

IN THE HIGH COURT OF KARNATAKA
GULBARGA BENCH

DATED THIS THE 24TH DAY OF SEPTEMBER, 2013

BEFORE

THE HON'BLE MRS.JUSTICE B.S.INDRAKALA

M.F.A. NO.30698/2010 (MV)
C/W
MFA.CROB.NO.1011/2012 (MV)

IN M.F.A. NO.30698/2010 (MV)

BETWEEN :

THE D.C., KSRTC, BELGAUM
THE APPELLANT IS REPRESENTED BY
THE CHIEF LAW OFFICER
N.W.K.R.T.C. CENTRAL OFFICE,
HUBLI-580030.

... Appellant

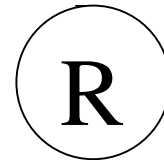
(BY SRI. SHIVASHANKAR H. MANUR, ADVOCATE)

AND :

HASANBASHA S/O ALLABHAKSH JAMBAGI,
AGE : 61 YEARS, OCCU:
AT : NEHARU NAGAR, RUMAL BAVDI,
BIJAPUR, SINCE RTD.
REPRESENTED BY HIS WIFE
SMT.CHANDBI W/O HASANBASHA
JAMBAGI.

... Respondents

(BY SRI. SANJAY M. JOSHI, ADVOCATE)



This MFA is filed U/S. 173(1) of MV Act, against the judgment and award dated 3-11-2009 in MVC No.853/2004 on the file of the Motor Accident Claims Tribunal No.IV, Bijapur, partly allowing the claim petition and awarding amount of Rs.8,40,000/- with interest at 6% p.a.

IN MFA.CROB.NO.1011/2012 (MV)

BETWEEN :

HASANSAB S/O ALLABHAX JAMBAGI
AGE ABOUT 63 YEARS,
OCCU : EX-DRIVER NOW NIL
R/O NEHARU NAGAR,
RUMAL BOUDI,
BIJAPUR-586 101
REPRESENTED BY
CHANDBI W/O HASANSAB
JAMBAGI – (WIFE)

... Cross Objector

(BY SRI.SANJAY M. JOSHI, ADVOCATE)

AND :

1) DIVISIONAL CONTROLLER
N.W.K.R.T.C. DIVISIONAL OFFICE,
ATHANI ROAD,
BIJAPUR-586 103.

2) DIVISIONAL CONTROLLER
N.W.K.R.T.C. BELGUM-590008.

3) MANAGING DIRECTOR
N.W.K.R.T.C. GOKUL ROAD,
HUBLI-580030.

... Respondents

(BY SRI.SHIVASHANKAR H. MANUR, ADV.)

This MFA CROB is filed U/Or. 41 Rule 22 of C.P.C., against the judgment and award dated : 3-11-2009 in MVC No.853/2004 on the file of the Motor Accident Claims Tribunal No.IV, Bijapur, partly allowing the claim petition and seeking enhancement of compensation.

These appeals coming on for admission this day, the court delivered the following;

J U D G M E N T

Though both the appeal and the cross-appeal are listed today for admission, with the consent of the counsels appearing for the claimant and respondent, the same are taken up for final disposal.

2. The respondent-corporation in M.V.C.No.853 of 2004 on the file of MACT-IV Bijapur, filed the above appeal against the judgment and award dated : 03-11-2009 passed therein, contending that the impugned judgment and award is passed without appreciating the evidence let in properly; awarding of compensation of Rs.8,40,000/- is erroneous and sought setting aside of the impugned judgement and award.

3. The claimant in the said case on receipt of summons in this proceedings, chose to file cross-objections in MFA CROB No.1101/2012 interalia contending amongst other grounds that in the facts and circumstances of the case, the amount awarded is inadequate and same needs to be enhanced.

