

(2016) 01 KAR CK 0210
In the Karnataka High Court
Case No : M.F.A. No. 7323 of 2014 (MV)

Karnataka State Road Transport Corporation

APPELLANT

Vs

Dr. Lavanya, R.

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Citation : (2016) AAC 1509 : (2016) 4 ACC 221 : (2016) ACJ 2088 : (2017) 1 TAC 327

Hon'ble Judges : Vineet Saran and B. Sreenivase Gowda, JJ.

Bench : Division Bench

Advocate : Sri D. Vijayakumar, Advocate, for the Appellant; Sri A.K. Bhat, Sri N. Gopal Krishna, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

B. Sreenivase Gowda, J.—As these appeals are arising out of a common judgment and award of the Tribunal, with the consent of the learned counsel appearing for the parties, they are heard together and disposed of finally by this common judgment.

2. In a road traffic accident, one Chetan Kumar died. His wife, two minor daughters, of whom the second daughter was born posthumously and parents filed a claim petition under Section 166 of the Motor Vehicles Act, before MACT, Bengaluru, seeking compensation from the KSRTC - the owner/insurer of the vehicle. The Tribunal by impugned judgment and award has held that the accident has occurred due to contributory negligence of the driver of the KSRTC bus and the driver of the car - deceased at the rate of 50% each and has awarded a compensation of Rs. 1,98,94,840/- with interest at 6% per annum and directed the corporation to pay 50% of the said amount i.e. Rs. 99,47,420/- to the claimants. Both, the corporation and the claimants, aggrieved by the said judgment and award of the Tribunal have challenged the same on the ground of negligence and quantum by preferring MFA No. 7323 and MF No. 6966/2014 respectively.

3. As there is no dispute regarding death of deceased - Chethan Kumar in a road traffic accident occurred on 4-3-2013 by involvement of a KSRTC bus bearing registration No. KA-06-F-733, hereinafter referred to as "bus" and the Swift car bearing registration No. KA-53-Z-6266 hereinafter referred to as "car," the only points that arise for our consideration in these appeals are :

(i) Whether the finding of the Tribunal on negligence, in holding that the accident has occurred due to contributory negligence of both the driver of the KSRTC bus and the driver of the car/deceased at the rate of 50% each, is sustainable in law?

(ii) Whether compensation of Rs. 1,98,94,840/- with interest at 6% p.a. awarded by the Tribunal is just and reasonable or does it call for reduction or enhancement?

4. Sri A.K. Bhat for Sri N. Gopal Krishna, learned counsel appearing for the claimants submits, though deceased was driving the car on the left side of the road slowly and carefully, the accident had taken place, since the driver of the bus drove the bus with high speed in a rash and negligent manner and dashed against the car and later hit the road side tree which was uprooted as evident from the police records viz. FIR, mahazar, IMV report and charge-sheet which were marked as Exs. R1, P.2, P.3 and P.6 and the oral evidence of P.Ws. 1 and 2. The Tribunal without considering this material evidence on record has committed an error in holding that the accident has occurred due to contributory negligence of the driver of the bus and the driver of the car - deceased at the rate of 50% each, instead of holding that the accident has occurred due to sole rash and negligent driving of the driver of the KSRTC bus.

5. With regard to quantum, the learned counsel submits, the compensation awarded by the Tribunal is on the lower side and, therefore, he prays for allowing the appeal filed by the claimants and dismissing the appeal filed by the KSRTC.

6. Per contra, Sri D. Vijayakumar, learned counsel appearing for the KSRTC submits, the person who lodged the complaint to the police about the accident and examined by the claimants as PW 2 is the owner of the car. PW 2 in his cross-examination has admitted that the road at the place where the accident had taken place is a straight road, vehicles coming from the opposite direction can be noticed at a distance of 1/2 km. and he has noticed the bus from a distance of 100 metres. Thereby his submission was that deceased was not diligent in driving his car carefully and cautiously. He submits, PW 2 is not only the owner of the car, he was an occupant in the car at the time of accident and he is an interested witness and his evidence cannot be relied upon. He submits, though the driver of the bus immediately after the accident made an attempt to lodge complaint with the jurisdictional police against the driver of the car, the Police did not receive his complaint and hence, he sent the complaint by e-mail and sent a copy of the e-mail to the higher authorities. He submits, the Police in order to help the claimants to get compensation from the Corporation, did not receive complaint from the driver of the car and they did not take photographs before

removing the car from the spot of the accident. He submits, that the driver of the car in order to overtake another vehicle proceeding ahead of the car, came to the right side of the road and the driver of the bus noticing the same took the bus to the left side of the road, in spite of that, accident had taken place and it was due to rash and negligent driving of the car by the deceased himself. He submits, Police records and photographs produced in the case prima facie show, that the accident had occurred due to rash and negligent driving of the car by deceased himself.

