

(2015) 10 KAR CK 0239

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 10322/2012 (MV)

Karnataka State Road Transport Corporation

APPELLANT

Vs

Savitha and Others

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Citation : (2015) 10 KAR CK 0239

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : H.R. Renuka, for the Appellant; Sateesh Chandra K.V., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

S.N. Satyanarayana, J—The first respondent KSRTC in MVC No. 97/2011 on the file of MACT, Sagar has come up in this appeal challenging the finding of tribunal in saddling 50% of contributory negligence on its driver in causing the accident dated 16.10.2010 resulting in saddling 50% liability to pay compensation to the legal representatives of deceased Teekesh who died in the said accident.

2. Brief facts leading to this appeal are as under:

The proceedings in MVC No. 97/2011 is initiated by the widow, children, mother and younger sister of Teekesh, an inmate of KSRTC bus bearing registration No. KA 09 F 3718. The records would disclose that the said bus was proceeding from Sagar to Ananthapur. When the same was near Kallukoppa village on NH 206 it is stated that accident has taken place due to rash and negligent driving of canter lorry bearing registration No. KA 30 8711 which was coming from Ananthapur towards Sagar from opposite direction. The accident is not in dispute. So also the death of Teekesh who was inmate in the bus at the relevant point of time. Hence the claim petition was filed by his legal representatives seeking compensation.

3. In the proceedings before tribunal on appreciation of pleadings, oral and documentary evidence on record, the court below allowed the claim petition and

awarded compensation to claimants in a sum of Rs. 5,10,800/- payable with interest at 9% from the date of petition till the date of deposit of entire amount. The liability to pay compensation was saddled on the owner and insurer of KSRTC bus to an extent of 50% and another 50% on the owner and insurer of the canter. The KSRTC being aggrieved by the quantum of compensation, percentage of interest awarded and also in fixing 50% liability on the KSRTC has come up in this appeal on the ground that the accident has taken place on a road which is about 22 feet wide asphalted portion on which the accident has taken place with the lorry coming to the right side of the road i.e., straying into the right half of the road in the path of KSRTC resulting in the KSRTC bus moving to the extreme left side of the road and turtling on the mud road which is adjacent to the asphalted portion on the left side of its path. It is also contended that the interest awarded at 9% for the compensation awarded is on the higher side.

4. Though this appeal is at the stage of admission, since the lower court records is secured the appeal was heard for final disposal in the presence of learned counsel appearing for the insurer of the canter and also the claimants.

5. In this proceedings the counsel appearing for the claimants would submit that in this appeal he has a right to file cross objections seeking enhancement of compensation provided the appeal is admitted. Since the appeal is taken up for final disposal his right to file cross objection is lost. Therefore, his oral arguments should be taken as his cross objection to consider enhancement of compensation. The grounds urged for enhancement is that in an accident which has taken place in the year 2010 for deceased aged about 35 years who died leaving him surviving a widow and four minor children with aged mother the income taken at Rs. 3,000/- is on the lower side and the same should have been considered with higher income with future prospects and other relevant benefits for which the claimants are entitled to.

6. In this proceedings the contention of the counsel appearing for KSRTC is that the width of the asphalted road being 22 feet as could be seen from the sketch which is at EX.P5 the canter which has hit the bus has come almost 3/4th into the right side of the median indicating that the accident caused solely due to the negligence on the part of the driver of canter. It is stated that complaint was lodged against the driver of canter who died on the spot of accident. The grievance of appellant KSRTC is that, the tribunal has failed to consider the sketch and complaint which are EX.P5 and EX.P3 respectively. The said documents are stated to provide information regarding the manner in which the accident has taken place, which according to appellant, not properly considered by the tribunal. Per contra, the finding of the tribunal is supported by the counsel appearing for the insurer of the canter on the ground that the KSRTC has failed to establish the accident is cause due to the negligence solely attributable to the driver of canter. Admittedly, when the driver of KSRTC was available at the time of recording evidence appellant herein could have summoned him and his evidence could have been recorded in support of their defence in the proceedings

before the tribunal. In the absence of any evidence being led through the driver of KSRTC the contention that the accident is caused solely due to the rash and negligent driving on the part of driver of the canter cannot be accepted.

