

(2016) 01 KAR CK 0325
In the Karnataka High Court
Case No : MFA No. 24320/2012 (MV)

The Depot Manager, N.W.K.R.T.C.

APPELLANT

Vs

Mahadevappa and Others

RESPONDENT

Date of Decision : 27-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 33

Citation : (2016) 01 KAR CK 0325

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Veena Hegde, Advocate, for the Appellant; Deepak S. Shetty, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

B. Veerappa, J.—1. The Insurance Company - NWKRTC filed the above appeal against the judgment and decree dated 15.2.2012 made in MVC No. 280/2009 awarding compensation of Rs. 4,42,000/- with interest at 9% p.a. from the date of petition till the date of realization.

2. The claimants - respondent Nos. 1 and 2 filed the Claim Petition claiming compensation of Rs. 10,20,000/- with interest at 18% p.a. contending that on 5.9.2006 at about 3.30 p.m. on Gagad-Mulgund Road, near Kanavi Cross, the son of petitioners by name Vinod was proceeding in a KSRTC Bus bearing Reg. No. KA-26/3731 being driven by its driver in a rash and negligent manner so as to endanger human life, dashed to Tipper Lorry bearing No. KA-31/1002 coming from opposite side and thereby, Vinod and other inmates of the bus sustained grievous injuries and Vinod succumbed to the injuries and died at the spot. The deceased was a student and aged about 19 years and was earning Rs. 5,000/- per month by doing private computer job. The claimant Nos. 1 and 2 are parents of the deceased Vinod. Respondent Nos. 1 and 2 being owner and Insurer of the offending KSRTC Bus and respondent Nos. 3 and 4 are the owner and Insurer of the Tripper Lorry and respondent No. 5 is KSRTC Gadag (depot manager) to

whom the offending bus was given by respondent No. 1 on lease for plying it on the road and therefore, respondent Nos. 1 to 5 are jointly and severally liable to pay compensation.

3. The 2nd respondent being insurer of KSRTC Bus filed the written statement denying the alleged accident, age, occupation and income of the deceased Vinod and contended that the driver of offending bus caused accident by driving the same in a rash and negligent manner and contends that, the driver of Tipper Lorry caused the accident by his fault and contends that the bus was given to R-5 on lease basis for running it on road and hence liable to pay compensation. Respondent No. 4 being insurer of the tipper lorry denied alleged accident and denied age, occupation and income of the deceased and contends that offending bus is duly insured with respondent No. 2 covering the date of accident. As the accident is caused due to fault of driver of KSRTC bus, respondent No. 2 being insurer of the alleged bus is liable to pay compensation to the petitioners. Respondent No. 5 denied the alleged accident, age and occupation and income of the deceased and contends that the offending bus is duly insured with respondent No. 2 covering the date of accident, as the accident is caused due to fault of driver of KSRTC Bus etc.

4. Based on the rival contentions urged by the parties, the Tribunal framed the following issues:--

"1. Whether the petitioners prove that on 5.9.2006 at about 15.30 pm. on Gadag Mulgund road, near kanavi cross, bearing No. KA-26/3731 the driver of offending vehicle drove bus in a rash and negligent manner and dashed to Tipper No. KA-31/1002 and caused accident and deceased died on the spot?

2. Does the respondent No. 2 proves that, the driver of KA-31/1002 was also at fault, thus contributed for the occurrence of the accident?

3. Does the respondent No. 2 proves that, the bus bearing No. KA-26/3771 was carrying 95+2 passengers against the seating capacity of 56+1 thereby violated terms and conditions of the policy, hence he is not liable to pay compensation?

4. Does the respondent No. 4 proves that, the compensation claimed by the petitioners is highly excessive and exorbitant?

5. Does the respondent No. 4 proves that, the deceased was an unauthorized passenger and was standing on the foot of the bus and the owner has violated terms of policy conditions?

6. Does the petitioners are entitled to the compensation, if so, from whom and how much?

7. What order or award?"

5. After considering the entire material on record, the Tribunal awarded compensation of Rs. 4,42,000/- together with interest at 9% p.a. on the global compensation from the date of petition till the date of complete realization.

Hence the present appeal for reduction of the compensation.

