

(2017) 07 KAR CK 0052
In the Karnataka High Court
Case No : 1249 of 2016 (MV)

THE MANAGING DIRECTOR K.S.R.T.C, DEPOT	APPELLANT
Vs	
SRI RAJAPPA S/o SRI THIRUMAIAH, & ORS.	RESPONDENT

Date of Decision : 11-07-2017

Acts Referred:

Citation : (2017) 07 KAR CK 0052

Hon'ble Judges : N.K. Sudhindrarao

Bench : SINGLE BENCH

Advocate : NAGARAJA.K, V JAVAHAR BABU

Final Decision : Dismissed

Judgement

1. With the consent of learned counsel for both sides the matter is taken for final disposal.
2. This appeal is directed against the judgment and award passed in MVC No.3904/2014 clubbed with MVC No.4177/2014 dated 28/08/2015 by the learned IX Additional Small Causes and Additional MACT., Bengaluru preferred by Karnataka State Road Transport Corporation, .(hereinafter referred to as "KSRTC" for short).
3. To avoid confusion and overlapping the parties are hereinafter referred with reference to their respective rankings before the tribunal.
4. The proceedings before the tribunal came to be initiated because of a road traffic accident on 01.08.2014 at about 2.15 p.m., when one Mahadesha R, aged 25 years, was riding the Hero Maestro Vehicle bearing Registration No.KA.05.JE.4726 complying traffic rules on Bangalore- Kanakapura road, at the said moment KSRTC bus bearing Registration No.KA.42.F.287 came being driven in rash and negligent manner and floating the traffic rules and over took a tempo on the wrong side and dashed against the two wheeler of Mahadesha, further dashed against TVS XL Motor cycle bearing Registration No.KA.02.HZ.6109 and

sustained serious injuries. He was taken to Sai Ram Hospital, Bangalore and was referred to BGS Hospital where he succumbed to injuries on 02.08.2014.

5. The respondent-Corporation denied the claim and allegations made by the petitioners. Further it is contended that the driver of the KSRTC was moving his bus slow and carefully. The riders of Maestro vehicle bearing registration No.KA-05-JE-4726 and TVS XL two wheeler bearing registration No.KA-02-HZ-6109 rode them in a rash and negligent manner, because of which Mahadesha sustained fatal injuries.

6. Out of the two claims that were adjudicated by the tribunal, this appeal is directed against MVC.NO.3904/14.

7. The tribunal on the basis of assertions and denials along with the available materials framed the issues on accident, injuries, negligence, disability and entitlement for compensation.

8. The petitioners examined Kumar M.T., petitioner No.1 in MVC No.4177/2014, one Rajappa and Dr.Avinash Partha Sarathy as PWs1 to 3 respectively and produced 38 documents as per Exs.P1 to 38, which included FIR, complaint, IMV report, related documents. The respondent examined Prabhulingaiah and another person whose name is also Prabhulingaiah as RW1 and RW2 and filed documents as per Exs.R1 and R2.

9. The learned Member has disposed of MVC No.3904/2014 and MVC No.4177/2014 through a common judgment on 28.08.2015 under which, in respect of MVC No.3904/2014, the Tribunal adjudicated the claim of Rs.12,34,498/- together with interest at the rate of 6% per annum from the date of presentation of the claim petition till the date of payment, holding the appellant- Corporation herein is liable to pay the compensation amount to the said claimants. The appeal is preferred against the said judgment and award dated 28.08.2015.

10. The parties during oral evidence reiterated their averments and contentions.

11. The claim petition was in the beginning seeking compensation of Rs.50,00,000/- by the petitioners who claim that they are the dependants of Mahadesha who succumbed to the injuries which he sustained in the accident on 01.08.2014.

