

Bangarya vs the Managing Director

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Court : Karnataka Dharwad

Decided On : Feb-29-2024

Judge : M.I.Arun,Umesh M Adiga

Appeal No. : MFA/101944/2020

Appellant : Bangarya

Respondent : The Managing Director

Judgement :

-1- IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE 29TH DAY OF FEBRUARY, 2024 PRESENT THE HON'BLE MR JUSTICE M.I.ARUN AND THE HON'BLE MR JUSTICE UMESH M ADIGA MFA NO.102760 OF 2018 (MV) C/W MFA NO.101944 OF 2020 (MV) IN M.F.A. NO.102760 OF 2018 BETWEEN: THE MANAGING DIRECTOR, N.W.K.R.T.C., HUBBALLI, REPRESENTED BY DIVISIONAL CONTROLLER, BUS NO.KA-42/F-990, Digitally signed by REPRESENTED BY CHIEF LAW OFFICER. SAMREEN AYUB APPELLANT DESHNUR Location: HIGH (BY SRI. S.C. BHUTI, ADVOCATE) COURT OF KARNATAKA AND:

1. BANGARYA KERIYA GOUDA, AGE: 57 YEARS, OCC: COOLIE, R/O: MALALI, SIRSI (N.K.)-581450, (FATHER OF THE DECEASED)

2. KAMALA BANGARYA GOUDA, AGE: 47 YEARS, OCC: HOUSEWIFE, R/O: MALALI, SIRSI (N.K.)-581450, (MOTHER OF THE DECEASED) -2-

3. GEETA BANGARYA GOUDA, AGE: 24 YEARS, OCC: HOUSEHOLD, R/O: MALALI, SIRSI (N.K.)-581450, (SISTER OF THE DECEASED)

4. GIRIJA BANGARYA GOUDA,

AGE: 23 YEARS, OCC: HOUSEHOLD, R/O: MALALI, SIRSI (N.K.)-581450, (SISTER OF THE DECEASED) RESPONDENTS (BY SRI. VISHWANATH HEGDE, ADV.) THIS M.F.A. IS FILED U/S.173(1) OF MV ACT, 1988, AGAINST THE JUDGMENT AND AWARD DATED 20.03.2018 PASSED IN MVC NO.312/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE AND MEMBER, ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, SIRSI, AWARDED COMPENSATION OF Rs.6,50,000/- WITH INTEREST AT 7% P.A. FROM THE DATE OF PETITION TILL ITS REALISATION. IN M.F.A. NO.101944 OF 2020 BETWEEN:

1. BANGARYA S/O. KERIYA GOUDA, AGE: 59 YEARS, OCC: COOLIE, R/O: MALALI, SIRSI, TQ: SIRSI, DIST: UTTAR KANNADA-581403. (FATHER OF THE DECEASED)

2. KAMALA W/O. BANGARYA GOUDA, AGE: 49 YEARS, OCC: HOUSEWIFE, R/O: MALALI, SIRSI, TQ: SIRSI, DIST: UTTAR KANNADA-581403. (MOTHER OF THE DECEASED) -3-

3. GEETA D/O. BANGARYA GOUDA, AGE: 26 YEARS, OCC: HOUSEHOLD, R/O: MALALI, SIRSI, TQ: SIRSI, DIST: UTTAR KANNADA-581403. (SISTER OF THE DECEASED)

4. GIRIJA D/O. BANGARYA GOUDA, AGE: 25 YEARS, OCC: HOUSEHOLD, R/O: MALALI, SIRSI, TQ: SIRSI, DIST: UTTAR KANNADA-581403. (SISTER OF THE DECEASED) APPELLANTS (BY

SRI. VISHWANATH HEGDE, ADVOCATE) AND: THE MANAGING DIRECTOR, N.W.K.R.T.C., HUBBALLI, REPRESENTED BY DIVISIONAL CONTROLLER, BUS NO.KA-42/F-990. RESPONDENT (BY SRI. S.C. BHUTI, ADVOCATE) THIS M.F.A. IS FILED U/S.173(1) OF MV ACT, 1988,

AGAINST THE JUDGMENT AND AWARD DATED 20.03.2018 PASSED IN MVC NO.312/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE AND MEMBER, ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, SIRSI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THESE MISCELLANEOUS FIRST APPEALS, COMING ON FOR ADMISSION, THIS DAY, UMESH M. ADIGA, J., DELIVERED THE FOLLOWING: -4-

JUDGMENT

Both these appeals arise out of the judgment and award passed by the learned Senior Civil Judge and Addl. M.A.C.T., Sirsi, in M.V.C. No.312/2016 dated 20.03.2018. Hence, taken up together for disposal. Though the matter is slated for admission, with the consent of both the side, it is taken up for final disposal.