6. I have heard the learned counsel for the parties to the lis.

7. Smt. Veena Hegde, learned counsel for the appellant - Corporation contended that the impugned order passed by the MACT is perverse, capricious and illegal and has committed an error by holding 100% liability on the Corporation and the same is liable to be set aside. She also contended that the bus bearing No. KA-26/3731 belongs to respondent No. 3. Therefore, respondent Nos. 3 and 4, who are owner and Insurer of the said bus are liable to pay compensation she also relied upon the judgment in *uttar pradesh state road TRANSPORT CORPORATION v. KULSUM AND OTHERS* reported in 2011 AC J 2145 and further contended that the Tribunal has wrongly deducted 1/3rd towards personal expenses and interest awarded is on the higher side.

8. Per contra, Sri Gadagoli, learned counsel appearing for respondent No. 4 contended that the owner of the NWKSRTC Bus and insurer are liable to pay compensation as there was violation of the conditions stipulated and Sri. Narasammanavar, learned counsel for respondent No. 5 - Insured contended that the Insurance Policy was in force and it was insured by 4th respondent and the same was in force as on the date of the accident. The insured cannot escape the liability of the accident. Therefore, sought to justify the impugned judgment and award.

9. I have heard the learned counsel for the parties and perused the entire material on record.

10. It is not in dispute that the deceased Vinod was aged about 19 years and died in the accident that occurred on 5.9.2006 due to rash and negligent driving of the NWKSRTC bus and 2nd respondent failed to prove that the driver of the Tipper Lorry was at fault, thus contributing for the occurrence of the accident. Respondent No. 2 - Branch Manager failed to prove that the bus bearing No. KA-26/3731 was carrying 95 + 2 passengers as against the seating capacity of carrying 56 passengers as permitted by law, thereby violated the terms and conditions of the policy and hence not liable to pay compensation. Respondent No. 4 - Oriental Insurance Company also failed to prove that the compensation claimed by the claimants is excess and also failed to prove the violation of the conditions stipulated in the policy and Tribunal also held that the claimants are entitled to compensation of Rs. 4,42,000/- with interest at 9% p.a. from the date of petition till the date of realization.

11. This Court while exercising powers under Order 41 Rule 33 of CPC and Rule 22 and 33 of CPC as Appellate Court can also pass such other order decree or as the case may be to meet the ends of justice, in view of the dictum of the Hon''ble Supreme Court in the case of *RANJANA PRAKASH AND OTHERS v. DIVISIONAL MANAGER AND ANOTHER* reported in , (2011) 14 SCC 639 held at paragraphs 7 and 8 as under:--

"7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability but cannot be invoked to get a larger or higher relief. For example, where the claimants seek compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by the owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by the owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation."

12. The Tribunal while taking the income of the deceased at Rs. 3,000/- per month relied upon the judgment of Hon"ble Supreme Court in the case of LAXMIDEVI AND OTHERS v. MOHAMMED TABBAR AND ANOTHER reported in , 2008 acj 1488 and deducted 1/3rd of his income towards personal expenses which comes to Rs. 2,000/- per month. Accordingly, awarded compensation of Rs. 4,32,000/- towards loss of dependency". The Tribunal while considering the income has not considered the future prospects in view of the dictum of the Hon"ble Supreme Court in the case of MUNNA LAL JAIN & ANOTHER v. VIPIN KUMAR SHARMA AND others reported in , 11 (2015) acc 806 (sq. The future prospects is arrived at by taking 50% of the monthly income i.e., Rs. 1,500 + Rs. 3,000/- = Rs. 4,500/-, 50% of it is = Rs. 2,250/- x 12 x 18 = Rs. 4,86,000/-. Towards love and affection a sum of Rs. 5,000/- is awarded which is on lower side, taking into consideration the dictum laid down in munna lal Jain's case, the claimants are entitled to Rs. 25,000/- each (Rs. 50,000/-) towards love and affection as against Rs. 5,000/- granted by the Tribunal, a sum of Rs. 20,000 is awarded towards funeral expenses, Thus in all the claimants are entitled to a

sum of Rs. 5,61,000/- (Rupees Five Lakhs Sixty One Thousand only).

13. The Tribunal while awarding compensation failed to consider 50% addition to future prospects and 50% of deduction and reasonable compensation towards love and affection and funeral expenses. Therefore, in the above appeal, though the claimant has not filed any appeal for applying the dictum of the Hon''ble Supreme Court in the case of MUNNALAL JAIN cited supra and exercising powers of this Court as appellate jurisdiction under Order 41 Rule 33 of CPC while determining just compensation, this Court is of the considered opinion that the claimant is entitled to just compensation of Rs. 5,61,000/- in the present appeal.

14. Accordingly, the appeal stands disposed of. The statutory deposit made by the appellant - NWKSRTC be transmitted to the Tribunal forthwith.