12. The learned Member considering the claim of the petitioners that Mahadesha was hale and healthy and he had entered into an agreement with one Nagaprasad on 06.12.2012 for construction of a house in site No.41 and 42, 6th cross, Siddagudda Ashrama, Kodipalya, Kengeri, Bengaluru - 60 and the monthly income of Mahadesha was claimed at Rs.40,000/-. During his life time and it is also stated that he was contributing Rs.25,000/- per month to the family. In this connection the learned Member of the Tribunal finds that the petitioners have not produced the income tax return and does not agree with the claim of the petitioners in respect of the income of Rs.40,000/- per month and considers the

income of Mahadesha at Rs.6,000/-. Finally the Tribunal takes the notional monthly income at Rs.6,000/-, added 50% (Rs.3,000/-) towards future prospects and taken total monthly income at Rs.9,000/-, considering the age of Mahadesha as 25 years at the time of his death and he was a bachelor and petitioners Nos.1 and 2 are parents and petitioner No.3 is sister, deducts 50% of his monthly income for personal and living expenses and arrived at Rs.4,500/- per month as his remaining income multiplied the same by 18 multiplier considering the age of Mahadesha at 18 years on the basis of the materials before it and awarded Rs.9,72,000/- towards loss of dependency and also awarded medical expenses at Rs.25,000/-; Funeral expenses at Rs.25,000/-; expenses of transportation of dead body at Rs.5,000/-; loss of love and affection at Rs.25,000/-; loss of estate at Rs.25,000/- and in all Rs.12,34,498/- together with interest at the rate of 6% from the date of the petition till payment payable by the KSRTC to the claimants.

13. The contentions and submissions of counsel for claimants has been that the compensation was not sufficient and proportionate to the loss of dependency. The KSRTC would submit that the claimants were not entitled for the amount granted under the award and warrants setting aside of the same.

14. The learned counsel for the appellant KSRTC was vehement in his submission on the claim of Rs.40,000/- as the monthly income of Mahadesha and that he was contributing Rs.25,000/- per month to the family for maintenance. However learned counsel for claimants would submit that Mahadesha was also a Contractor and had taken up the work of one Nag Prasad for construction of a house on site Nos. 41 and 42, 6th Cross, Siddagudda Ashrama, Kodipalya, Kengeri, Bengaluru-560 060.

15. The learned Tribunal relied upon decisions reported in 2013 ACJ 1403 Rajesh and Others V/s Rajbir Singh and others and 2015 AIR SCW 3105 (Munna Lal Jain and Another V/s Vipin Kumar Sharma and Others)

16. The claim of the Corporation is that the claimants are not entitled for compensation are that the notional monthly income of Mahadesha could never be at Rs.6,000/- per month holds no substance to be considered. On the other hand, the total amount of compensation in its present form just touches the border line of just compensation. There is no lapses reckoning the entitlement of the claimant for seeking compensation by virtue of the death of Mahadesha, because of the injuries sustained by him, because of the accident dated 01.08.2014 and as a result of which he died on the next day i.e., 02.08.2014.

17. The tribunal considered the monthly notional income at Rs.6,000/- on contextual assessment of the monthly notional income of Rs.6,000/- is neither exorbitant nor unreasonably low and the Mahadesha was aged 25 years and naturally multiplier applicable is 18. Further, tally also entitled for future prospects at 50% of the present notional income . However, subject to reducing 50% for personal living expenses, dependants are parents and sister and he was unmarried. Thus the break up equation is Rs.6,000/- (considered notional

monthly income) + 50% Rs.3,000/- (future prospects) =Rs.9,000/- Less 50% towards personal living expenses = Rs.4,500/-. Therefore, his remaining income is Rs.4,500/-. Rs.4,500 X 12(Months) = 54,000 per annum and if it is multiplied by 18, the loss of dependency comes to Rs.9,72,000/-. The learned Member considered the claim of the petitioner Nos.1 and 2 parents and petitioner No.3-sister. Insofar as the amount awarded towards conventional heads are just and proper. Therefore, this Court does not see any infirmity, lapses, irregularity and illegality in the finding of the learned Member.

18. In the circumstances, the impugned judgment and award passed by IX Additional Small Causes Judge and XXXIV ACMM and Additional MACT., Bengaluru, in M.V.C.No.3904/2014 does not call for interference by this Court. Accordingly, the appeal is dismissed.