(2017) 02 KAR CK 0066

In the Karnataka High Court

Case No : M.F.A. No. 7433 of 2015

Karnataka State Road Transport Corporation APPELLANT

Vs

Boraiah RESPONDENT

Date of Decision : 07-02-2017

Acts Referred:
Motor Vehicles Act, 1988 — Section 168

Citation : (2017) AAC 943

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Smt. H.R. Renuka, Advocate, for the Appellant in M.F.A. No. 7433 of 2015.; Sri. N.R. Naik, Advocate, for the Respondent Nos. 1 and 2 in M.F.A. No. 7433 of 2015.; Sri. N.R. Naik, Advocate, for the Appellant in M.F.A. No. 8181 of 2015 (MV).; Smt. H.R. Renuka, Advocate, for the Respondent in M.F.A. No. 8181 of 2015 (MV).

Final Decision : Dismissed

Judgement

B. Manohar, J.—Karnataka State Road Transport Corporation as well as the claimants have filed these appeals challenging the judgment and award dated 15.07.2015 made in MVC. No. 3953/2014 passed by the MACT, Bengaluru.

2. KSRTC being aggrieved by the exorbitant compensation, taking the income of the claimant as Rs. 7,000/- pm and application of multiplier has filed MFA No.7433/2015 whereas the claimants being not satisfied with the meager compensation awarded by the Tribunal have filed MFA No.8181/2015. Hence, both the appeals are clubbed together and disposed of by this common Judgment.

3. The parties are referred to as arrayed before the tribunal.

4. The claimants are the father and mother of deceased Shivanna. They filed the claim petition contending that on 22.07.2014 while the deceased was proceeding on TVS motorbike bearing Reg. No. KA-41-EA-1349 on the left side of Bangalore-Tavarekere main road near Chennadasipalya, a KSRTC bus bearing Reg. No.

KA-42-F-1272 driven in a rash and negligent manner dashed against the motorbike. Due to that deceased Shivanna fell down and sustained grievous injuries all over the body. Subsequently he succumbed to the injuries. In the claim petition it is contended that at the time of death, the deceased was aged about 29 years. He was working as a building centering contract worker and earning a sum of Rs. 40,000/- per month. In view of the death of Shivanna, the family has lost the bread earner and sought for the compensation of Rs. 30,00,000/-.

5. In response to the notice issued by the tribunal, the respondent-Corporation filed written statement denying the entire averments made in the claim petition and also the rash and negligent driving of the bus.

6. After trial, the tribunal on appreciating the oral and documentary evidence, IMV report, spot mahezar, spot sketch, copy of the charge-sheet held that, due to actionable negligence on the part of driver of the bus, the accident occurred. The claimants being the father and mother of the deceased, are entitled for the compensation. The tribunal taking into consideration the income of the deceased as Rs. 7,000/- per month and adding 50% towards the future prospectus, as per the judgment of the Hon''ble Supreme Court in Rajesh v. Rajbir Singh reported in 2013 (2) ACAJ 1403, loss of dependency comes to about Rs. 1,26,000/- per annum and since he was a bachelor, deducting 50% thereof and applying the multiplier 17, awarded a sum of Rs. 10,71,000/- towards loss of dependency and a sum of Rs.69,000/- towards the other conventional head. In all, the tribunal awarded compensation in a sum of Rs. 11,40,000/- with interest at 6% p.a. The liability is fastened on the Karnataka State Road Transport Corporation to compensate the claimants. Being aggrieved by the quantum of compensation awarded by the tribunal, both the Transport Corporation as well as the claimants have preferred these two appeals.

7. I have carefully considered the arguments addressed by Smt. Renuka H.R, learned counsel appearing for the Corporation as well as Sri. N.R. Naik., learned counsel appearing for the claimants and perused the judgment and award, oral and documentary evidence.

8. The main contention of the Corporation is that while awarding the compensation the tribunal has added 50% of the income towards future prospectus relying upon the judgment in the case of Rajesh v. Rajbir Singh reported in 2013 (2) ACAJ 1403 is contrary to law. He was working as a building centering worker which is not permanent job. The said case is referred to the larger bench. Hence the tribunal considering 50% towards the future prospectus is contrary to law. Further, the employer of the deceased was examined as PW-2. In the cross examination, he has admitted that he is not a registered contractor and he is not an income tax assessee. On the other hand the claimants have filed the appeal contending that the monthly income of Rs. 7,000/- taken by the tribunal is on the lower side. The accident occurred in the year 2014. The tribunal ought to have taken reasonable income while awarding the

compensation and sought for enhancement of compensation.

9. I have carefully considered the arguments addressed by the counsel appearing for the parties and perused the judgment and oral and documentary evidence.

10. The deceased was working as a building centering worker. The employer-contractor is examined as PW-2. In the cross examination he has admitted that he is not a registered contractor and not an income tax assessee. Hence, it is difficult to believe that the owner of the contractor was paying salary of Rs. 7,000/- per month, moreover it is not a stable job. The tribunal relying upon the Rajesh v. Rajbir Singh, referred to above, has taken into consideration the future prospectus at 50% since the age of the deceased was less than 40 years as on the date of accident. Rajesh''s case is pending consideration before the larger bench of the Hon''ble Supreme Court. Hence, adding 50% of the income towards future prospects is contrary to law. No documents have been produced to show that deceased was earning Rs.7,000/- per month by doing centering work. Since the accident occurred in the year 2014, even a daily wage employee would earn Rs. 7,000/- per month. In view of that the tribunal has taken the income at Rs. 7,000/- per month and awarded the compensation.

11. Since, the issue regarding future prospectus is pending before the larger bench of Hon''ble Supreme Court, the finding of the tribunal with regard to awarding future prospectus is set aside. Taking the income of the deceased as Rs. 7,000/- per month and deducting 50% towards personal expenses as he was a bachelor and taking into consideration the loss of dependency at Re. 42,000/- per annum, applying the multiplier 17, the claimant is entitled for compensation of Rs. 7,14,000/- as against Rs. 10,71,000/- awarded by the tribunal. Further, Rs. 69,000/- towards the other conventional heads, is in accordance with law. In all, the claimants are entitled for a compensation of Rs. 7,83,000/- as against Rs. 11,40,000/- awarded by the tribunal.

12. Accordingly I pass the following order.

ORDER

i. MFA.No.7433/2015 allowed in part and the judgment and award dated 15.07.2015 in MVC. 3953/2014 passed by the MACT, Bengaluru is modified. The claimants are entitled to compensation of Rs. 7,83,000/- as against Rs. 11,40,000/- with 6% interest.

ii. MFA No.8181/2015 filed by the claimants is dismissed.

The amount, in deposit be transferred to MACT, Bengaluru for disbursement.