

(2010) 04 KAR CK 0051

In the Karnataka High Court

Case No : Miscellaneous First Appeal No"s. 3575 and 4803 of 2005

S.B. Rajamani and Another

APPELLANT

Vs

The Managing Director, Bangalore Metropolitan Transport
Corporation Division

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 6 KarLJ 471 : (2011) 2 TAC 771

Hon'ble Judges : N.K. Patil, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : R. Chandrashekar and Angadi Associates, for the Appellant; Angadi Associates, for the Respondent

Judgement

N.K. Patil, J.—These two appeals are filed by the claimants and BMTC. They arise out of the same impugned judgment and award dated 29th January, 2005 passed in MVC No. 2883 of 2002 on the file of VI Additional SCJ and Motor Accidents Claims Tribunal (SCCH-2) at Bangalore (Tribunal" for short).

2. The Tribunal by its judgment and award, has awarded compensation of Rs. 5,20,800/- with interest at 7% p.a. on account of the death of deceased Basavaraj Shehappa Rajamani in the road traffic accident that occurred on 13-5-2002 at about 11.50 a.m.

3. It is the case of the claimants that the compensation awarded by the Tribunal is inadequate and it requires enhancement and further, fixing the contributory negligence of 20% on the part of deceased is on higher side. Therefore, the impugned judgment and award is liable to be modified.

4. As against this, the Corporation has contended that the compensation awarded by the Tribunal is disproportionate, excessive and is liable to be reduced by modifying the impugned judgment and award and fixing the contributory negligence at 20% on the part of the deceased is on the lower side. Therefore,

both claimants and Corporation felt necessitated to file these appeals seeking appropriate reliefs.

5. The brief facts of the case are:

The claimants 1 and 2 are respectively the wife the minor son of the deceased Basavaraj Shehappa Rajamani, who died in a road traffic accident. On that day, when the deceased was travelling in a BMTC bus bearing Registration No. KA-28/F-244, the driver of the said bus drove the same in a rash and negligent manner at high speed and took fast turn on the said road. As a result of the same, the deceased fell down from the bus and the bus ran over him. On account of the same, he sustained grievous injuries and succumbed to the same in the hospital. Further, the case of the claimants is that the deceased was aged about 41 years as on the date of accident. He was working as a Conductor, on a monthly salary of Rs. 5,995/- and he had another 19 years of service. He was the only bread-earner of the family and on account of the death of deceased in the road traffic accident, their life has been jeopardised. Therefore, the claimants have filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 10.00 lakhs against Corporation.

6. The said claim petition had come up before the Tribunal on 29th January, 2005. The Tribunal on assessment of oral and documentary evidence and other material available on file, taking into consideration age and avocation of the deceased, has allowed the claim petition in part and awarded compensation of Rs. 5,20,800/- with interest at the rate of 7% p.a. from the date of petition till the date of deposit. The claimants being dissatisfied with the quantum of compensation awarded by the Tribunal, have presented MFA No. 3575 of 2005 seeking enhancement of compensation and also sought for setting aside the finding of the Tribunal with regard to contributory negligence of 20% fixed on the deceased. Whereas, the Corporation has filed MFA No. 4803 of 2005 contending that the compensation awarded by the Tribunal is on the higher side and is liable to be reduced and that fixing the liability at 20% on the part of the deceased is on the lower side.

7. We have heard the learned Counsel for claimants and learned Counsel for Corporation.

8. The submission of the learned Counsel for the claimants is that, the Tribunal has committed error in fixing the contributory negligence of 20% on the part of the deceased and the same cannot be sustained for the reason that the accident occurred due to rash and negligent driving by the driver of offending vehicle. Therefore, the contributory negligence fixed against the deceased is exorbitant. Further, he vehemently submitted that the deceased was aged about 41 years, as on the date of accident and is therefore entitled for compensation under future prospects also, in view of the law laid down by the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Therefore, he submitted that 30% of the monthly income has to be

taken as future prospects and should be added to the gross salary, and after deducting 1/3rd of the same towards personal expenses, the Tribunal should have assessed the net income of the deceased. Further, the compensation awarded by the Tribunal under conventional heads is also inadequate and requires enhancement. Therefore, he submitted that the impugned judgment and award is liable to be modified.

9. As against this, the learned Counsel appearing for the Corporation, *inter alia*, contended that, the Tribunal has committed grave error in fixing the liability at 20% on the part of deceased and the same is on the lower side. The quantum of compensation awarded by the Tribunal is also on the higher side. Therefore, the same is liable to be modified.

10. After careful consideration of the submissions made by the learned Counsel for both parties, the following points arise for our consideration:

(1) Whether the contributory negligence of 20% fixed on the part of the deceased and 80% fixed on the part of driver of the BMTC bus is justifiable in law?

(2) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

11. Regarding Point No. 1.--It is not in dispute that the accident occurred on 13-5-2002 at about 11.50 a.m. When the deceased was traveling in BMTC bus bearing Registration No. KA-25/F-244, the driver of the said bus took fast turn, in a rash and negligent manner, on account of which, the deceased fell down from the bus and the bus ran over him. He sustained grievous injuries and succumbed to the same in the hospital. The Tribunal after assessing the oral and documentary evidence and other relevant material available on the file and placing reliance on the oral evidence of P.W. 2 and documentary evidence of Exs. P. 1 to P. 4 (copy of FIR, Panchanama, hand-sketch, IMV report)

1. Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, attributed contributory negligence on both the deceased and driver of the offending vehicle in the ratio 20:80.

