IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR. JUSTICE K NATARAJAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

MISCL. FIRST APPEAL NO.200124 OF 2022 (MV-D)
C/W
MISCL. FIRST APPEAL NO.201718 OF 2021(MV-D)

IN MFA NO.200124/2022:

BETWEEN:

THE DIVISIONAL CONTROLLER,
NEKRTC, RAICHUR DIVISION,
RAICHUR, NOW REPRESENTED BY
CHIEF LAW OFFICER, NEKRTC,
CENTRAL OFFICE, SARIGE SADANA,
KALABURAGI-585102.

Digitally signed by NIJAMUDDIN JAMKHANDI
Location: HIGH COURT OF KARNATAKA

...APPELLANT

(BY MISS BHADRASHETTY SANGEETA, ADVOCATE)

AND:

1. SMT. NAGAMMA W/O LATE. K. BOJARAJ,
   @ BOJARAPPA, AGE: 46 YEARS,
   OCC: HOUSEHOLD AND AGRICULTURE,

2. SHASIKUMAR S/O LATE K. BOJARAJ,
   @ BOJARAPPA,
   AGE: 27 YEARS, OCC: AGRICULTURIST,
   BOTH RESPONDENTS 1 AND 2 HEREIN ARE

BOTH R/O MATMARI VILLAGE,
TQ. AND DIST. RAICHUR-584202.

3. AMARESH S/O MALLESHAPPA,
AGE: 42 YEARS, OCC: DRIVER OF NEKRTC
BUS BEARING NO.KA-35/F-35,
NEKRTC 1ST DEPOT, RAICHUR-584101.

…RESPONDENTS

(BY SRI SHARANAGOWDA V. PATIL, ADVOCATE FOR
R-1 AND R-2;
NOTICE TO R-3 SERVED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MV ACT, PRAYING TO CALL FOR THE RECORDS IN MVC NO.202/2019, DATED 28.03.2021, PASSED BY THE II ADDL. DISTRICT AND SESSIONS JUDGE AND MOTOR ACCIDENT CLAIMS TRIBUNAL, RAICHUR AND ALLOW THIS APPEAL BY SETTING ASIDE THE IMPUGNED JUDGMENT AND AWARD PASSED IN M.V.C. NO.202/2019, DATED 28.03.2021, BY THE II ADDL. DISTRICT AND SESSIONS JUDGE AND MOTOR ACCIDENT CLAIMS TRIBUNAL, RAICHUR.

IN MFA NO.201718/2021:

BETWEEN:

1. SMT. NAGAMMA
W/O LATE K. BOJARAJ @ BOJARAPPA,
AGE: 46 YEARS, OCC: HOUSEHOLD,

2. SHASIKUMAR S/O K.BOJARAJ @ BOJARAPPA,
AGE: 25 YEARS, OCC: AGRI,

ALL THE ABOVE APPELLANTS ARE THE
R/O MATMARI VILLAGE,

TQ. AND DIST. RAICHUR-584101.

…APPELLANTS

(BY SRI SHARANAGOWDA V. PATIL, ADVOCATE)

AND:

1. SRI AMARESH S/O MALLESHAPPA,
   AGE: 40 OCC: DRIVER OF
   KSRTC BUS. KA35/F-35,
   1ST DEPOT R/O NEKRTC
   DEPOT NO. 1 RAICHUR-584101

2. THE DIVISIONAL CONTROLLER,
   NEKRTC, RAICHUR DIVISION,
   RAICHUR-584101.

…RESPONDENTS

(BY MISS BHADRASHETTY SANGEETA, ADVOCATE FOR R-2;
V/O DATED 04.02.2022 NOTICE TO R-1 IS DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT, PRAYING TO ALLOW THIS APPEAL AND MODIFY THE JUDGMENT AND AWARD DATED 28.03.2021, PASSED BY THE II ADDL. DIST. AND SESSIONS JUDGE AND MACT AT RAICHUR IN MVC NO.202/2019 AND ENHANCE THE COMPENSATION OF RS.13,60,000/- WITH INTEREST.

THESE APPEALS COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE K NATARAJAN
AND
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE K NATARAJAN)

MFA No.200124/2022 is filed by the NEKRTC challenging the liability as well as quantum and MFA No.201718/2021 is filed by the claimants for enhancement of compensation awarded by the II Additional District and Sessions Judge and MACT, Raichur [for short, '*the Tribunal*'] in MVC No.202/2019 dated 28.03.2021.

