

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2019

PRESENT

THE HON'BLE MRS. JUSTICE B. V. NAGARATHNA

AND

THE HON'BLE MR. JUSTICE K. NATARAJAN

MISCELLANEOUS FIRST APPEAL NO.4040 OF 2015 (MV)

BETWEEN:

1. SMT. LAVINA S. LOBO
W/O. LATE JAYAKUMAR,
AGED ABOUT 44 YEARS.
2. KIRAN
D/O. LATE JAYAKUMAR,
AGED ABOUT 12 YEARS,
SINCE MINOR, REPRESENTED BY
HER MOTHER AND NATURAL GUARDIAN,
SMT. LAVINA S. LOBO.
3. SMT. JAYALAKSHMI
W/O. SRI GANGADHAR NAYAK C.R.,
AGED ABOUT 67 YEARS.
4. SRI GANGADHAR NAYAK
S/O. RAMA NAYAK,
AGED ABOUT 72 YEARS.

All ARE RESIDING AT
KANCHIGARARA BEEDI, KOTE,
CHIKKMAGALURU.

... APPELLANTS

(BY SRI K.S. GANESHA, ADVOCATE)

AND:

1. SRI SATISH
S/O. SHIVALINGEGOWDA,
AGED ABOUT 31 YEARS,
DRIVER OF KSRTC BUS,
BADGE NO.0991,
CHIKKAMAGALURU DEPOT,
RESIDENT OF DEVARAHALLI,
LAKYA HOBLI,
CHIKKAMAGALURU TALUK.
2. THE MANAGING DIRECTOR
KSRTC, BENGALURU,
CHIKKAMAGALURU SUB-DIVISION.
3. THE MANAGER
THE NEW INDIA ASSURANCE CO. LTD.,
PANDURANGA COMPLEX,
K.T. STREET,
CHIKKAMAGALURU.

... RESPONDENTS

(BY SRI K.N. DAYALU, ADVOCATE, FOR R-2;
SRI M.P. SRIKANTH, ADVOCATE, FOR R-3; &
R-1 IS SERVED AND UNREPRESENTED)

* * *

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT AGAINST THE JUDGMENT AND AWARD DATED 24-2-2015 PASSED IN M.V.C. NO.254 OF 2013 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE, ADDITIONAL M.A.C.T., CHIKKAMAGALURU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR ADMISSION, THIS DAY, **NATARAJAN, J.**, DELIVERED THE FOLLOWING:

JUDGMENT

Though this appeal is listed for Admission, with the consent of learned counsel on both sides, it is heard finally.

2. The appellants have preferred this appeal assailing the judgment and award dated 24-2-2015 passed by the Principal Senior Civil Judge and Additional Motor Accident Claims Tribunal, Chikkamagaluru, in M.V.C. No.254 of 2013, on various grounds.

3. For the sake of convenience, parties shall be referred to in terms of their status before the Tribunal.

4. Appellants-claimants are the legal heirs of the deceased-C.G. Jayakumar. They filed the claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.30,00,000/- for the death of C.G. Jayakumar, contending that on 12-4-2013 at about 8:00 p.m., near Kote Circle, Belur Raod, Chikkamagaluru, when deceased was proceeding by riding the Honda Activa motorcycle, bearing No.KA-18 R-0072, from Azad Park Circle

to his house at Kote, when he came near Kote Circle, Belur Road, Chikkamagaluru, respondent No.1, being Driver of K.S.R.T.C. bus, bearing Registration No. KA-18 F/199, drove the bus in a rash and negligent manner endangering human life and dashed against the motorcycle of deceased, due to which, deceased sustained fatal injuries. He was shifted to District hospital, Chikkamagaluru and later, he was referred to NIMHANS hospital, Bengaluru, where he succumbed to the injuries. Petitioners contended that they lost their livelihood due to the death of deceased. The accident occurred due to rash and negligent driving of Driver of K.S.R.T.C. bus. Hence, they filed the claim petition.

5. In response to the notice issued by the Tribunal, respondent No.1-Driver of K.S.R.T.C. bus filed objections denying the age, income, and occupation of deceased and also denied that the accident occurred due to his rash and negligent driving of K.S.R.T.C. bus. He further contended that the accident occurred due to rash and negligent riding of the motorcycle by the deceased. It was their contention that

the Court has to assess the percentage of negligence, if it comes to the conclusion that there is negligence on the part of K.S.R.T.C. bus. Hence, they prayed for dismissing the petition. Respondent No.2-Managing Director of K.S.R.T.C. filed separate objections and similar contentions as that of respondent No.1 were taken. Respondent No.3-insurer of the bus also filed separate written statement contending that their liability was subject to terms and conditions of insurance policy and that the accident occurred due to rash and negligent driving of K.S.R.T.C. bus by its Driver. Therefore, they are not liable to pay any compensation. Hence, he also prayed for dismissal of the claim petition.

