
(2015) 01 KAR CK 0075

Karnataka High Court

Case No: M.F.A. No. 8484 of 2013 (MV)

Manju Bhandary and
Others

APPELLANT

Vs

Mahadeva B.
Halappanavar and
Others

RESPONDENT

Date of Decision: Jan. 21, 2015

Acts Referred:

Motor Vehicles Act, 1988 - Section 166

Citation: (2015) 01 KAR CK 0075

Hon'ble Judges: B. Sreenivas Gowda, J.

Bench: Single Bench

Advocate: Mahesh Shetty, Advocate, for the Appellant

Final Decision: Partly Allowed

Judgement

B. Sreenivas Gowda, J.

This appeal is by the claimants seeking enhancement of compensation awarded by the Tribunal.

2. Heard, the appeal is admitted and with the consent of the learned counsel appearing for the parties, it is taken up for final disposal.

3. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.

4. As there is no dispute regarding death of deceased Sanjeeva Bhandary in a road traffic accident occurred on 13.06.2010 by involvement of the

KSRTC bus bearing registration No. KA-19-F-2421 and liability of the Corporation to the extent of 95% negligence contributed by their driver,

the points that arise for my consideration in the appeal are:

1. Whether the finding of the tribunal regarding negligence holding that the accident has occurred due to contributory negligence of 95% on the

part of the driver of the KSRTC bus and 5% on the part of deceased in riding his two wheeler is sustainable in law?

2. Whether compensation of Rs. 1,63,000/- after deducting 5% contributory negligence on the part of the deceased, with interest at 6% p.a.

awarded by the Tribunal is just and reasonable or does it call for enhancement?

5. Issue No. 1: The claimants in support of their contentions that while deceased was proceeding on his motorcycle, the accident has taken place

due to rash and negligent driving of the driver of the KSRTC bus have examined the father of the deceased as P.W. 1 and an eyewitness to the

accident as P.W. 2, and have also produced FIR, Complaint, Spot Mahazar, P.M. Report and Police notice as per Exs. P. 1 to P. 5.

6. The Corporation in support of its contention that deceased had also contributed for the accident, examined the driver of the bus as RW.1.

Admittedly, P.W. 1 who is the father of deceased is not an eyewitness to the accident and he is the person who lodged the complaint to the police.

P.W. 2 is the eyewitness to the accident and the FIR is registered against the driver of the bus.

7. The tribunal on appreciation of the oral and documentary evidence on record, particularly, the spot mahazaar produced at Ex. P. 3 came to the

conclusion that the accident has taken place due to contributory negligence of 95% on the part of the driver of the KSRTC bus and 5% on the part

of deceased in riding his motor cycle. I have carefully gone through the finding of the Tribunal on negligence and do not find any illegality or

irregularity warranting interference and therefore, the finding of the tribunal on negligence is confirmed and Point No. 1 is answered accordingly.

8. Point No. 2 After hearing the learned counsel appearing for the parties and perusing the judgment and award of the Tribunal, I am of the view

that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and hence it is required to be enhanced.

9. The deceased was a bachelor aged about 28 years at the time of his death in the accident. Initially the parents of deceased filed a claim petition

seeking compensation under Section 166 of MV Act. During the pendency of claim petition, the mother of deceased died and therefore, her other

children who are brothers and sisters of deceased were brought on record as her legal representatives and the claim petition was proceeded by the

father, brothers and sisters of deceased. The claimants in support of their contention that deceased by running a Barber shop in the name and style

of "Shri Mookambika Hair Dresses" at Kollur and also by working as a barber by himself was earning a sum of Rs. 10,000/- per month have

examined the father of the deceased as PW-1 and they have produced tender information at Ex. P. 8 and letter issued by the Kollur Grama

Panchayath at Ex. P. 9 to show that he had taken a Barber shop by auction. Therefore, considering his age as 28 years, the year of accident as

2010 and his profession as a Barber, his income can be assessed at Rs. 7,000/- per month as against Rs. 3,000/- per month assessed by the

Tribunal. Since, deceased died as a bachelor, 50% of his income has to be deducted towards his personal expenses and remaining 50% of his

income has to be taken as his contribution towards his family. The multiplier of 7" has to be applied based on the younger age of the parents i.e.,

mother, who was in the age group of 62 - 65 years at the relevant point of time.

Therefore, the loss of dependency" works out to Rs. 2,94,000/-

(Rs. 7,000 x $\frac{1}{2}$ x 7 x 12) and it is awarded as against Rs. 1,47,000/- awarded by the Tribunal.

10. Further, a sum of Rs. 50,000/- is awarded under different heads of "conventional heads" as against Rs. 25,000/- awarded by the Tribunal.

11. Thus, the claimants are entitled for the following compensation:--

Thus the Claimants are entitled to a total compensation of Rs. 3,44,000/- as against Rs. 1,72,000/- awarded by the Tribunal and they are entitled

for additional compensation of Rs. 1,72,000/- from which 5% is to be deducted towards negligence contributed by deceased in riding his two

wheeler and claimants are finally entitled to additional compensation of Rs. 1,63,400/-.

12. Accordingly, the appeal is allowed in part. The judgment and award passed by the Tribunal is modified to the extent stated herein above. After

deducting 5% contributory negligence on the part of the rider of the motorcycle (deceased), the claimants are entitled for an additional

compensation of Rs. 1,63,400/- with interest at 6% p.a. from the date of claim petition till the date of realisation excluding interest for the delayed

period of 219 days in filing the appeal.

13. The Insurance Company is directed to deposit the additional compensation amount with interest within two months from the date of receipt of

a copy of this judgment excluding interest for the delayed period of 219 days in filing the appeal. From which, Rs. 1,00,000/- with proportionate

interest is ordered to be invested in fixed deposit in the name of first claimant in any Nationalised Bank/Scheduled Bank/Post Office for a period of

5 years with a right of option to withdraw interest periodically. Remaining amount with proportionate interest is ordered to be released in favour of

the claimants in equal proportion immediately after the deposit.

14. No order as to costs.