

(2003) 12 KAR CK 0035

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 6929 of 2003

North West Karnataka Road Transport Corporation, Central
Office

APPELLANT

Vs

Devamma and Others

RESPONDENT

Date of Decision : 03-12-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 173 (1)

Citation : (2005) ACJ 1591 : (2004) ILR (Kar) 962 : (2004) 3 KarLJ 93

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : H.D. Lingaraju, for D. Vijayakumar, for the Appellant;

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The North West Karnataka Road Transport Corporation (for short, "Corporation") has preferred this appeal u/s 173(1) of the Motor Vehicles Act, 1988 (for short, "Act"), calling in question the judgment and award dated 30th July, 2003 passed in M.V.C. No. 71 of 1996 on the file of the Civil Judge (Senior Division) and Additional Motor Accidents Claims Tribunal, Gadag (for short, "MACT").

2. The facts of the case in brief as narrated in the judgment and award are as under:

On 5-4-1994 one Ningappa Belagajjari, in order to go to Laxmeshwar, boarded the bus bearing Registration No. KA-25/F-190 by climbing to the roof-top since, the said bus was jam-packed with passengers. The said bus belonged to the appellant and was driven by its driver at high speed and in a rash and negligent manner. When the said bus reached Uma Vidyalaya at Laxmeshwar, another bus belonging to the K.S.R.T.C. came from the opposite direction and the driver of the bus No. KA-25/F-190 swerved the bus on to the katcha road at the very same speed, as a result of which, the bus lost its balance and the petitioner who

was sitting on the roof-top fell down to the left side and on to the katcha road sustained fatal injuries and was unconscious. On being taken to the K.M.C. Hospital, Hubli, he was referred to a Neuro-Surgeon-Dr. S.P. Baligar, under whom he was treated for a period of one and half months and thereafter, he was treated by Dr. P.V. Totad. After a period of one month therefrom, the said Ningappa Belagajjari, succumbed to his injuries. The legal representatives of the deceased depending on the income of the deceased, filed a claim petition numbered as M.V.C. No. 71 of 1996 seeking compensation of Rs. 2,45,000/- together with interest at 18% per annum under several heads. The appellant who was arraigned as the respondent before the MACT in the above claim petition, on notice, entered appearance and resisted the claim. A specific plea was taken by the appellant that though there was sufficient space inside the bus, the deceased had boarded on roof-top of the bus without heeding to the request, caution and warnings given by the driver and conductor that travelling on the roof-top of the bus was an offence and moreover, was risky. Thus, it was contended that the deceased by his own conduct and risk climbed to the roof-top and finally met his end.

3. On the aforesaid pleadings, the MACT framed three issues.

4. The claimants in support of their case examined one M.N. Galagachchi as P.W. 1; one Basavaraj Totad as P.W. 2 and Dr. P.D. Totad as P.W. 3. The claimants also got marked 8 documents as Exs. P. 1 to P. 8 and closed their side. The respondents did not lead any oral evidence or produce any documentary evidence. The MACT having appreciated the oral and documentary evidence laid before it by the claimants and the fact that the respondents-Corporation had not tendered evidence of either the driver or the conductor of the bus, attributed actionable negligence on the part of the driver of the bus in causing the accident resulting in fatal injuries and death of the said Ningappa. The MACT awarded a total compensation of Rs. 1,98,800/- together with interest at the rate of 7% per annum from the date of petition till the date of deposit, under the following heads:

1. Loss of dependency: Rs. 1,72,800/- 2. Loss of consortium : Rs. 8,000/- 3. Love and affection : Rs. 5,000/- 4. Funeral expenses : Rs. 3,000/- 5. Medical expenses : Rs. 10,000/- Total Rs. 1,98,800/-

Being aggrieved of the said judgment and award, the appellant-Corporation has filed this appeal.

5. The learned Counsel for the appellant sought to contend that the deceased himself had taken the risk of climbing to the roof-top of the bus and travelled as a roof-top passenger with full knowledge of the consequences, which the MACT had not considered while attributing actionable negligence on the part of the driver of the bus. Alternatively, he sought to contend that the deceased had also contributed to the negligence and therefore there ought to be an apportionment of the negligence in the ratio of 50:50 between the driver of the bus and the

deceased. Further, he sought to contend that the MACT ought not to have taken the monthly income of the deceased at Rs. 2,400/- in the absence of any substantial legal evidence to establish the income of the deceased. The learned Counsel further contends that in any event of the matter, the claim was that the deceased was earning Rs. 1,000/- to Rs. 1,500/- per month and therefore the MACT ought to have taken the said income while awarding compensation. In support of the contentions of the learned Counsel, reliance was placed on the ruling of this Court in the case of Smt. Shivleela and Others Vs. Karnataka State Road Transport Corporation, .

6. Having heard the learned Counsel, the questions that arise for determination in this appeal are:

(1) Whether the MACT was justified in attributing actionable negligence on the part of the driver of the bus No. KA-25/F-190 in the facts, circumstances of the case and evidence on record, if not whether the deceased had contributed to the negligence as contended by the learned Counsel for the appellant?

(2) Whether the award of Rs. 1,98,800/- by the MACT is just and reasonable compensation?