7. Regarding quantum, he submits the first claimant-wife of the deceased, admittedly, is an MBBS doctor and she is earning, similarly the father of deceased is a retired employee and he is a pensioner and they are not dependent legal heirs of the deceased and that deduction of 25th of the income of the deceased, by the Tribunal towards his personal expenses is not proper and deduction should have been 3rd. He submits, employment of the deceased was a contractual employment and it could be terminated at any moment and he was not working against any permanent post. Therefore adding 50% of the income of the deceased by the Tribunal towards future prospects is not just and proper. Consequently, compensation awarded by the Tribunal is on the higher side. Therefore, he prays for allowing the appeal filed by the KSRTC and dismissing the appeal filed by the claimants.

8. Point No. 1 - regarding negligence :

The case of the claimants as pleaded in their claim petition is that on 4-3-2013 around 5.30 a.m. when deceased - Chetan Kumar was proceeding in the car from Kunigal town towards Hebbur, on the left side of the road by following all the traffic rules cautiously, near Chiganipalya village, Kothagere Hobli, Kunigal taluk, on Kunigal - Tumkur S.H. 33, the driver of the KSRTC bus came from the opposite direction with high speed, in a rash and negligent manner, and in an attempt to overtake another vehicle proceeding ahead of the bus, dashed against the right side front portion of the car and caused the accident. Though the driver of the car was driving the car exactly on the left side of the road, the driver of the bus negligently and recklessly jumped the lane and dashed the front portion of the car and immediately after the accident, he left the place. Due to the accident, car was badly damaged and deceased-Chetan Kumar had sustained fatal injuries and another inmate of the car, namely Dharmendra who also sustained injuries, with the help of villagers had tried to shift the driver of the car to the General Hospital, Kunigal, in 108 ambulance, but he succumbed to death near Kothagere village and doctors at Kunigal General Hospital declared that he is dead.

9. The Corporation has contested the petition by filing statement of objections. They denied the averments made in columns 1 to 6 and 11 to 14 of the claim petition as false. Regarding negligence, they denied the averments made in the claim petition that the deceased was driving his car on the left side of the road by following traffic rules cautiously and the driver of the bus drove the bus with

high speed in a rash and negligent manner and in an attempt to overtake a vehicle proceeding ahead of the bus, dashed against the car, as false. They contended that the driver of the bus was driving the bus on the left side of the road slowly, carefully and cautiously with due adherence to traffic rules and regulations. The deceased drove the car at high speed, in a rash and negligent manner and came to the wrong side of the road and by seeing the same, the driver of the bus took the bus to the extreme left side of the road and in spite of it, the car dashed against the front portion of the bus and there is no negligence on the part of the driver of the bus and accident was due to negligence on the part of the deceased himself. When the driver of the bus went to give Police complaint regarding the accident, the same was not taken by the concerned Police, hence, complaint was sent by e-mail and by registered post to the higher authorities.

10. The occurrence of accident on 4-3-2013 around 5.30 a.m. near Chiganipalya village, Kothagere Hobli, Kunigal taluk, on Kunigal - Tumkur S.H. 33 by involvement of a KSRTC bus and the Swift car is not in dispute. It is also not in dispute that the bus and the car were proceeding in the opposite direction.

11. The dispute is whether accident has occurred due to the rash and negligent driving of the driver of the bus as contended by the claimants or due to the rash and negligent driving of the car by the deceased himself as contended by the KSRTC.

12. The claimants in support of their case have examined the fourth claimant-mother of the deceased as P.W.1, one Dharmendra, the owner of the car who lodged the complaint to the Police about the accident as P.W.2 and one Kaveriappa working as Regional Senior Payroll Manager at Oracle Solution Services (India) Pvt. Ltd. as P.W.3 and have produced as many as 22 documents which were marked as Exs.P.1 to P.22. Whereas the KSRTC in order to prove their case have examined the driver of the bus as R.W.1 and one H.B. Lingaraju - Assistant Law Officer of the Corporation as R.W.2 and have produced 9 documents which were marked as Exs. R.1 to R.9.