2. Brief facts of the case of both the parties before

the Tribunal are as under. It is case of claimants that on 23.05.2016 at about 11:55 hours, deceased Ganesh Bangarya Gouda was going on the motorcycle bearing registration No.KA-30/R-551 alongwith pillion rider Manjunath Gouda on Sirsi-Kumta road. The said Ganesh was riding the motorcycle. They met with an accident due to rash and negligent driving of the bus bearing registration No.KA-42/F-990 at Challehole, Bandal. Due to the impact, both the riders sustained grievous injuries and died. Parents and sisters of deceased Ganesh filed the claim petition, -5- claiming compensation of Rs.50,00,000/- for the death of said Ganesh.

3. The contention of the respondent is that the

accident had taken place due to rash and negligent riding of the motorcycle of the deceased. He was not holding licence to ride the motorcycle. The motorcycle came on the wrong side of the road and dashed against the bus and caused accident and therefore, claimants are not entitled for compensation.

4. The learned Tribunal has framed following

issues:

1. Whether the petitioner No.1 proves that, on 23.05.2016 that about 11:15 hours, when his son was proceeding towards ragihosalli through Sirsi-Kumta road by riding a motorcycle No.KA- 30/R-551 he met with an accident due to the rash and negligent driving of bus bearing No.KA-42/F-990 by its driver and due to which he succumbed to the injuries at the spot? -6-
2. Whether the respondent prove that he is not liable to pay the compensation for the reasons stated in para No.2 of written statement?
3. Whether the petitioners are entitled for the compensation as claimed by them, if so what is the quantum and from whom?
4. What order or award?
5. Claimants on their behalf examined PW1 and got marked Exs.P1 to P10. Respondents examined RW1 and got marked Exs.R1 to R6.
6. The Tribunal after hearing both the parties and appreciating pleadings and evidence on record, awarded

compensation of Rs.6,50,000/- by the impugned judgment

dated 20.03.2018. Same is challenged by both the parties.

7. We have heard the arguments of the learned counsel for both the parties.

8. The learned counsel for the appellant NWKSRTC

would submit that if we verify the spot mahazar as well as the copy of the spot of accident, it clearly reveals that -7- inspite of sufficient space available, the rider of the motorcycle went to the middle of the road and dashed against ongoing bus. It clearly indicates that he was negligent and had no control over the vehicle. Moreover, respondent has taken a contention that rider of the motorcycle had no valid and effective driving licence and during the trial, driving licence of the deceased was not placed on record to prove that deceased had licence to ride motorcycle. Both the facts show that due to negligence of deceased, accident had taken place. The contributory negligence of rider of motorcycle and driver of bus could be apportioned in the ratio of 20:80. Hence, prayed to pass suitable orders. He would further contend that the respondents examined the driver of the bus as RW1, who has stated in detail about the accident. Therefore, the accident was not caused due to the negligence of the driver of the bus alone, but also due to the contributory negligence on the part of the rider of the motorcycle, as well as driver of the bus. -8-

9. On the contrary, learned counsel for the

appellants - claimants has submitted that, in spite of there being sufficient space towards the left side of the bus, the driver of the bus came to the wrong side and dashed against the motorcycle. Therefore, the entire negligence needs to be saddled on the part of the driver of the bus. He is charge sheeted to the accident in question. He further submits that amount of compensation awarded is meager. Hence, prayed for enhancement.

10. The Tribunal has considered the point of

negligence and held that the accident was taken place due to the negligence of the driver of the bus and even the Investigating Officer after investigation, charge sheeted the driver of the bus for the accident. The said finding is under serious challenge by the corporation.

