

**(2016) 02 KAR CK 0255**

**In the Karnataka High Court**

**Case No :** M.F.A. Nos. 30392/2013 (MV) and 30393, 30589 and 30590 of 2013

Renuka and Others

APPELLANT

Vs

The Divisional Controller, NEKRTC and Others

RESPONDENT

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**Date of Decision :** 19-02-2016

**Acts Referred:**

**Citation :** (2016) 02 KAR CK 0255

**Hon'ble Judges :** B. Manohar, J.

**Bench :** Single Bench

**Advocate :** Harshavardhan R. Malipatil, Advocate, for the Appellant; Ratna N. Shivayogimath, Advocate, for the Respondent

**Final Decision :** Partly Allowed

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## **Judgement**

B. Manohar, J.—1. These appeals by the claimants and the Divisional Controller, NEKRTC challenging the common judgment and award dated 21st November, 2012 made in MVC Nos. 73/2012 and 74/2012 by the Senior Civil Judge and MACT - IX at Basavana Bagewadi (hereinafter referred to as "the Tribunal" for short).

2. Since the common judgment and award passed by the Tribunal has been challenged in these appeals, all these appeals are clubbed together and disposed of by this common judgment.

3. MFA Nos. 30392 and 30393 of 2013 have been filed by the claimants being not satisfied with the quantum of compensation, whereas MFA Nos. 30589 and 30590 of 2013 have been filed by the Divisional Controller, NEKRTC questioning the liability fastened on them.

4. For the sake of convenience, the parties are referred to as in the claim petitions.

5. The necessary facts leading to the filing of these appeals are as under:

Claimants filed claim petitions in MVC Nos. 73/2012 and 74/2012. The claimants

are the legal representatives of deceased Sanappa and Sadashiv. The common facts and grounds urged in these claim petitions are that on 21.05.2012, while Sadashiv along with Sanappa as a pillion rider were proceeding on a motor cycle bearing Regn. No. KA-28/L-895 towards Muddebihal - Nalawatwad road, a KSRTC bus bearing Regn. No. KA-36/F 685 coming from opposite direction being driven by its driver in high speed and in rash and negligent manner dashed against the motor cycle. Due to that, the rider and pillion-rider fell down and sustained grievous injuries and subsequently succumbed to the same.

6. Claimants in MVC No. 73/2012 are the wife and mother of the deceased Sanappa. They contended that the deceased Sanappa was working as a carpenter and earning a sum of Rs. 6,000/- p.m. At the time of accident, he was aged about 25 years and left behind the recently married wife and aged mother. In view of death of Sanappa, the family has lost the bread earner and claimed compensation of Rs. 10,64,000/-, whereas the claimant in MVC No. 74/2012 is the mother of deceased Sadashiv. She contended that prior to the accident, deceased Sadashiv was aged about 22 years. He was a bachelor, working as a carpenter and earning a sum of Rs. 6,000/- p.m. The mother has lost her son and sought for compensation of Rs. 10,64,000/-.

7. In pursuance of the notice issued by the Tribunal, respondent-NEKRTC entered appearance and filed detailed statement of objections contending that the claim petitions are not maintainable for non-joinder of parties. The owner and the insurer of the motor cycle were not made parties to the proceedings. The compensation sought for by the claimants is exorbitant. Due to the negligence on the part of rider of motor cycle, the accident had occurred and sought for dismissal of the claim petitions.

8. On the basis of pleadings of the parties, the Tribunal framed necessary issues in each of the claim petitions.

9. Claimants in order to prove their case, the 1st claimant in MVC No. 73/2012 got examined as PW1 and claimant in MVC No. 74/2012 got examined as PW2. One of the eye witnesses was examined as PW3. The documents produced by the claimants were marked as Exs.P1 to P7. On behalf of respondents, none of the witnesses was examined and no document was produced.

10. The Tribunal after considering the oral and documentary evidence let in by the parties and taking into consideration the FIR, MVI report, chargesheet and copy of the complaint held that due to negligent driving of the bus, the accident had occurred and the rider and pillion rider of the motor bike died on the spot. Though the respondents alleged contributory negligence on the part of rider of the motor cycle, no document has been produced to establish the same. The claimants are dependants of the deceased and they are entitled to compensation.

11. With regard to compensation is concerned, though the claimants claimed that the deceased were working as carpenters and earning a sum of Rs. 6,000/- p.m., no document has been produced to establish the same. In view of that, taking

into consideration the income of both the deceased as Rs. 4,000/- p.m., deducting 1/3rd towards personal expenses of deceased Sanappa in respect of MVC No. 73/2012 and deducting 50% towards personal expenses of the deceased Sadashiv in respect of MVC No. 74/2012 and applying the appropriate multiplier considering the age of the deceased awarded compensation of Rs. 5,59,000/- and Rs. 4,37,000/- respectively with interest at 6% p.a. Being not satisfied with the quantum of compensation, the claimants have preferred MFA Nos. 30392 and 30393 of 2013, whereas the NEKRTC being aggrieved by the common judgment and award fastening the liability on them has preferred MFA Nos. 30589 and 30590 of 2013.

