



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL NO. 9222 OF 2018 (MV-D)

BETWEEN:

1. SMT. SHAHEDA
W/O LATE SAIFULLA URAISHI
AGED ABOUT 47 YEARS.

2. SMT UMME UMRA
W/O RAHMATHULLA
AGED ABOUT 32 YEARS.

R/AT NO.445 SHAMPUR MAIN ROAD
NEAR RAHMANIYA MASJID
NEW SALT MANDI TANNERY ROAD
BENGALURU NORTH - 05.

3. AYESHA BEGUM
D/O SHAHEEDA BEGUM
AGED ABOUT 29 YEARS
APPELLANTS NO.1 &3 ARE
RESIDING AT NO.6 THIMMAIAH ROAD
DANA KOTI LANE
SHIVAJINAGAR BENGALURU - 51.

...APPELLANTS

(BY SMT. AMBIKA, ADV., FOR
SRI MOHD SHERIFF, ADV.)

AND:

THE MANAGING DIRECTOR
BMTCL, K.H. ROAD
BANGALORE.

...RESPONDENT

(BY SMT. SOHANI HOLLA, ADV.)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 31/05/2017, PASSED IN MVC
NO.2857/2016, ON THE FILE OF THE III ADDITIONAL SENIOR CIVIL





JUDGE, COURT OF SMALL CAUSES AND MACT, BENGALURU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL JUDGMENT

This appeal is filed by the claimants challenging the judgment and award dated 31.05.2017 passed in MVC No.2857/2016 by the Court of III Addl. Senior Civil Judge & MACT, Bengaluru (SCCH-18), (for short, 'Tribunal').

2. Though this appeal is listed for orders, with consent of the learned counsel for the parties, it is taken up for final disposal.

3. Smt. Ambika, learned counsel for the appellant submits that the Tribunal has committed a grave error in recording the finding that the deceased has contributed to the accident in question to the extent of 50% without any evidence before it. It is submitted that the charge sheet is filed against the driver of the BMTC bus and the Tribunal



has placed reliance on the written complaint placed before it along with the charge sheet and came to the conclusion that the deceased has contributed to the accident as the complainant was not the eye-witness to the incident. He only enters the spot of accident later in point and took the injured to the hospital. It is further submitted that the death summary issued by the Hospital at Ex.P-9 clearly indicates the reason for admission of the deceased in hospital. The other documents indicate that the injured was brought to the hospital and informed that the injuries were due to the road accident and caused by BMTC bus. Hence, she seeks to reverse the finding in so far as contributory negligence is concerned. It is also submitted that the income of the deceased assessed by the Tribunal which is on the lower side requires to be re-assessed appropriately by adding 40% on the head of loss of future prospects, and each of the claimants are entitled for compensation under the head of loss of consortium. Hence, she seeks to allow the appeal.



4. *Per contra*, Smt. Sohani Holla, learned counsel for the respondent-Corporation vehemently opposes the appeal, and submits that the Tribunal considering the evidence available on record at paragraph nos.17 to 19 has assigned detailed reasons as to why it has come to the conclusion with regard to contributory negligence. It is submitted that RW-1 who was the driver of the bus, has clearly deposed before the Tribunal that the deceased rider of the motor cycle tried to overtake from the right side of the bus in a rash and negligent manner, and as a result caused damage to the bus, fell down and rear wheel of the bus ran over him, resulting in injuries. It is further submitted that the oral evidence of RW-1 corroborates with Ex.P-5 - MVA report which indicates the damage to the right side of the bus just before the rear wheel. It is also submitted that the complainant who has informed the police with regard to the accident, has clearly stated that the accident was caused due to the negligence of the deceased - rider of the motor cycle. Hence, she seeks to



sustain the finding recorded with regard to contributory negligence. It is contended that the Tribunal considering the pleadings and avocation of the deceased, has assessed the income at Rs.8,000/- per month and awarded just compensation including the compensation under the head of love and affection which should be construed and understood as award of compensation under the head of loss of consortium, and the claimants/appellant nos.2 & 3 are the married sisters who would not be entitled for any compensation. Hence, she seeks to dismiss the appeal.

5. I have heard the arguments of the learned counsel for the appellant, the learned counsel for the respondent and meticulously perused the material available on record including the Tribunal records.

6. The only point that would arise for consideration in this appeal is:

"Whether the impugned judgment and award passed by the Tribunal calls for any interference?"



7. The mother and sisters of deceased Shabaz Quraishi filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.25 lakhs along with interest for the death of Shabaz Quraishi in the road accident that took place on 03.03.2016. The records indicate that the deceased was riding the motor cycle bearing registration No.KA-01-HH-7124 and when he reached opposite to Darga at Tannery Road, Bengaluru, at that time, the driver of the BMTC bus bearing registration No.KA-53-F-268 drove the same in a rash and negligent manner, dashed to the motor cycle and caused the accident. With these assertions, the claim petition was filed.

8. In order to establish the claim, the mother of the deceased examined herself as PW-1 and got marked Exs.P-1 to P-10. The respondent examined RW-1 - driver of the bus, but did not produce any documentary evidence. The Tribunal considering the oral and documentary evidence, recorded the finding that the



deceased - rider of the motor cycle has contributed to the accident to the extent of 50% and accordingly fastened the liability by awarding total compensation of Rs.11,37,000/- with 9% interest.

