
(2013) 08 KAR CK 0042
In the Karnataka High Court
Case No : MFA. No. 7167 of 2011

Shanthamma and Another

APPELLANT

Vs

Divisional Controller, K.S.R.T.C.

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Citation : (2014) 1 LLJ 4

Hon'ble Judges : N.K. Patil, J; Manohar, J

Bench : Division Bench

Advocate : K. Vishwanatha, for the Appellant; D. Vijayakumar, for the Respondent

Final Decision : Partly Allowed

Judgement

1. Appellants are the claimants, being aggrieved by the judgment and award dated 31-12-2010 made in MVC No. 38/2009 passed by the Additional Motor Accident Claims Tribunal, Kolar (hereinafter referred to as "the Tribunal") dismissing the claim petition, have filed this appeal. Appellant No. 1 is the wife and Appellant No. 2 is the son of deceased G.N. Nekar, who died in the road traffic accident occurred on 28-09-2008. The case of the claimants is that the deceased was discharging his duties as a conductor in KSRTC bus bearing Registration No. KA-40/F-213. On 28-09-2008, the said bus met with an accident near Devagiri Cross, Haveri District. Due to the rash and negligent driving, the driver of the bus lost control over the bus due to the high speed and dashed against the hind portion of the lorry bearing KA-06/B-3055 which was going ahead of the said bus. Due to the accident, the conductor G.N. Nekar sustained grievous injuries and he was shifted to Haveri Hospital. Subsequently, he succumbed to injuries. The claimants contended that the deceased was the only bread earner of their family. As on the date of the accident, the deceased was aged about 51 years and getting salary of Rs. 14,774/- p.m. Due his death, they have lost the bread earner of the family. The police have registered a case against the driver of the bus in Crime No. 227/2008 for the offences punishable

under Sections 279, 337, 338 and 304A of IPC. Hence, they sought for compensation of Rs. 25,00,000/-.

2. In pursuance to the notice issued by the Tribunal, the first respondent entered appearance and filed the statement of objections denying the various averments made in the claim petition. However, admitted that the deceased G.N. Nekar was working as a Conductor as on the date of accident and they have not disputed the age and income of the deceased. However, it is specifically denied that the accident has occurred due to the rash and negligent driving of the bus. The first respondent also contended that the deceased died during the course of employment and immediately after the death of the deceased, compensation has been deposited before the Commissioner for Workmen's Compensation. Hence, the claim petition filed by the claimants is not maintainable and sought for dismissal of the same.

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

1. Whether the petitioners prove that one G.N. Nekar succumbed to the injuries due to rash and negligent driving of the KSRTC bus bearing No. KA-40/F.213 bus by its driver near Devagiri Cross of Haveri District on 28-9-2008, at about 5.30 a.m.?

2. Whether the petitioners are entitled for compensation, if so, of what rate and from whom?

3. Whether the respondent prove that they are not liable to pay compensation for the reasons stated in the objection statement?

4. On behalf of the claimants, the second claimant got examined himself as RW. 1 and got marked the documents as Ex. P1 to Ex. P6. On behalf of the respondents, the Labour Welfare Officer of KSRTC, Kolar Division was examined himself as R.W.1 and the driver of the bus got himself examined as R.W.2 and got marked the documents as Ex. R1 to Ex. R4.

5. The Tribunal on appreciating the oral and documentary evidence and also examining the copy of the FIR, Charge Sheet and P.M. Report answered issue Nos. 1 and 3 in the affirmative and issue No. 2 in the negative and held that due to the rash and negligent driving of the KSRTC bus, the accident has occurred. The claimants are legal representatives of the deceased. Since the death has occurred during the course of employment and the respondent-Corporation has already deposited the compensation amount before the Commissioner for Workmen's Compensation, the claimants cannot maintain petition u/s 166 of the Motor Vehicles Act, by its judgment and award dated 31-12-2010 dismissed the claim petition relying upon the judgment reported in The National Insurance Company Limited Vs. Siddappa and Another, . Being aggrieved by the judgment and award passed by the Tribunal rejecting their claim for compensation, the claimants have filed this appeal.

