

**Jacob and Others Vs. The Managing Director, K.S.R.T.C. Depot**

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**Court :** Karnataka

**Decided On :** Nov-18-2016

**Judge :** The Honourable Mrs. Justice S. Sujatha

**Appeal No. :** M.F.A. No. 534 of 2012 c/w M.F.A. Nos. 533, 4066, 4065 of 2012  
[MV]

**Appellant :** Jacob and Others

**Respondent :** The Managing Director, K.S.R.T.C. Depot

**Judgement :**

(Prayer: This M.F.A. is filed under Section 173(1) of M.V.Act. against the judgment and award dated 21.02.2011 passed in MVC No. 2240/2008 on the file of xii additional small causes judge and member, MACT. Bangalore, partly allowing the claim petition for compensation and seeking enhancement of compensation.

This M.F.A. is filed under section 173(1) of M.V.ACT against the judgment and award Dated 21.02.2011 passed in MVC No. 2241/2008 on the file of XII additional small causes judge and member, MACT, Bangalore, Partly Allowing The Claim Petition For Compensation And Seeking Enhancement Of Compensation.

This M.F.A Is Filed Under Section 173(1) of M.V.ACT against the judgment and award dated 21.02.2011 passed in MVC No.2241/2008 on the file of the 12th additional small causes judge and member, MACT, Bangalore, awarding a compensation of rs.2,25,000/- with interest @ 6% p.a. from the date of petition till

realisation.

This M.F.A. is filed under section 173(1) of M.V.ACT against the judgment and award dated 21.02.2011 passed in MVC No.2240/2008 on the file of XII additional small causes judge and member, MACT, Bangalore, awarding a compensation of rs.7,38,000/- with interest at 6% p.a. from the date of petition till the date of realization.)

1. Since these appeals arise out of common Judgment, involving the same accident, the same are clubbed, heard together and disposed of by this common Judgment.

2. Briefly stated the facts are:

That the claim petitions were instituted by the injured/legal representatives of the deceased contending that the injured and the deceased met with the road traffic accident on 26.12.2007 while moving in an autorickshaw bearing No.KA-05-6593 as driver/occupant alleging actionable negligence of the driver of a KSRTC bus bearing No.KA-41-F-018 which was under the control of the Corporation. The Tribunal, after analyzing the evidence on record, awarded compensation, fastening the liability on the Corporation. Being aggrieved, the claimants are in appeal as the compensation quantified being inadequate whereas the Corporation is challenging the impugned Judgment and Award on the aspect of negligence as well as quantum, particularly, the maintainability of the claim petition in MVC. No.2241/2008.

3. The learned Counsel appearing for the claimants would contend that the Tribunal grossly erred in awarding a meager sum of compensation ignoring the material evidence on record. It was contended that the injured-claimant in MVC No.2240/2008 was aged about 25 at the time of the accident and was a driver by profession. The Tribunal assessed the disability of whole body to the extent of 25% against the physical disability of 50% to the whole body assessed by the Doctor/PW.3. The monthly income determined by the Tribunal at Rs.4,000/- is on the lower side. Thus, it is contended that the compensation awarded by the Tribunal under the different heads is disproportionate to the nature and gravity of

the injuries sustained by the claimant, accordingly seeks for enhancement of compensation.

4. As regards MVC No.2241/2008 is concerned, it was contended that the deceased was aged about 15 at the time of the accident, a student studying in VIII Standard. The Tribunal erred in awarding a meager compensation of Rs.2,25,000/-globally. The compensation awarded by the Tribunal for the death of a minor is not in consonance with the well established principles of law. In support of his contention, the learned Counsel placed reliance on the Judgment of the Hon ble Apex Court in the case of KISHAN GOPAL AND ANOTHER vs. LALA AND OTHERS reported in [(2014)1 SCC 244], to contend that the claimants/legal representatives of the deceased minor boy are entitled to compensation of Rs.5,00,000/-minimum.

