

(2013) 11 KAR CK 0115
In the Karnataka High Court
Case No : M.F.A. No. 5495 of 2007 (MV)

North West Karnataka Road Transport Corporation	APPELLANT
Vs	
Annappa Basappa Basagoudar, Babu Basappa Basagoudar, Nandeppa Basappa Basagoudar and Gouravva Basappa Basagoudar	RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0115

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : P.P. Hiremath, for the Appellant; Jagadish Patil R.S. Hegde, for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—The Divisional Controller, NWKRTC (hereinafter referred to as the "Corporation" for short) filed this appeal challenging the judgment and award dated 27-12-2006 made in MVC No. 2266/2005 passed by the Additional Motor Accident Claims Tribunal, Athani, (hereinafter referred to as "the Tribunal" for short) fastening the liability on the appellant. The respondents 1 to 4 herein who are the claimants had filed a claim petition before the Tribunal contending that the father of respondents 1 to 3 and husband of the 4th respondent one Basappa Basavanagoudar was standing by the side of the road, near Sankonatti village at about 8.00 p.m. The bus belonging to the Corporation bearing Registration No. KA-28/F-592 driven by its driver in a rash and negligent manner came and dashed against the deceased Basappa who was standing by the side of the...road. Due to the impact, Basappa fell down and sustained grievous injuries to his head. While shifting to the hospital, he succumbed to injuries. At the time of death, the deceased was aged about 58 years, doing agricultural and milk vending business and was earning a sum of Rs. 13,000/- p.m. Due to the death of their father, they have lost their bread earner and sought for compensation of

Rs. 8,00,000/-.

2. The respondent-Corporation entered appearance and filed objection statement denying the entire averments made in the claim petition and also contended that no accident had occurred as on 6-7-2005 as alleged by the claimants. The bus belonging to the Corporation bearing registration KA-28/F-592 had not met with any accident. They have disputed the earnings of the deceased and sought for dismissal of the claim petition.

3. On the basis of the pleadings of the parties, the Tribunal framed the following issues:

(i) Whether the petitioners prove that on 06-07-2005 at 8 p.m. near Sankonatti Bus Stop the driver of bus bearing No. KA-28/F-592 drove it in a rash and negligent manner and dashed to the deceased Basappa?

(ii) Whether the petitioners further prove that, in the said accident due to heavy impact, the deceased Basappa sustained fatal injuries and died on the way of Hospital?

(iii) Whether the respondent proves that, there is no negligence on the part of the driver of the Bus?

(iv) Whether the petitioners are entitled for the relief of compensation?

(v) What order or decree?

4. In order to prove the case of the claimants, the first claimant was examined himself as P.W. 1 and got marked the documents as Ex. P1 to Ex. P13. He has also examined eye-witnesses of the accident as P.W.2 and P.W.3. On behalf of the respondents, driver and conductor of the bus were examined as R.W.1 and R.W.2 and got marked the documents as Ex. D1 to Ex. D5.

5. The Tribunal, after considering the arguments addressed by the learned Counsel for the parties and on appreciating the oral and documentary evidence let in by the parties, held issue Nos. 1, 2 and 4 in the affirmative and issue No. 3 in the negative. Consequently, by its judgment and award dated 27-12-2006 allowed the claim petition and directed the Corporation to pay a compensation to the claimants in a sum of Rs. 2,20,000/- with interest at 6% p.a. Being aggrieved by the said judgment and award passed by the Tribunal, the appellant-Corporation has filed this appeal.

6. Sri. P.P. Hiremath, learned Counsel appearing for the appellant contended that the judgment and award passed by the Tribunal is contrary to law. The Tribunal has not properly appreciated the oral and documentary evidence adduced by the driver and conductor of the bus. The specific case of the appellant-Corporation is that the bus in question had not met with an accident on 6-7-2005 at 8.00 p.m. as alleged by the claimants. On the complaint made by the claimants, the Police after investigating the matter submitted "C" report. Hence, the question of fastening the liability on the appellant-Corporation to compensate the claimants

do not arise. The IMV report also does not support the case of the claimants. Further contended that the respondents-1 to 3 are not the dependants of the deceased. Hence, they are not entitled for compensation and the compensation awarded is also exorbitant and sought for allowing the appeal.