6. Sri K. Vishwanath, learned counsel appearing for the appellants contended that the judgment and award passed by the Tribunal is contrary to law. u/s 167 of the Motor Vehicles Act, the option is available to the claimants to seek compensation either under the Workmen Compensation Act or under the Motor Vehicles Act. Just depositing the amount before the Commissioner for Workmen's Compensation will not preclude the claimants from claiming compensation under the Motor Vehicles Act. Under the Workmen's Compensation Act, a very meager sum has been deposited before the Commissioner. The claimants have not made any claim petition before the Commissioner for Workmen's Compensation seeking compensation. Even though the employer has deposited the amount before the Commissioner for Workmen's Compensation that will not preclude the claimants from claiming compensation under the Motor Vehicles Act. The judgment and award passed by the Tribunal is contrary to the law laid down by this court in North West Karnataka Road Transport Corporation Vs. Smt. Kulsumbi Nadaf and Others and Oriental Insurance Company Ltd. Vs. Dyamavva and Others, . Hence, sought for setting aside the judgment and award passed by the Tribunal and requested this court to determine the compensation in accordance with law.

7. On the other hand, learned counsel appearing for the respondents argued in support of the judgment and award passed by the Tribunal and contended that u/s 167 of the Motor Vehicles Act, the claimants are not entitled for compensation both under the Workmen's Compensation Act as well as under the Motor Vehicles Act. In the instant case, G.N. Nekar who was working as a Conductor died during the course and out of employment and the claimants are entitled for compensation under the Workmen's Compensation Act. The said amount has already been deposited by the respondent-Corporation. Hence, the claimants cannot maintain a claim petition under the Motor Vehicles Act and sought for dismissal of the appeal.

8. We have carefully considered the arguments addressed by the parties and perused the impugned judgment and award and oral and documentary evidence adduced by the parties.

9. Upon hearing the learned counsel for the parties, the only point that arise for consideration in this appeal is -

Whether the claimants are entitled for compensation u/s 166 of the MV Act, though the Employer has deposited the compensation amount under the Workmen's Compensation Act?

10. The records clearly disclose that the husband of the first claimant and father of the second claimant died in the road traffic accident occurred on 28-09-2008. At that time, he was working as a Conductor in the said bus. He was aged about 51 years and 4 months and getting salary of Rs. 14,774/- p.m. The FIR and Charge Sheet clearly disclose that the accident had occurred due to the rash and negligent driving of the bus and G.N. Nekar died due to the injuries sustained in

the accident. However, the claim petition filed by the claimants was rejected by the MACT, Kolar solely on the ground that the Employer has already deposited the compensation amount before the Commissioner under the Workmen's Compensation Act. Hence, the claimants are not entitled to claim compensation both under the Workmen's Compensation Act as well as the Motor Vehicles Act. The judgment and award passed by the Tribunal runs contrary to the law laid by this Court as well as the Hon'ble Supreme Court in the judgments referred to above. The Division Bench of this Court in a judgment reported in *North West Karnataka Road Transport Corporation, by its Managing Director v. Smt. Kulsumbi and others* (supra) held that the claimant is entitled to claim compensation under the Workmen Compensation Act as well as u/s 166 of the Motor Vehicles Act. While awarding compensation under the Motor Vehicles Act, the compensation awarded under the Workmen Compensation Act has to be deducted from the amount payable under the Motor Vehicles Act.

The judgment referred to above reads as under:

The claimants are entitled to claim compensation under the W.C. Act as well as u/s 166 of the M.V. Act. -- Determination of compensation under the MV Act is different from the determination of compensation under the WC Act -The Commissioner under the WC Act has awarded compensation of Rs. 1,59,800/-. After allowing the application, the claimants have filed claim petition u/s 166 of the M.V. Act. If the claim petition filed u/s 166 of the M.V. Act held to be contrary to Section 167 of the Motor Vehicles Act, the claimants will suffer irreparable loss and injury as a paltry amount of Rs. 1,59,800/- is awarded under the WC Act and the same cannot be just and adequate compensation towards the death of sole bread earner of the family. The compensation awarded under the WC Act is to be deducted from the amount payable under the M.V. Act. In the instant case also the Tribunal has deducted the compensation awarded under the WC Act.