5. On the other hand, learned Counsel appearing for the Corporation would contend that the accident caused due to the negligence of the driver-injured/claimant and the Tribunal was wrong in not appreciating the vital evidence on record mainly, the spot mahazar and the sketch which reveals the manner of accident. It is based on the charge sheet filed against the driver of the bus [offending vehicle], an adverse inference was drawn for not examining the driver of the offending vehicle and fixed the liability on the Corporation which is wholly unsustainable. The factum of contributory negligence of the driver/injured claimant was totally ignored by the Tribunal. The quantum of compensation awarded by the Tribunal is excessive, not in proportionate to the nature and gravity of the injuries sustained by the claimant in MVC No.2240/2008.

6. As regards MFA No.4066/2012 is concerned, it was contended by the Corporation that the first claimant was self claimed guardian of the deceased and second claimant was paternal aunty who have filed claim petition seeking compensation for the death of A.Ebenezer who was admittedly an orphan and the claimants are not legal representatives of the deceased, cannot be considered as dependants on the income of deceased in future and as such claim petition itself was not maintainable. Though the specific contention was raised by the Corporation, the Tribunal brushing aside the same, awarded global compensation

of Rs.2,25,000/- mechanically relying on the Judgment of this Court in the case of S. SANA ULLA AND ANOTHER vs. A.R. SHIVASHANKAR AND OTHERS reported in ILR 2008 KAR 1896 and fixed the entire liability on the appellant. This is the principal contention in this appeal besides the grounds urged in much as the aspect of negligence and the quantum of compensation.

7. Heard the learned Counsel for the parties and perused the material on record.

8. Re: Negligence:

The case of the Corporation is that IMV Report at Exhibit.P4 shows, the front right side corner and right side bumper of the bus was damaged and front side of the auto was damaged. The bus was moving on the main road, the auto in which the deceased was travelling was coming from opposite direction and took a right turn/ u turn towards eastern side of the road without giving any signal and as such, the negligence ought to have been fixed on the driver of the auto. This argument of the Corporation is not worthy of acceptance, the crucial witness to establish the factum of negligence would have been the driver, no driver of the offending vehicle was examined by the Corporation. In such circumstances, an adverse inference has to be drawn against the Corporation, more particularly, against the driver of the offending vehicle. Contributory negligence has to be proved on factual grounds. A mere allegation/accusation would not suffice to ascertain the contributory negligence on the part of the person. Contributory negligence has to be proved by leading direct and corroborating evidence which is conspicuously missing in the present case. On the other hand, charge sheet filed against the driver of the offending vehicle indicates negligence on the part of the driver of the offending vehicle. No case is made out by the Corporation to fix the negligence on the part of the driver of the auto.

9. MVC No.2240/2008:

The claimant/injured was aged about 25 years at the time of accident and was a driver by profession. Considering the nature and gravity of the injuries sustained by the claimant, the Tribunal has quantified the compensation under the different heads which is just and reasonable except the compensation awarded towards

loss of amenities.

10. It is obvious that the claimant has to suffer lot of inconveniences and discomforts for the rest of his life which would bring down the happiness and amenities of life to certain extent. In view of the same, Rs.25,000/- would be the reasonable compensation towards the loss of happiness and future amenities as against Rs.10,000/- awarded. In all other aspects, the compensation awarded by the Tribunal remains undisturbed. Thus, the compensation awarded by the Tribunal is modified to Rs.7,53,000/- as against Rs.7,38,000/-.