7. After giving careful consideration to the arguments submitted by both the counsels and also going through the material available on record this court find that the sketch at EX.P5 would clearly indicate the path of canter which is involved in the accident as having come to the extreme right side of the road i.e., to the right half of the median on which the KSRTC bus was traveling from opposite direction i.e., from Sagar towards Ananthapur. If that is looked into, it is clearly seen that the tribunal has not properly looked into the document available on record. However, in this proceedings KSRTC instead of relying solely on EX.P5 should have examined its driver to demonstrate that there is no mistake on the part of driver of KSRTC bus and the accident is caused solely due to the mistake on the part of driver of the canter. In that view of the matter, this court feel that in the facts and circumstances the liability of the lorry is enhanced from 50% to 90% and that of the KSRTC bus is reduced from 50% to 10% for the reason that they have not adduced evidence of driver and committed serious error in establishing beyond all reasonable doubt that there was no error on the part of the driver of the KSRTC bus. While considering the prayer of appellant KSRTC regarding liability, the ground urged regarding interest which is awarded at 9% on the compensation awarded is seen, since the same is on higher side, it is reduced from 9% to 6%. Accordingly, the appeal filed by the KSRTC is allowed.

8. Now, coming to the oral submission on the part of the counsel appearing for the appellant seeking enhancement of compensation which he could have sought provided the appeal is admitted the right would have created for him to file cross objections. Since the appeal is disposed of at the stage of admission itself the oral submission on the part of counsel appearing for claimants is taken as his cross objection to reconsider the compensation which is awarded by the tribunal. Admittedly, Teekesh who is husband of first claimant and father of claimants No. 2 to 4 and son of 6th claimant and elder brother of 7th claimant has died in the aforesaid accident involving canter and KSRTC bus. It is not in dispute that at the relevant time of accident he was aged about 35 years. Though it was stated that he was working as Secretary in a society and besides that he was also an agriculturist was earning Rs. 10,000/- p.m., no proof is furnished with reference to his avocation and income.

9. Therefore, in the absence of avocation and income with reference to the accidents which are taken place in the year 2010 the normal practice of this court is to take the income notionally at Rs. 5,000/-. If that is taken into consideration the compensation payable to the claimants would vary from what it is already assessed by the tribunal. Therefore by taking the notional income of the deceased Teekesh at Rs. 5,000/- the compensation payable to his legal representatives is reassessed as under.

10. Out of Rs. 5,000/- if 1/5th is deducted towards personal upkeep of the

deceased the loss of dependency to the family would be in the range of 80% or Rs. 4,000/- p.m. in other words Rs. 48,000/- p.a. Since the claimant was aged about 35 years as on the date of accident the relevant multiplier being "16" the claimants are entitled to compensation in a sum of (Rs. 48,000/- x 16 = Rs. 7,68,000) Rs. 7,68,000/- towards loss of dependency. As could be seen from the records the age of the claimants No. 2 to 5 being less than 8 and that of the deceased being 35 compensation towards loss of future prospects is required to be awarded. Same is awarded in a sum of Rs. 1,00,000/-. In addition to that another Rs. 1,00,000/- is awarded towards compensation payable under conventional head. With this the total compensation to which the claimants are entitled to is Rs. 9,68,000/- as against Rs. 5,10,800/- awarded by the tribunal. In other words the enhanced compensation the claimants are entitled to is Rs. 4,57,200/- which they shall receive along with interest at 6% from the date of petition till the date of deposit of entire amount.

11. Out of the enhanced compensation Rs. 75,000/- each with proportionate interest is ordered to be deposited in the names of Kum. Bhoomika, Kum. Priyanka, Kum. Deepika and Chi. Nishanth in any nationalized bank for a period of ten years which shall be renewed for another ten years after its expiration with right to receive interest periodically by the first claimant Smt. Savitha, their mother.

12. Out of the balance enhanced compensation a sum of Rs. 50,000/- is awarded to Smt. Puttamma, the mother of deceased which she shall be entitled to receive with proportionate interest. Out of that 20% is ordered to be released in her favour and 80% to be kept in any nationalized bank for a period of five years with right to receive interest.

13. Remaining balance Rs. 1,07,200/- shall be to the share of first respondent Smt. Savitha alongwith interest at 6%. Out of that Rs. 25,000/- is ordered to be released in her favour and balance to be kept in any nationalized bank for a period of five years with right to receive interest periodically. Accordingly, this appeal is disposed of.

14. The enhanced compensation shall be deposited by appellant at 10% with proportionate interest and 10th respondent New India Assurance Co. Ltd., to deposit 90% with proportionate interest after deducting the amount already paid.

15. In view of the appeal of KSRTC being allowed in part the excess deposit if any shall be ordered to be released in favour of the appellant.