4. Sri.Shivashankar H. Manur, the learned counsel for the appellant-corporation contended that though it is not pleaded before the tribunal nor urged as a ground in the memorandum of appeal, the question of admissibility of the proceedings filed by the claimant through next friend will have to be taken note off. In that regard, he further submitted that though the claimant is said to be represented by his wife as he suffered from mental disability and the entire proceedings is carried out by the next friend and wife of the claimant, however, the required formalities to prosecute in such manner is not followed by the claimant, in as much as no application was filed before the tribunal seeking

permission to prosecute, nor court enquired with regard to contention of the claimant before allowing the next friend to prosecute the case.

5. Per contra, Sri.Sanjay M. Joshi, the learned counsel appearing for the claimant submitted that for instituting the suit for and on behalf of a person who is mentally unsound and unstable, the provisions of Order XXXII Rules 1 and 2 of the Code of Civil Procedure squarely applies as per Order XXXII Rule 15 of Code of Civil Procedure. Further he submitted that no separate application need to be filed seeking express permission from the court in view of the said provision Order XXXII Rules 1 and 2 of the Code of Civil Procedure and so also under Order XXXII Rule 15 of the Code of Civil Procedure. If the court has failed to enquire with regard to the mental capability of the claimant, as there are number of certificates filed under which the claimant is adjudged as suffering from dementia and mentally unsound, it cannot be said that the due procedure of law to institute or

prosecute the proceedings is not followed. He further submits that, considering the total disability of the claimant to carry out any work, the functional disability will have to be assessed at 100% and though the tribunal has taken disability at 100%, it has wrongly calculated the multiplier of number of years left for the claimant to retire while as per the decision rendered in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **2009 ACJ 1298**, no such method is acceptable and as such he submit that the amount awarded under such head is inadequate.

6. In view of the submissions made the points that arise for consideration are;

- i) Whether the impugned judgment and award dated 03-11-2009 passed in MVC No.853/2004 on the file of the Motor Accident Claims Tribunal No.IV, Bijapur is liable to be modified?
- ii) What order?

7. Admittedly the above appeal is prosecuted by the wife of the claimant on the ground that the claimant is mentally incapable of prosecuting the case by himself. In that regard as contended to by both the counsels the provisions of Order XXXII Rules 1 and 2 R/w Order XXXII Rule 15 of the Code of Civil Procedure is squarely applicable so far as it relates to the procedure to be followed. For the sake of convenience, the said provision is excerpted hereunder :-

ORDER XXXII
SUITS BY OR AGAINST MINORS AND PERSONS OF
UNSOUND MIND

1. Minor to sue by next friend.- Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

2. Where suit is instituted without next friend, plaint to be taken off the file.- (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the Pleader or other person by whom it was presented.

15. Rules 1 to 14 (except Rule 2A) to apply to persons of unsound mind.- Rules 1 to 14 (except Rule 2-A) shall, so far as may be, apply to persons adjudged before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity of protecting their interest when suing or being sued.

By reading Order XXXII Rule 1 CPC, it is clear that there is no need for filing of separate application seeking permission to sue by the next friend on behalf of the original claimant. Similarly, on reading of Order XXXII Rule 2 CPC, if at all the suit or proceedings is instituted improperly, the defendant or respondent may apply to have the case taken off the file, which in the instant case is not opted by the respondent-corporation.

8. By reading of Order XXXII Rule 15 CPC, it is clear that Rule 1 to 14 (except Rule 2-A) of Order XXXII is clearly applicable in the cases relating to the persons of unsound mind. Further it is made clear in the said provision that if a

person is adjudged either before or during the pendency of the proceedings is of unsound mind, the provisions of Order XXXII Rule 1 to 14 CPC are applicable and in case if it is not adjudged so, the court, on enquiry by itself can find regarding the capability of such person. In the case on hand, as contended by the learned counsel for the claimant, there are certificates consolidatedly marked as Ex.P-167 which includes the certificates issued by the Medical Officer attached to the appellant-corporation certifying that the claimant is

“suffering from post traumatic dementia with hemiparesis (R) side. He is physically and mentally unfit to perform his duties as driver. Hence, he may be retired from his duties on voluntary scheme”. **(emphasis supplied)**

By this certificate it is seen that the claimant be considered as adjudged as mentally incapable or mentally unsound, besides the claimant was also kept present before this court today and on enquiry, though he seems to be physically

alright but mentally his answers to the queries were incoherent. In the circumstances, it cannot be said that the claimant has not followed the due procedure of the law while instituting the proceedings through his next friend his wife.