12. The case of the Corporation is that, the accident occurred due to the negligence of the deceased himself. P.W. 2-a police constable, in his cross-examination has deposed that he was on patrolling duty and was standing by the side of the road in the turning. The deceased got into the bus and when he was on the foot-door, the bus moved at high speed, on account of which, deceased fell down and sustained injuries. It is clearly stated by P.W. 2 that the place at which the deceased boarded the bus at a place other than the bus stop. It is also stated that the deceased boarded the bus when it was moving. Further, P.W. 2 has stated that he cannot say as to whether there was any negligence on the part of the bus driver. Thus, it emerges from his statement that the deceased tried to get into the moving bus, at a place, other than the bus stop and accident

occurred due to the rash and negligence driving by the driver of the bus and also due to negligence on the part of the deceased. The Tribunal after assessing the oral and documentary evidence has rightly fixed the contributory negligence both on the part of the driver of the bus at 80% and on the part of the deceased at 20%. However, having regard to the oral and documentary evidence as discussed above, particularly, taking into consideration the evidence of P.W. 2, we deem it fit to reassess the contributory negligence on the part of the deceased at the rate of 30% and 70% on the part of the driver of the offending vehicle to meet the ends of justice.

13. Regarding Point No. 2.--It is not in dispute that the deceased succumbed to the injuries sustained in the road traffic accident. It is the case of the claimants that deceased was aged about 41 years as on the date of accident and was working as a conductor. As per Ex. P. 6, he was getting salary of Rs. 5,995/- p.m. After deducting professional tax of Rs. 100/- the net income comes to Rs. 5,895/- p.m. He had another 19 years of service. In view of the judgment of Apex Court in Smt. Sarla Verma's case, and as rightly pointed out by the learned Counsel for the claimants, 30% of salary should be added to the gross salary of Rs. 5,895/- p.m. towards future prospects. If, the future prospects at the rate of 30% (Rs. 1,768.50) is added to the same, the net salary comes to Rs. 7,663.50 (Rounded off to Rs. 7,664/-). Out of which, if 1/3rd (Rs. 2,555/-) is deducted towards his personal expenses, the net income comes to Rs. 5,109/-. The appropriate multiplier applicable in the instant case is "14". Considering all these aspects, we redetermine compensation towards loss of dependency at a sum of Rs. 8,58,312/- (Rs. 5,109/- x 12 x 14) as against Rs. 6,16,000/-.

14. Further, the Tribunal has rightly awarded just and reasonable compensation of Rs. 10,000/- each under the heads loss of consortium and loss of estate. Therefore, it does not call for interference.

15. However, the Tribunal is not justified in awarding compensation of Rs. 15,000/- towards transportation and funeral expenses. The same is excessive, therefore, we award a sum of Rs. 10,000/- under this head. The Tribunal has not awarded any compensation towards loss of love and affection. Therefore, we deem it fit to award a sum of Rs. 10,000/- under this head. In all, the claimants are entitled to Rs. 40,000/- under conventional heads as against Rs. 35,000/- awarded by the Tribunal.

16. In the result, the appeal filed by the claimants is allowed in part. The appeal filed by the Respondent-Corporation is also allowed in part by refixing the contributory negligence on the part of the deceased and the driver of the offending vehicle in the ratio 30:70.

17. The impugned judgment and award passed on 29th January, 2005 by the Tribunal in MVC No. 2883 of 2002 is hereby modified and the break up is as under:

(i) Loss of dependency Rs. 8,58,312/- (ii) Loss of consortium Rs. 10,000/- (iii)

Loss of estate Rs. 10,000/- (iv) Loss of love and affection Rs. 10,000/- (v)
Funeral expenses and transportation charges Rs. 10,000/- Total Rs. 8,98,312/-

18. The claimants are entitled to total compensation of Rs. 8,98,312/- as against Rs. 6,51,000/- awarded by the Tribunal. Out of which, if 30% (Rs. 2,69,494/-) is deducted towards contributory negligence on the part of deceased, the total compensation payable to claimants comes to Rs. 6,28,818/- as against Rs. 5,20,800/- awarded by the Tribunal. The enhanced compensation comes to Rs. 1,08,018/- with interest at 6% p.a. from the date of petition till the date of realisation.

19. The Corporation is directed to deposit the enhanced compensation of Rs. 1,08,018/- with interest at 6% p.a. within a period of four weeks from the date of receipt of copy of the judgment and award.

20. On such deposit by the Corporation, a sum of Rs. 60,000/- with proportionate interest shall be kept in fixed deposit in the name of the first claimant in any Nationalised or Scheduled Bank, for a period of five years, renewable by another five years, with permission for her to withdraw the interest periodically.

21. The remaining sum of Rs. 48,018/- with proportionate interest shall be released in favour of the first and second claimants immediately on deposit by the Corporation.

22. The statutory amount deposited by the Corporation shall be transferred to the jurisdictional Tribunal, forthwith.

23. Office is directed to draw the award accordingly.