13. It is the specific case of the claimants that on 4-3-2013 around 5.30 a.m. when deceased - Chetan Kumar was travelling in his car towards Hebbur from Kunigal town on the left side of the road by following all the traffic rules cautiously and while so travelling near Chiganipalya village, Kothagere Hobli, Kunigal taluk, on Kunigal - Tumkur S.H. 33, the driver of the KSRTC bus drove the same from the opposite direction at very high speed in a rash and negligent manner and while trying to overtake another ongoing vehicle proceeding in the same direction, dashed against the front portion of the car, as a result, accident has occurred. It is their further case that the deceased was driving the car exactly on the left side of the road, whereas the driver of the bus negligently and recklessly jumped the lane and dashed against the right side front portion of the car, as a result the car was damaged and deceased had sustained fatal injuries. The fourth claimant-mother of the deceased, examined as RW. I has not

witnessed the accident as admitted by her in her cross-examination. Similarly, P.W.3 has not witnessed the accident and he was examined for the purpose of establishing the income of the deceased. As such, evidence of P.Ws.1 and 3 is not helpful in adjudicating the issue relating to negligence.

14. P.W.2 - Dharmendra-owner of the car, had travelled in the car along with the deceased by sitting next to him and that he had witnessed the accident. It is P.W.2 who informed the jurisdictional Police about the accident by lodging complaint in writing at 9.10 a.m. on 4-3-2013 itself. The said complaint has been marked along with the F.I.R. as Ex.P.1. In the complaint also, it was stated that the deceased was driving the car on the left side of the road by observing all the traffic rules cautiously, the driver of the bus coming from the opposite direction i.e. from Tumkur side, drove the bus at very high speed in a rash and negligent manner and while overtaking another vehicle proceeding ahead of the bus came to the right side of the road and dashed against the front portion of the car and caused the accident. As a result, deceased had sustained fatal injuries and he took the deceased to Kunigal Government Hospital in 108 ambulance with the help of public and deceased died on the way to Hospital.

15. The police have conducted the mahazar as per Ex.P.2, wherein it was stated that mahazar was typed between 2.00 to 3.00 p.m. on 4-3-2013. So the mahazar must have been conducted before 2.00 p.m. on the date of the accident itself. In the mahazar it was stated that accident has occurred on the tar road measuring 22 feet and road runs in north-south direction and there is footpath on either side of the road measuring 10 feet. After the accident, the driver of the bus lost control of the bus and dashed against the huge jungle tree standing on the left side of the road which was uprooted.

16. The case of the claimants that the driver of the bus drove the bus at very high speed in a rash and negligent manner and while trying to overtake another ongoing vehicle which was also moving in the same direction dashed against the car and thereafter to the tree which was uprooted is not only corroborated by the oral evidence of P.W.2, it is stated so in the complaint marked along with the FIR as Ex.P.1 and in the mahazar marked as Ex.P.2.

17. As per the averments made in the statement of objection of the Corporation though it is not the case of the Corporation that the deceased in the process of overtaking another vehicle proceeding ahead of the car came to the right side of the road and dashed against the bus, they have suggested to P.W.2 that deceased while overtaking another vehicle proceeding ahead of the car came to the right side of the road and dashed against the bus. However the said suggestion has been denied by P.W.2. In the alleged complaint stated to have been lodged by the driver of the bus to the Kunigal Police about the accident, which was marked as Ex.R.3, it was not stated that the driver of the car/deceased, in the process of overtaking another vehicle proceeding ahead of him, dashed against the bus. Whereas, the contention of the claimants that driver of the bus in an attempt to overtake another vehicle proceeding ahead of it dashed

against the car was stated in the complaint - Ex.P.1, stated so in the claim petition, in the evidence of P.W.2 - an eyewitness to the accident and it was mentioned so in the charge-sheet marked as Ex.P.6. The driver of the bus admitted in his alleged complaint marked as - Ex.R.3 that he left Tumkur at 5 O'clock. Admittedly, the accident had taken place at 5.30 a.m. at a distance of around 50 kms. away from Tumkur. So the driver of the bus covered the distance of 50 kms. in 30 minutes time, so he must have driven the bus with the speed of more than 100 kms. per hour. The contention of the learned counsel for the KSRTC that the bus reached the spot of accident at 5.55 a.m. and mentioned so in the alleged complaint -Ex.R.3 is contrary to the other material evidence on record. The Corporation nowhere in their statement of objections have stated that the accident had occurred at 5.55 a.m. The Corporation has not denied the fact of occurrence of accident at 5.30 a.m. near Chiganipalya village, Kothagere Hobli, Kunigal taluk, which is at a distance of around 50 kms. from Tumkur. Further the Corporation have suppressed the fact of the bus hitting the huge road side tree in their alleged complaint - Ex.R.3 and in their statement of objections.

