

(1996) 10 KAR CK 0033
In the Karnataka High Court
Case No : M.F.A. 1589 of 1991

Rajesab Bandagisab Gennur and Another	APPELLANT
Vs	
Siddalingayya Rudrayya Hiremath and Another	RESPONDENT

Date of Decision : 29-10-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 110 A (1) (c)

Citation : (1997) ILR (Kar) 2130

Hon'ble Judges : M.B. Vishwanath, J

Bench : Single Bench

Advocate : Ashok R. Kalyanshetti, for the Appellant; Basavaraj Kareddy, for R-1 and U. Abdul Khader, for R-2, for the Respondent

Final Decision : Allowed

Judgement

M.B. Vishwanath, J.—Heard both Counsel.

2. The appellants are the claimants before the Tribunal.

3. Jorabai, mother of the claimants, died on 16.12.1989 at 8.30 a.m. at the bus-stand in Chikkapadasalagi village on Bijapur - Jamakhandi road as a result of the accident caused by the driver who was driving the tempo bearing No. MYJ 7967.

4. The Tribunal dismissed the claim petition holding that the rashness and negligence on the part of the driver was not established and that the appellants claimants were not entitled to any compensation.

5. Ex.P-1 is the copy of the F.I.R. It is clear from Ex.P-1 that there was rashness and negligence on the part of the driver. It is clearly stated that the driver was driving the tempo with great speed and negligence.

6. Ex.P-3 is the copy of the mahazar prepared at the spot. It is clear from the recitals in Ex.P-3 that the vehicle in question, after dashing against the claimants' mother, was facing west from the tar road. It is clearly stated in Ex.P-3 that the tempo was standing at a distance of 30" from the spot of the

accident. This recital is proof positive that there was negligence on the part of the driver. There is yet another recital in Ex.P-3. The front glass of the tempo was smashed to pieces after the accident.

7. PW. 3- Husenbi (second appellant herein) has stated in her evidence that on the date of the accident, she and her mother were standing on the kachcha road at Chikkapadasalagi bus-stand and that the tempo came from Bijapur side in a high speed and dashed against the bullock-cart and thereafter to her mother and then stopped by touching the hut. No doubt there is a little exaggeration in the evidence of P.W.3. But there can be no doubt that there was rashness and negligence on the part of the driver. The evidence of P.W.3 Husenbi read conjointly with the recitals in Ex.P-1 and P-3 pointed out above point to one conclusion viz., there was rashness and negligence on the part of the driver, and the accident was due to rash and negligent driving of the tempo by the driver.

8. The learned Member of the Tribunal has grossly erred in not noticing the above facts and dismissing the claim petition. The conclusion reached by the Member of the Tribunal is perverse.

9. Now I take up the contention to what compensation are the appellants-claimants, who are the son and daughter of deceased Jorabai, are entitled to.

10. It is argued by the Learned Counsel for the Insurance Company that the second claimant is a married daughter and so she is not entitled to any compensation. The second claimant is a 22 years old lady. It is argued that the second claimant, since she is married, is not a dependent and so she is not entitled to any compensation. It has been laid down by the Supreme Court in the case reported in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, that Clauses (b) and (c) of Sub-section (1) of Section 110-A of the Motor Vehicles Act provide that an application for compensation arising "out of an accident may be made where death has resulted from the accident by all or any of the legal representatives of the deceased.

11. In the same authority, at page 571, the Supreme Court has been pleased to observe that in an Indian family, brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the, bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation under the Motor Vehicles Act.

12. In view of the law laid down by the Supreme Court, there is no force in the argument that the second appellant-claimant, who is 22 years old daughter of the deceased, is not entitled to compensation.

13. It is next contended that the first appellant-claimant is a major son and he was not a dependent of deceased mother. It is in the evidence and it has been noted by the Tribunal also that the first appellant-claimant is a physically handicapped man. He does not have three middle fingers. Bearing in mind this

condition of the first appellant-claimant and the law laid down by the Supreme Court, there is no force in the argument that the first appellant-claimant was not a dependent on the deceased mother and so he is not entitled to compensation.

14. The learned Counsel for the appellants-claimants relied on the decision of the Punjab & Haryana High Court reported in *Unnati and Others Vs. Pepsu Road Transport Corporation, Patiala and Another*, where in compensation of Rs. 50,000/- was awarded on account of the death of the mother in the accident. In the Punjab and Haryana authority, the claimant was a four year child. The mother who was killed in the accident was young. The Punjab and Haryana High Court was pleased to observe that if the unfortunate accident has not taken place, the claimant would have had her mother to look after for many years to come, certainly until she was married. In view the two circumstances pointed out above, the Punjab and Haryana High Court granted compensation of Rs. 50,000/- to the child.

15. The Punjab and Haryana High Court also took into consideration the higher social status of the deceased mother of the claimant.

16. The authority of the Punjab and Haryana High Court is clearly distinguishable on facts. In the instant case, the deceased was the mother of the claimants and she was aged 60 years as per the P.M. report.

17. It is in evidence that the deceased was working as a coolie, earning Rs. 20/- per day.

18. At this stage, both Counsel agree that a consolidated sum towards compensation, as has been done by the Punjab and Haryana High Court, may be granted to the appellants-claimants. "All these elements must be considered. They are to be given such weight as sound judgment dictates. They are constituents of that social welfare which it is our business to discover". The Nature of the Judicial Process by Benjamin N. Cardozo. I am of the opinion that a sum of Rs. 35,000/- as compensation will meet the ends of justice.

19. The judgment and award passed by the Tribunal on 13.5.1991 in M.V.C.No.721/1989 are set aside. The claim petition is allowed. The appellants-claimants are granted compensation of Rs. 35,000/-with interest at 9% p.a. from the date of petition till realisation. The Insurance Company is granted three months time to deposit this amount in the Tribunal.

Out of this amount, 3/4th of the amount shall be paid to the first appellant-claimant (son) and 1/4th shall be paid to the second appellant-claimant (daughter).

The appeal is allowed as stated herein.