

**(2003) 12 KAR CK 0018**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No. 3457 of 2002 (MV)

Managing Director, K.S.R.T.C. and Another

APPELLANT

Vs

Sunanda and Another

RESPONDENT

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**Date of Decision :** 01-12-2003

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 173 (1)

**Citation :** (2004) ACJ 889 : (2004) 1 KarLJ 105

**Hon'ble Judges :** S.R. Nayak, J; Ram Mohan Reddy, J

**Bench :** Division Bench

**Advocate :** Ashok Haranahalli, for the Appellant; Mallikarajuna S. Mylar, for Respondent -1, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Ram Mohan Reddy, J.—The owner and insurer of the motor vehicle involved in the accident have 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 34-9-2001 passed in M.V.C. No. 411 of 2000 on the file of the Additional Civil Judge (Senior Division) and Additional Motor Accidents Claims Tribunal, Hubli (for short the "MACT").

2. The facts of the case in brief are:

On 1-1-2000, one Mahaveerappa Prathamashetty was travelling on the top of the bus belonging to the appellants along with his goods being tin sheets. When the bus reached KEB Pole No. GDR 16 on Hubli - Gadag Road, the driver of the bus applied brakes suddenly and the deceased fell down from the top of the bus and died instantaneously. The legal representatives of the deceased being the widow and minor son, dependant on the income of the deceased, instituted a claim petition in M.V.C. No. 411 of 2000 seeking compensation.

3. The appellants, on being notified by the MACT, appeared through their Counsel and filed their objections denying the claim. The appellants, the respondents in

the claim petition took a specific contention that the deceased was travelling on the roof of the bus without any permission of the conductor or the driver and also without a ticket and that the deceased was solely responsible for his death. On the basis of the pleadings of the parties, the MACT framed the following issues:

1. Whether the petitioner prove that the accident in question has taken place on 1-1-2000 at about 15-45 hours on Gadag-Hubli Road near K.E.B. Pole due to rash, negligent and speed driving of the K.S.R.T.C. bus as pleaded in the petition?
2. Whether the petitioner prove that deceased Mahaveerappa was travelling on the top of the K.S.R.T.C. bus bearing No. KA 25/F 863 with permission of driver and conductor of said bus and due to the sudden brake application by the driver of bus Mahaveerappa fell down on the katcha road as a result he sustained severe injuries and died as pleaded in the petition?
3. Whether respondent prove that deceased was travelling by bus by sitting on the roof of bus illegally and unauthorisedly without permission and without tickets and became himself was root cause for accident and he himself contributed for his accident and death as alleged in the objection?
4. Whether the petitioner is entitled to any compensation? If so, what amount and from whom?
5. What order?

4. The 1st claimant examined herself as P.W. 1 and also examined another witness as P.W. 2 and marked 11 documents as Exs. P. 1 to P. 11. The respondent examined the driver of the bus as P.W. 1 and did not exhibit any documents. The MACT after having considered the oral and documentary evidence, placed before it, answered issues 1 and 2 in the affirmative and issue 3 in the negative and awarded total compensation of Rs. 3,73,000/- together with interest at 9% p.m. from the date of petition till realisation. Being aggrieved by the said judgment and award, the appellants have preferred this appeal.

5. The learned Counsel for the appellant, contended that the deceased, on his own, was travelling on the top of the bus without the permission of the conductor or the driver and therefore, was responsible for his own death. Finding of the MACT to the contrary, is contended, to be perverse. Learned Counsel further sought to contend that there was no evidence to substantiate negligence on the part of the driver of the bus in applying the brakes, therefore, it would in the least amount to contributory negligence on the part of the deceased, which aspect of the matter was not considered by the MACT. In addition, the learned Counsel contends that there was no evidence oral or documentary to establish that the deceased was earning a sum of Rs. 3,000/- p.m. from running a Kirana Shop and fixing of income of the deceased at Rs. 3,000/- by the MACT is said to be on the higher side.

6. Having heard the learned Counsel for the appellant, two questions arise for

decision making, viz.--

(i) Whether the MACT was justified in attributing actionable negligence on the part of driver of the bus bearing No. KA 25/F 863 and in negating the contention of the appellants that the deceased was sitting on the roof of the bus illegally, unauthorisedly, without permission and without ticket and had actually contributed to the accident?

(ii) Whether the MACT was justified in taking the income of the deceased at Rs. 3,000/- per while awarding compensation?

Point No. (i):

7. The evidence of Shivanand Gurupadappa Naikar, who is examined as P.W. 2 goes to show that he knew the deceased as he belongs to his native place and that on the relevant date, himself and the deceased came for purchasing goods at Hubli. He further deposed that when they were near the Municipal Corporation at Hubli to go to their village with the goods i.e., tin sheets purchased by the deceased, the bus bearing No. K.A 25/F 863 stopped for alighting and picking up of passengers. The deceased purchased the tickets and loaded the tin sheets on the top of the bus belonging to the appellants and the deceased was allowed to sit and travel on top of the bus. He also stated that other passengers were also allowed to sit and travel on the top of the bus in question, while the said witness was seated inside the bus. This witness has testified to the driving of the bus by its driver at a high speed, having applied the brakes suddenly due to which the deceased fell down from the top of the bus and sustained fatal injuries and died instantaneously. It is in the deposition of P.W. 2 that the deceased was shifted to KIMS Hospital, Hubli, where post-mortem was conducted and thereafter the body was shifted to his native village. This witness also has spoken to the Kirana business carried on by the deceased including that of running a Tea Stall and that the deceased was earning Rs. 5,000/- to 6,000/- from all sources.