11. MVC No.2241/2008:

The first claimant is one of the Trustees of Clavery Chapel Trust, where the deceased A. Ebenezer was staying. The second claimant claims to be the sister of deceased A. Ebenezer s father. A perusal of police records at Exhibit.P22 to P24 disclose that one Smt. Kousalya married with Anthony Raj of Byyappanahalli begotten two children, namely, Santhosh and A. Ebenezer. It appears that the first son Santhosh left the house at his tender age, his father Anthony Raj got disturbed and died. Subsequently, his mother Kousalya also died due to some illness leaving behind A. Ebenezer who was aged about 6 years. Consequently, one Smt. Jaya Mery wife of Rajkumar who is stated to be sister of Ebenezer s mother took this 6 years old child to an Orphanage being run by Ebenezer Rajkumar. The said deceased Ebenezer studied there upto 1<sup>st</sup> standard, later on he was shifted to Clavery Chapel Trust being run by the first claimant herein. Since the, the deceased A. Ebenezer was living in the said Orphanage run by the Trust and studying in the Christ High School. The Tribunal analyzing the material evidence recorded a finding of fact that the second claimant was not at all in picture in the events that took place during the lifetime of the deceased A. Ebenezer. However, based on Exhibit.P26 a family pedigree, said to have been issued by the Village Accountant. Hulimavu, Revenue Circle, Begur Hobli, Bangalore South, the second claimant contended that the being the legal representative of the deceased Ebenezer as the paternal aunty is entitled to the compensation.

12. In the background of this factual matrix, the Tribunal held that the deceased A. Ebenezer was an orphan. The claimants have not brought all the legal heirs of the

deceased Ebenezer in the claim proceedings so as to decide their entitlement to the Award amount which is estate of the deceased A. Ebenezer. Given the circumstances, the Tribunal awarded Rs.2,25,000/- as the global compensation relying on the Judgment of this Court in S. SANA ULLA s case [supra], directed to be deposited in the name of deceased in any Nationalized Bank, leaving the claimants to approach the competent court and to get succession certificate for the said Award amount of deceased Ebenezer.

13. Now the question that arises for consideration would be,

[a] Whether the claimants are the legal representatives of the deceased A. Ebenezer to maintain the claim petition under section 166 of the Motor Vehicles Act, 1988, [ Act , for short]?

[b] Whether the quantum of compensation awarded globally at Rs.2,25,000/-for the death of the deceased A. Ebenezer, a 15 years old minor is justifiable in the facts and circumstances of the case?

14. It is apt to refer to section 166 of the Act which reads thus:

166. Application for compensation

[An application for compensation arising out of an accident of the nature specified in sub-section [1] of section 165 may be made

[a] by the person who has sustained the injury; or

[b] by the owner of the property, or

[c] where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

[d] by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be.

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf

of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

The word legal representative is not defined under the Act.

15. The legal representatives has to be read in terms of section 2[1] of CPC. Section 2[11] of CPC defines legal representative as under:

2[11]. Legal representative means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

16. The Hon ble Apex Court in the case of GUJARAT STATE ROAD TRANSPORT CORPORATION vs. RAMANBHAI PRABHATBHAI reported in 1987 ACJ 561 [SC], has held thus:

Before concluding we may add that although the Act was extensively modified after the receipt of the report of the Law Commission, Parliament did not choose to amend section 110-A of the Act by defining the expression legal representatives in relation to claims under Chapter VIII of the Act as the spouse, parent and children of the deceased as recommended by the Law Commission. The Law Commission had observed in its 85th report that it would be appropriate to assign to the expression legal representative the same meaning as had been given to the expression representative for the purposes of the Fatal Accidents Act, 1855 and that would effectively carry-out the purpose of social justice underlying Chapter VIII of the Act, to which the Fatal Accidents Act, 1855 was the nearest approximation. This recommendation was made after referring to the divergent views expressed by the various High Courts on the meaning of the expression legal representatives in section 110-A of the Act. The fact that Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression legal representatives in section 110-A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased.

17. In the case of *MANAGING DIRECTOR, KSRTC vs. VENKATARAMAPPA K.S.*, reported in 2003 ACC 457, it is held thus:

7. When we look into Section 8 of the Hindu Succession Act, when a male Hindu does intestate, his property has to be devolved according to the provisions of Section 8.

