IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 5TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

MISCL. FIRST APPEAL NO. 200877 OF 2020 (MV-D)

C/W

MFA CROSS OBJ NO. 200072 OF 2021

MISCL. FIRST APPEAL NO. 200877 OF 2020

BETWEEN:

THE MANAGING DIRECTOR
NEKRTC, KALABURAGI DIVISION, KALABURAGI
(NOW REPRESENTED BY CHIEF LAW OFFICER,
KALABURAGI)

...APPELLANT

(BY SRI. PREETI PATIL MELKUNDI, ADVOCATE)

AND:

Digitally signed by RENUKA
Location: HIGH COURT OF KARNATAKA

1. SHIVAMMA W/O BASAPPA HONAKERI,
   AGE: 61 YEARS
   OCC: NIL,
2. SUNITA W/O SHEKHAR HONAKERI,
   AGE: 33 YEARS
   OCC: HOUSEHOLD,
3. AMRUTA D/O SHEKHAR HONAKERI,
   AGE: 9 YEARS,
4. ABHISHEK S/O SHEKHAR HONAKERI,
   AGE: 6 YEARS,
5. ANANYA D/O SHEKHAR HONAKERI,
   AGE: 3 YEARS
   RESP.NO.3-5 HEREIN ARE

MINOR U/G OF RESPO.NO.2 HEREIN,
THEIR NATURAL MOTHER
ALL R/O: ADARSH NAGAR
VIJAYPUR-586101

…RESPONDENTS

(BY SRI. BIRADAR VIRANAGOUDA, ADVOCATE FOR R1 TO R5; R3 TO R5 ARE MINORS U/G OF R2)

MFA FILED U/S 173(1) OF MV ACT, PRAYING TO, CALL FOR THE RECORDS AND ALLOW THE ABOVE APPEAL BY SETTING ASIDE THE IMPUGNED JUDGMENT AND AWARD DATED 25.06.2020 IN MVC NO. 92/2019 PASSED BY THE III ADDL. SENIOR CIVIL JUDGE AND MACT-XII AT VIJAYAPUR.

MFA CROSS OBJ NO. 200072 OF 2021

BETWEEN:

1. SHIVAMMA W/O BASAPPA HONAKERI
   AGE: 62 YEARS, OCC: H.H. WORK,

2. SUNITA W/O SHEKHAR HONAKERI
   AGE: 34 YRS, OCC: H.H. WORK,

3. AMRUTA D/O SHEKHAR HONAKERI
   AGE: 10 YRS, OCC: STUDENT,

4. ABHISHEK S/O SHEKHAR HONAKERI
   AGE: 7 YRS, OCC: STUDENT,

5. ANANYA D/O SHEKHAR HOAKERI
   AGE: 04 YRS, OCC: NIL,
   ALL ARE R/O ADARSH NAGAR
   VIJAYAPUR-586101

…CROSS OBJECTORS

(BY SRI. BIRADAR VIRANAGOUDA, ADVOCATE)

AND:

1. THE MANAGING DIRECTOR
NEKRTC, KALABURAGI DIVISION,
KALABURAGI-585101.

…RESPONDENT

(BY SMT. PREETI PATIL MELKUNDI, ADVOCATE)

MFA CROB. FILED U/S. 41 RULE 22 OF CPC, PRAYING TO ALLOW THIS CROSS OBJECTION/APPEAL BY MODIFYING THE AWARD OF JUDGMENT AND AWARD OF THE III ADDL. SENIOR CIVIL JUDGE AND MOTOR ACCIDENT CLAIMS TRIBUNAL NO.XII, VIJAYAPUR, DATED 25.06.2020 IN MVC NO.92/2019.

THIS APPEAL, AND CROSS OBJECTION ARE COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM)

These two appeals are filed by claimants and Corporation. Corporation has preferred an appeal in MFA No.200877/2020 questioning the liability, whereas claimants have filed MFA Crob No.200072/2021 seeking enhancement of compensation.

2. Learned counsel appearing for Corporation reiterating the grounds has vehemently argued and contended that deceased jumped out of the bus, so as to commit suicide and therefore, claimants are not entitled for compensation. He would point out that Tribunal has not properly appreciated the records, while fastening liability and therefore, findings on liability warrants reversal at the hands of this Court.

