

(2013) 12 KAR CK 0118

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3936 of 2013 (MV)

The Divisional Controller/Managing Director, Owner-cum-
Internal Insurance

APPELLANT

Vs

Shaheen and Others

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0118

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : K. Nagaraja, for the Appellant; M.Y. Sreenivasan, R2 to R5 are minors and repled. By R1, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Abdul Nazeer, J.—The Divisional Controller/Managing Director of the Karnataka State Road Transport Corporation, Bangalore, has filed this appeal challenging the judgment and award in MVC No. 6/2012 dated 22.12.2012 on the file of the Fast Track Court and Motor Accident Claims Tribunal, Kollegal. Respondent Nos. 1 to 5 are the wife and children of one Abdul Samiulla. According to the claimants, on 30.11.2011, the KSRTC bus belonging to the Corporation bearing registration No. KA-40 F-498 being driven by its driver in a rash and negligent manner dashed against Abdul Samiulla near New Ameer John Transport Office, Nanjanagud Road, Mysore City, on account of which, he fell down and sustained grievous injuries. Later, he succumbed to the injuries sustained by him in the accident.

2. The Corporation has filed its written statement opposing the claim petition. On the basis of the pleadings of the parties, the Tribunal has framed the following issues:

(1) Whether the petitioners prove that the accident in question occurred on 30.11.2011 at about 1.45 p.m. on account of rash and negligent driving of the

driver of the KSRTC bus bearing Regd. No. KA-40 F-498 in front of New Ameer John Transport Office, Nanjangud Road and due to it, Abdul Samiulla sustained grievous injuries and later, he has succumbed to the injuries?

(2) Whether the respondent proves that they are not liable to pay compensation for the reason stated in the objection statement?

(3) Whether the petitioners are entitled for compensation? If so, what is the quantum of compensation they are entitled to and from whom?

(4) What order or award?

3. The first claimant was examined as P.W. 1 and a witness was examined as P.W. 2. Documents Ex. P1 to Ex. P8 were marked in their evidence. The driver of the offending bus was examined as R.W. 1. On appreciation of the materials on record, the Tribunal has held that the driver of the KSRTC bus is responsible for the accident. The Tribunal has determined compensation in a sum of Rs. 11,24,000/- with interest at 6% per annum from the date of the petition till the date of deposit.

4. Sri K. Nagaraja, learned Counsel appearing for the appellant-Corporation submits that the Tribunal was not right in holding that the driver of the bus alone was responsible for the accident. The deceased had also contributed to some extent for the accident. It is further contended that the deceased was working as a driver. The accident had occurred on 30.11.2011. No documents have been produced to substantiate the contention that he was earning Rs. 15,000/- per month. The Tribunal has determined his monthly income at Rs. 9,000/- on the basis of the evidence of P.W. 2, the employer of the deceased for the purpose of computation of loss of dependency.

5. On the other hand, learned Counsel appearing for the respondent/claimants has sought to justify the impugned judgment and award.

6. I have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

7. Having regard to the contentions urged, the first question for consideration is whether the Tribunal is right in holding that the driver of the offending bus is responsible for the accident?

8. Claimant No. 1 was examined as P.W. 1. In her evidence, she has reiterated the petition averments. A complaint was lodged against the driver of the offending bus. After investigation, charge sheet has been filed against him. It has come in the evidence that the accident had occurred on the footpath as per the spot mahazar at Ex. P5. On appreciation of the oral and documentary evidence on record, the Tribunal has recorded a finding of fact that it is on account of the rash and negligent driving of the driver of the offending bus, the accident had occurred. I do not find any error in the said finding.

9. That brings me to the second question as to whether the Tribunal was right in

holding that the deceased was earning Rs. 9,000/- per month for the purpose of computation of loss of dependency?

10. The deceased was a driver by profession. The contention of the claimants is that the deceased was earning Rs. 15,000/- per month. P.W. 2, the employer of the deceased, in his evidence has stated that he was paying Rs. 15,000/- per month towards salary. However, no documents have been produced in support of the said contention. The accident had occurred on 30.11.2011. Having regard to the facts and circumstances of the case, it is just and proper to hold that the deceased was earning Rs. 8,000/- per month.

11. Now let me assess the compensation payable to the claimant. The deceased was aged 46 years at the time of the accident, which is clear from the driving licence as per Ex. P8. The Tribunal is therefore not right in taking his age at 45. The multiplier applicable to the case is 13. 1/4th of the income has to be deducted towards his personal expenses having regard to the number of dependants left behind by him. By taking his income at Rs. 8,000/- per month after deducting 1/4th of the income towards his personal expenses and with the application of multiplier 13, the compensation payable towards loss of dependency comes to Rs. 9,36,000/-. The claimants are entitled for another sum of Rs. 60,000/- under other conventional heads. Thus, they are entitled for Rs. 9,96,000/- towards compensation as against the award of Rs. 11,24,000/- by the Tribunal. In the result, the appeal succeeds and it is accordingly allowed in part. I hold that the claimants are entitled for a total compensation of Rs. 9,96,000/-. Since a sum of Rs. 50,000/- has already been paid to the claimants towards interim compensation, I direct the appellant-Corporation to deposit a sum of Rs. 9,46,000/- with interest at 6% per annum from the date of the petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. The amount in deposit shall be transferred to the Tribunal forthwith. The order of the Tribunal relating to apportionment/deposit stands unaltered. No costs.