[a] firstly, upon the heirs, being the relatives specified in Class I of the Schedule;

[b] secondly, if there is no heir of Class I then upon the heirs, being the relatives specified in Class II of the Schedule.

8. In the instant case, there are no Class I legal heirs to the deceased-Shivanna. The claimants are the brothers and sisters who will come as Class II legal heirs under the Hindu Succession Act. Therefore, the petition filed by the claimants was maintainable before the Tribunal.

18. The Division Bench of this Court in the case of *A. MANAVALAGAN v. A. KRISHNAMURTHY AND OTHERS* reported in ILR 2004 KAR 3268 has held as under:

19. We may summarise the principles enunciated, thus:

(i) The law contemplates two categories of damages on the death of a person. The first is the pecuniary loss sustained by the dependant members of his family as a result of such death. The second is the loss caused to the estate of the deceased as a result of such death. In the first category, the action is brought by the legal representatives, as trustees for the dependants beneficially entitled. In the second category, the action is brought by the legal representatives, on behalf of the estate of the deceased and the compensation, when recovered, forms part of the assets of the estate. In the first category of cases, the Tribunal in exercise of power under Section 168 of the Act, can specify the person to whom compensation should be paid and also specify how it should be distributed (Note: for example, if the dependants of a deceased Hindu are a widow aged 35 years and mother aged 75 years, irrespective of the fact that they succeed equally under Hindu Succession Act, the Tribunal may award a larger share to the widow and a smaller share to the

mother, as the widow is likely to live longer). But in the second category of cases, no such adjustments or alternation of shares is permissible and the entire amount has to be awarded to the benefit of the estate. Even if the Tribunal wants to specify the sharing of the compensation amount, it may have to divide the amount strictly in accordance with the personal law governing succession, as the amount awarded and recovered forms part of the estate of the deceased.

(ii) Where the claim is by the dependants, the basis for award of compensation is the loss of dependency, that is loss of what was contributed by the deceased to such claimants. A conventional amount is awarded towards loss of expectation of life, under the head of loss to estate.

(iii) Where the claim by the legal representatives of the deceased who were not dependants of the deceased, then the basis for award of compensation is the loss to the estate, that is the loss of savings by the deceased.

A conventional sum for loss of expectation of life, is added.

(iv) The procedure for determination of loss to estate is broadly the same as the procedure for determination of the loss of dependency. Both involve ascertaining the multiplicand and capitalizing it by multiplying it by an appropriate multiplier. But, the significant difference is in the figure arrived at as multiplicand in cases where the claimants who are dependants claim loss of dependency, and in cases where the claimants who are not dependants claim loss to estate. The annual contribution to the family constitutes the multiplicand in the case of loss of dependency, whereas the annual savings of the deceased becomes the multiplicand in the case of loss to estate. The method of selection of multiplier is however the same in both cases.

Though the quantum of savings will vary from person to person, there is a need to standardize the quantum of savings for determining the loss to estate (where the claimants are not dependants) in the absence of specific evidence to the contrary. The quantum of savings can be taken as one-third of the income of the deceased where the spouses are having a common establishment and one-fourth where the spouses are having independent establishments. The above will apply where the

family consists of non-dependent spouse/children/parents. Where the claimants are non-dependant brothers/sisters claiming on behalf of the estate, the savings can be taken as 15 % of the income. The above percentages, one of course, subject to any specific evidence to the contrary led by the claimants.

19. The Hon ble Apex Court while considering the application under section 140 of the Act, of the married daughter who was not dependent on the deceased father has held in *MANJURI BERA vs. ORIENTAL INSURANCE COMPANY LIMITED* reported in 2007 [10] SCC 643 thus:

12. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no law loss of dependency the claimant if he or she is a legal representative will be entitled to compensation the quantum of which shall be not less than the liability flowing from Section 140 of the Act.