11. Let us consider the copy of prosecution papers;

According to Ex.P4, width of the road is about 18 feet and on both sides of the road, there were foot path / rough road to an extent of 5 feet. The accident had taken place about -9- 8 feet away from the south left side edge of tar road, towards north. Rider of motorcycle had sufficient space towards his left side. Leaving the same came near middle portion of the road. Claimants have not examined any eyewitness to the incident to substantiate the same. Rider of motorcycle could have avoided the accident. It indicates that he had contributed to the accident in question. Similarly the driver of the bus could have taken his bus to the northern side of the road and avoided the accident. However, the photographs produced at Exs.P2 to P6 reveal that, major contribution is by the driver of the bus. Considering prosecution papers and evidence of RW1, contributory negligence for the accident by the rider of the motorcycle as well as driver of the bus is taken in the ratio of 20:80; That is the driver of the bus has contributed to an extent of 80% in causing the accident and rider of motorcycle to an extent of 20%. Accordingly, we hold that both the rider of the motorcycle and driver of the bus had contributed for the accident in question in the above ratio. - 10 -

12. Coming to the quantum of compensation, the

deceased was a student studying in 2nd Semester of BBA at the time of accident. Had he survived, he might have bright future. However, unfortunately he died in the accident. Considering the same, we deem it appropriate to consider the notional income of the deceased on the basis of the schedule of income prepared by the Karnataka State Legal Service Authority in consultation with the stakeholders. In the present case, the accident is of the year 2016 and therefore, the notional income of the deceased could be taken as Rs.8,750/- per month.

13. Since the deceased was aged about 18 years at

the time of accident, 40% of the income is to be added towards future prospects, as per the law laid down in the case of the National Insurance Co. Ltd., Vs. Pranay Sethi and others¹. It is not in dispute that the deceased was unmarried and hence 50% of the income needs to be deducted towards his personal expenses. Further, the 2017 ACJ 2700 - 11 - multiplier applicable is 18. Thus, on the basis of said calculations, the claimants are entitled for compensation towards loss of

dependency at Rs.13,23,000/- (Rs.8,750 + 40% - 50% x 12 x 18).

14. Further, parents of the deceased would be entitled to a sum of Rs.80,000/- (Rs.40,000/- each) towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses.

15. The Tribunal has awarded interest at the rate of

7% p.a. Learned counsel appearing for the NWKRTC vehemently contends that as the normal interest of the banks is at 6% p.a., the same may be awarded. The said submission is accepted and the rate of interest is reduced to 6% from 7% as awarded by the Tribunal.

16. Accordingly, the claimants are entitled to the following amounts of compensation as follows:

1. Loss of dependency Rs.13,23,000/- (Rs.8,750 + 40% - 50% x 12 x 18)

2. Loss of consortium (Rs.40,000 x 2) Rs.80,000/-

3. Loss of estate Rs.15,000/- - 12 -

4. Funeral expenses Rs.15,000/- TOTAL Rs.14,33,000/- Less: 20% contributory negligence on Rs.2,86,600/- the part of the rider of the motorcycle GRAND TOTAL Rs.11,46,400/-

17. In MFA No.101944/2020, an application was filed

to condone the delay of 770 days in filing the appeal. While allowing the said application, it is held that the claimants are not entitled to interest for the delayed period. Accordingly, to that extent the claimants are not entitled to any interest for the delayed period of 770 days in filing this appeal.

18. For the aforesaid discussion, we pass the following:

ORDER

(i) Both the appeals, M.F.A. No.102760/2018 and M.F.A. No.101944/2020 are disposed off.

(ii) The impugned judgment and award passed by the Tribunal in MVC No.312/2016 is modified. The claimants are entitled to total compensation of Rs.11,46,400/- as against - 13 -

Rs.6,50,000/- as awarded by the Tribunal along with interest at the rate of 6% p.a. from the date of petition till its realization on the enhanced amount of compensation except the period of delay of 770 days in filing the appeal in MFA No.101944/2020.

(iii) The NWKRTC is directed to deposit the compensation along with interest, as ordered above within a period of six weeks from the date of receipt of certified copy of this order.

(iv) The apportionment of compensation and deposit is as per the order of the Tribunal.

(v) Whatever the amount deposited by the corporation in this Court shall be transmitted to the Tribunal. Sd/- JUDGE Sd/- JUDGE RSH,VNP, CT: UMD List No.: 1 Sl No.: 29

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