

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 6TH DAY OF JANUARY 1999

PRESENT

THE HON'BLE MR.JUSTICE A.J. SADASHIVA

AND

THE HON'BLE MR.JUSTICE S.R. BANNURMATH

MISCELLANEOUS FIRST APPEAL No.1890/1994

BETWEEN:

1. Smt.Laxmawwa @ Laxmibai,  
w/o Thimmanna Jakaraddi,  
age: 25 years, Occ: House-  
hold work, r/o Bavalatti,  
Bilagi Tq., Dist. Bijapur.
2. Shrishail s/o Timmanna  
Jakaraddi, age: 7 years,  
M/G next friend by Laxmawwa,  
Appellant No.1.
3. Renuka d/o Timmanna Jakaraddi,  
age: 5 yrs., M/G next friend  
by Laxmawwa, Appellant No.1.
4. Mahadevi d/o Timmanna Jakaraddi,  
age:3 years, M/G next friend by  
Laxmawwa, Appellant No.1.
5. Appayya s/o Timmanna Jakaraddi,  
age: 53 years, Occ: Agril.,  
r/o Bavalatti, Tq. Bilagi.
6. Channawwa w/o Appayya Jakaraddi,  
age: 48 years, Occ: Household work,  
r/o Bavalatti, Taluka: Bilagi.

Petitioners 2 to 4 are r/o  
Bavalatti, Tq. Bilagi. .. Appellants

(By Sri Ashok R Kalyan Shetty, Adv.,)

AND:

Managing Director,  
KSRTC, Central Office,  
K.H.Double Road,  
Bangalore-27. .. Respondent

(By Sri D.Vijayakumar, Adv.,)

This M.F.A. filed U/sec.173(1) of the  
M.V. Act, 1988 against the Judgment and Award  
dt. 5.7.1993 in M.V.C.No.366/90 passed by the  
M.A.C.T. No.1, Bijapur, partly allowing the  
claim petition for compensation.

This M.F.A. coming on for hearing this  
day, BANNURMATH J., delivered the following :

#### JUDGMENT

This Appeal is filed challenging the  
adequacy of compensation awarded by the  
M.A.C.T., Bijapur, by the judgment and award  
dated 5.7.1993 in M.V.C.No.366/1990.

2. The brief facts are :-

On 18.5.1990, deceased Thimmanna was

travelling in the KSRTC bus-MEF 3769.

As it was last bus to go to Konnur from Bagalkot and the bus was over-loaded, the driver and the conductor, according to the claimants, permitted the excess passengers to sit and travel on top of the bus and while the bus was so proceeded, passenger travelling on the top was hit by the road side branch of a tree due to which deceased fell down and succumbed to injuries. The claimants viz widow, children and parents of the deceased alleging rash and negligent driving on the part of the driver of the KSRTC filed Claim Petition claiming the compensation at Rs.8,70,000/- alongwith cost and interest. In order to establish their case, the claimants examined the widow and another co-passenger as PWS-1 and 2 and also produced various documents. The respondent-KSRTC examined its driver as RW1 who in the evidence stated that though the bus was over-crowded neither he nor the conductor permitted any passengers to travel on the top and thus denied negligence on his part.

3. Considering the entire evidence, the Tribunal held that there was contributory negligence on the part of the deceased also which was assessed at 50%. So far as the quantum of compensation is concerned, the Tribunal held that, in the absence of any material evidence the income of the deceased could be taken as Rs.25/- per day or Rs.750/- per month. Deducting 1/3rd towards personal expenses, the loss of dependency was calculated at Rs.500/- per month or Rs.6,000/- per year. Taking into account the age of the deceased as 30 years, the Tribunal applied the multiplier '14' and thus the total loss of dependency was calculated at Rs.84,000/-. To this amount the conventional figures under the heads of loss of consortium and funeral expenses totalling to Rs.20,000/- was added and thus the Tribunal held that though the claimants were entitled for total sum of compensation at Rs.1,04,000/- in view of the finding that there was a contributory

negligence on the part of the deceased, at 50% the compensation was awarded at Rs.52,000/- with 6% interest.

4. The learned Counsel appearing for the claimants-appellants vehemently contended that the finding of the Tribunal in respect of contributory negligence is erroneous. That, it was the KSRTC driver and conductor who had permitted the deceased to travel on the top and as such there could not have been any contributory negligence on the part of the deceased. The learned Counsel also submitted that the income of Rs.25/- per day as held by the Tribunal is on lower scale as during the year 1990 even the labourers and agricultural coolies were getting income at Rs.40/- to 45/- per day. Further he contended that the rate of interest awarded at 6% is on the lower side.

5. On the other hand, Sri.Vijaykumar, the Counsel appearing for the KSRTC has contended that <sup>as</sup> there was no material placed by the claimant to show that the deceased was

travelling with the permission of the conductor or the driver after purchasing the ticket, the finding regarding contributory negligence is just and proper. Similarly, so far as the calculation of compensation is concerned, he contended that, in the absence of any material placed before the Tribunal, the Tribunal was justified in holding the income at Rs.25/- per day.

6. Heard the learned Counsel. Perused the records. So far as the contributory negligence is concerned, nodoubt it is the duty of the conductor of the bus not to permit passengers to travel on the top of the bus and if the conductor does not take any precaution preventing the passengers from travelling on the top of the bus, he will be negligent in his duties. At the same time it cannot be forgotten that the deceased who was well educated person by travelling on the top of the bus, even if it was held he was permitted so, should not have taken the risk

endangering his life. As such there was some negligence also on the part of the deceased. Taking into consideration the various pronouncements, in our considered view, the contribution of negligence of the deceased and of the driver of the bus could be assessed at 20:80 and not 50:50 as held by the Tribunal.

7. So far as the quantum of compensation is concerned, it is undisputed that, in the year 1990 even a manual labourer was getting anywhere from Rs.40 to 50 per day. Even taking the least of the same at Rs.40/- the income of the deceased per month would be Rs.1,200/-. Out of this income if 1/3rd is deducted towards his personal expenses, the loss of dependency of the claimants would come to Rs.800/- per month or Rs.9,600/- per year. As the deceased was 30 years of age, in our view the multiplier of '14' applied by the Tribunal is just and proper and as such the total loss of dependency to the claimants would come to Rs.1,34,400/- which could be

rounded of to Rs.1,35,000/-. To this the conventional sums at Rs.10,000/- towards consortium and Rs.5,000/- towards funeral and transportation charges if added, the total compensation would be Rs.1,50,000/-. As we have held that the deceased had also contributed at 20%, deducting his contribution of negligence at Rs.30,000/- in our considered view, the claimants would be entitled to a total compensation of Rs.1,20,000/-. Further, the rate of interest of 6% awarded is also on lower side and in our view it should have been 9% and is so awarded.

8. In the result, the Appeal is partly allowed. The compensation awarded at Rs.52,000/- with 6% is enhanced to Rs.1,20,000/- with 9% interest from the date of petition till its realisation.

9. No order as to costs.

Sd/-  
Judge

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Sd/-  
Judge