it was held that the deceased was not responsible for the accident. Under Issue No. 3 it was held that the appellant was entitled to a total sum of Rs. 2,45,000/- with interest at the rate of 6% per annum from the date of petition till its realisation.

7. Findings on Issue Nos. 1 and 2 have not been challenged before us. Finding under Issue No. 3 regarding the age of the deceased and his income have also not been challenged. Counsel for the appellant has argued regarding the quantum of compensation only.

8. Tribunal on the basis of Salary Certificate came to the conclusion that gross salary of the deceased Rs. 4,275/- per month at the time when the accident took place. After deducting a sum of Rs. 1,000/- on guess basis towards contribution of provident fund, insurance premium and other loans Tribunal determined the carry home salary at Rs. 3,000/- per month. After deducting 1/2 of the amount for personal expenses the loss of dependency was found to be Rs. 1,500/- per month which comes to Rs. 18,0007- per annum. Adopting a multiplier of 13, the total loss of dependency was quantified at Rs. 2,34,000/- after adding Rs. 5,000/- towards loss of corsortium, Rs. 5,000/- towards loss of expectation of life and Rs. 1,000/- as funeral expenses, the total compensation payable was determined at Rs. 2,45,000/-.

9. Counsel for the appellants has argued that the Tribunal has erred in making a deduction of Rs. 1,000/- on estimated basis towards contribution of provident fund, insurance premium and other loans and that it further erred in deducting half of the salary towards personal expenses. It was also argued by him that keeping in view of the age of the deceased the multiplier of 13 adopted by the Tribunal is also wrong.

10. We find substance in the submissions made by the Counsel for the appellants. In order to decide the loss of dependency, the earning of the deceased, his age and expected life-span of the deceased are the relevant factors to be taken into consideration. ,,

11. The sum of Rs. 1,275/- has been deducted towards provident fund premium and other loans on an estimated basis without any reliable evidence. There is no evidence on record regarding the contribution made by the deceased towards the provident fund, insurance premium and other loans. Apart from this the deduction made towards provident fund, insurance premium and other loans was not called for as these were work savings of the deceased which would have added to his estate. Tribunal therefore erred in making the deduction of Rs. 1,275/- under this head.

12. Including the deceased there were four members in the family and to deduct

half of the amount towards personal expenses is not sustainable. He left behind a young widow and a daughter and a son aged 13 and 6 years respectively. The children were growing up and at school going age. Having regard to the number of dependents and their age the deduction of half of the salary towards personal expenses was not justified. Taking the salary at Rs. 4,275/- of the deceased, the deduction of Rs. 1.275/- towards personal expenses would be just and proper. The loss of dependency after deducting the sum of Rs. 1,275/- from the gross salary of the deceased would come to Rs. 3,000/- per month. Yearly dependency would come to Rs. 36,000/-. Multiplier of 13 is also on the lower side. We would adopt the multiplier of 14. The total loss of dependency would come to Rs. 5,04,000/-. After adding Rs. 10,000/- towards loss of consortium, Rs. 5,000/- towards funeral expenses and Rs. 7,000/- towards loss to the estate of the deceased, the total compensation payable comes to Rs. 5,26,000/-. The rate of interest awarded at 6% is also on the lower side. Keeping in view the prevalent rate of interest, the minimum rate of interest at 9% per annum deserves to be granted in claim petition arising under the Motor Vehicles Act. Accordingly we grant interest at the rate of 9% per annum from the date of the filing of the claim petition till its realisation. Respondents would be jointly and severally liable to pay the compensation. Appellants shall be entitled to the apportionment of the claim in the ratio fixed by the Tribunal in its order.

13. Appeal is accepted to the extent indicated and the award under appeal is modified accordingly.

14. No costs.