7. It is not in dispute that the deceased was travelling on the roof-top of the bus and that he had fallen down from the bus and sustained fatal injuries which ultimately led to his death. P.W. 2 is said to be an eyewitness a passenger travelling in the bus who has accounted for the said incident. In the entire cross-examination of this witness, nothing is elicited which could prejudice the case of the claimants. The evidence of P.W. 2 remains uncontroverted and there is nothing in the cross-examination to discredit the evidence or impeach the witness.

8. Be that as it may. The appellant having taken a specific plea that the deceased had climbed to the roof-top of the bus without heeding to the request, caution or warning given by the driver and conductor was not proved or established, such a plea remained a plea only. Neither the driver nor the conductor of the bus was examined to establish this plea. In addition, it is to be noted that the police records-Exs. P. 1 to P. 4 support the case of the claimants that it was the driver of the bus, having driven the bus in high speed, in rash and negligent manner had resulted in the deceased falling from the roof-top of the bus and sustaining fatal injuries. The MACT has taken into consideration the documentary evidence such as police records while rendering its findings. Though the appellant had taken a specific plea that the deceased was informed of the risk failed to discharge the said burden of establishing the plea and therefore the appellant cannot be heard to say that it was the deceased who had contributed to the negligence. It is not their case that the deceased had refused to get down in spite of directions of the driver or conductor. Though it is the case of the appellant that the bus was not crowded and vacant seats were available in the bus, the deceased had chosen to travel on the roof-top, failed to place before the

MACT substantial legal evidence to establish this plea. The testimony of P.W. 2 would go against the appellant-Corporation.

9. The contention of the appellant that the deceased could be held responsible at least in part, for having travelled on the roof-top of the bus which was not permitted under law and hence, no fault can be found with the driver, cannot be sustained, The ruling relied on in respect of the said contention that in similar circumstances, the Court had apportioned the negligence in the ratio of 50:50 between the driver and conductor of the K.S.R.T.C. bus and the claimant therein, in my opinion, has no application to the facts and circumstances of the case on hand. It is relevant to note the finding of this Court recorded at para 13 which is extracted, reads as under:

"It is neither possible nor proper for us to lay down any general standard or norms to govern the apportionment of liability between those travelling on the roof of a public vehicle and the driver/conductor of any such vehicle. Each case shall have to be dealt with in its own peculiar facts and circumstances.".

10. The appellant, as already noticed above, has failed to establish his contention by examining either the driver or the conductor or any independent witnesses. In the absence of such evidence, it is trite that the MACT was justified in attributing actionable negligence on the driver of the bus. No exception can be taken to such finding. There is no infirmity in the said findings of the MACT either in law or on facts of the case.

11. The claimants have stated that the deceased was 55 years of age and was doing agriculture and was also carrying on the business of selling and purchasing cattle from out of which he had an income of Rs. 1,000/- to Rs. 1,500/- per month. The MACT having appreciated the evidence of the claimants, held that the claimants had not led sufficient evidence to establish the monthly income of the deceased at Rs. 1,000/-to Rs. 1,500/- from the business of selling and purchasing cattle and accordingly, rejected the said claim of income from business. The appellants produced Ex. P. 7-ROR extract in respect of Sy. No. 92 of Ullatti Village, to show that the deceased was an agriculturist. Having thus established the fact that the deceased was an agriculturist, the MACT in the absence of any evidence to show the income of the deceased from agriculture, has done some guesswork and in its estimation, assessed the daily income of the deceased at Rs. 80/-. From out of the monthly earnings of the deceased at Rs. 2,400/- the MACT deducted 173 towards personal expenses of the deceased, arrived at yearly loss of dependency at Rs. 19,200/- taking the age of the deceased at 55 years which was uncontroverted and established by the evidence of P.W. 1, the appropriate multiplier 9 was applied and the loss of dependency was calculated at Rs. 1,72,800/-. The learned Counsel for the appellant was not able to point out any infirmity in the said finding.

12. It is in the evidence of P.W. 3-Dr. Totad that the deceased was brought to his Nursing Home in an unconscious state on 9-5-1994 and had undergone surgery

for the head injury. The Exhibits P. 5 and P. 8-Certificates issued by P.W. 2 satisfactorily establish the treatment undergone by the deceased before his death. Though the claimants had not produced any bills or vouchers, but having regard to the fact that the deceased was admitted to the hospital as an inpatient and underwent surgery, it is probable that the claimants must have spent huge sums of money. The MACT has awarded only a meagre sum of Rs. 10,000/- towards medical expenses, which in the facts and circumstances of the case is totally inadequate. Since the claimants are not before Court, the same cannot be reviewed. The MACT has awarded a sum of Rs. 3,000/-towards funeral and obsequies and Rs. 8,000/- towards loss of consortium and a sum of Rs. 5,000/- towards love and affection. The award of compensation under the conventional heads do not call for interference at the hands of this Court.

13. The appeal is devoid of merits and accordingly it is dismissed without notice to the respondents.

The registry is directed to transmit Rs. 25,000/- in deposit, in this appeal, forthwith, to the MACT.

No order as to costs.