2. We have heard the arguments of learned counsel for both sides.

3. The parties are referred to as per their rank before the Tribunal for the sake of convenience.

4. The case of the claimants before the Tribunal was that they have filed the claim petition under Section 166 of the M.V. Act claiming compensation of Rs.31,00,000/- for the death of Sri K. Bojaraj, the husband of first claimant who died in the road traffic accident. It is alleged that on 04.03.2019 at about 08.15

p.m., when Bojaraj was proceeding as a pillion rider on a motor cycle bearing Reg.No.KA-36/ED-5758 driven by one Hanumesh, when the vehicle reached near Jalibenchi village from Matmari village, at that time the first respondent - driver of the bus bearing Reg.No.KA-35/F-35 came in a rash and negligent manner in a high speed from Raichur side without giving any horn and dashed to the motor cyclist, due to which the rider as well as pillion rider fell down and sustained injuries. It is contended that Bojaraj was admitted in various hospitals i.e., RIMS Hospital, Dhanvantri Hospital and Apollo Hospital where he succumbed to the injuries. Due to the untimely death of the deceased, the claimants have suffered loss of dependency and they have spent more than Rs.5,00,000/- for medical expenses and therefore claimed compensation on various grounds.

5. Respondent Nos.1 and 2 appeared and filed common statement of objection by denying the rash and negligent driving, accident, age, occupation and income of

deceased as false and it is contended that the accident had occurred due to rash and negligent riding of the rider of the motor cycle and not due to negligent driving of the NEKRTC bus driver and hence prayed for dismissal of claim petition.

6. Based on the pleadings, the Tribunal framed following issues:

> *"1) Whether the petitioners prove that the accident dated 4.3.2019 was due to rash and negligence of driver of vehicle bearing No.KA-35/F-35 in which deceased K. Bojaraj sustained fatal injuries and died as alleged?*
>
> *2) Whether petitioners are entitled for award of compensation? If so, from whom?*
>
> *3) What order or award?"*

7. In order to prove the case, the first claimant examined herself as PW-1 and got marked 17 documents. On behalf of the respondents, Incharge Divisional Security Inspector was examined as RW-1 and driver of the bus was examined as RW-2 and got marked 7 documents.

8. After hearing the arguments, the Tribunal answered issue No.1 in the affirmative, issue No.2 partly in the affirmative and allowed the claim petition in part by awarding compensation of Rs.17,40,000/- together with interest at the rate of 6% per annum by fixing the liability on respondent Nos.1 and 2. Feeling aggrieved by the same, the NEKRTC has filed the appeal challenging the liability and quantum and claimants have filed the appeal for enhancement of compensation.

9. Learned counsel for NEKRTC vehemently contended that the Tribunal has committed an error in not considering the documents especially Ex.P-5 the Motor Vehicles Accident Report which shows that there is no visible damage caused to the bus and the accident was purely occurred due to negligence on the part of the rider of the motor cycle. This was not properly appreciated by the Tribunal. Even the respondents internally investigated about the medical expenses and it was found that only Rs.4,60,000/- was spent by the claimants. The learned

counsel also contended that contributory negligence should be fixed on the rider of the motor cycle. Hence, she prayed for allowing the appeal.

10. *Per contra*, learned counsel for the claimants has supported the liability fixed by the Tribunal. However, it is contended that the Tribunal committed an error in considering the income of the deceased at Rs.9,000/- per month even though the accident had occurred in the year 2019. The Tribunal should have considered the notional income of the deceased as per the chart prepared by the Legal Services Authority which is at Rs.13,250/- per month. The Tribunal has not considered other expenses incurred by the claimants. It is also contended that the Tribunal has not considered the RTC produced by the claimants to show that the income of the deceased was more than Rs.20,000/- per month. The learned counsel also contended that the consortium is not properly awarded by the Tribunal. Hence, prayed for enhancing the

compensation and prayed for dismissing the appeal filed by NEKRTC.

11. Having heard the arguments of learned counsel for both the parties, perused the records. The points that arise for our consideration are:

(i) Whether the Tribunal was justified in fixing the liability on NEKRTC and its driver, which calls for interference?

(ii) Whether the claimants are entitled for enhancement of compensation. If so, to what extent?