6. On the rival pleadings, the Tribunal framed the following issues:

- i. *"Whether the petitioners prove that on 12.4.2013 at 8.00 p.m., C.G. Jayakumar died in motor vehicle accident near Kote circle, Belur road, Chikkamagaluru, due to the rash and negligent driving of K.S.R.T.C. bus*

bearing No.KA.18/F-199 which was hit to the Honda Activa motor cycle bearing No.KA.18/R-0072 ridden by deceased?

ii. Whether the petitioners are entitled for the compensation amount? If so, what amount and from whom?

iii. What order or award?

7. In support of their case, petitioner No.1 examined herself as P.W.1 and examined two other witnesses and got marked 25 documents as Exs.P.1 to P.25. Respondent No.1-Driver of the bus examined himself as R.W.1 and got marked 9 documents as Exs.P.1 to P.9.

8. After hearing the arguments, the Tribunal answered issue No.1 in the affirmative, issue No.2 partly in the affirmative and awarded compensation of Rs.7,67,000/- together with interest at the rate of 6% per annum from the date of petition till realisation, which is as under:

Heads	Compensation awarded by the Tribunal (in Rs.)
Loss of dependency	7,02,000.00
Loss of consortium	20,000.00
Loss of love and affection and loss of estate	25,000.00
Funeral expenses	15,000.00
Transportation of dead body	5,000.00
Total	7,67,000.00

9. Being not satisfied with the quantum of compensation, claimants have filed the present appeal before this Court.

10. We have heard learned counsel on both sides and perused the material on record.

11. Learned counsel for the appellants contended that deceased was working as a Site Supervisor under a Civil Engineer and also running finance business and also working as a Sports Coach earning Rs.40,000/- per month. Ex.P.7 is the Salary Certificate produced by the claimants, but the same is not considered by the Tribunal which has assessed the notional income of deceased as Rs.6,000/- per month,

which is meager as even an unskilled Coolie would be earning more than Rs.6,000/- per month. The Tribunal has also not awarded properly on conventional heads such as loss of consortium, funeral expenses, etc. Age of deceased was below 50 years. The Tribunal ought to have awarded future prospects, but nothing has been awarded on that lead. Therefore, he prayed for enhancing the compensation.

12. Per contra, learned counsel for the respondents contended that there is no proper document produced by the claimants to prove the income of deceased or that he was earning Rs.12,500/- per month. Though deceased's employer was examined by claimants, there is no document produced before the Court, except Salary Certificate. The Tribunal has rightly considered the income of deceased as Rs.6,000/- as notional income. Therefore, he supported the judgment and award passed by the Tribunal. However, he further contended that there is contributory negligence in respect of the accident and evidence of the respondents was

not appreciated by the Tribunal. Hence, he prayed for dismissal of the appeal.

13. Upon hearing the arguments, claimants have established that accident occurred on 12-4-2013 at 8:00 p.m. due to rash and negligent driving of K.S.R.T.C. bus by its Driver. Claimants have filed the documents, i.e. Ex.P.1-F.I.R., Ex.P.2-complaint, Ex.P.3-spot mahazar and Exs.P.4 & P.5-inquest reports. P.W.1 has given oral evidence in support of the claim petition. Claimants also examined P.W.3-C.N. Natraj, who is complainant and eyewitness to the accident. Respondent No.1 has denied his rash and negligent driving of bus. The Tribunal, after considering the evidence on record, has rightly come to the conclusion that accident has occurred due to rash and negligent driving of Driver of K.S.R.T.C. bus. Respondents have also not filed any appeal against the findings of the Tribunal in respect of rash and negligence driving on the part of Driver of K.S.R.T.C bus. Therefore, we hold that there is no necessity for interference by this Court in respect of issue No.1.