9. In so far as the contentions with regard to contributory negligence is concerned, admittedly immediately after the accident, information was furnished to the jurisdictional police and they have registered the FIR based on such information. The Tribunal has extracted the relevant paragraph of the complaint at paragraph no.18. Perusal of the complaint averments clearly indicate that the complainant was not present at the time of accident. He has given the complaint based on hearsay information received from others and the complainant only shifted the injured to the hospital. To that extent, his version in the complaint can be believed.

10. The Tribunal also placed reliance on the evidence of RW-1 who was the driver of the bus. Perusal



of the examination-in-chief of RW-1 would indicate that the deceased - rider of the motor cycle tried to overtake the bus from the right side and resulted in the accident. However, in his cross-examination, which has been extracted by the Tribunal, clearly indicates that RW-1 has admitted that he has not seen the deceased - rider of the motor cycle trying to overtake the bus and hence, he could not apply the brake, which resulted in the bus moving on the rider of the motor cycle and caused the accident.

11. The evidence of RW-1 in his examination-in-chief and cross-examination runs contrary to the each other. Hence, his evidence cannot be relied fully to come to the conclusion that the rider of the motor cycle was negligent and caused the accident.

12. It is not in dispute that the jurisdictional police after investigation filed charge sheet against the driver of the bus. The charge sheet clearly indicates that the driver of the bus did not apply the brake, which resulted in



rolling over the tyres of the bus on the rider of the motor cycle resulting in injury and later in his death. The said charge sheet has not been challenged by the respondent-Corporation nor was any independent evidence placed before the Tribunal to disbelieve the charge sheet. It has to be noticed that the claimants in order to prove the aspect of negligence, has examined herself as PW-1 based on the hearsay information. She has deposed that the accident is caused due to the actionable negligence on the part of the driver of the BMTC bus and produced the charge sheet material. If the oral testimony of PW-1 is corroborated with the charge sheet material, it clearly indicates that the accident is caused due to the actionable negligence of the driver of the BMTC bus and there is no independent evidence available before the Tribunal to come to the conclusion that the deceased rider of the motor cycle has contributed to the accident. In the absence of any such evidence, in my considered view, the Tribunal has committed a grave error in recording the



finding that the deceased rider of the motor cycle has contributed to the accident to the extent of 50%. Accordingly, the said finding with regard to contributory negligence is set aside.

13. In so far as the quantum of compensation is concerned, admittedly the claimants have not produced any evidence with regard to the income of the deceased. Hence, the income of the deceased is notionally assessed at Rs.9,500/- per month placing reliance on the notional income charge prepared by KSLSA.

14. The deceased at the time of accident was aged about 23 years. Hence, there should be an addition of 40% of the assessed income under the head of loss of future prospects. The appropriate multiplier would be 18 and the deceased was a bachelor. Hence, deduction would be 50% towards personal expenses. Therefore, if the loss of dependency is re-assessed taking into consideration the



aforesaid factors, the same would come to Rs.14,36,400/-
(Rs.9,500/- + 40% x 12 x 18 - 50%).

15. The claimants are the mother and sisters of the deceased. Though it is contended that the sisters are married and they are residing separately, in my considered view, even the married sisters are entitled for compensation under the head of loss of consortium as per the law laid down by the Hon'ble Supreme Court in the case of **MAGMA GENERAL INSURANCE CO. LTD. VS NANU RAM & OTEHRS - (2018)18 SCC 130**. Hence, each of the claimants are entitled for compensation of Rs.40,000/- under the head of loss of consortium. Thus, the appellants would be entitled to modified compensation as under:

HEADS	AMOUNT (in Rs.)
Loss of dependency	14,36,400/-
Loss of consortium	1,20,000/-
Transportation of dead body & funeral expenses	15,000/-
Medical expenses	1,53,000/-
Total	17,24,400/-



Thus, the appellants-claimants shall be entitled to a total compensation of **Rs.17,24,400/-** as against Rs.11,37,000/- awarded by the Tribunal.

16. In the result, this Court proceeds to pass the following:

ORDER

- a) The appeal is ***allowed in part.***
- b) The impugned judgment and award dated 31.05.2017 passed by the Tribunal in M.V.C.No.2857/2016, in so far as the finding with regard to contributory negligence is concerned, the same is set aside.
- c) The impugned judgment and award dated 31.05.2017 passed by the Tribunal in M.V.C.No.2857/2016 is modified to an extent that the appellants-claimants would be entitled to total compensation of **Rs.17,24,400/-** as against Rs.11,33,000/- awarded by the Tribunal.



- d) The enhanced compensation shall carry interest at the rate of 6% p.a. from the date of petition till realisation.
- e) The respondent-Insurance Company shall deposit the enhanced compensation amount with accrued interest before the Tribunal within a period of six weeks from the date of receipt of the certified copy of this judgment.
- f) The rest of the judgment and award of the Tribunal with respect to apportionment, deposit and release shall remain unaltered.
- g) Registry shall transmit the records to the Tribunal forthwith.
- h) Draw modified award accordingly.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

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