(2017) 03 KAR CK 0199

In the Karnataka High Court

Case No : 7578 of 2016

THE MANAGING DIRECTOR — APPELLANT

Vs

SMT.R LAKSHM & ORS. — RESPONDENT

Date of Decision : 13-03-2017

Acts Referred:

Citation : (2017) 03 KAR CK 0199

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

Bench : DIVISION BENCH

Advocate : K.NAGARAJA, NAGENDRASHETTY

Judgement

1. The present appeal is directed against the Judgment and award passed by the Tribunal in MVC No.4357/2014 whereby the Tribunal for the reasons recorded in the order has awarded compensation of Rs.15,60,000/- attributing 50% of the contributory negligence for the accident.

2. The short facts of the case appear to be that on 12.07.2014 at about 5.30 P.M., the deceased with his son Mr.Suresh Kumar were proceeding on a Hero Honda Splendor bearing No.KA-05-HF-480 from Nelamangala to his native place at Kempachikkanahalli on NH-48. When they reached near Mahadevapura, at that time one K.S.R.T.C bus bearing No.KA-13-F-1916 suddenly applied brake and stopped the bus without any signal. At that time, the deceased Sri.C.Jayaram who was riding on his vehicle lost control on account of sudden stoppage of the bus and dashed to the backside of the bus and consequently sustained injuries and ultimately he succumbed to the injuries. The pillion rider was also injured and the motorcycle was damaged. Such accident gave raise to the claim petition preferred by the dependent members of the family of the deceased for compensation of Rs.30,00,000/- with cost and interest.

3. The Tribunal ultimately held that there is 50% contributory negligence of the deceased and 50% of the driver of the bus and after assessing compensation at Rs.31,20,000/-, awarded compensation to the extent of 50% in Rs.15,60,000/-

with interest at the rate of 9% p.a. against the appellant. Under the circumstances, the present appeal before this Court.

4. We have heard Mr.K.Nagaraj, learned counsel appearing for the appellant and Mr.Nagendra Shetty, learned counsel appearing for the respondents 1 to 4 - as original claimants -main contesting parties.

5. We have considered the reasons recorded in the impugned Judgment of the Tribunal. We have also considered the lower Court records (LCR).

6. The first contention raised by the learned counsel for appellant was that the contributory negligence assessed by the Tribunal to the extent of 50% to the driver of the bus was much on a higher side. He contended there was a bus stop and therefore the bus was supposed to be stopped at that place and the fact that the bus is dashed on rear side by motorcyclist would show there is more negligence than 50% by the deceased who was driving the motorcycle. He submitted that the Tribunal has not properly appreciated the evidence and hence this Court may consider in the present appeal.

7. We have gone through the reasons recorded by the Tribunal in the impugned order from paragraphs 8 to 14. The Tribunal has recorded the evidence of eyewitness who was a pillion rider. Further the bus stop was not there on the road at which the bus was actually stopped but bus stop was on approach road interior to the place at which the bus stopped by the driver of the bus. It was not the case of the appellant that the brake lights were applied or that the parking lights were on when the bus was stopped. As against the same, the evidence of eyewitness was that the bus was suddenly stopped on the main road instead of stopping on the service road without signal or indication and as the deceased was going behind the bus he lost control over the motorcycle, hit the bus. In our view, the consideration of the evidence by the Tribunal together with the photographs on record shows that the damage by the vehicle to the bus is much lower whereas the brake lights were already broken. Further no evidence is led to show that the brake lights were applied or were on nor there is any evidence to show that the parking lights were also on. Under these circumstances, if the Tribunal has assessed 50% contributory negligence of the driver of the bus, such view cannot be said to be unreasonable which may call for interference in exercise of appellate power.

8. The second contention raised by the learned counsel for appellant is for the quantum. He submitted that the deceased was selling milk and he was milk producer and he was having several cows. After the death of the deceased the business has been continued by his son. He also submitted that the original claimant No.2 son of the deceased was major and the document produced go to show that he has remained as supplier of milk and therefore in the submission of the learned counsel for appellant, the loss assessed by the Tribunal is not correct and further if the son of the deceased who is original claimant No.2 is taken out as the dependent member, as per the decision of the Apex Court in Sarla Verma

supra reported at AIR 2009 SC 3104, 1/3rd of the amount would be required to be deducted towards personal expenses whereas the Tribunal has deducted 1/4th of the amount and therefore the quantum awarded by the Tribunal and dependency benefit assessed by the Tribunal would be lower than Rs.29,40,000/- (as assessed by the Tribunal). Therefore, he submitted that the error has been committed by the Tribunal which may be interfered with by this Court in the appeal.

9. We may record that the evidence is discussed for the income of the deceased at paragraph 17 of the impugned order of the Tribunal. There was evidence produced i.e., bank pass book that too for the month of May, 2013 which is one year prior to the date of accident that the deceased has received the amount of Rs.1,66,434/- by sale of the milk and average was stated to be Rs.1,20,000/- per month and therefore, the Tribunal considered income at Rs.1,20,000/- per month, on the basis of the pass book as the money realized by sale of milk. The Tribunal thereafter, has considered to apply 15% as the net income of the said amount and accordingly the income is assessed at Rs.18,000/- per month being 15% of the amount of sale of milk. As such, in our view, the Tribunal has not given proper weightage to the aspect that the cow belongs to the deceased as per the say of the deceased. Further the income tax return would not be required to be filed by the deceased who was earning out of the sale of the milk as an agriculturist. Not only that but thereafter if the ownership of the cow as per the evidence on record is considered, the profit margin will be more in comparison to 15% as assessed by the Tribunal. If the aforesaid aspect is considered, in our view the assessment of the income for the purpose of dependency benefit at Rs.2,10,000/- per year cannot be said to be on a higher side. As we find that the figure assessed by the Tribunal at the rate of 15% is much on a lower side. Even if the contention is considered that the second petitioner was not dependent member of the family, therefore, instead 1/3rd ought to have been deducted towards personal expenses. In our considered view, the ultimate compensation assessed at Rs.2,10,000/- p.a. would meet just compensation. The contention raised that the business has been continued by the son and therefore the dependency benefit or the compensation will be much on a lower side also cannot be accepted for the simple reason the human element and contribution by the deceased for supply of milk is also to be considered as against an average monthly sale of milk assessed by the Tribunal at Rs.1,20,000/-. We cannot accept the contention that merely because cows have continued to live after the death of the deceased the assessment of the compensation made by the Tribunal is erroneous. In any business and more particularly business of the animal husbandry and supply of milk the gross contribution will be about 1/4th of the total money realized and if the said aspect is considered, we do not find that the compensation as awarded by the Tribunal is so unreasonable but rather would meet the principles of just compensation.

10. No further contention is raised. In view of the above reasons, appeal is meritless and therefore dismissed. The amount deposited will be transmitted to

the Tribunal for its appropriation as per the award.