9. With regard to the quantum of compensation awarded, on perusal of the impugned judgement and award, it is seen that, by considering the evidence placed on record, the tribunal has deemed it fit to award a sum of Rs.1,00,000/- towards pain and suffering, Rs.60,000/- towards medical expenses and attendant charges, Rs.50,000/- towards future medical expenses apart from awarding a sum of Rs.5,80,000/- under the head of loss of income on account of disability. Considering the facts and circumstances of the case, the amount so awarded except the amount awarded under the head loss of income on account of disability to an extent of Rs.5,80,000/- seems to be proper.

10. With regard to the compensation to be awarded under loss of income owing to disability, as observed by the

tribunal and also as claimant is said to be suffering from 100% functional disability, the disability can be easily assessed at 100%. However, with regard to calculating loss of income on account of such disability, as per the decision rendered in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **2009 ACJ 1298**, considering the age of the victim as 54 years, by applying the multiplier of 11, the loss of income on account of disability will have to be calculated.

11. With regard to the actual income, the claimant has chosen to file number of pay slips, including the pay slip for the month of October, 2002, which was permissible as the claimant was granted admissible leave with full salary for that month and the said pay slip is marked as Ex.P-169, on perusal of which, it is seen that the claimant drawn the salary of Rs.8835-70 paise and the same is now rounded off to Rs.8,835/-. With regard to deduction, Rs.200/- is deducted towards income tax, which has to be given deduction to while

assessing the loss of income on account of disability. Thus towards the head loss of income on account of disability, the claimant is entitled to be compensated at Rs.8,835/- Less Rs.200/- = Rs.8,635/- X 12 X 11 = Rs.11,39,820/-.

12. Thus the claimant is entitled to be compensated as hereunder :-

1) Pain and suffering	:-	Rs.1,00,000-00
2) Medical and other incidental expenses.	:-	Rs.0,60,000-00
3) Loss of amenities	:-	Rs.0,50,000-00
4) Future Medical expenses	:-	Rs.0,50,000-00
5) Loss of income on account of disability.	:-	Rs.11,39,820-00
TOTAL :-		Rs.13,99,820-00

13. Accordingly, the impugned judgment and award is liable to be modified and point no.1 is answered in the Affirmative.

14. Hence, the following:

ORDER

- i) The MFA No.30698/2010 is hereby dismissed while MFA CROB No.1011/2012 is hereby allowed in part modifying the impugned judgment and award, awarding a sum of Rs.13,99,820/- as against Rs.8,40,000/-, awarded by the Tribunal with interest at the rate of 6% per annum, from the date of petition, till realisation. However, the amount of Rs.50,000/- awarded towards future medical expenses shall not carry any interest.
- ii) Respondent-Corporation is directed to deposit the amount so awarded within four weeks from the date of receipt of copy of this order.
- iii) Out of the enhanced amount of Rs.5,59,820/-, Rs.3,00,000/- with proportionate interest, shall be invested in Fixed Deposit in any of the Nationalized Bank of the choice of the claimant in his name duly represented by his wife/next friend, for a period of five years with liberty to the appellant to withdraw 50% of the interest which accrues periodically on the said deposit.

The 50% of interest is payable on maturity. The balance amount of Rs.2,59,820/- with proportionate interest shall be released in favour of the claimant represented by his wife, permitting his next friend/wife to use the same for his immediate necessity.

Office to draw the award, accordingly.

**Sd/-
JUDGE**

SGS