
(2019) 06 KAR CK 0011

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4896 Of 2014 (MV)

Legal Manager

APPELLANT

Vs

Kempaiah

RESPONDENT

Date of Decision : 06-06-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2019) 06 KAR CK 0011

Hon'ble Judges : K. Somashekar, J

Bench : Single Bench

Advocate : Pradeep .B, R Krishna Reddy

Final Decision : Allowed

Judgement

1. Though this appeal is listed for admission, with the consent of the learned counsel appearing on both sides, it is taken up for final disposal.

2. This appeal is filed against the judgment and award dated 04.12.2013 passed in MVC No.7336/2012 by the XVII Additional Judge and Motor

Accident Claims Tribunal, Court of Small Causes, Mayo Hall Unit, Bengaluru city, awarding compensation in a sum of Rs.4,38,667/- with interest at

6% per annum from the date of petition till payment of entire compensation.

3. Factual matrix of this appeal are as under :

It is stated in the claim petition that on 14.11.2012 at around 7.30 p.m., the deceased namely T.K. Rakesh was proceeding on his motor cycle bearing

registration No.KA-02-HM-4966 at Sumanahalli Ring Road. When he reached near Sumanahalli and took turn towards service road, at that relevant

point of time, the offending lorry bearing Registration No.TN-76-J-2913 was parked just opposite to cross road without following the road rules and

without giving space to other road users of that road. The deceased was not able to notice the parking of the said offending vehicle on the road

because the place of the parking was dark and came into contact with the offending vehicle, due to which, he sustained the grievous injuries.

Subsequently, the injured was taken to Lakshmi Multi Specialty Hospital in order to provide treatment. But the doctor declared him as brought dead.

4. The deceased was aged about 19 years and he being college going student was studying in 3rd semester Bachelor of Engineering. Due to the

sudden demise of the deceased, the claimants said to be the parents of the deceased, suffering untold mental shock and agony, filed the claim petition

against respondent Nos.1 and 2, being the owner and insurer of the offending lorry bearing No.TN-76-J-2913, contending that both are jointly and

severally liable to pay compensation. These are the averments made in the claim petition by the claimants before the tribunal seeking compensation.

5. In pursuance of the notice in the claim petition against the respondents, respondent No.1 in the claim petition was placed exparte, but respondent

No.2 entered appearance through the advocate who filed vakalath resisting the claim petition filed by the petitioners seeking compensation for the

death of the deceased.

6. In order to establish their case, claimant No.1-Kempaiah was examined himself as P.W.1 and another witness by name B.S. Prakash was

examined as P.W.2 and the documents Exs.P.1 to P.16 were got marked. On behalf of the respondents, one witness by name Lakshminarayan was

examined as R.W.1 and the documents Exs.R.1 to R.7 were got marked.

7. Based on the pleadings of the parties, so also referring to the oral and documentary evidence of the parties, the tribunal framed the issues and given

its findings on the said issues and allowed the petition in part, awarding compensation of Rs.4,38,667/- with interest at 6% per annum from the date of petition till its payment.

8. Learned counsel for the appellant has taken the Court through the evidence of PW.1 said to be the father of the deceased T K Rakesh and the

claimant namely, Smt. B K Sujatha said to be the mother of the deceased. But the Tribunal has erroneously fixed the entire negligence on the part of

the driver of the offending lorry though the deceased himself was also responsible for the alleged accident, but the driver of the offending lorry was

not at all responsible for the alleged accident and also the death of the deceased. The said evidence has not been noticed by the Tribunal in a proper

perspective manner, but the aspect of the matter relating to the claim petition made by the petitioner before the Tribunal was not considered by the

Tribunal and the same amounts to miscarriage of justice. But the Tribunal has been stated the judgment rendered by the Honâ??ble Apex Court in

the case of Ningamma vs. United India Insurance Company Ltd., reported in 2009 ACJ 202 0and another judgment in the case of New India

Assurance Company Ltd., vs. Sadanand Mukhi and others reported in 2009 ACJ 998. This ratio of the reliance as the Tribunal has not been noticed in

order to consider the claim petition made by the petitioner before the Tribunal for seeking compensation whereas in the aforesaid judgment rendered

by the Apex Court and so also on the face of the reliance it has clearly held that for oneâ??s own negligence the claim petition is not maintainable.

These are all the grounds urged in this appeal and seeking for intervention of the impugned judgment rendered by the Tribunal.

9. It is further emphatically submitted that the Tribunal has awarded compensation in respect of loss of estate in a sum of Rs.10,000/-. It is contrary to the schedule of Section 163A of the Motor Vehicles Act, 1988. Therefore, in this appeal it requires to be interfered with the impugned judgment and

award rendered by the Tribunal by reevaluating the evidence put forth by the claimants for seeking compensation.

10. Per contra, the learned counsel for the respondents â?? claimants contending that PW.1 Kempaiah said to be the father of the deceased T K

Rakesh as his son was proceeding in his motorcycle on 14.11.2012 at around 7.30 p.m. at the scene of crime indicates in the mahazar said to be

conducted by the Investigating Officer as wherein the charge sheet has been laid against the accused being a trial, but the offending lorry bearing

registration No.TN/76/J/2913 which was parked by the driver of the offending lorry at the darken place and also the place for accident as the

deceased was not noticed. Therefore, the road traffic accident was occurred as wherein his motorcycle was came into contact with the offending

lorry due to that the said T K Rakesh said to be the son of the claimant Sri Kempaiah and also that Smt. B K Sujatha as they have lost their son being

aged about 19 years and also being a college going student studying in third semester in Bachelor of Engineering Courses. These are all the evidence

has been evaluated by the Tribunal inclusive of evidence of PW.2 B S Prakash and so also the relevant documents at EX.P.8, SSLC marks card and

study certificates at EXs.P15 and 16 and awarded compensation. Therefore it does not for call for any interference. The Tribunal even though has

appreciated the evidence and awarded compensation, but the Tribunal has not been awarded compensation in respect of that Kempaiah said to be the

father of the deceased T K Rakesh, but the compensation awarded in a sum of Rs.4,38,667/- as wherein that PW.1 Kempaiah said to be father of the

deceased and also claimant namely B K Sujatha being the mother of the deceased and both are the parents of the deceased have deserving for

compensation as sought for as wherein they have lost their son T K Rakesh aged about 19 years and he being the sources to their family in future.

