
(2014) 04 KAR CK 0062

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 31027 of 2013 (MV)

The Divisional Controller

APPELLANT

Vs

Kallappa @ Kalmesh

RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Citation : (2014) 04 KAR CK 0062

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Subhash Mallapur, Advocate for the Appellant; S.V. Biradar, Advocate in Miscellaneous First Appeal No. 31027 of 2013 (MV) and in Miscellaneous First Appeal No. 31030 of 2013 (MV) for R-1, R-4 and R-5], Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.S. Pachhapure, J.—The appellant has challenged the finding on negligence and the quantum of compensation granted to the legal representatives of deceased Suresh and the injured Kallappa in the accident said to have occurred due to the rash and negligent driving of bus bearing registration No. KA-25/F-3412 by its driver. The facts reveal that on 26.01.2012 injured Kallappa the claimant in MVC No. 278/2012 along with Suresh (the deceased) pillion rider was riding the motorcycle bearing registration No. KA-28/Q-101 on Kolhar Uppaldinni road. At that time the bus bearing registration No. KA.25/F-2512 owned by the appellant came from the opposite direction driven in a rash and negligent manner, hit the motorcycle. Thereby Suresh pillion rider sustained grievous injuries and died on the spot, whereas Kallappa sustained grievous injuries and he was lifted to the hospital for treatment. He suffered disability. In the circumstances, the legal representatives of deceased Suresh i.e., his wife, children and parents made a claim for compensation towards loss of dependency and other conventional heads. The injured claimant claimed compensation for pain, suffering, mental agony, medical expenses etc.

2. Both the claim petitions were clubbed and common evidence was permitted. PWs 1 to 4 were examined on behalf of the claimants. In their evidence Ex.P-1 to P-10 were marked. On behalf of appellant RW 1 was examined.

3. The Tribunal after hearing the counsel and on appreciation of evidence on record held negligence on the part of the bus driver and granted compensation of Rs. 8,50,000/- to the legal representatives of deceased Suresh in MVC No. 277/2012 and a sum of Rs. 3,41,400/- for the injuries sustained by Kallappa. Dissatisfied with the finding of negligence and quantum of compensation, these appeals are filed.

4. Though these matters are posted in the list of hearing on interlocutory application, with the consent of both the counsel, they are taken up for final disposal.

5. I have heard the learned counsel for both the parties. The points that arise for my consideration are:

(1) Whether there was any negligence on the part of the injured Kallappa in riding the motorcycle?

(2) Whether the quantum of compensation granted by the Tribunal is on the higher side? If so, to what extent?

6. Learned counsel for the appellant would submit that there was head on collusion between the motorcycle and the bus and therefore he submits that there was negligence on the part of the rider of the motorcycle. Hence he contends that finding on negligence requires to be set aside. It is also his submission that compensation granted to the respondents is on the higher side and needs reduction.

7. On the other hand the learned counsel for the respondents supported the judgment and award of the Tribunal.

8. Scrutiny of the material placed on record reveal that Ex.P-1 is the copy of the First Information Report and the complaint, whereas Ex.P-2 is the spot mahazar and Ex.P-3 is the Motor Vehicle Inspector's report. The complaint is in respect of the rash and negligent act, was filed by a witness who had not seen the accident. But anyhow complaint was filed against the driver of the bus. The spot mahazar does not reveal the exact spot of the accident, though the place where the motorcycle, body of the deceased and the bus were found. Therefore, the contents of the spot mahazar Ex.P-2 are also of no help to find out the negligence. Perusal of Ex.P-3 the Motor Vehicle Inspector's report reveals that front portion of the motorcycle was damaged. At the same time there was damage to the front right side of the bus.

9. The spot of the accident is the road running east-west and the tar road at the place of accident is 12 feet width with 5 feet rough road on both the sides. The bus was proceeding towards eastern direction, whereas the motorcycle has

proceeding towards western direction at the time of accident. PW 3 is the rider of the motorcycle, in his evidence states that he was proceeding slowly on the left side of the road and the bus driven in a rash and negligent manner came from opposite direction and hit his motorcycle. His evidence is consistent with the contents of the documents produced by the petitioners.

10. RW 1 is the driver who is examined and he states that after seeing the motorcycle which was coming from opposite direction in a zig-zag manner, he stopped his bus and the motorcycle hit the stopped bus and thereby the accident occurred. It is relevant to note spot mahazar Ex.P-2 reveals that the motorcycle and the dead body of the deceased were dragged to an extent of 20 feet from the spot of the accident. There were drag marks. The bus was standing at a distance of 150 feet from the spot of the accident. Even after hitting the motorcycle, the bus went 150 feet ahead. That itself speaks about the speed of the bus. That apart when motorcycle and the dead body were dragged to an extent of 20 feet, it would also indicate that the bus was in high speed at the time of accident. Therefore, the evidence of RW 1 cannot be accepted to prove any negligence on the part of the rider of the motorcycle. It is for this reason the Tribunal held the negligence on the part of the driver of the bus. No grounds are made out to interfere with the finding on negligence.

MFA No. 31030/2013 (MVC No. 277/2012)

11. Suresh (the deceased) was doing the motor winding work which is a skilled job and therefore, it appears that the Tribunal has taken his income at Rs. 6,000/- per month. Taking into consideration the work that was carried out by the deceased and the probable income of the skilled work, no grounds are made out to interfere with the assessment of the income. A sum of Rs. 40,000/- is granted as compensation on conventional heads. As the claimants were more than four, the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased. Therefore, the compensation arrived at assessing his income at Rs. 6,000/- and compensation on conventional heads at Rs. 40,000/-, totally sum of Rs. 8,50,000/- has been rightly granted by the Tribunal. No grounds are made out to interfere with the quantum of compensation.

MFA No. 31027/2013 (MVC No. 278/2012)

12. The injured is aged 19 years at the time of accident and his income has been assessed at Rs. 4,500/- per month. He has suffered fracture of bony orbital wall right side and he had lost his vision to an extent of 45% in the right eye, due to the injuries suffered. The doctor has been examined as PW 4 and he has assessed disability at 40%-45%. Taking into consideration the fracture of bony orbital wall right side and also fracture of nasal bone, loss of vision to an extent of 40% in one eye would be equivalent to 16% of the whole body. But anyhow as the income of the injured is assessed at Rs. 4,500/-, by reducing percentage of the disability at 16% and the income more than Rs. 4,500/-, the loss of future income assessed at Rs. 1,94,400/- need not be altered. Therefore, I do not find

any grounds to interfere with the compensation granted by the Tribunal towards loss of future earnings. A sum of Rs. 30,000/- has been granted towards pain and suffering, Rs. 20,000/- towards loss of amenities, Rs. 20,000/- towards loss of expectation of life, Rs. 5,000/- towards conveyance, attendant charges, food etc, a sum of Rs. 72,000/- has been granted towards medical expenses incurred on the basis of medical bills produced, totally sum of Rs. 3,41,400/- as compensation. Though the compensation on some of the heads appears to be liberal, it is not so much so as to interfere with the quantum of compensation awarded. Hence, the points are answered in the negative.

Consequently both the appeals fail and accordingly they are dismissed.

The amount in deposit is ordered to be transmitted to the jurisdictional Tribunal.