

(1998) 09 KAR CK 0081
In the Karnataka High Court
Case No : M.F.A. No. 3272 of 1995

Mahaboob Sab and Another

APPELLANT

Vs

M.G. Giriraja and Others

RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:

Citation : (2000) ACJ 1142

Hon'ble Judges : B.K. Sangalad, J

Bench : Single Bench

Advocate : A.K. Bhat, for the Appellant; S.P. Shankar, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sangalad, J.—The appellants filed M.V.C. No. 490 of 1991 for the compensation of Rs. 11,60,000 for the death of their son Rahamathulla who was a carpenter by profession earning Rs. 1,000 to Rs. 2,500 per month. The Tribunal while dismissing the petition, has awarded a sum of Rs. 32,000 as compensation on the basis of no fault liability. Being aggrieved by this, the present appeal arises.

2. Mr. A.K. Bhat, learned counsel for the appellants submitted that there is no justification for the Tribunal to dismiss MVC petition holding that the petitioners did not prove the negligence. Mr. Shankar, learned counsel for the respondents supported the judgment and award passed by the Tribunal. In view of this submission, it is to be seen whether the petitioners are able to establish the negligence. The facts in nutshell can be narrated as follows:

On 14.6.1991 at about 10.30 p.m., the respondent No. 1 took the bus bearing No. MEK 2072 from a hill top of Donimalai for going towards Sandur. When that bus came in front of a hostel building at Donimalai, some of the passengers got down from the bus. The deceased Rahamathulla was about to board that bus for going to Sandur. At that time, its driver drove it suddenly in speed. As a result, the deceased fell down and its rear wheel ran over him. He sustained injuries and

he was taken to NMDC Hospital at Donimalai for treatment. When he was under treatment, he succumbed to the injuries. The bus was meant for NMDC employees and Ors. were not allowed to board that bus. Since this deceased tried to board that bus, he met with an accident. It is also held by the Tribunal that there was no negligence on the part of the driver of the bus.

3. Mr. A.K. Bhat, learned counsel for the appellants submits that the deceased was waiting for the bus along with other three persons. PW 2 is an eyewitness. According to him, the deceased attempted to board the bus. Because it moved, he fell down and the rear wheel of the bus ran over him. The contention of Mr. A.K. Bhat is that it was a schedule bus-stop for the NMDC. The passengers who were waiting for the bus, could not know that this bus was not meant for them. Even assuming for a moment, with a wrong impression if any passenger is attempting to enter the bus, it is the duty of the driver of the bus to tell him to get down safely. Otherwise, it amounts to negligence.

4. There is some force in the contention of Mr. Bhat. Some illiterate persons may be standing at the bus-stop. They may not be able to read the board of the bus. If bus comes, they might be under the impression that it is the same bus by which they want to travel. With that impression, there is possibility of attempting to enter into the bus. If a person has wrongly entered into the bus, it is the duty of either conductor and in the absence of the conductor, it is the duty of the driver to tell such passenger to get down safely. Merely a person has gone into the wrong bus, the Tribunal could not have held that the deceased was also negligent. Safety of the life of passengers is paramount consideration. Looking to the facts, it is to be seen whether it can be said that the driver was rash and negligent. Mr. A.K. Bhat, learned counsel for the appellants also relied upon the observations in the textbook by Charlesworth and Percy on Negligence. It is held at page 600, item 10-101-Statutory duties that many of the common law duties of drivers, conductors and passengers have been embodied as statutory duties by virtue of the provision of the Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Regulations, 1936. By regulation 4: "A driver or a conductor, when acting as such... (c) shall take all reasonable precaution to ensure the safety of the passengers in or on or entering or alighting from the vehicle" .. .The receipt of a signal to proceed, which has been given by the conductor, cannot absolve the driver of an omnibus from his duty to take reasonable care for an intending passenger's safety. Thus, where a driver moved off, while a passenger was still in the act of climbing aboard, civil liability was established, sounding in damages for the injury sustained. [See *McLaughlin v. Glasgow Corporation* (1963) 79 Sh Ct Rep 172]. This observation clearly indicates the duties and obligations of the driver and conductor. In the bus involved in the accident, there was no conductor. Hence, the responsibility of the driver was doubled up when he was driving the vehicle without the conductor. Another factor that is to be noted is that he has not stepped into witness-box at the time of trial. Only the owner of the bus is examined. The circumstances now in this case, viz., the deceased was standing at the bus-stop; NMDC bus came

and stopped at the bus-stand and according to the evidence of PW 2, the deceased was trying to enter into the bus and the driver without caring for this man, drove the vehicle in a high speed are very much transparent. As a result, the deceased fell down and the rear wheel ran over him. These sets of circumstances clearly go to show that the driver was responsible for this accident. Hence, the finding of the Tribunal that there was no rashness and negligence on behalf of the driver has to be set aside.

5. Once it is held that there is negligence then compensation has to be calculated looking to the age of the claimants, looking to the income of the deceased and what multiplier would be applicable shall have to be seen.

6. It is in the evidence of PW 1 that his son was a carpenter earning Rs. 1,000 p.m. Again he improves stating that he was earning Rs. 2,500 p.m. The evidence of PW 1 is not of any assistance to come to the conclusion about the definite income of the deceased. Even assuming that he was earning Rs. 1,000 or less, I think the ends of justice would adequately meet with if it is taken that the deceased was able to earn Rs. 500 p.m. For one year, it comes to Rs. 6,000. The age of the father, appellant No. 1 and the mother, appellant No. 2, was 42 years and 38 years respectively at the time of the accident. In view of this, I think the proper multiplier would be 14 as per the decision in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, . Therefore, the loss of dependency comes to Rs. 84,000. In addition to this, a sum of Rs. 5,000 is awarded for the loss to the estate of the deceased and Rs. 2,000 towards funeral and obsequies. Thus, in all the petitioners are entitled to a total compensation of Rs. 91,000. Hence, the following order:

In the result, the appeal is allowed in part and the compensation is enhanced from Rs. 32,000 to Rs. 91,000 with interest at 6 per cent from the date of petition till the date of payment. The respondent Nos. 2 and 3 are jointly and severally liable to pay this compensation with costs and interest.