

**(2015) 07 KAR CK 0174**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal Nos. 4455 and 4456/2011 (MV)

The Managing Director K.S.R.T.C.

APPELLANT

Vs

V. Jayalakshmi and Others

RESPONDENT

---

**Date of Decision :** 08-07-2015

**Acts Referred:**

**Citation :** (2015) 07 KAR CK 0174

**Hon'ble Judges :** S.N. Satyanarayana, J

**Bench :** Single Bench

**Advocate :** H.R. Renuka, for the Appellant; O. Shivaram Bhat, Advocates for the Respondent

**Final Decision :** Partly Allowed

---

## **Judgement**

S.N. Satyanarayana, J—The common respondent in MVC Nos. 1315/2009 and 125/2010 - KSRTC, on the file of Fast Track Court-V and MACT., Mysuru, has come up in these two appeals challenging the judgments and awards passed by the Tribunal of even date i.e., 04.02.2011, in so far as it pertains to fastening liability on it to pay 75% of the compensation awarded to claimants in MVC No. 1315/2009 and the entire compensation awarded to the sole claimant in MVC No. 125/2010.

2. Though claim petitions in MVC Nos. 1315/2009 and 125/2010 are decided separately by the Tribunal by two different judgments on the very same day, these appeals, which are filed by KSRTC, are taken up for consideration together for the reason that claim in both the claim petitions arise out of the same accident involving same vehicles.

Brief facts leading to these appeals are as under:--

3. On 08/09/2009 at about 1:50 p.m., the deceased K. Vijayakumar was driving his Tata Indica Car bearing registration No. KA.09-N/2325 from Mysuru to Gundlupet and his wife, V. Jayalakshmi, 1st claimant in MVC No. 1315/2009 and the sole claimant in MVC No. 125/2010 was accompanying him at the relevant

point of time. It is the case of the said V. Jayalakshmi that on the ill-fated day when her husband was driving Tata Indica Car in a slow and cautious manner near Karunalaya hospital in Nanjangud taluk, the driver of KSRTC bus bearing registration No. KA-09-F-4050 came from the opposite direction i.e., from Gundlupet in a rash and negligent manner and dashed against the Car in which they were traveling resulting in instant death of her husband. Thereafter, two claim petitions came to be filed. V. Jayalakshmi, widow of Vijayakumar along with her son, aged about 28 years as on the date of the accident and married daughter, C. Kavitha, filed MVC No. 1315/2009 seeking compensation for the death of Vijayakumar. V. Jayalakshmi filed another petition in MVC No. 125/2010 independently seeking compensation for the injuries suffered by her in the accident. The Tribunal tried the claim petitions separately and disposed the same by separate judgments. However, both the judgments were rendered on the same day i.e., 04.02.2011.

4. The Presiding Officer, MACT., while disposing of MVC No. 125/2010 filed by V. Jayalakshmi, held that the accident has occurred solely due to the rash and negligent driving of KSRTC bus bearing registration No. KA-09-F-4050 by its driver. However, the same Judge when considering claim petition in MVC No. 1315/2009 filed by claimants therein seeking compensation for the death of Vijayakumar, held that there was contributory negligence on the part of the deceased Vijayakumar in causing the accident, which was quantified at 25% while saddling liability to pay compensation on respondent - KSRTC, to an extent of 75%. The Tribunal has calculated compensation to which claimants in MVC No. 1315/2009 are entitled to at Rs. 8,12,736/- and in view of the fact that there was contributory negligence on the part of the deceased Vijayakumar in causing the accident to an extent of 25%, awarded compensation of Rs. 6,09,500/- to the claimants therein with interest at 6% per annum from the date of petition till realization. However, in MVC No. 125/2010, the Tribunal held that the accident occurred solely due to the rash and negligent driving of KSRTC, bus by its driver and accordingly, awarded compensation of Rs. 67,500/- with interest at 6% p.a. to the claimant, V. Jayalakshmi, wife of deceased Vijayakumar, for the injuries suffered by her in the accident. Being aggrieved by the dual stand taken by the Tribunal with reference to the contributory negligence on the part of the deceased Vijayakumar in causing the accident in the claim petitions and the quantum of compensation awarded to claimants in MVC No. 1315/2009 for the death of Vijayakumar, these two appeals are filed by KSRTC. Learned counsel for appellant in MFA No. 4456/2011 submitted that she is not seriously contesting the quantum of compensation awarded to the claimant in MVC No. 125/2010.

