

(2004) 01 KAR CK 0060

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2338 of 2002

Karnataka State Road Transport Corporation

APPELLANT

Vs

Duttaiah and Another

RESPONDENT

Date of Decision : 19-01-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 123 (2), 166, 173 (1)

Citation : (2004) 2 ACC 368 : (2004) ACJ 1498 : (2004) ILR (Kar) 1975 :
(2004) 2 KarLJ 440

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : H.C. Motigi, for the Appellant; H.C. Kavitha, for the Respondent

Judgement

Ram Mohan Reddy, J.—The management of the K.S.R.T.C. has preferred this appeal u/s 173(1) of the Motor Vehicles Act, 1988 (for short, the "Act"), calling in question the judgment and award dated 2-11-2001 in M.V.C. No. 216 of 1998 on the file of the Additional Civil Judge (Senior Division) and Additional MACT, Hassan (for short, the "MACT").

2. Brief facts leading to the filing of this appeal are:

On 26-10-1998 one Chandraiah was travelling as a passenger in a K.S.R.T.C. bus bearing No. KA-25-F-278 from Hassan to Ugane. When the bus stopped near Dyavegowdanahally High School in order to allow the school children to get into the bus, driver of the said bus without waiting for the signal to be given by the conductor moved the bus in a rash and negligent manner, at a high-speed, as a result of which Chandraiah who was on the footboard fell out of the bus sustained grievous injuries and later succumbed to the same. The jurisdictional police prosecuted the driver of the bus and charge-sheeted him for rash and negligent driving.

3. It is claimed that the deceased was aged about 22 years on the date of the accident, was unmarried and an employee of a courier service on a monthly

salary of Rs. 2,000/-. The deceased left behind his parents - the claimants" viz., the mother Smt. Kamalamma and the father Sri Duttaiah. The parents filed a claim petition u/s 166 of the Motor Vehicles Act seeking compensation of Rs. 4 lakhs. The K.S.R.T.C. owner of the motor vehicle, assigned as respondent entered appearance and filed its statement of objections resisting the claim.

4. The MACT recorded the evidence of the 1st claimant as P.W. 1, an eye-witness as P.W. 2 and also marked nine documents as Exs. P. 1 to P. 9. Whereas, the respondent did not either lead oral evidence or produce any documents.

5. On the basis of the aforesaid pleadings of the parties, the MACT framed the following issues:

1. Whether the petitioners prove that their son Chandraiah died in an accident on 26-10-1998 at 4 p.m. caused by the rash and negligent driving of the K.S.R.T.C bus by its driver near Dyavegowdanahally?

2. Whether the petitioners are entitled for compensation, as claimed?

3. For what order?

6. On appreciating the oral and documentary evidence placed before it, by the claimants, the MACT recorded a finding of actionable negligent on the part of the driver of the bus belonging to the appellant-K.S.R.T.C. and awarded total compensation of Rs. 2,70,000/- together with interest at 6% per annum. The appellant-Corporation being aggrieved by the said judgment and award has preferred this appeal.

7. The learned Counsel for the appellant Sri Motigi, while assailing the findings of actionable negligence on the part of the driver of the bus would contend that the deceased had also contributed to the negligence by standing on the footboard of the bus and therefore the MACT had committed an illegality in recording a finding attributing negligence on the driver. Dilating the said contention he would point out that Section 123(2) of the Act prohibits person from travelling on the footboard of the bus and therefore no liability could be foisted on the appellant-Corporation. He would also contended that the MACT while applying multiple "17" had taken the age of the deceased instead of applying multiple "13" corresponding to the age of the mother who was about 45 years. He also contends that the MACT has taken 50% of the income towards personal expenses of the deceased.

8. Smt. Kavitha, learned Counsel appearing for the respondents-claimants while supporting the findings contends that the MACT was fully justified in applying multiple "17" in accordance with Second Schedule of the Act. Additionally, she would maintain that the MACT was justified in deducting 1/3rd of the income towards personal expenses of the deceased as the respondents were residing in rural area and placed reliance on a decision of this Court in the case of Smt. Gullamma and Another Vs. Basheer Sab and Another,

9. Having heard the learned Counsels for the parties, two questions arises for determination in this appeal: (1) Whether the MACT was justified in attributing actionable negligent on the part of the driver of the bus in the facts and circumstances of the case and evidence on record? (2) Whether the award of Rs. 2,70,000/- as compensation is not justified in the facts and circumstances of the case? If so to what just compensation the claimants are entitled to?