14. With regard to computation of compensation, in respect of loss of dependency, claimants have stated that deceased was working as a Site Supervisor under P.W.2-Shekar N. and earning Rs.12,500/- per month and in support of their case, they examined P.W.2 and also got marked Ex.P.7-Salary Certificate. On perusal of Ex.P.7, it shows that deceased was working under P.W.2 as a Site Supervisor. Merely because claimants have not filed bank passbook of deceased and P.W.2 has not produced any document that itself is not a ground to disbelieve the evidence of PWs.1 and 2. There is no clear cross-examination by learned counsel for respondents in respect of the income of deceased. Merely because P.W.2 has not produced any other document in respect of his income, evidence of claimants, P.W.2 and Ex.P.7 cannot be disbelieved. Accident occurred in the year April, 2013 and deceased is said to have worked under P.W.2 from the year 2001 to 2013 and that is for almost 14 years. Therefore, earning Rs.12,500/- per month by deceased cannot be disbelieved. Therefore, we

hold that when Salary Certificate was produced and employer of deceased was examined by claimants, the Tribunal was not right in disbelieving the evidence of PWs.1 and 2 and Ex.P.7 and considering the notional income of deceased as Rs.6,000/- per month is meager. Therefore, we propose to consider Rs.12,500/- per month as salary of deceased. Apart from that, the Tribunal has not considered the future prospects of deceased. As per the dictum of the Hon'ble Supreme Court in the case of **NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI AND OTHERS** reported in **(2017) 16 SCC 680**, the Tribunal ought to have considered future prospects of deceased. Therefore, 40% of the income is considered as future prospects. If we calculate 40% of Rs.12,500/-, it comes to Rs.5,000/-. Thereby, the income of deceased is calculated as Rs.17,500/- per month (12,500 + 5,000). As per dictum of the Hon'ble Supreme Court in the case of **SARALA VERMA v. DELHI TRANSPORT CORPORATION** reported in **2009 ACJ 1298 (SC)**, when dependents are four in number, one fourth of the

income has to be deducted towards personal expenses of deceased, which comes to Rs.4,375/- ($17,500 \times 1/4$). If the said amount is deducted from Rs.17,500/-, it comes to Rs.13,125/-, which is the net income. Multiplier applicable to the age 46 is '13'. Therefore, towards 'loss of dependency', claimants are entitled to Rs.20,47,500/- ($13,125 \times 12 \times 13$). As per the dictum of the Hon'ble Supreme Court in the case of **MAGMA GENERAL INSURANCE CO. LTD. v. NANU RAM ALIAS CHUHRU RAM AND OTHERS** reported in **2018 ACJ 2782 (SC)**, appellant No.1, being the wife, is entitled for spousal consortium of Rs.40,000/-; appellant No.2, being the son, is entitled for parental consortium of Rs.30,000/- and appellant Nos.3 and 4, being the aged parents, are entitled for filial consortium of Rs.30,000/- each. In all, Rs.1,30,000/- is awarded towards 'loss of consortium'. As per the judgment of **PRANAY SETHI** and **MAGMA GENERAL INSURANCE CO. LTD.** stated supra, we propose to award Rs.15,000/- towards funeral expenses and another Rs.15,000/- towards 'loss of estate'.

15. Thus, appellants-claimants are entitled for total compensation of Rs.22,07,500/-, which is as under:

Heads	Compensation awarded by this Court (in Rs.)
Loss of dependency	20,47,500.00
Loss of consortium (Rs.40,000/- to wife, Rs.30,000/- to child and Rs.30,000/- each to parents of deceased)	1,30,000.00
Loss of estate	15,000.00
Transportation of dead body and funeral expenses	15,000.00
Total	22,07,500.00

16. In the result, the appeal is ***allowed-in-part*** in the aforesaid terms.

17. Compensation now assessed is Rs.22,07,500/- instead of Rs.7,67,000/- awarded by the Tribunal. The enhanced compensation is Rs.14,40,500/- (22,07,500 minus 7,67,000). Said enhanced compensation shall also carry interest at the rate of 6% per annum from the date of claim petition till realisation.

18. The enhanced compensation shall be apportioned in the same ratio of 40:30:15:15 to the claimants as apportioned by the Tribunal. 75% of the enhanced compensation apportioned to appellant No.1 shall be deposited in a Fixed Deposit in any Post-Office or nationalised Bank for an initial period of ten years and she shall be entitled to draw periodical interest on the said deposit. The remaining compensation shall be released to her. The entire compensation awarded to appellant No.2-minor child shall be kept in a Fixed Deposit in a Post-Office or in any nationalised Bank till she attains the age of majority. The compensation awarded to appellant Nos.3 and 4, who are parents of the deceased, shall be released to them, after due identification.

19. Respondent No.2-Corporation shall deposit the balance compensation amount with interest within a period of six weeks from the date of receipt of a certified copy of this judgment.

Parties to bear their respective costs.

**SD/-
JUDGE**

**SD/-
JUDGE**

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