12. On perusal of the records, to prove the case of the claimants in respect of rash and negligent driving, PW-1 was examined and got marked documents especially Exs.P-1 to P-6. Ex.P-1 is FIR, Ex.P-1(a) is the complaint filed by the very rider of the motor cycle, Ex.P-2 is the spot panchanama, Ex.P-3 is the inquest panchanama, Ex. P-4 is the postmortem report of dead body of deceased K. Bojaraja, Ex.P-5 is the MVA report, Ex.P-6 is the charge sheet. These documents go to show that the police, after

due investigation, filed charge sheet against RW-2 the driver of NEKRTC bus. The charge sheet was not challenged by him and also he has not filed any complaint to the police or any higher authority to show that there was no negligence on his part and accident has occurred due to negligence on the part of the motor cycle. The police records clearly reveal that the accident occurred due to rash and negligent driving of the drier of the NEKRTC bus and not due to rider of the motor cycle. It is contended by the learned counsel for NEKRTC that there is no visible damage on the bus. Bus is a heavy vehicle and we cannot expect any visible damage. Even touching the bumper itself will cause damage to the motor cycle and the damage to the motor cycle clearly goes to show that this accident had occurred right side of the motor cycle and due to negligent driving of bus. Therefore, the Tribunal has rightly held that the accident has occurred due to rash and negligent driving of the NEKRTC bus by its driver i.e., RW-2 and fixed the liability on the respondents. The same does not call for our interference.

13. As regards the compensation awarded by the Tribunal, the Tribunal has taken notional income of the deceased at Rs.9,000/- per month. The documents produced by the claimants to show the income of the deceased were the RTC extracts. However, the claimants have not filed any income tax returns to show that this was the income from the agricultural land and thereby the deceased was earning more than Rs.20,000/- per month. In the absence of any proof of income, this Court intends to take the income of the deceased as per the chart prepared by the Legal Services Authority. The income for the accident of the year 2019 is Rs.13,250/- per month. Therefore, we are of the opinion that the Tribunal committed error in considering Rs.9,000/- instead of considering Rs.13,250/- per month. Hence, we propose to consider Rs.13,250/- per month as the income of the deceased. Admittedly, the claimants are two and 1/3rd has to be deducted towards personal and living expenses of the deceased as per the judgment of the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport***

Corporation[1]. As per the judgment of the Hon'ble Apex Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and Others***[2] age of the deceased being 50 years, 25% has to be added to his income towards loss of future prospects. Considering Rs.13,250/- as income, after adding 25%, it comes to Rs.16,562.5/-. If 1/3rd of it (i.e., Rs.5,520.83) is deducted, it comes to Rs.11,041.67. If the same is multiplied by 12 and multiplied by '13' multiplier, it comes to Rs.17,22,500/-. This should be the loss of dependency.

14. The deceased was admitted to various hospitals including RIMS hospital, Raichur, Dhanvantri Hospital and thereafter Apollo hospital and he died during the treatment. The respondents also investigated and produced the documents Exs.R1 to R5 which shows that Rs.4,61,000/- has been spent towards medical expenses. The claimants might have spent some amount towards conveyance charges and also attendant charges.

---

[1] *(2009) 6 SCC 121*
[2] *(2017) 16 SCC 680*

Therefore, considering the fact, the Tribunal has rightly awarded Rs.5,00,000/- towards medical expenses which calls for no interference. However, the Tribunal has not awarded any amount towards loss of consortium. The first claimant is wife and second claimant is the son of the deceased. They are entitled for Rs.40,000/- each towards loss of consortium. Rs.30,000/- needs to be awarded under conventional heads i.e., for funeral expenses and loss of estate. Accordingly, the claimants are entitled for a total compensation as under:

Sl. No.	**Head of compensation**	**Amount**
1.	Loss of dependency	Rs.17,22,500/-
2.	Medical Expenses	Rs.5,00,000/-
3.	Loss of consortium (Rs.40,000 x 2)	Rs.80,000/-
4.	Funeral expenses & loss of estate	Rs.30,000/-
	Total	**Rs.23,32,500/-**

15. Hence, we proceed to pass the following:

ORDER

(i) MFA No.200124/2022 filed by the NEKRTC is dismissed.

(ii) MFA No.201718/2021 filed by the claimants is allowed in part.

(iii) The claimants are entitled for a total compensation of Rs.23,32,500/- as against Rs.17,40,000/- awarded by the Tribunal together with at the rate of 6% per annum from the date of petition till realization.

(iv) The apportionment made by the Tribunal is hereby confirmed.

(v) The amount in deposit made by the NEKRTC is ordered to be transferred to the concerned court.

Send the copy of this judgment along with Trial Court records to the concerned Tribunal forthwith.

Sd/-
(K NATARAJAN)
JUDGE

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

SWK
List No.: 1 Sl No.: 32
CT:SI