10. Point No. 1.--The 1st claimant having examined himself as P.W. 1 reiterated the statement made in the claim petition and examined another witness as P.W. 2 who is said to have travelled in the said bus along with the deceased Chandraiah. This witness testifies that when the bus stopped near Dyavegowdanahally to enable the children to board the bus and before the signal to proceed was given by the conductor the driver of the bus moved the bus at a high-speed and in a rash and negligent manner, as a result of which Chandraiah who was on the footboard fell out of the bus. Nothing is elicited in the cross-examination of this witness to disbelieved the statements much less discredit his evidence. It is also in evidence neither the appellant nor the driver or conductor of the bus is examined in support of the case of the K.S.R.T.C. and to indicate their stand. It is well-settled that a duty is cast on the conductor of the bus to give a signal to the driver to proceed only after he ensures that passengers are within the bus and are found either standing or sitting inside the bus. There is absolutely no evidence forthcoming by the appellant to show that there was negligence on the part of the deceased while he was on the footboard at the time when the driver of the bus moved the same in a rash and negligent manner. In addition, it is also noticed that the driver of the bus was prosecuted for rash and negligent driving under the provisions of the Indian Penal Code. While it is true that under Sub-section (2) of Section 123 of the Act, no person shall travel on the footboard of the bus but in the facts of the present case, the deceased was not travelling on the footboard on the contrary while he was on the footboard, and even before he could get over the footboard and into the bus, the driver apparently moved the bus, therefore it is not possible to accept the contention of the learned Counsel for the appellant that the deceased had contributed to the negligence. The MACT having considered the entire evidence, recording its finding on issue 1. The finding attributing actionable negligence on the driver of the bus is justified on the material available on record and does not warrant interference by this Court.

11. There is considerable force in the contention of the learned Counsel for the appellant that the MACT erred in law in awarding total compensation of Rs. 2,44,800/- by applying multiple "17", instead of "13", while computing the loss of dependancy. The established facts are that the claimants the father aged about 50 years, mother aged about 45 years, are residents of Salagame Post, Hassan Taluk and the deceased had a monthly income of Rs. 1,800/-. The MACT was justified in deducting 1/3rd of the income of the deceased towards his personal expenses, keeping in mind the fact of the deceased being a resident of rural area. This finds support from a judgment of this Court in the case of Smt.

Gullamma, supra, following the decision of the Division Bench of this Court in the case of Lakshman and Others Vs. Susheela Chand Choudary and Others, , where in it is held that in respect of bachelors living in rural areas it would be appropriate to deduct 1/3rd towards personal expenses since their expenses will be less than those people residing in urban areas.

12. Applying the said principles and taking into consideration the monthly income of the deceased at Rs. 1,800/- and after deducting 1/3rd towards personal expenses the monthly loss of dependency would be Rs. 1,200/- and the annual loss of dependency would be Rs. 14,400/- applying multiple "13" being the appropriate multiple for age 45 of the mother as the claim petition is one u/s 166 of the Act, the total loss of dependency is Rs. 1,87,200/-.

13. Learned Counsel for the appellant did not question the award of compensation of Rs. 10,000/- towards loss of expectation of life; Rs. 3,000/- towards funeral expenses; and Rs. 2,000/- towards transportation charges. Hence, there is no need to interfere with the said finding.

14. In the result and for the reasons set out supra, the appeal is allowed in part and in substitution of the impugned judgment and award, the respondents-claimants are entitled to a sum of Rs, 2,02,200/- under the following heads:

(Rs.) 1. Loss of dependency 1,87,200/- 2. Loss of expectation of life 10,000/- 3. Funeral expenses 3,000/- 4. Transportation charges 2,000/- Total 2,02,200/-

Together with interest at 6% p.a. from the date of petition till the date of payment. The appellant-Corporation is directed to deposit the compensation amount, minus the amount already deposited within the period of six weeks from the date of receipt of a copy of this order and on such deposit being made the MACT shall invest/disburse the amount in the very same proportion as specified in the impugned award.

In the peculiar facts of this case the parties are directed to bear their own costs.