Therefore in this appeal it does not arise for call for any interference as wherein the Tribunal has been rightly considered the evidence and awarded

compensation. Therefore seeking for dismissal of the appeal preferred by the appellant by confirming the judgment and award rendered by the

Tribunal in MVC No.7336/2012 whereby awarded compensation in a sum of Rs.4,38,667/- with interest at 6% p.a.

11. Keeping in view of the strenuous contention taken by the learned counsel for the appellant and so also countering to the argument by the learned

counsel namely R Krishna Reddy for respondent Nos.1 and 2 are concerned it is relevant to state that there is no dispute about the death of T K

Rakesh aged about 19 years at the relevant point of time met with an accident on 14.11.2012 at around 7.30 p.m. as the deceased was proceeding on

his motorcycle and the said motorcycle came into contact with the offending lorry as where the lorry was parked by the driver of the offending

vehicles without allowing the road rules and also without providing spaces to the others in that road said to be users because of that reason the

accident was occurred and sustained grievous injuries and he was taken to Laxmi Multi Specialties Hospital in order to provide treatment to him but

the address declared as â??brought him deadâ?, but the Tribunal has awarded compensation to the petitioner No.2 being the mother of the deceased

T K Rakesh. But PW.1 Kempaiah said to be the father of the deceased has been examined in order to establish his case against the respondent for

seeking compensation. PW.2 was also been subjected to examination in respect of the averments made in the claim petition, but it is relevant to state

that Post Mortem Report at EX.P3 has been issued by the doctor who conducted autopsy over the dead body and so also it is relevant to state that

Ex.P8 is the SSLC marks card of the deceased and EXs.P15 and 16 are the study certificates relating to the deceased that it is relevant to state that

EX.P14 Diploma marks card (six in numbers) that certainly states that the deceased was aged about 19 years and also being a college going student

by studying in third semester bachelor of engineering as he being the sources in the family consisting of his parents, but at the age of 19 years the

deceased who has met with an accident and lost his breath and also the entire family of the deceased have lost the sources as their son T K Rakesh

who was aged about 19 years as away from the family as his parents had lost the passionate with their son being a college going student. But the

tribunal has awarded compensation in a sum of Rs.4,38,667/- in heads of loss of dependency and also funeral expenses in so far as loss of estate the

Tribunal has awarded in a sum of Rs.10,000/- but the learned counsel for the appellant who has addressed the arguments relating to Section 163 A of

the Motor Vehicles Act, 1988 as relating to the schedule to the aforesaid provision of law it cannot be awarded the compensation in a sum of

Rs.29,500/- it is only that amount to be deserving but the tribunal has awarded exceedingly in a sum of Rs.7,500/- instead of Rs.2,500/-. Therefore, in

this appeal it requires to be considered the scope and object of Section 163A of the Motor Vehicles Act which is adhere with the schedule in the

aforesaid provision of law. The loss of estate it cannot be awarded in a sum of Rs.10,000/-, but the claimants are deserving only Rs.2,500/-.

Therefore, it is said that whatever the appeal it has been preferred by the appellant by questioning the judgment and award rendered by the tribunal in

MVC No.7336/2012, but we should have proceed with the scope and object of Section 163A of the Motor Vehicles Act, 1988 as this provision has

been introduced.

12. It is by the parliamentarian views and so also the schedule to be attached to the provision in a petition filed under Section 163A, it is always adhere

with the schedule that should not be awarded the amount exceeding Rs.2,500/- but the Tribunal has awarded in the heads of loss of estate in a sum of

Rs.10,000/-. But in the impugned judgment also the tribunal has observed and stated that as per the schedule the claimants are entitled in the loss of

estate in a sum of Rs.2,500/-, but it is strenuously stated in a tabular form which is in a sum of Rs.10,000/- in the heads of loss of estate. Therefore,

keeping in view of the contention as taken by the learned counsel for the appellant and so also the grounds as urged in this appeal it requires

intervention in so far as loss of estate awarded in a sum of Rs.10,000/- which is exceeding the scope and object of Section 163A attached to the

schedule of the Motor Vehicles Act of 1988. Therefore, it is restraining only the claimants are entitled in a sum of Rs.2,500/- instead of Rs.10,000/-.

Accordingly it is reducing to Rs.7,500/- as against Rs.10,000/-. The rest of the heads of compensation awarded by the Tribunal shall be intact along

with the interest at 6% p.a. as awarded by the Tribunal.

13. In terms of the aforesaid reasons and finding I have to proceed to pass the following

ORDER

The appeal is hereby allowed in part. Consequently, the claimants / respondents are entitled for compensation in a sum of Rs.4,31,167/- with interest at

6% p.a. from the date of the petition till the date of payment of compensation to the loss of the deceased. Accordingly, the appeal is hereby allowed in

part.

Office is directed to draw the decree.

The amount in deposit if any, shall be transmitted to the concerned Tribunal forthwith.