

(2017) 03 KAR CK 0222
In the Karnataka High Court
Case No : 836 of 2017 (MV-D)

The Managing Director,

APPELLANT

Vs

Smt.Manjula & Ors.

RESPONDENT

Date of Decision : 16-03-2017

Acts Referred:

Citation : (2017) 03 KAR CK 0222

Hon'ble Judges : Jayant Patel, N. K. Sudhindrarao

Bench : DIVISION BENCH

Advocate : Nagaraja K, Prakash M.H

Judgement

1. The present appeal is directed against the judgment and award passed by the MACT., (hereinafter referred to as the Tribunal") dated 27.08.2016 whereby the Tribunal for the reasons recorded in the award, has granted compensation of Rs.17,37,000/- with interest at 8% per annum.

2. The short facts of the case appears to be that on 24.06.2015 at about 7.40 p.m., the deceased was riding the motorcycle bearing registration No.KA- 42-R-1879 from Kanakapura towards Bengaluru, when he reached near Kurigowdanadoddi village on N.H.209 road, at that time the driver of K.S.R.T.C. bus bearing registration No.KA-42-F-180 dashed the motorcycle. The deceased who was the rider of the motorcycle, sustained injuries and ultimately, he succumbed to the injuries. Such accident gave rise to the claim petition for compensation of Rs.40,00,000/- before the Tribunal. The Tribunal at the conclusion of the aforesaid case, passed the above said judgment and award. Under the circumstances, the present appeal is before this Court.

3. We have heard Sri.Nagaraj.K., learned counsel appearing for the appellant and Sri.Prakash.M.H., leaned counsel appearing for respondents ? original claimants.

4. We have considered the reasons recorded by the Tribunal and we have also considered the documents ie., mahazar, examination of the eyewitness-PW2 and other photographs which were made available by the learned counsel appearing

for the appellant during the course of the hearing.

5. The first contention raised by the learned counsel for the appellant was that the contributory negligence attributed to the driver of the K.S.R.T.C., bus to the extent of 100% is erroneous on the part of the Tribunal. He submitted that it was a case where the motorcyclist was also negligent for the cause of the accident. In his submission, the reliance placed upon the eyewitness-PW2 by the Tribunal, was erroneous and therefore, this Court may interfere in the present appeal.

6. We need to record that as per say of the claimant and deposition of PW2, when the motorcyclist was going on the front side, the driver of the bus had overtaken and hit the motorcycle on its right side. The presence of PW2 as eyewitness has not been contradicted in the cross-examination of the said witness. Merely because the said witness in the police investigation was not as eyewitness, such would not be a ground to discard the evidence of PW2 as eyewitness to the incident. If the defence of the appellant was that the driver of the bus was not negligent, it was also required for the appellant to produce other evidence in addition to the evidence of the driver of the bus. The Tribunal has recorded that the Investigating Officer has also not been examined and no other evidence was produced. Be it recorded that motor vehicle claim is to be conducted in a summary manner. If the evidence has come on record, through the eyewitness for showing the negligence of the driver of the bus for the accident and if no other evidence to the contrary of any of the independent witnesses was produced and the Tribunal has taken the view that the driver of the bus was fully negligent for the accident. Such view cannot be said to be unreasonable, which may call for interference in exercise of appellate power of this Court. Hence, the said contention cannot be accepted.

7. The learned counsel appearing for the appellant next contended that the deceased was not receiving income in a systematic manner, nor the income of the deceased could be so as permanent, out of the supply of milk, sericulture and carpentry work and therefore, addition of 50% towards prospective income could be said to be on higher side and consequently, the quantum awarded by the Tribunal is on higher side which may be interfered by this Court in the present appeal.

8. It may be recorded that as per the claimants, the deceased was having income of Rs.15,000/- per month by doing the work of sericulture, milk vending business and carpentry work. Whereas, the Tribunal has assessed income of Rs.8,000/- per month. When the deceased was aged about 28 years and the activity of the deceased was shown as sericulture, milk vending business and carpentry work, it could not be said that the addition of prospective income of 50% by the Tribunal, after assessing the income of Rs.8,000/- per month as erroneous. Further, in any case, there were four claimants, whereas the Tribunal has deducted 1/3rd amount towards personal expenses as against 1/4th of amount was required to be deducted. Keeping in view of number of claimants, under these circumstances, we find that ultimate compensation awarded by the

Tribunal at sum of Rs.17,37,000/- towards the dependency benefit, could not be said to be on higher side. Hence, no interference is called for as to the quantum of the compensation awarded.

9. No other contentions raised.

10. In view of the above, the appeal is meritless and hence the same is dismissed. The amount of Rs.25,000/- deposited with this Court shall be transmitted to the Tribunal.

I.A.No.2/2017 does not survive for consideration. Hence, the same is disposed of.