

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 31st DAY OF MAY, 2012

BEFORE

THE HON'BLE MR.JUSTICE SUBHASH B. ADI

M. F. A. No. 25309/2011 (MV)

c/w

MFA CROB. No.822/2012

M. F. A. No. 25309/2011 (MV)

BETWEEN:

The Divisional Controller,
Divisional Officer,
KSRTC, Bellary.

... Appellant

(By Sri Sadiq N. Goodwala, Adv.)

AND:

1. Smt. Naseema Banu,
W/o Late S. Iqbal,
Aged: 33 years,
Occ: House hold.
2. S. Asif, S/o Late S. Iqbal,
Age: 14 years, Minor.
3. Shagofee,
D/o Late S. Iqbal,
Age: 12 years, Minor.

4. Markandeppa,
S/o Gavisiddappa Kumbar,
Age: 41 years,
Occ: Driver of KSRTC bus
Bearing No. KA 34/ F 987,
R/o Hospet, Dist: Bellary.

Respondents 2,3, are minors, they are rep. by their mother i.e. Respondents No.1.

.. Respondents

(By Sri D.V. Pattar, Adv. for R1-R3; R-4 served)

This MFA is filed under Section 173(1) of the MV Act against the judgment and award dated 01.04.2011, passed in MVC No. 146/2010, on the file of the Member, Addl. MACT and Presiding Officer, Fast Tract Court-I, Koppal, awarding the compensation of Rs. 5,37,000/- with interest at the rate of 8% p.a. from the date of petition till its deposit.

MFA CROB. 822/2012:

BETWEEN:

1. Smt. Naseema Banu,
W/o Late S. Iqbal,
Aged: 33 years,
Occ: House hold.
2. S. Asif, S/o Late S. Iqbal,
Age: 14 years, Minor.
3. Shagofee, D/o Late S. Iqbal,
Age: 12 years, Minor.

Petitioners 2 and 3 are minors
Represented by petitioner No.1
Natural guardian mother

All are r/o Munirabad,
Tal & Dist: Koppal.

...Cross Objectors

(By Sri D.V. Pattar, Adv.)

AND:

The Divisional Controller,
Divisional Officer,
KSRTC, Bellary.

... Respondent

(By Sri Sadiq N. Goodwala, Adv.)

This MFA Crob. is filed under Order 41 Rule 22 CPC against the judgment and award dated 01.04.2011, passed in MVC No. 146/2010, on the file of the Member, Addl. MACT and Presiding Officer, Fast Tract Court-1, Koppal, partly allowing the claim petition and seeking enhancement of compensation.

This MFA and MFA Crob. coming on for hearing on I.A., this day, the Court delivered the following:

JUDGMENT

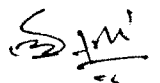
There is delay in filing both the appeal and the cross objection. Accepting the cause shown, delay is condoned. I.A. No.1/2011 in the appeal and I.A.No.1/2012 in the cross objection are allowed.

2. Sri Sadiq N. Goodwala, learned counsel is directed to take notice for the respondent in the cross objection.

Sgw

3. Appeal is filed by the Corporation questioning the quantum and liability, whereas, cross objection is filed by the claimants seeking enhancement of compensation.

4. The Corporation has questioned the liability on the ground that the deceased was travelling in the bus by standing on the foot board and when the driver of the bus applied the break, fell down and died due to his own negligence. He submitted that, the driver of the bus is examined and he has stated that the conductor requested the deceased to come inside the bus. But the driver has not stated that he had seen the deceased standing on foot board. He has spoken on behalf of the conductor. But, conductor has not been examined. Further, it is not known whether there was space inside the bus or not. Even the police records disclose the negligence on the part of the driver of the bus. Hence, in my opinion, liability of the Corporation cannot be disputed.



5. As far as compensation is concerned, tribunal has taken the income at Rs.4,000/-. Accident is of the year 2009. Taking income of the deceased at Rs.4,500/- and giving 1/3rd deduction, claimants are entitled to Rs.3,000/- x 12x 16 = Rs.5,76,000/- towards loss of dependency. Claimants are entitled to Rs.50,000/- on conventional heads. In all, claimants are entitled to Rs.6,26,000/- with interest as against Rs.5,37,000/-.

6. Accordingly, appeal and cross objection are disposed of. The amount in deposit is ordered to be transferred to the Tribunal. However, it is made clear that the claimants are not entitled to interest on the enhanced compensation for the delay period.

Sri Sadiq N. Goodwala, learned counsel is permitted to file vakalath in two weeks.

Sd/-
JUDGE

mkc