

Nagappa Vs. General Manager Ksrtc

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Court : Karnataka

Decided On : Sep-27-1995

Reported in : 1996ACJ921; ILR1996KAR1231

Judge : Hakeem and ;Padmaraj, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 164

Appeal No. : M.F.A. No. 2676 of 1991

Appellant : Nagappa

Respondent : General Manager Ksrtc

Advocate for Def. : H.B. Narayan, Adv.

Advocate for Pet/Ap. : T.C. Sathish Kumar, Adv.

Disposition : Appeal allowed

Judgement :

Hakeem, J.

1. The claimants are the father and brothers of one H.N. Krishnamurthy who died in a Motor Accident on 14.1.1990 involving BTS bus bearing registration No. CAF 389. The occurrence of the accident resulting in the death of the deceased Krishna Murthy is not in dispute. So far as the actionable negligence is concerned, the

Tribunal has apportioned the actionable negligence on the part of the bus driver and the rider of the motor cycle on which the deceased was a pillion rider, at 90% and 10%.

2. The only ground on the basis of which the Tribunal has given its finding on the question of contributory negligence is that the motor cycle on which the deceased was travelling as a pillion rider, was proceeding leaving a gap of 8' feet towards left side of the road. It is observed that having regard to the time and place of the accident, the rider of the motor cycle ought not to have proceeded in that manner, whereby he had exposed the pillion rider to the risk of accident. We have the sketch prepared by the Jurisdictional Police which shows that both the vehicles were moving in the same direction, i.e., from East to West. Total width of the road is 36'. The distance between the foot path and motor cycle was about 8 feet leaving sufficient width of the road on the right side. The bus driver could have slowed down the speed of the vehicle or over taken the motor cycle from the right side for which there was sufficient space on the road. The sketch also makes it clear that the bus had deflected towards its left side and in that process hit the motor cyclist and thereafter it had proceeded to a distance of 152 feet from the point of the impact. This itself makes it clear that the bus was proceeding at a very high speed and the accident was solely on account of the actionable negligence on the part of the bus driver, In that view of the matter, we are unable to agree with the finding of the Tribunal that the rider of the motor cycle had contributed to the accident to the extent of 10%. This finding is accordingly set aside.

3. This takes us to the assessment of compensation payable to the dependants of the deceased. Out of three claimants the only recognised dependant can be the father of the deceased D, Nagappa. The other two brothers who have impleaded themselves as claimants aged 42 years and 34 years, are not entitled for any compensation. Admittedly, the age of the first claimant was 60 years at the time of accident. According to the evidence the deceased having completed his M.B.B.S. Course was studying in a Post Graduation Course in K.M.I.C., where he was getting stipend of Rs. 1200/- p.m. It is further stated that he had already completed one year in the Post Graduate Course and he was in the final year of M.D. Course. In the mean time he had applied for a Gazetted post advertised by the State

Government and he was infact selected as an Insurance Medical Officer, in E.S.I. (M) Services. However, before the orders of appointment could be issued on 1st July, 1991, he died in the accident. In the facts and circumstances emerging out of the pleadings and the evidence on record it is clear that the deceased had very bright prospects in life. If he had survived, he would have been appointed as Insurance Medical Officer in the Department of E.S.I. (M) Services, for which he was selected. The Government Notification gives the basic pay for that post at Rs. 2,200/-. This, along with other allowances, would have amounted to Rs. 4,189/-. Deducting a sum of Rs. 118/- as compulsory deduction, the net salary of the deceased in the year 1990 would have been around Rs. 4,000/-. Having regard to the fact that the deceased was unmarried and in due course would have married, the loss of dependency to the parents can be taken at 50%, i.e., Rs. 2000/- per month. Applying the multiplier of 8 which is appropriate to the age of the first claimant, the total loss of dependency would come to Rs. 1,92,000/-. To this, a sum of Rs. 5,000/- is added towards loss to the Estate and Rs. 2000/-towards funeral expenses. Thus the first claimant is entitled to a total compensation of Rs. 1,99,000/-, rounded off to Rs. 2,00,000/-.

4. In the result, the Appeal is allowed. In modification of the Award made by the Tribunal, the first claimant is held to be entitled to a compensation of Rs. 2,00,000/-, together with interest thereon at 6% p.a. from the date of claim till the date of realisation, subject to adjustments of any payments already made by the respondents. The claimant is also entitled to costs. Advocate Fee is Rs. 2,000/-.

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