

(2015) 10 KAR CK 0183

In the Karnataka High Court

Case No : MFA Nos. 21291, 21292/2010 (MV) and MFA Crob. No. 749/2011 (MV)

The Divisional Controller, North West Karnataka Road
Transport Corporation and Others

APPELLANT

Vs

Sangeeta and Others

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Citation : (2015) 10 KAR CK 0183

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : Madanmohan M. Khannur, Advocate, for the Appellant; Sanjay S. Katageri, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Sujatha, J.—The appeal in MFA No. 21291/2010 and MFA No. 21292/2010 are filed by the North-West Road Transport Corporation (hereinafter referred to as the "Corporation" for brevity) challenging the judgment and award passed by the MACT, Athani, in MVC No. 1129/2006 and MVC No. 1440/2006, respectively, and the Cross Objections No. 749/2011 is filed by the claimants seeking enhancement of the compensation against the judgment and award passed in MVC No. 1129/2006.

2. The facts in brief are that, on 21.4.2006 at about 7.30 p.m., the deceased Ramesh Salunke and Govind Mali were proceeding on a scooter bearing No. MVU/1780, towards Adahalli village to undertake the repair work of the tractor of the said Govind Mali. It is contended that the deceased was riding the said scooter following the traffic rules and Govind Mali was the pillion rider of the said scooter. When they reached near the spot of the accident i.e., near Halyal Circle on Athani Miraj Road, at that time the KSRTC bus bearing No. KA-28/F-960 came from backside, in a rash and negligent manner, with high speed, dashed to the scooter of the deceased and caused the accident. Due to the said impact, the rider and the pillion rider fell down and the back wheel of the bus ran over the

head of the deceased and he sustained grievous injuries to the head and died on the spot. Based on these facts the widow and son along with parents of the deceased filed the claim petition before the Tribunal, seeking compensation of Rs. 15,00,000/-, against which the Tribunal awarded the compensation of Rs. 4,20,000/-. Being aggrieved by the same, the corporation is in appeal.

3. The learned counsel for the Corporation vehemently contends that there was contributory negligence on the part of the deceased. The Tribunal without appreciating the same, fastened the liability on the Corporation.

4. On the contrary, the learned counsel for the claimants seeks for enhancement of the compensation and vehemently argued that the Tribunal has not considered the avocation of the deceased, who was trained tractor mechanic and expert in repairing motorcycles. The monthly income of the deceased was about Rs. 5,000/-, besides the income that he was earning from the agricultural lands, which he was cultivating.

5. After hearing the learned counsel for the parties, it is noticed that though the Corporation is in appeal mainly alleging contributory negligence of the deceased, it is pertinent to notice that the Corporation has not examined the driver, who drove the bus. In such circumstances, the contention now raised by the Corporation that the driver of the KSRTC bus following the traffic rules was driving the bus and that alleged accident occurred only due to the rash and negligent driving of the scooter by the deceased is not trustworthy in the absence of any material evidence available on record to establish the fact that the accident occurred only due to the rash and negligent riding of the scooter by the deceased, in the absence of examination of the material witness i.e., the driver, who was driving the bus. Accordingly, the said contention of the learned counsel for the Corporation is not sustainable and the same is negated.

6. As regards the cross objections filed by the claimants seeking enhancement of the compensation, it is noticed that the deceased was well trained tractor mechanic and it is averred that he was earning an income of Rs. 5,000/- per month with his avocation, besides the agricultural income. If the same is considered, the income determined by the Tribunal at Rs. 40,000/- per annum appears to be on lower side. It is brought on record as per Ex. P. 11 that the deceased was well trained tractor mechanic i.e., he was self employed. Considering the age factor of the deceased, his health conditions and the avocation, income would be safely determined at Rs. 4,000/- per month. If the same is taken into consideration and in view of the law laid down by the Apex Court in *Munna Lal Jain and Others Vs. Vipin Kumar Sharma and Others*, the claimants are entitled to 30% future prospects, applying the same, the loss of dependency works out to Rs. 6,24,000/-.

7. As regards the conventional heads i.e., loss of consortium, the amount of Rs. 5,000/- awarded is too meager, considering the age of the widow. Accordingly, this Court is of the considered opinion that the same requires enhancement and

the same is enhanced to Rs. 25,000/-. As regards the funeral expenses, transportation charges, the amount of Rs. 5,000/- awarded by the Tribunal is also too meager and in my considered opinion the same requires to be enhanced by Rs. 10,000/-. In other respects the compensation awarded by the Tribunal is left undisturbed.

8. Accordingly, the compensation awarded by the Tribunal is enhanced to Rs. 6,74,000/- as against Rs. 4,20,000/- awarded by the Tribunal. The claimants are entitled to the same with interest at 6% p.a. from the date of petition till the date of realization.

9. The amount in deposit, if any, shall be transmitted to the Tribunal. The claimants are at liberty to withdraw the same.

10. Accordingly, the appeal filed by the corporation in MFA No. 21291/2010 is dismissed and the cross objections filed by the claimants is allowed.

MFA No. 21292/2010

11. This appeal is filed by the corporation challenging the award passed by the Tribunal in MVC No. 1440/2006 primarily on the ground that the Tribunal has not properly considered the evidence placed on record to establish the fact that there was contributory negligence on the part of the pillion rider of the vehicle involved in the accident. The learned counsel for the corporation based on these grounds argued that there was contributory negligence on the part of the pillion rider. The Tribunal without considering the same awarded the compensation of Rs. 37,770/- without any valid basis.

12. On the contrary, the learned counsel for the claimant justifies the award passed by the Tribunal.

13. Having heard the learned counsel for the parties it is noticed that the claimant in this appeal was riding as a pillion. The ground now urged by the corporation challenging the award passed by the Tribunal that there was contributory negligence on the part of the pillion rider is wholly untenable. No contributory negligence would be attributed to a rider who is a pillion. In such circumstances, the appeal filed by the corporation is bereft of any essential elements to establish the contributory negligence as raised now. In such circumstances, the appeal lacks merit and the same stands dismissed.

14. The amount in deposit, if any, shall be transmitted to the Tribunal concerned. The claimant is at liberty to withdraw the same.