8. As against this evidence of the eye-witness, the driver of the bus was examined as R.W. 1 who had driven the said bus at the time of the accident, while proceeding from Hubli-Yeraguppi on the relevant date. He states that he after having stopped the bus at Municipal Corporation in Hubli, he move the bus only after the conductor gave the signal for him to proceed. He also admits that passengers boarded the bus at the said bus stop. He states that he came to know that the accused had boarded the bus on the top, only after he had fallen from top of the bus at Railway General Store, Gadag Road, when the passengers asked him to stop the bus.

9. It is not in dispute that the deceased was travelling on the top of the bus in question. It is also not in dispute that the deceased has loaded tin sheets on rooftop of the bus. For the purpose of loading these tin sheets on rooftop, the deceased must have taken sufficient time and the same cannot be done without the knowledge of the driver and conductor of the bus. Such loading of the goods on the top of the bus will not be allowed without the conductor having collected

the requisite fair from the passenger. It was the duty of the conductor and the driver of the bus to have noticed if there were any passengers on the rooftop and to ask them to alight from the rooftop and to board the bus. Boarding of the bus necessarily pre-supposes that the passenger will have to get inside the bus, either sit in the seat or stand in the place reserved for standing. The conductor of the bus has to comply with this statutory duty. In case, the passenger is on the rooftop of the bus itself, the conductor ought to have asked the passenger to get down and thereafter ought to have signalled to the driver of the bus to proceed. The driver of the bus was also enjoined with the duty to ensure that the bus move only after there was safe travelling conditions for the passengers. The deceased, who loaded his goods on to the roof of the bus and sat on the rooftop of the bus could not have done so stealthily. Neither the driver nor the conductor cautioned the said deceased not to travel on the rooftop of the bus, the deceased having fallen off the roof of the bus and died cannot be held to have contributed to the negligence. There is neither pleading nor proof of contributory negligence. There is no evidence on record to show that the deceased had refused to alight from the rooftop in spite of the directions from the driver or the conductor or he was cautioned about the risk, he was undertaking by travelling on the roof of the bus. The MACT having arrived at a positive conclusion that there was no negligence on the part of the deceased in travelling on the roof of the bus, no exception can be taken to the said finding.

10. The evidence of R.W. 1, who claim to have known nothing about the deceased travelling on the roof of the bus is contrary to the testimony of P. W. 2, the eye-witness which is corroborated by the Police records which clearly establishes that the driver of the bus was driving the bus at a high speed and due to sudden application of brake, the deceased was tossed from the top of the bus and fell to the ground and died instantaneously. The MACT, having rendered a factual finding on the said issue of negligence and attributing actionable negligence on the part of the driver, cannot be found fault with.

11. Coming to the quantum of compensation awarded by the MACT, it may be noticed that the evidence of P. Ws. 1 and 2 establish that the deceased was carrying on Kirana business. Though, the claimants also claim that the deceased was running a Tea stall business, the claimants have not produced any satisfactory evidence with regard to the alleged claim of Tea stall business. The MACT was justified in rejecting the alleged claim that deceased was carrying on Tea stall business.

12. Exhibits P. 3 to P. 9, the documents issued by the Department of Weights and Measures where the shop of the deceased was subjected to check and a seal affixed by the said department would safely establish the fact that the deceased was running a Kirana business. The respondents were unable to discredit this evidence of P.Ws. 1 and 2 nor lay any contra evidence in support of their defence and therefore the finding of the MACT that out of the said Kirana business, the deceased could have earned Rs. 100/- per day cannot be said to be perverse, in

the facts and circumstances of the case. The accident occurred on 1-1-2000 and considering the fact that the deceased had a family consisting of his wife and minor son, it cannot be said that earning Rs. 100/- per day was extraordinary or something special. The MACT having deducted 1/3rd of the said income towards personal expenses of the deceased, arrived at a sum of Rs. 24,000/- p.a., as loss of income to the family. The age of the deceased was 35 years and the application of the multiplier 15 is not disputed by the appellants. Applying the multiplier to the multiplicand, the MACT calculated the loss of dependency at Rs. 3,60,000/- and accordingly awarded the same. The award towards loss of dependency cannot be said to be either excessive or on the higher side. The appellants have not questioned the award of compensation under the conventional heads and therefore, there is no need to review the said finding.

In the result, the appeal is devoid of merits and is dismissed at the stage of admission. No order as to costs.

The registry is directed to transmit a sum of Rs. 25,000/- deposited in this appeal forthwith, to the MACT.