5. MFA. Nos. 4455/2011 and 4456/2011 are arising out of judgment and award passed in MVC Nos. 1315/2009 and 125/2010 respectively. Though these two appeals are listed for admission, lower Court records in both the claim petitions were secured at the request of learned counsel appearing for both parties and at their request, these appeals are taken up for final disposal.

6. The fact that Tata Indica Car belonging to Vijayakumar was driven by him on the ill-fated day of the accident is not in dispute. It is not in dispute that he was proceeding from Mysuru towards Gundlupet and bus belonging to KSRTC, was coming from the opposite direction i.e., from Gundlupet towards Mysuru. It is further not in dispute that the accident has taken place in front of Karunalaya hospital in Nanjanagud. The sketch of the place of the accident, which is marked as Ex. P12 in MVC No. 1315/2009, would indicate that the bus belonging to KSRTC, was on the left side from the middle of the road whereas Tata Indica Car, which was driven by deceased Vijayakumar came and hit against the said bus with the entire front portion of the Car hitting only the right side of the bus, thereby indicating that the Car, which was on the left side has moved towards right side of the highway when the accident took place. If the said sketch and the complaint - Ex. P2 available on record are looked into, it is seen that the finding of the Tribunal in MVC No. 125/2010 in holding that the accident occurred solely due to the rash and negligent driving of the KSRTC, bus is incorrect.

7. However, the very same Presiding Officer, MACT., without assigning any reason, has held in the judgment rendered in MVC No. 1315/2009 that there was contributory negligence on the part of deceased Vijayakumar, the driver of Tata Indica Car in causing the accident to an extent of 25%. Therefore, it is seen that the Tribunal has not applied its mind and has not looked into the complaint, which was lodged by the relative of deceased Vijayakumar after the accident and Ex. P12 in MVC No. 1315/2009, sketch of the spot, which was prepared immediately after the accident, which would clearly indicate that the accident has taken place in the middle of the highway leading to Gundlupet with Indica Car, proceeding towards the right side of the highway and right side of oncoming bus resulting in collision between two vehicles, which would indicate that Indica Car driven by Vijayakumar has moved towards the path of the oncoming KSRTC bus. Admittedly, the driver of KSRTC, bus is a professional driver. While driving a bus, he should ensure that he is not only on the right path as he is in the present case, but he should have looked at the vehicle coming in the opposite direction and the possible mistake that the other person may commit leading to occurrence of the accident.

8. In the instant case, it is seen that though the driver of the KSRTC bus was driving the bus cautiously, he did not foresee the possibility of Tata Indica Car driven by Vijayakumar coming and hitting his vehicle. Only if he had taken little more caution, he could have probably avoided the accident. Therefore, there is negligence on the part of driver of KSRTC bus, which could be quantified to an extent of 50%. Otherwise, this Court will have to hold that the deceased Vijaykumar drove Tata Indica Car in a rash and negligent manner in driving it to the right side of the highway, thereby causing collision between his vehicle and right side of KSRTC bus. Therefore, the finding of the Tribunal in exonerating Vijayakumar, the driver of Tata Indica Car in MVC No. 125/2010 and holding that there was contributory negligence on his part in causing the accident to an extent of 25% in MVC No. 1315/2009 is erroneous. Hence, this Court hold that

there is contributory negligence on the part of the deceased Vijayakumar, who was driving Tata Indica Car, at the time of the accident to an extent of 50% in causing the accident. Simultaneously, the driver of KSRTC, bus is also responsible to an extent of 50% in causing the accident. With this observation, this Court hold that appellant - KSRTC. is liable to satisfy the compensation awarded to the claimants in MVC No. 1315/2009 and the sole claimant in MVC No. 125/2010 only to an extent of 50% and remaining 50% liability is that of the driver of Tata Indica Car involved in the accident.