7. On the other hand Sri. Jagadish Patil, learned Counsel appearing for the respondents argued in support of the judgment and award passed by the Tribunal and contended that due to the rash and negligent driving of the bus by its driver, the accident has occurred. Immediately after the accident, the injured was shifted to the hospital, where he was declared dead. The hospital records clearly show that death of the deceased was due to the road traffic accident. Further the Police have also enquired the driver and conductor of the offending vehicle at 11.30 p.m. The evidence of eye-witnesses clearly disclose that death is due to the rash and negligent driving of the bus. The Police also chargesheeted the driver of the bus. The Tribunal taking into consideration the entire aspects of the matter held that the accident has occurred due to the rash and negligent driving of the bus by its driver. Hence, the claimants are entitled for compensation. The quantum of compensation awarded by the Tribunal is also on the lower side. Hence, sought for dismissal of the appeal.

8. I have carefully considered the arguments addressed by the parties and perused the judgment and award and oral and documentary evidence let in by the parties.

9. The records clearly disclose that the father of respondents 1 to 3 and the husband of 4th respondent died in the road traffic accident occurred on 6-7-2005 at 8.00. p.m. Immediately after the accident, he was shifted to the hospital, where he was declared dead. However, the respondent-Corporation denied the involvement of the bus belonging to the Corporation in the accident and contended that no accident has been occurred on 6-7-2005. The evidence of P.W.2 and P.W.3, who are the eye-witnesses of the accident/in their evidence had clearly deposed that the deceased Basappa was standing by the side of the road near Sankonatti Bus-stop. At that time, the driver of the offending bus drove the same in a rash and negligent manner and dashed against the deceased Basappa. In the cross-examination, P.W.2 deposed that on the date of accident, the bus was not stopped at Sankonatti bus stop since there were no passengers. However, the accident had occurred at a distance of 20 Ft from the bus stop. He further deposed in the cross- examination that after finishing the work, while he was proceeding to his house he saw the accident. P.W.3 in his evidence deposed that while he was returning to his house from the Basaveshwara Temple, he saw the accident at 8.00 p.m. He informed the claimants regarding the accident. Nothing contrary has been elicited in the cross- examination.

10. The respondent-Corporation examined the driver and conductor of the bus as R.W.1 and R.W.2. The driver in the examination-in-chief deposed that the bus had not met with accident. However, he has admitted that the bus had passed Sankonatti village at about 8.00 p.m. and last stop of the bus was Sapthasagar.

At about 11.30 p.m., the police had come for investigation. However, R.W.2 the conductor of the bus deposed that since he was busy in issuing tickets, he had not seen what has happened in the outside and he has not seen the accident.

11. The police records clearly disclose that a charge sheet has been filed against the bus driver and that has been challenged before the Sessions Court in Cr.P. No. 403/2006. and the said order has become final. The spot mahazar, rough sketch, copy of the complaint and FIR disclose that the accident had occurred due to the rash and negligent driving of the bus. The Tribunal, taking into consideration the Police records and also evidence of the two eyewitnesses held that death had occurred due to the rash and negligent driving of the bus, by its driver. I find no infirmity or irregularity in the said finding. With regard to the quantum of compensation is concerned, though the claimants claim that the deceased was earning more than Rs. 13,000/- p.m. no document has been produced in this regard. In view of that, the Tribunal has taken the income of the deceased as Rs. 90/- per day i.e. Rs. 2,700/- p.m., deducting 1/3rd towards his personal expenditure, applying the multiplier of 10, awarded loss of dependency of Rs. 2,16,000/- and funeral expenses of Rs. 4,000/-. In all, a sum of Rs. 2,20,000/- was awarded. The compensation awarded by the Tribunal is on the lower. side. Since the claimants have not preferred any appeal seeking enhancement of compensation, the question of interfering with the said judgment and award does not arise. Accordingly, I pass the following:

ORDER

The appeal is dismissed.

The amount in deposit before this court be transferred to the Motor Accident Claims Tribunal, Athani, forthwith.