

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11TH DAY OF DECEMBER 2012

BEFORE

THE HON'BLE MR.JUSTICE S.N.SATYANARAYANA

M.F.A.NO.4878/2011 (MV)

BETWEEN:

The Managing Director,
KSRTC, K.H.Road,
Shanthinagar,
Bangalore 560 027,
Rep.by its Chief Law Officer.

... Appellant

(By Sri.K.S.Bharath Kumar, Adv.,)

AND:

1. Smt.Radhamma,
w/o Late Krishnappa
@ Krishna Shetty,
Aged about 46 yrs.,

2. Smt.Hemalatha,
D/o Late Krishnappa
@ Krishna Shetty,
Aged about 21 yrs.,

Both are r/a
Vajrapalya, H.Durga Hobli,
Kunigal Tq.,
Tumkur District.

Presently r/a C/o
Shivalingaiah,
No.726, 10th Cross,
9th Main Road,

Nagarabhavi 2nd Stage,
Bangalore 22.

... Respondents

(By Smt.Bhushani Kumar, Adv)

This MFA is filed under Section 173(1) of MV Act against the judgment and award dated 11.1.2011 passed in MVC.No.3104/2010 on the file of the VII Additional Judge, Member MACT, Bangalore, awarding a compensation of Rs.4,79,700/- with interest @ 6% pa., from the date of petition till deposit.

This appeal coming on for Admission this day, the Court delivered the following:

JUDGMENT

The respondent in MVC.No.3104/2010 on the file of MACT, Bangalore (SCCH-3) has come up in this appeal impugning the judgment and award dated 11.1.2011 passed in the said proceedings so far as it pertains to awarding compensation to the claimants under Section 166 of the Motor Vehicles Act ('Act' for short) when the petition is under Section 163-A of the Act.

2. Brief facts of the case leading to this appeal are as under:

The claimants are respectively mother and sister of deceased Narayana Setty, a driver of Auto bearing No.KA-

52/2857. It is stated that on 29.4.2010 at about 8.30 am., when he was driving said Auto, near Vajarapalya on H.Durga Hobli-Kunigal Road his Auto was hit by KSRTC bus bearing No.KA-06/F.149 resulting in his death. Hence, claim petition was filed by his mother and younger sister seeking compensation under Section 163-A of the Act. In the said proceedings, after recording of evidence, the Tribunal proceeded to allow the claim petition awarding compensation in a sum of Rs.4,75,200/- towards loss of dependency to the mother and sister of deceased taking the income of deceased at Rs.3,300/- pm., by deducting 1/3rd towards his personal upkeep and taking balance 2/3rd as loss of dependency. In addition to that it also awarded Rs.4,500/- under conventional heads resulting in awarding total compensation in a sum of Rs.4,79,700/-. Being aggrieved by the same, the respondent before Tribunal, KSRTC has come up in this appeal.

3. Heard the Counsel for appellant and as well as respondents. The fact that Narayana Setty died in a road traffic accident dated 29.4.2010 involving KSRTC bus bearing

No.KA-06/F.149 is not in dispute. So also relationship of claimants with Narayana Setty. However when claim petition is filed under Section 163-A of the Act, it was not open for the Tribunal to calculate the compensation payable under Section 166 of the Act. Therefore, the same is required to be calculated by resorting to Section 163-A of the Act. In the instant case, it is stated that the deceased was earning Rs.3,300/- pm., by running Auto. In that behalf, no evidence is forthcoming either in the form of producing Auto driving licence or any other form of evidence to show that he was running Auto taking on hire. In that view of matter, even assuming for a moment that he is not having any avocation and assuming that he is only a manual labourer, his income would be anywhere around Rs.100/- per day and Rs.3,000/- pm. From out of that if 1/3rd is deducted towards personal expenses, Rs.2,000/- pm., or Rs.24,000/- pa., would be available for the benefit of the claimants. Since the deceased was aged about 24 years five months the correct multiplier applicable under II Schedule to the Act is 17. Hence, if Rs.24,000/- is multiplied by 17, the compensation that the claimants would be entitled to is

Rs.4,08,000/- . In addition to that they are entitled to Rs.4,500/- under conventional heads. With this, in all the claimants would be entitled to Rs.4,12,500/- as against Rs.4,79,700/- awarded by the Tribunal.

4. Accordingly, the appeal is allowed in part. The impugned judgment and award dated 11.1.2011 passed in MVC.No.3104/2010 on the file of MACT, Bangalore (SCCH-3) is modified. However, the entire compensation will have to be paid to only first claimant since second claimant is not dependent on deceased as contemplated under the Act. Further, from out of the compensation awarded a sum of Rs.3,50,000/- with proportionate interest is ordered to be deposited in the name of first claimant, mother, in any nationalized bank initially for a period of ten years with right to first claimant to receive interest periodically and the balance Rs.62,500/- with proportionate is ordered to be released in her favour. Since the appeal is allowed in part, from out of the amount in deposit the modified compensation is ordered to be sent to Tribunal for release in favour of first claimant in the

aforesaid manner and the excess amount in deposit, if any, is ordered to be released in favour of appellant-KSRTC.

Sd/-
JUDGE

nd/-