

(2015) 10 KAR CK 0052
In the Karnataka High Court
Case No : M.F.A. No. 1329 of 2015 (MV)

Karnataka State Road Transport Corporation

APPELLANT

Vs

Nagendra and Others

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 10 KAR CK 0052

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : N. Dinesh Rao, Advocate, for the Appellant; Jagadeesh H.T. for Sumanth L. Bharadwaj, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the appellant/Corporation is directed against the impugned judgment and award dated 15/11/2014, passed in MVC No. 330/2013, by the District & Sessions Judge and Motor Accident Claims Tribunal, Chamarajanagar, (hereinafter referred to as "Tribunal" for short).

2. The Tribunal, by its judgment and award has awarded a sum of Rs. 31,40,592/- under different heads with interest at 9% per annum from the date of petition till the date of realization as against the claim of Rs. 44,10,000/-, on account of the death of the deceased Smt. Yashodamma, in the road traffic accident. It is the case of the Corporation that the Tribunal has erred in not fixing any negligence on the part of the rider of the motor cycle/husband of the deceased and that the compensation awarded by the Tribunal is disproportionate to the income of the deceased and therefore, it is liable to be reduced by modifying the impugned judgment and award by fixing reasonable negligence on the part of the rider of the motor cycle/husband of the deceased and by reducing the compensation.

3. In brief, the facts of the case are:

Claimants are the husband and minor son of the deceased. They filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the Corporation, on account of the death of the deceased in the road traffic accident, contending that, on 24.9.2013 at 6.00 p.m. claimant No. 1 along with his wife, deceased Yashodamma and his son Vikasgowda had been to Sujjalur village for taking meals in connection with the festival and thereafter, returning back to their village in Hero Honda Motor cycle bearing Reg. No. KA.11.S.5854 slowly and cautiously on the left side of the road and when he came near Kerekatte, Averahalli on Poorigali-Sujjalur Main road, at that time, the driver of KSRTC bus bearing Reg. No. KA.09.F.3699 came in a rash and negligent manner and dashed against the motor cycle of the claimant No. 1. Due to which, deceased fell down and sustained grievous injury to back portion of head and died at the spot itself.

4. It is the further case of the claimants that, deceased was aged about 31 years, hale and healthy prior to the accident, working as Teacher in Bapuji Educational Institution, Poorigali and drawing the salary of Rs. 16,000/- per month, she had ample opportunity of being elevated to higher post as still she has 30 years of service and contributing her entire earnings to the family. Due to her untimely death, claimants are put to great hardship and they lost the love and affection and suffered financial loss, apart from mental shock and agony.

5. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petition in part and awarded the compensation of Rs. 31,40,592/- under different heads with interest at 9% p.a., from the date of petition till realization.

6. Being aggrieved by the impugned judgment and award passed by the Tribunal, the appellant/Corporation has presented this appeal.

7. We heard the learned counsel appearing for Corporation and the learned counsel appearing for claimants.

8. The submission of the learned counsel Sri. N. Dinesh Rao, appearing for appellant/Corporation, at the outset is that, the Tribunal has failed to consider the categorical admission made by PW1-husband of the deceased who was riding the motor cycle that accident had occurred on slightly curve road, the said road is a single road and on both sides of the road there are footpaths. Further, the Tribunal has failed to consider the admission made by RW1, driver of the bus that the rider of the motor cycle was riding his motor cycle in a rash and negligent manner and while the bus driver blew the horn, PW1 saw the oncoming vehicle and lost control over his motor cycle and fell down and at the same time, his wife Yashodamma who was pillion rider also fell down and suffered severe injury to her head and she died at the spot and without appreciating the contents of Ex.P5-IMV report and Ex.P3-Spot panchanama, has fixed entire negligence on the part of the driver of the bus belonging to the Corporation and therefore, the

same cannot be sustained and is liable to be modified by fixing negligence on the part of the rider of the motorcycle/husband of the deceased and the driver of the bus in equal proportion i.e. 50% each.

Further, learned counsel appearing for the Corporation submits that, the quantum of compensation awarded by the Tribunal towards loss of dependency is disproportionate to the income of the deceased and that the compensation awarded towards conventional is on the higher side and is liable to be reduced. Therefore, he submitted that the impugned judgment and award is liable to be modified by fixing 50% negligence on the part of the rider of the motor cycle/husband of the deceased and by reducing the compensation.