Accordingly, the Division Bench of this Court dismissed the appeal filed by the KSRTC.

11. The Hon'ble Supreme Court in a judgment reported in *Oriental Insurance Company Limited v. Dyavamma and others*, (supra) referred to above held that

Claim for compensation u/s 166 of the MV Act by the dependants of workman dying during the course of employment - Employer of the deceased/employee/workman "suo-motu" deposited compensation with the Workmen's Compensation Commission in pursuance of sub-sections (1) to (3) of Section 8 of the Act of 1923 - Payment of the amount of compensation so deposited disbursed by the Workmen's Compensation Commission to the dependants of the deceased workman for which such dependants did not lay any claim before him - Acceptance of the amount of compensation so deposited by the Employer with the Workmen's Compensation Commission, by the deceased workman's dependants -- Not amount to either exercise of option/choice to seek compensation under 1923 Act and as such would not preclude the claimants/

dependants of the workman from making claim under the provisions of Motor Vehicles Act, in view of Section 167 thereof Procedure u/s 8 of 1923 Act, having been initiated by the employer "suo-motu" would not operate as a bar against the claimants/dependants of the deceased workman for making claim u/s 166 of the Motor Vehicles Act 1988.

12. In view of the authoritative pronouncement of law, an option was available to the claimants to seek compensation either under the Workmen's Compensation Act, 1923 or under the Motor Vehicles Act 1988. In the instant case, the respondent-Corporation on their own had deposited the amount before the Commissioner for Workmen's Compensation, however, the claimants of the deceased had filed a claim petition under the provisions of Motor Vehicles Act. However, depositing the amount before the Commissioner for Workmen's Compensation would not preclude the dependants of the deceased to claim compensation under the Motor Vehicles Act. The specific case of the claimants is that they have not withdrawn the amount deposited before the Commissioner for Workmen's Compensation and they have not made any claim before the Commissioner for Workmen's compensation. Hence, the claimants are entitled for compensation.

13. Ex. P6 produced by the claimants clearly disclose that as on the date of death of the deceased, he was getting salary of Rs. 14,774/- p.m., and was aged about 51 years 4 months. Taking into consideration the salary drawn and the age of the deceased, the compensation has to be assessed. Out of the monthly salary of Rs. 14,774/-, if Rs. 150/- is deducted towards professional tax, the gross amount comes to Rs. 14,624/-. Out of which, if 1/3rd is deducted towards his personal expenditure, the net income works out to Rs. 9,750/-. The appropriate multiplier to be adopted is 11. Hence, the claimants are entitled for compensation of Rs. 12,87,000/- towards loss of dependency (Rs. 9,750/- x 12 x 11).

14. Having regard to the facts and circumstances of the case, we deem it fit to award a sum of Rs. 45,000/- towards conventional heads, like loss of consortium, loss of love affection, loss of estate and transportation of dead body and funeral expenses and other incidental charges. Hence, the claimants are entitled to total compensation of Rs. 13,32,000/- with interest at the rate of 6% p.a. from the date of petition till realization. Accordingly, the appeal is allowed in part and the impugned judgment and award dated 31-12-2010 passed in MVC No. 38/2009 on the file of the III Additional Senior Civil Judge and Additional MACT, Kolar is set aside. The Appellants are entitled to total compensation of Rs. 13,32,000/- with interest at 6% p.a. from the date of petition till realization.

The respondent-Corporation is directed to deposit the entire compensation amount with interest at the rate of 6% p.a. from the date of petition till realization, within a period of four weeks from the date of receipt of a copy of this judgment.

Out of the compensation amount of Rs. 13,32,000/-, a sum of Rs. 10,00,000/- with proportionate interest shall be invested in the Fixed Deposit in the name of the first appellant for a period of ten years renewable for another five years with liberty to her to withdraw the interest accrued periodically.

The remaining amount of Rs. 3,32,000/- with proportionate interest shall be released in favour of appellants 1 and 2 in equal proportion.

Office to draw up the award accordingly.