20. In *KISHAN GOPAL S* case [supra], the claimants were the dependent parents of the deceased 10 year old boy, considering the death of the minor child in the motor vehicle accident, where no question of loss of dependency arose, the Hon ble Apex Court awarded the compensation arose, the Hon ble Apex Court awarded the compensation which is applicable to the case on hand, only to assess the annual income of the deceased at Rs.30,000/- *SANA ULLA S* case [supra], was rendered in the context of dependent legal representatives claiming compensation. Hence, the same is not applicable to the facts of the present case.

21. In the circumstances, it would be necessary to examine, whether the claimants are entitled to compensation as legal representatives not dependent on the deceased or as dependents entitled to compensation. It is obvious that the deceased A.Ebenezer was an orphan studying in the school living with the Orphanage maintained by the Trust. The loss of dependency and loss of estate are two different aspects. It is unrealistic to expect the Manger of the Trust as a dependent of the deceased A. Ebenezer, similarly, the paternal aunt who had not played any role during the lifetime of the deceased. It is clear that to claim compensation under Section 166 of the Act, the claimants must fall within the

ambit of legal representative as interpreted in the various Judgments of the Hon ble Apex Court. As per the judgments referred to supra, a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child. Even if there is no loss of dependency, the claimant if he or she is a legal representative is entitled to compensation, towards loss of estate, the loss of financial contribution made to the claimant is the loss of dependency, the loss of savings by the deceased is the loss of estate. As discussed above, the question of loss of dependency would not arise in the present case. In view of the same, the claimants being not proved to be the dependent legal representatives, are entitled to loss of estate. Loss of estate to be computed as per the Division Bench Judgment of this Court in A. MANAVALAGAN S case (supra), the savings taken as 15% of the income. The annual notional income has to be reckoned at Rs.30,000/- based on the judgment of the Hon ble Apex Court in the case of KISHAN GOPAL S case (supra). The appropriate multiplier would be 15 as per the judgment of the Hon ble Apex Court in the case of RESHMA KUMARI and OTHERS vs. MADAN MOHAN and ANOTHER reported in 2013 ACJ 1253. Thus, the loss of estate works to Rs.67,500/- (Rs.30,000/- x 15% x 15). The claimants shall be entitled to a sum of Rs.25,000/- towards transportation of dead body and funeral expenses. Hence, the claimants shall be entitled to total compensation of Rs.92,500/- as against Rs.2,25,000/-. The award amount shall carry interest at 6% p.a. from the date of petition till the date of the deposit provided the claimants shall establish in law as legal representatives of the deceased since the person who may or may not be a legal heir competent to inherit to the property of the deceased can represent the estate of the deceased person which includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased as observed by the Hon ble Apex Court in CUSTODIAN OF BRANCHES OF BANCO NATIONAL ULTRAMARINO vs. NALINI BAI NAIQUE reported in 1989(2) SCR 810. The observations made by the Tribunal that the claimants have to approach the competent court and get the succession certificate to claim the award amount of deceased A. Ebenezer is justifiable.

22. The Award amount shall be deposited in the in any Nationalized Bank leaving the claimants to approach the competent court and to get the succession

certificate for the said Award amount of deceased A. Ebenezer.

23. MFA No.534/2012 and MFA No.4065/2012 arising out of MVC No.2240/2008 are disposed of enhancing the compensation amount awarded by the Tribunal to Rs.7,38,000/- as against Rs.7,53,000/- which shall carry interest at 6% p.a. from the date of petition till realization.

24. MFA No.533/2012 and MFA No.4066/2012 arising out of the MVC No.2241/2008 are disposed of reducing the compensation amount awarded by the Tribunal from Rs.2,25,000/- to Rs.92,500/- which shall carry interest at 6% p.a from the date of petition till the realization.

25. In the result, the appeals are disposed of in terms of the above.

Award amount shall be transferred to the jurisdictional Tribunal for disbursement.

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