

Aruna and Others Vs. Muthanna and Others

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Court : Karnataka Dharwad

Decided On : Mar-01-2013

Judge : H. Billappa & the Honourable Mrs. Justice B.S. Indrakala

Appeal No. : M.F.A. No. 22712 of 2012 (MV)

Appellant : Aruna and Others

Respondent : Muthanna and Others

Judgement :

(Prayer: This MFA is filed U/S 173(1) of MV Act, against the Judgment and Award dated:24-03-2012 passed in MVC No.830/2011 on the file of Member, MACT.No.II, Bellary, partly allowing the claim petition for compensation and seeking enhancement of compensation.)

H. Billappa, J.

1. This appeal by the claimants is directed against the judgment and award, dated 24.03.2012, passed by the MACT-II, Bellary, in MVC No.830/2011.

2. By the impugned judgment and award, the Tribunal has awarded a sum of Rs..10,59,750/- and deducting 60% towards contributory negligence has awarded a sum of Rs..4,23,888/- with interest at 6% p.a. from the date of petition till the date of realisation.

3. Aggrieved by that, the appellants-claimants have filed this appeal.

4. Briefly stated the facts are:

The appellants are the wife and children of deceased G.Suresh. That on 25.07.2010, at about 2.10 p.m., the deceased Suresh was driving the KSRTC bus bearing No.KA-36-F-736. The deceased stopped the bus on the left side of the road near Simla Cross, on NH-13, Munirabad.

When he tried to stop the lorry, the first respondent who was driving the lorry bearing No.KA-25/C-1013, drove it at high speed and dashed against the deceased. As a result of that, the deceased sustained injuries and succumbed to the same. The appellants claimed compensation of Rs..49,35,000/-. The Tribunal has awarded a sum of Rs..10,59,750/- and deducting 60% towards contributory has awarded a sum of Rs..4,23,888/- with interest at 6% p.a. from the date of petition till the date of realisation. Aggrieved by that, the appellants-claimants have filed this appeal.

5. The learned counsel for the appellants contended that the Tribunal has erred in holding that the deceased has contributed 60% to the accident. Further he submitted that the driver of the lorry was solely responsible for the accident and charge sheet has been filed against the driver of the lorry and in spite of that, the Tribunal has held that the deceased has contributed 60% to the accident which is totally incorrect. Further he submitted that the Tribunal has not considered future prospects. He also submitted the compensation awarded by the Tribunal towards conventional heads also is inadequate. He, therefore, submitted that the impugned judgment and award needs to be modified.

6. As against this, the learned counsel for the respondent No.3 submitted that the impugned judgment and award does not call for interference. He also submitted that it is clear from the evidence of PW-2 that the deceased has contributed for the accident and therefore, the tribunal was justified in holding that the deceased has contributed 60% to the accident. Further he submitted that the deceased was aged about 47 years and the Tribunal has adopted multiplier of 13 which is proper. He also submitted that the Tribunal has rightly not considered future prospectus.

Further he submitted that the compensation awarded by the Tribunal is just and proper and therefore, it does not call for interference.

7. We have carefully considered the submissions made by the learned counsel for the parties.

8. The points that arise for our consideration are:

1. Whether the Tribunal was justified in holding that the deceased has contributed 60% to the accident?

2. Whether the compensation awarded by the Tribunal is just and proper?

POINT NO.1:

9. It is relevant to note, the Tribunal has held that the deceased has contributed 60% to the accident. PW-2 has deposed that on 25.07.2010, he was on duty as conductor and the deceased was driving the bus bearing No.KA-36/F-730. At about 2.10 p.m., the driver stopped the bus on the correct side of the road. He got down from the bus. He was on the correct side of the road. Near Simla cross, on NH-13, Munirabad, the first respondent drove the lorry bearing No.KA-25/C-1053 at high speed and dashed against the deceased driver and another person by name Ramanna. As a result of that, the deceased driver sustained crush injuries and succumbed to the same. In his cross-examination, P.W.2 also he has stated that there were 47 passengers in the bus. The lorry driver while overtaking the bus was about to dash against the bus. To enquire about it, the bus was stopped. When the driver of the lorry was asked to stop the lorry, he dashed against the deceased who got down from the bus. It is clear, the first respondent was responsible for the accident. The charge sheet has been filed against the first respondent. The owner and the driver of the lorry have not participated in the proceedings. They have not adduced any evidence. Therefore, the Tribunal was not justified in holding that deceased has contributed 60% to the accident. The first respondent was solely responsible for the accident. Therefore, we hold that the first respondent was solely responsible for the accident. The finding that the deceased has contributed 60% to the accident is hereby set-aside. The point No.1

is answered, accordingly.

POINT NO.2:

10. The Tribunal has assessed compensation at Rs..10,32,720/- towards loss of dependency taking the income of the deceased at Rs..10,959/- and deducting a sum of Rs..541/- towards Provident Fund, Rs..339/- towards DRB Fund and Rs..250/- towards Professional Tax, and deducting 1/3rd towards personal expenses and adopting multiplier of 13. The Tribunal was right in taking the income of the deceased at Rs..10,959/- p.m. based on Ex.P-5, the salary slip. It was not justified in deducting Rs..541/- towards Provident Fund, Rs..339/- towards DRB Fund and Rs..250/- towards Professional Tax. Only Rs..150/- needs to be deducted towards Professional Tax. If Rs..150/- is deducted, the income comes to Rs..10,809/-. The deceased was aged about 47 years at the time of accident as per Ex.P.4 PM Report. Therefore, 30% needs to be added towards future prospects as per Sarala Verma's case. If 30% is added, the income comes to Rs..14,053/- per month. There are 3 dependants. Therefore, 1/3rd needs to be deducted towards personal expenses of the deceased. If 1/3rd is deducted, the loss of dependency per month comes to Rs..9,369/-. The deceased was aged about 47 years. Therefore, the appropriate multiplier is 13. The compensation payable towards loss of dependency comes to Rs..9,369X12X13=14,61,564/-. Accordingly, a sum of Rs..14,61,564/- is awarded towards loss of dependency.

11. The Tribunal has awarded a sum of Rs..2,000/- towards transportation, a sum of Rs..5,000/- towards funeral expenses, Rs..10,000/- towards loss of consortium and Rs..10,000/- towards loss of love and affection. We award a sum of Rs..45,000/- in all.

12. The total compensation payable comes to Rs.15,06,564/- and the break up is as follows:

1. Towards loss of dependency	Rs..14,61,564/-
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2. Towards loss of estate, funeral expenses, loss of love and affection and transportation.	Rs.. 45,000/-
Total	Rs..15,06,564/-

13. Accordingly, the appeal is allowed and the impugned judgment and award passed by the tribunal in MVC No.830/2011 stands modified enhancing compensation to Rs..15,06,564/- from Rs..4,23,888/- with interest at 6% pa.. From the date of petition till the date of realisation. The third respondent shall deposit the amount within two months from today excluding the amount already deposited, if any.

Out of the enhanced compensation of Rs..10,82,676/-, the appellant No.1 shall be entitled to a sum of Rs..5,82,676/- with proportionate interest. The appellant No.2 shall be entitled to a sum of Rs..2,00,000/- with proportionate interest. The appellant No.3 shall be entitled to a sum of Rs..3,00,000/- with proportionate interest. From the amount awarded to appellants 1 to 3, 70% shall be invested in fixed deposit in any Nationalized Bank for a period of 5 years. The appellants 1 to 3 shall be entitled to withdraw the interest accrued on it. The balance amount shall be released in favour of the appellants as apportioned.

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