18. The contention of the learned counsel for the Corporation that though the driver of the bus after the accident made an attempt to inform the Police by lodging complaint and complaint was not received by the Police and, therefore, they sent the complaint by e-mail is contrary to the evidence on record. R.W.1 - driver of the bus in his evidence says, when he went to Kunigal Police Station to lodge complaint about the accident, the Police neither received his complaint nor recorded his statement regarding accident and, therefore, the Corporation has sent the complaint to the Kunigal Police Station and to its higher authorities by e-mail and by registered post acknowledgement due. Whereas, R.W.2 in his evidence says, when R.W.1 went to the Kunigal Police Station to lodge complaint about the accident, there was nobody to receive the complaint and later S.H.O. refused to receive the complaint. This contradictory statement between R.W.1 and R.W.2 would show, R.W.1 has not made any attempt to lodge complaint or inform the jurisdictional Police about the accident. The contents of alleged complaint - Ex. R.3 do not tally with the contents of the complaint sent through e-mail and marked as Ex.R.5.

19. The above facts would go to show that the driver of the bus had not made any attempt to lodge complaint to the jurisdictional Police about the accident as evident from the statement of objections. The respondent have not stated at the earliest point of time while filing their statement of objections that Police refused to receive the complaint.

20. Both R.W.1 and R.W.2 have admitted that they have not challenged the filing of charge-sheet by the Police against R.W.1 for the offence punishable under Sections 279, 337 read with Section 304-A, IPC. The Corporation has also not taken steps to summon the Police and examine them for substantiating their contention. The contention of the Corporation that driver of the car in order to

overtake another vehicle proceeding ahead of the car, came to the wrong side and dashed against the bus was not pleaded in their statement of objections and it was suggested so, to P.W.2 for the first time in his cross-examination which suggestion has been denied. R.W.1 in his evidence has admitted that after the accident, the bus had hit the tree existed on the eastern side footpath of the road. It is admitted case of the Corporation that at the place of accident, road was straight and it was visible to a distance of more than 1/2 kms.

21. R.W.1 - the driver of the bus in his evidence has stated, after seeing the deceased driving the car at high speed in a rash and negligent manner and was in the process of overtaking another vehicle proceeding ahead of the car, he took the bus to the extreme left side of the road i.e. to the mud road. If the said contention were to be true then there was no scope for occurrence of accident on the tar road and there was tyre mark of the bus on the tar road as per the mahazar. It was not the case of the Corporation that the accident had taken place on the footpath/mud road and it was also not their case that the place where the bus was shown to have been parked in the photographs is the place of accident. If the driver of the bus who admittedly saw the car coming from the opposite direction was driving the bus slowly and cautiously on the left side of the road, there was no scope for occurrence of accident. As already stated above, admittedly, the driver of the bus left Tumkur at 5.00 a.m. and reached the place of accident situated at a distance of about 50 kms. from Tumkur at 5.30 a.m., as such he covered the distance of 50 kms. in 30 minutes time, so he had driven the bus with the speed of more than 100 kms. per hour and it was with an intention of overtaking another vehicle proceeding ahead of the bus and, therefore, the bus even after dashing the car was not stopped and it dashed against a huge road side jungle tree, which was uprooted, as seen in the photographs produced by the Corporation as R. 1 series. The fact that a huge jungle tree was uprooted would itself show, the driver of the bus had driven the bus with high speed.

22. If the Tribunal had noticed the above material facts available on record, it would not have come to the conclusion that the driver of the bus and the driver of the car/deceased had contributed for occurrence of the accident equally at the rate of 50% each. The fact that the driver of the bus in spite of noticing the car from the opposite direction could not avoid the accident, as he was driving the bus at high speed and dashed against the car and thereafter the roadside huge jungle tree which was uprooted, would go to show that the negligence contributed by the driver of the bus is heavy and more comparing to that of the driver of the car/deceased which would be in our view is 70% and 30% respectively. Thus, we hold that the accident has occurred due to contributory negligence of the driver of the bus and the driver of the car - deceased, at the rate of 70% and 30% respectively. Point No. 1 is answered accordingly.

23. Point No. 2 (regarding quantum :

Claimants in support of their contention that deceased had done BBM and MBA

and he had gone to foreign countries and he was working as Senior Consultant in MNC and drawing salary of Rs. 1,13,758/- for the months of December, 2012 and February, 2013, have examined the 4th claimant-mother of deceased as PW.1 and an officer from MNC where deceased was working as PW.3 and have produced passports of the first, third and fourth petitioners at Exs.P.7, P.8 and P.9 respectively, copy of MBA certificate of deceased at Ex.P.14, copy of his BBM certificate at Ex.P.15, his training certificate at Ex.P.16, original letter of offer of employment at Ex.P.17, his 3 pay slips at Ex.P.18, copy of Form No. 16 at Ex.P.19 and his salary details for the month of February, 2013 at Ex.P.22.

