

(2016) 09 KAR CK 0073

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2476 of 2015 connected with
Miscellaneous First Appeal No. 3094 of 2015

The Managing Director

APPELLANT

Vs

Kum. V. Rachoel Annal Sheila

RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2017) 1 KantLJ 36

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Sri. F.S. Dabali, Advocate, for the Respondent in First Appeal No. 3094 of 2015; Sri. F.S. Dabali, Advocate, for the Appellant in Miscellaneous First Appeal No. 2476 of 2015; Sri Vasanthappa, Advocate, for the Respondent in Miscellaneous First Appeal No.

Final Decision : Dismissed

Judgement

Mrs. S. Sujatha, J. - BMTC (Corporation) as well as the claimant are before this Court challenging the judgment and award passed by the Motor Accident Claims Tribunal, Bangalore (for short "the Tribunal) in MVC No. 3596 of 2012.

2. Briefly stated the facts are the that claimant was an unmarried sister of the deceased Paul Joseph Shanthakumar, who died in the motor vehicle accident which occurred on 25-5-2012. Claim petition was instituted by the claimant seeking compensation for the death of said Paul Joseph Shanthakumar, alleging the actionable negligence on the part of the driver of a bus bearing Registration No. KA-01-FA-2000 which was under the control of the Corporation. It was contended the that said accident occurred while the deceased was riding his motor cycle bearing Registration No. TN-37-BF-3139 on 25-5-2012.

3. The Corporation entered appearance and resisted the claim. The Tribunal after appreciating the material evidence on record, awarded a total compensation of Rs. 18,20,000/- and 60% of contributory negligence was fixed on the part of the

deceased, the total compensation of Rs. 7,28,000/- was awarded to the claimant with interest at 6% per annum from the date of petition till realisation.

4. Being aggrieved, the Corporation is in appeal challenging the liability on two grounds:

Firstly, on contributory negligence fixed to an extent of 40% on the driver of the bus. Learned Counsel elaborating the arguments on this point would contend that Corporation had examined R.W. 1 who had clearly deposed as regards the negligence on the part of the deceased. Judgment and deposition of witnesses in C.C. No. 1329 of 2012 of MMTC-6, Bengaluru, dated 2-9-2013 marked as Ex. R. 1 was produced before the Tribunal to establish that eye-witness-P.W. 2 in the criminal proceedings, who was the owner of the car present at the scene of occurrence of the accident, has clearly deposed that the cause for accident was the negligence of the deceased who overtook the car of P.W. 2 from the right side and proceeded further wherein an auto-rickshaw was moving, to avoid the collision with auto-rickshaw, the deceased suddenly applied brake and fell down. By that time, the bus came in contact with the head of the deceased. As a result of which, the deceased died on the spot. The Tribunal erred in not appreciating this vital evidence. There was sheer negligence on the part of the deceased in overtaking the car, while trying to avoid auto-rickshaw, the deceased applied brake and fell down from the two wheeler. This incident would not have been visualised or expected by the driver of the bus. There was no negligence absolutely on the part of the driver of the bus. He was driving the bus with all care and caution following the traffic rules and regulations. It is only due to the negligence of the deceased, the mishap occurred. The police records clearly establish the negligence on the part of the deceased but unfortunately charge-sheet was filed alleging negligence on the part of the driver of the bus.

Secondly, learned Counsel would contend that the claimant was an earning member which was elicited in the cross-examination of P.W. 1. The claimant being a sister of the deceased is not entitled to claim compensation "towards loss of dependency, utmost, she is the legal representative of the deceased, entitled to claim compensation towards loss to estate as per Section 140 of Motor Vehicles Act, 1988 (for short, "the Act"). The Tribunal grossly erred in not appreciating this crucial evidence while awarding the compensation towards loss of dependency.

5. Per contra, Sri Vasanthappa, learned Counsel appearing for the claimant supporting the impugned judgment and award would contend that the accident occurred owing to the negligence of the driver of the bus. The evidence placed on record by the appellant-Corporation cannot have any credential value since R.W. 1 was a self-interested witness. The documents produced by the appellant-Corporation at Ex. R. 1 has no bearing on the proceedings before the Tribunal while adjudicating the award of compensation under the provisions of the Act. It is further contended that the Tribunal erred in not considering the income of the deceased as per the pay slip. Learned Counsel invited the attention of this Court

to Exs. P. 14, P. 16 to P. 19, contended that the net salary of the deceased as per these documents was Rs. 32,240/- deducting the professional tax and income tax, the income of the deceased ought to have been determined by the Tribunal. The deceased was aged about 38 years and was a software engineer working with M/s. Zyoin Web Private Limited. The Tribunal erred in determining the monthly income of the deceased at Rs. 20,000/-. It is further contended that compensation awarded under the different heads is also on the lower side and same deserves to be enhanced substantially. As regards to the challenge made by the Corporation, inasmuch as loss of dependency is concerned, the learned Counsel submits that claimant is an unmarried sister of the deceased and she is not an earning member. No positive evidence is elicited in the cross-examination of P.W. 1 to establish the fact that she is an earning member and not dependant of the deceased. Moreover, no defence was taken by the appellant-Corporation in the written statement on this aspect before the Tribunal. In such situation, the plea raised by the appellant-Corporation for the first time before this Court on the question of dependency is not to be entertained and accordingly seeks for dismissal of the appeal filed by the Corporation and to allow the appeal filed by the claimant seeking enhancement of compensation.