12. I have carefully considered the arguments addressed by Sri Harshavardhan R. Malipatil, learned Advocate appearing for the claimants and Smt. Ratna N. Shivayogimath, learned Standing counsel appearing for the NEKRTC and perused the judgment and award and the oral and documentary evidence let in by the parties.

13. The records clearly disclose that due to rash and negligent driving of the KSRTC Bus, the accident had occurred on 21.5.2012 resulting in the death of rider and pillion rider of motor cycle bearing Regn. No. KA 28/L 895. The finding of the Tribunal with regard to actionable negligence on the part of driver of the offending vehicle has become final. The NEKRTC has not challenged the actionable negligence on the part of the driver of the offending vehicle. The dispute to be decided in these appeals is only with regard to quantum of compensation. The claimants contended that the compensation awarded taking into consideration the income of Rs. 4,000/- p.m. of the deceased taken by the Tribunal is on the lower side, whereas the NEKRTC in their statement of objections contended that the compensation awarded taking the income of the deceased as Rs. 4,000/- p.m. is on the higher side. It was further contended that no document has been produced to show that the deceased were working as carpenters and earning a sum of Rs. 4,000/- p.m. In the absence of necessary document, the income of Rs. 4,000/- p.m. taken by the Tribunal is on the higher side.

14. Admittedly, the accident had occurred on 21.5.2012. Even a daily wage employee working in the Government department would earn a sum of Rs. 200/- per day. Even in Lok Adalath also in the absence of necessary documents to establish the income, a sum of Rs. 6,500/- p.m. will be taken, whereas the claimants claimed that the deceased were working as carpenters and earning a sum of Rs. 6,000/- p.m. I find that the income of Rs. 4,000/- taken by the Tribunal is on the lower side. There is lot of demand for carpenters and sometime they are earning more than Rs. 10,000/- p.m., whereas the claimants claimed that the deceased were earning a sum of Rs. 6,000/- p.m. The Tribunal ought to have taken the income as Rs. 6,000/- p.m., deducting 1/3rd towards personal expenses, applying multiplier 17 in respect of Sanappa and deducting 50% towards personal expenses and applying multiplier 18 in respect of Sadashiv.

Further, the deceased Sanappa had left behind the wife aged 22 years and mother aged about 45 years. Hence, the wife of the deceased Sanappa is entitled to a sum of Rs. 1,00,000/- towards consortium in view of law laid down by the Hon"ble Supreme Court in the case of Rajesh -vs- Rajbir Singh reported in , 2013 ACJ 1403 In view of the judgment of the Hon"ble Supreme Court in the case of Sarala Verma (Smt.) and Others v/s Delhi Transport Corporation and another reported in , 2009(6) ACJ 121, the claimants are entitled to compensation of Rs. 45,000/- towards conventional heads. Taking into consideration the income as Rs. 6,000/- p.m., deducting 1/3rd towards personal expenses and applying multiplier 17, the claimants in MVC No. 73/2012 are entitled to a sum of Rs. 8,16,000/- towards loss of dependency, Rs. 1,00,000/- towards loss of consortium to the wife and Rs. 45,000/- towards conventional heads. Hence, the claimants in MFA No. 30392/2013 are entitled to compensation of Rs. 9,61,000/- as against Rs. 5,74,000/- with interest at 6% p.a, whereas the claimant in MFA No. 30393/2013 is entitled to compensation of Rs. 6,48,000/- towards loss of dependency, Rs. 45,000/- towards conventional heads, in all, the total compensation of Rs. 6,93,000/- as against compensation of Rs. 4,37,000/- with interest at 6% p.a. Accordingly, I pass the following:

#### ORDER

MFA Nos. 30392 and 30393 of 2013 are allowed in part. The common judgment and award dated 21st November, 2012 made in MVC Nos. 73/2012 and 74/2007 by the MACT-IX at Basavana Bagewadi, is modified.

The appellants in MFA No. 30392/2013 are entitled to compensation of Rs. 9,61,000/- and the appellant in MFA No. 30393/2013 is entitled to compensation of Rs. 6,93,000/- both with interest at 6% p.a.

MFA Nos. 30589 and 30590 of 2013 filed by the NEKRTC are dismissed.

The amount in deposit made in MFA Nos. 30589 and 30590 of 2013 is directed to be transferred to the Tribunal at Basavana Bagewadi for disbursement.