24. P.W.3 in his evidence has stated that on 28-10-2010 deceased was appointed as Senior Consultant in their company. Ex.P.17 is the offer of employment letter of the deceased, which shows it is a contractual appointment, but permanent in nature and his remuneration depends upon his performance. As such, there is no merit in the contention of the learned counsel for the KSRTC that the appointment of the deceased was not a permanent one and it could be terminated. Considering this, the Tribunal was justified in taking the income of deceased at Rs. 97,456/- per month after deducting Rs. 16,102/- per month towards income-tax and Rs. 200/- per month towards profession tax.

25. Admittedly, deceased was 37 years old at the time of his death in the accident. He was highly qualified. He had every chances of getting promotions with more remuneration and perks and he was working against permanent post in an established company. Considering this, the Tribunal was justified in adding 50% of his salary to his income towards his future prospects, as per the judgment of the Hon"ble Supreme Court in Sarala Verma (AIR 2009 SC 3104) and followed by the recent judgment in the case of Munnalal Jain and another v. Vipin Kumar Sharma and others, reported in 2015 (6) SCC 347, AIR 2015 SC (Supp) 1130.

26. Even if we accept the contention of the learned counsel for the KSRTC that 5th claimant-father of the deceased was a pensioner and he is not dependent legal heir of his deceased son, still there are four dependent claimants. The contention of the KSRTC that first claimant - wife of the deceased was a MBBS graduate, she was a Medical Practitioner and earning handful and she was not dependent on the deceased, is a contention taken for the first time before this Court and no evidence was adduced before the Tribunal in this regard. However, P.W.1 - mother of the deceased and mother-in-law of claimant No. 1 have denied the suggestion made to her that first claimant was practicing medicine and was earning. Therefore, 7th of the income of the deceased deducted by the Tribunal towards his personal expenses and taking 7th of his income as his contribution towards family is just and proper. There is no merit in the contention of the learned counsel for the KSRTC that lesser multiplier has to be applied treating it as a special case. We do not see any reason for applying lesser multiplier than the one applicable to the age group of the deceased. On the other hand, we have to see, first claimant - wife of the deceased has lost her husband at her young

age of 30 years, second claimant-minor daughter has lost her father at 5 years and third claimant was born as postermate child after the death of the deceased as first claimant was three months pregnant for the second child at the time of death of deceased. Considering the above facts, multiplier of "15" applied by the Tribunal, based on the age of the deceased who was 37 years at the relevant point of time, is just and proper. Therefore, compensation of Rs. 1,97,34,840/- awarded by the Tribunal towards loss of dependency is just and proper and we do not see any reason to interfere with the same.

27. Although a sum of Rs. 1,60,000/- awarded by the Tribunal under various conventional heads is found to be on the lower side, in the facts and circumstances of the case, considering the total amount of compensation awarded by the Tribunal, we do not wish to interfere with the same.

28. In view of our finding on negligence that the accident has occurred due to contributory negligence of the driver of the bus and the deceased at 70% and 30% respectively, the claimants are entitled to 70% of Rs. 1,98,94,840/-, which comes to Rs. 1,39,26,388/- and it is awarded as against Rs. 99,47,420/- awarded by the Tribunal.

29. Hence, we pass the following order :

a) MFA 6955/2014 filed by the claimants is allowed in part and judgment and award passed by the Tribunal, both on negligence and quantum is modified to the extent stated herein above. It is held, that the accident has occurred due to contributory negligence of the driver of the bus and the driver of the car (deceased) at the rate of 70% and 30% respectively.

b) Claimants are entitled for 70% of the compensation determined by the Tribunal amounting to Rs. 1,39,26,388/- with interest at 6% per annum, from the date of claim petition till the date of realisation.

c) The KSRTC is directed to deposit the compensation of Rs. 1,39,26,388/- with interest at 6% per annum within two months from the date of receipt of a copy of this judgment after deducting the amount, if any, already deposited.

30. Disbursement, deposit and release of compensation among the claimants will be in the ratio of the award of the Tribunal.

31. In view of allowing the appeal filed by the claimants and modifying the judgment and award passed by the Tribunal both on negligence and quantum, MFA 7323/2014 filed by the KSRTC is dismissed as devoid of merits.

32. Amount in deposit is ordered to be transmitted to the Tribunal for disbursement in the manner indicated herein above.

33. All pending applications are rejected.

34. No order as to costs.