9. Per contra, learned counsel appearing for claimants, inter-alia, contended and substantiated that, the Tribunal, after critical evaluation of the oral and documentary evidence available on file and after recording a finding of fact in para-10 to its judgment by assigning cogent and valid reasons has justified in fixing entire negligence on the part of the driver of the bus. The said finding of fact recorded by the Tribunal after critical evaluation of the oral and documentary evidence is just and proper and therefore, interference by this Court is not called for. Further, he pointed out and submitted that the stand taken by the Corporation regarding contributory negligence cannot be accepted and is liable to be rejected, on the ground that, the Tribunal after due consideration of the oral and documentary evidence and other material on file and that the police authorities, after due investigation have filed the chargesheet against the driver of the bus has recorded the finding of fact in para-14 of the judgment that the accident has caused due to rash and negligent driving by the driver of the bus and on account of fatal injuries sustained by the deceased she succumbed to the same at the spot. Further, learned counsel appearing for the claimants submitted that the Tribunal has justified in awarding reasonable compensation towards loss of dependency and towards conventional heads and therefore, it does not call for interference nor the appellant/Corporation has made out any good grounds to entertain the relief sought in this appeal.

10. After hearing learned counsel appearing for the parties and after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

Whether the appellant/Corporation has made out a case to interfere in the judgment and award passed by the Tribunal?

11. The occurrence of the accident and the resultant death of the deceased are not in dispute. Two vehicles were involved in the accident, viz., motor cycle bearing Reg. No. KA.11.S.5854 and the KSRTC bus bearing Reg. No. KA.09.F.3699. It is the case of the claimants that due to rash and negligent driving by the driver of the KSRTC bus the said accident has occurred and deceased was aged about 31 years, working as Teacher in Primary School and

claimants are her husband and minor son.

The Tribunal, after considering the oral and documentary evidence available on file has observed that, while the rider of the motor cycle/husband of the deceased was riding his bike on left side of the road, the driver of KSRTC bus dashed to the two wheeler while coming from the opposite direction which clearly shows that the driver of the bus was not having proper look out and control over his vehicle, due to which, deceased who was the pillion rider of the motor cycle fell down, sustained grievous injuries on her head and succumbed to the same at the spot. Further, the Tribunal has observed that, admittedly, either the respondent or the driver of the KSRTC bus have filed any complaint against the rider of the motor cycle immediately after the said accident, alleging negligence on his part nor explained the same on any grounds or produced any credible documents to prove the same and accordingly, fixed the entire negligence on the part of the driver of the bus. Further, after careful perusal of the nature of damages caused to the vehicles as per IMV report given by the independent authorized officer of the jurisdictional RTO and also from the contents of spot mahazar, Ex.P3 and Ex.P1 and P2, we are of the considered view that, the Tribunal has justified in fixing entire negligence on the part of the driver of the bus belonging to the Corporation after assigning cogent and valid reasons in para-10 of its judgment. The reasoning given by the Tribunal for fixing entire negligence on the part of the driver of the bus is just and reasonable, well founded and well considered one and therefore, it does not call for interference, nor we find any good grounds as such made out by the learned counsel appearing for appellant/Corporation to consider the submission with regard to contributory negligence on the part of the rider of the motor cycle/husband of the deceased.

12. Regarding quantum of compensation also, we do not find any error or illegality as such committed by the Tribunal in awarding compensation towards loss of dependency and towards conventional heads on account of the death of the deceased. The Tribunal, taking the income of the deceased at Rs. 15,576/-, adding another 50% towards future prospects and total income at Rs. 23,364/- per month, deducting 1/3rd towards personal and living expenses of the deceased and taking the net income at Rs. 15,576/- per month and applying multiplier of "16" taking the age of the claimant No. 1/husband of the deceased 34 years, has awarded a sum of Rs. 29,90,592/- towards loss of dependency. The Tribunal has also awarded Rs. 50,000/- towards mental shock and agony and loss of love and affection, Rs. 25,000/- towards transportation of dead body, funeral and obsequies, Rs. 45,000/- towards loss of estate, Rs. 30,000/- towards loss of consortium and marital amenities and in all Rs. 31,40,592/- with interest at 9% p.a. from the date of petition till its realization. The said compensation awarded by the Tribunal towards loss of dependency, towards conventional heads and the rate of interest is just and proper and after appreciation of the oral and documentary evidence available on file and by following the judgment of the Apex Court in General Manager, Kerala State Road Transport Corporation,

Trivandrum Vs. Mrs. Susamma Thomas and others, and in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, is just and reasonable and it does not call for interference. Therefore, we do not find any injustice as such caused to the appellant/Corporation nor the said compensation is unreasonable or arbitrary. Taking all these factors into consideration, the appeal filed by the appellant/Corporation is liable to be dismissed as devoid of merits and accordingly, it is dismissed.

The amount in deposit shall be transmitted to the jurisdictional Tribunal immediately.