6. Heard the learned Counsel for the parties and perused the material placed on record.

7. As regards, the liability is concerned, it is manifestly clear from the complaint produced at Ex. P. 2 that the deceased while overtaking the car in order to avoid the collision with an auto-rickshaw which was moving ahead, suddenly applied the brake and fell down. Immediately at that time, the driver of the bus in a rash and negligent manner drove the bus and as a result of which the rear side right wheel of the bus moved on the head of the deceased and he succumbed to the fatal injury on the spot. The complainant was a Police Constable. He was not an eye-witness to the incident. The said complaint was lodged based on the information collected by him from the public. P.W. 2 in the criminal proceedings (Ex. R. 1) was a driver of the car whose vehicle was overtaken by the deceased. The said driver of the car P.W. 2 had deposed in the criminal proceedings, that said accident occurred due to the negligence of the deceased and not due to the negligence of the driver of the bus. This evidence of P.W. 2 would not assist the appellant-Corporation in any manner since the proceedings before the Criminal Court is not binding on the Civil Court or the Tribunal. The attempt made by the learned Counsel for the appellant-Corporation to emphasise on the testimony of P.W. 2 before the criminal proceedings cannot be accepted and the same requires to be negated. No direct or corroborative evidence of any independent witness was led by the Corporation to establish the entire negligence of the deceased. The charge-sheet filed against the driver of the bus and the Corporation, clearly establishes the negligence on the part of the driver of the bus. Though, R.W. 1 is acquitted in the criminal proceedings, it would not have any bearing in the claim proceedings before the Tribunal which is a settled legal position. In such circumstances, the Tribunal considering the material

evidence on record apportioned the negligence at 60% on the part of the deceased and 40% on the part of the driver of the bus which cannot be found fault with. Thus, challenge made by the appellant-Corporation as regards to the contributory negligence fails. In other words, the contributory negligence fixed on the part of the deceased at 60% is confirmed.

8. On the point of dependency, it is evident from the written statement that no defence was taken by the appellant-Corporation inasmuch as the issue of dependency is concerned. No material evidence was placed on record by the appellant-Corporation to prove that claimant is an earning member, it was only an attempt made by the appellant-Corporation to elicit this aspect from the evidence of P.W. 1 which also fails since P.W. 1 has denied the suggestion made by the appellant-Corporation. In such circumstances, the plea raised by the appellant-Corporation on the point of dependency cannot be entertained in the appeal proceedings, since this point was not raised before the Tribunal and no opportunity was there for the Tribunal to address on this point. Accordingly, on this point also, the appellant-Corporation fails.

9. As regards, quantum of compensation awarded by the Tribunal it emerges from record, more particularly, Exs. P. 14 to P. 19 that the deceased was working as a Soft Engineer with M/s. Zyoin Web Private Limited and drawing net salary of Rs. 32,240/-, deducting income tax and professional tax paid by the deceased, the monthly income would work out to Rs. 29,838/-. This determination of income is made following the principles of law enunciated by the Hon'ble Apex Court in the case of Yerramma and Others v. G. Krishnamurthy and Another, 2015 AIR SCW 514. Applying the monthly income of Rs. 29,838/- deducting 50% of the income towards personal expenses of the deceased, a bachelor, employing the multiplier of 15 since the deceased was in the age group of 36 to 40 i.e., (Rs. 29,838 x 12 x 15), the compensation towards "Loss of dependency" would work out to Rs. 26,85,420/-. The compensation awarded by the Tribunal under the different heads is also meager. Applying the principles of law rendered by the Hon'ble Apex Court in the case of Rajesh and Others v. Rajbir Singh and Others, (2013) 9 SCC 54 and considering the factual matrix of the present case, it would be just and equitable to award a sum of Rs. 50,000/- towards "Loss of love and affection"; a sum of Rs. 25,000/- towards "funeral expenses and obsequies ceremony" and a sum of Rs. 10,000/- towards "Loss to estate".

10. Thus, total compensation awarded by the Tribunal is modified as under:

HEADS Rs.

Loss of dependency 26,85,420/-

Loss of love and affection 50,000/-

Loss to estate 10,000/-

Funeral expenses and obsequies ceremony 25,000/-

TOTAL 27,70,420/-

11. As discussed in the preceding paragraphs, 60% of contributory negligence is attributed on the part of the deceased. Hence, deducting the compensation towards this 60% contributory negligence, the claimant shall be entitled to 40% of compensation, which works out to Rs. 11,08,168/- and said amount shall carry interest at 6% per annum from the date of petition till the date of realisation.

In the result, the appeal filed by the Corporation stands dismissed and the appeal filed by the claimant is allowed to the extent indicated above.

The amount in deposit shall be transferred to the jurisdictional Tribunal for disbursement.