3. Per contra learned counsel appearing for claimants has taken this Court through paragraph No.9 of the judgment, while justifying the findings recorded by Tribunal on liability. Referring to paragraph No.9, he would point out that Tribunal has exhaustively dealt with the documents produced by claimants and therefore, he would contend that the finding on liability would not warrant any interference. However, on quantum, he would contend that the income of deceased, which is notionally assessed is on lower side and therefore, the same would warrant interference at the hands of this Court.

4. Heard learned counsels on record and perused the records and judgment under challenge.

Finding on liability:

5. Claimants filed a petition alleging that the deceased, Shekhar, was thrown out of a bus due to the rash and negligent driving of the bus driver and the failure of the conductor to ensure passenger safety. The Corporation, however, disputed this claim, arguing that the death was a case of suicide. Upon an independent review of the evidence presented by the claimants, this Court finds substantial documentary evidence to support their allegations.

6. Exhibit-P2, a crucial piece of evidence in the form of a complaint, provides a detailed account of the events leading to the accident. The contents of Exhibit-P2 clearly indicate that the conductor of the offending bus failed to close the door securely, thereby contributing to the unsafe conditions that led to the incident. Furthermore, the evidence reveals that the driver of the

bus was operating the vehicle in a rash and negligent manner, further exacerbating the risks to the passengers, including Shekhar.

7. Additional support for the claimants' case is found in the charge sheet filed by the Investigating Officer. The charge sheet explicitly identifies the conductor's negligence as a contributing factor and establishes that Shekhar, who was seated in the bus, was thrown out due to the unsafe conditions created by the conductor's failure to close the door. These materials adequately establish a prima facie case of negligence, thus discharging the initial burden of proof placed on the claimants. Consequently, the burden of proof shifts to the Corporation to substantiate its assertion that Shekhar's death was not accidental but a result of suicide.

8. The Corporation, however, has failed to produce any compelling evidence to support its claim of suicide. Notably, it did not lodge a formal complaint alleging suicide, nor has it presented any rebuttal evidence to cast

doubt on the claimants' version of events. The absence of such evidence reinforces the conclusion that the death occurred due to the combined negligence of the driver and conductor of the bus. The Tribunal has carefully analyzed these facts and correctly determined the liability of the Corporation based on the records.

9. This Court concurs with the Tribunal's findings on liability. The conclusions drawn are firmly rooted in the documentary evidence and are free from any apparent errors. The Corporation has not presented any substantial grounds to challenge or overturn the Tribunal's findings. Accordingly, this Court finds no reason to interfere with the Tribunal's decision regarding liability. The negligence of the bus driver in operating the vehicle recklessly and the failure of the conductor to secure the safety of passengers are well established, and the Corporation's liability is upheld.

On quantum :

10. Claimants are widow, children and mother of the deceased. In all, there are five dependents and accident is of the year 2018. Though, Tribunal was justified in notionally assessing income of the deceased, however, the income assessed at Rs.8,000/- is very much on the lower side. Having regard to the fact that accident is of the year 2018, this Court is inclined to place reliance on the income chart prepared by Karnataka State Legal Services Authority. Accordingly, income is notionally assessed at Rs.11,750/- and after adding 40% towards future prospect, income is assessed at Rs.16,450/-. After deducting 1/4th and by applying multiplier of 15, compensation payable under the head of loss of dependency works out to Rs.22,20,750/- (Rs.16,450 x 12 x 15 – ¼).

11. Since there are 5 dependents, the claimants are entitled for Rs.2,30,000/- under conventional heads and additional 10% escalation is awarded for every 3 years

i.e.Rs.46,000/-, applying the principles laid down by Hon'ble Apex Court in the case of ***National Insurance Co. Ltd., Vs. Pranay Sethi***[1]***.*** Total compensation re-determined by this Court works out to Rs.24,96,750/- as against Rs.11,50,000/-. Compensation re-determined by this Court is as under:

Heads of Compensation	**Amount**
Loss of dependency	Rs.22,20,750/-
Conventional heads	Rs.2,30,000/-
Escalation	Rs.46,000/-
Total	**Rs.24,96,750/-**

ORDER

i. Appeal is ***allowed in part***.

ii. Appellants are entitled for enhanced compensation of Rs.13,46,750/- with interest at the rate of 6%, from the date

[1] (2017) 16 SCC 680

of petition, till realization of entire compensation.

iii. Amount in deposit, if any, shall be forthwith transmitted to Tribunal. Registry shall ensure that records are transmitted to enable the claimants to withdraw the amount.

iv. Apportionment of award shall be in terms of order of Tribunal.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

NJ
List No.: 1 Sl No.: 7
CT-SW