9. The quantum of compensation awarded to claimants in MVC No. 1315/2009 is assailed by KSRTC in MFA No. 4455/2011. The Tribunal, having regard to the fact that the deceased Vijayakumar was working as driver in Police Department as on the date of the accident, has arrived at his income at Rs. 17,850/- per month after deducting professional tax of Rs. 200/- from his gross salary of Rs. 18,050/- based on the salary slip of the deceased as per Ex. P9. The Tribunal, after deducting 1/3rd of the same towards his personal expenses and applying multiplier of 9 in respect of his salary income at Rs. 17,850/- p.m. and multiplier of 8 in respect of his pension taken at Rs. 10,000/- p.m., has arrived at Rs. 7,82,736/- as compensation to which claimants are entitled towards loss of dependency to 1st claimant. In addition to that, Tribunal has awarded Rs. 30,000/- under conventional heads and has calculated compensation to which claimants in MVC No. 1315/2009 are entitled to at Rs. 8,12,736/-. This Court find that no justifiable grounds are made out to interfere with the compensation arrived at by the Tribunal in the facts and circumstances of the case. However, the finding of the Tribunal that there was contributory negligence on the part of the deceased Vijayakumar in causing the accident to an extent of 25% and saddling liability on appellant - KSRTC, to pay compensation to an extent of 75% is erroneous and claimants would be entitled to Rs. 4,06,368/-, which is 50% of compensation of Rs. 8,12,736/- awarded by the Tribunal.

10. The Tribunal has awarded compensation of Rs. 67,500/- with interest at 6% per annum from the date of petition till the date of realization to the claimant in MVC No. 125/2010 for the injuries suffered by her in the accident. Though the quantum of compensation is not seriously contested by learned counsel for appellant in MFA No. 4456/2011, having regard to the fact that appellant - KSRTC, is liable to pay compensation only to an extent of 50% and the deceased Vijayakumar was responsible in causing the accident to an extent of 50%, claimant would be entitled to compensation of Rs. 33,750/-, which is 50% of compensation of Rs. 67,500/- awarded by the Tribunal.

11. Accordingly, both the appeals filed by KSRTC, are allowed in part. In modification of the judgments and awards passed by Fast Track Court-V and MACT., Mysuru of even date i.e., 04/02/2011, claimants in MVC No. 1315/2009 (respondents in MFA No. 4455/2011) are entitled to 50% of compensation of Rs. 8,12,736/- awarded by the Tribunal, which works out to Rs. 4,06,368/- with interest at 6% per annum from the date of petition till the date of deposit of the

entire amount. The sole claimant in MVC No. 125/2010 (respondent in MFA No. 4456/2011) is entitled to 50% of compensation of Rs. 67,500/- awarded by the Tribunal, which works out to Rs. 33,750/- with interest at 6% p.a. from the date of petition till the date of deposit of the entire amount. The common appellant - KSRTC, shall deposit the compensation of Rs. 4,06,368/- awarded to claimants in MVC No. 1315/2009 and compensation of Rs. 33,750/- awarded to the sole claimant in MVC No. 125/2010 with interest in the aforesaid terms within eight weeks from the date of receipt of certified copy of this judgment. From out of the amount deposited by KSRTC, registry shall send 50% of the compensation awarded by the Tribunal in both the claim petitions with interest to the Tribunal for disbursement in favour of the sole claimant in MVC No. 125/2010 and claimants in MVC No. 1315/2009 and excess amount, if any, is ordered to be released in favour of the appellant - KSRTC. The judgment and award of the Tribunal dated 04.02.2011 in MVC No. 1315/2009 in so far as it relates to apportionment of compensation among claimant Nos. 1, 2 and 3 (respondent Nos. 1, 2 and 3 in MFA No. 4456/2011) remain unaltered and the said apportionment shall be done with reference to the revised compensation awarded to claimants in terms of this judgment.