

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated the 30th day of June 2006

: P R E S E N T :

THE HON'BLE MR.JUSTICE : CHIDANANDA ULLAL

A N D

THE HON'BLE MR.JUSTICE : V.JAGANNATHAN

MISCELLANEOUS FIRST APPEAL Nos. 5549 C/W 5550

C/W 5574 / 1999 (MV)

BETWEEN :

In M.F.A. Nos. 5549 & 5550/1999 :

National Insurance Co.Ltd.,
Mission Road, Bangalore-2,
by its Manager.

In M.F.A. No. 5574/1999 :

1. Smt. Nalini U.Mallya,
W/o late Sri M.Umesh Mallya,
Aged 45 years.
2. Praveen Mallya,
S/o late Sri M.Umesh Mallya,
Aged 21 years.
3. Anita Mallya,
D/o late Sri M.Umesh Mallya,
Aged 18 years.

Appellants-1 to 3 r/a No.487,
'Ananth' 4th Main, Rajajinagara II Stage,
Bangalore - 560 055.

4. Smt. Susheela A.Mallya,
W/o late M.Anantha Mallya,
Aged 69 years.

Near Canara Bank (Founders
Branch), at Bhat's Compound,
Dondgerkery,
Mangalore – 575 003.
(Amended as per court order
dated 3.9.2001).

...Appellants

(By Sri Sri O.Mahesh & Smt.Veena O.Mahesh,
Advocates for appellant in M.F.A.Nos.5549 & 5550/99.
Sri S.P.Shankar, Sr.Counsel, for Sri D.S.Sridhar,
Advocate for appellants in M.F.A.No. 5574/1999.)

A N D :

In M.F.A.No. 5549/1999 :

1. Smt. Nalini U.Mallya,
Major, W/o M.Umesh Mallya.
2. Parveen Mallya, Minor.
3. Anitha Mallya, Minor.

R-2 & R-3 are children of
Umesh Mallya and represented
by natural guardian-mother R-1.

4. Smt. Susheela A.Mallya,
Major, W/o M.Anantha Mallya.

All r/a No.487, 'Ananth',
4th Main, Rajajinagara II Stage,
Bangalore – 560 055.

5. S.R.Lingareddy,
Major, S/o Ramaswamy Naidu,
Prop: M/s Thirumala Bricks Works,
Sarahunase, Bangalore-87.

In M.F.A.No. 5550/1999 :

1. A.M.Manickam,
Major, S/o Manavelu,
No. 1134, 'M.G.Nilaya',
12th Main Road,
Prakash Nagara, Bangalore.
2. S.R.Lingareddy,
Major, S/o Ramaswamy Naidu,
Prop: M/s Thirumala Bricks Works,
Sarahunase, Bangalore-87.

In M.F.A.No. 5574/1999 :

1. S.R.Lingareddy,
S/o Ramaswamy Naidu,
Aged 49 years,
Prop: M/s Thirumala Bricks Works,
Sarahunase, Bangalore-87.
2. M/s National Insurance Co.Ltd.,
Mission Road, Bangalore-27,
represented by its Manager.
3. A.M.Manickam,
S/o Manavelu, Aged 45 years,
R/a No. 1134, 'M.C.Nilaya',
12th Main Road,
Prakash Nagara, Bangalore.
4. M/s New India Assurance Co.Ltd.,
Regional Office, Mission Road,
Bangalore-27, represented by its
Manager.

...Respondents

(By Sri S.P.Shankar, Sr.Counsel, for Sri D.S.Sridhar,
Advocate for R-1 to R-4, and
Sri S.K.Venkata Reddy, Advocate for R-5 in M.F.A.No.
5549/1999.

Sri C.V.Nagesh, Advocate for R-1, and
 Sri S.P.Shankar, Sr.Counsel, for Sri S.K.Venkata Reddy,
 Advocate for R-2 in M.F.A.No. 5550/1999.
 Sri S.K.Venkata Reddy, Advocate for R-1,
 Sri O.Mahesh, Advocate for R-2, and
 Sri A.N.Krishnaswamy, Advocate for R-4 in
 M.F.A.No. 5574/1999.)

Miscellaneous First Appeals filed under Section 173(1) of the M.V.Act against the judgment and award dated 9.7.1999 passed in M.V.C.Nos. 1594, 2762 & 1594/1990 respectively on the file of the MACT, Bangalore, partly allowing the claim petition for compensation.

These appeals having been reserved, coming on for pronouncement of judgment this day, Jagannathan, J, pronounced the following :

J U D G M E N T

All these three appeals arise out of the common judgment rendered by the MACT, Bangalore. M.F.A. Nos. 5549/1999 and 5550/1999 are by the National Insurance Co. Ltd. questioning fastening of the liability on it by the Tribunal and M.F.A. No. 5574/1999 is preferred by the mother, wife and children of deceased Umesh Mallya questioning the adequacy of the



compensation awarded by the Tribunal. Therefore, common judgment is being pronounced in all these appeals.

2. The facts essential for our purpose briefly stated are to the effect that on 30.6.1990 at about 9.00 a.m., Umesh Mallya, employed by the BPL India Ltd., Bangalore, was proceeding to his work spot in the autorikshaw bearing registration No. MED 2480 and near 7th Block, Koramangala, on Bangalore-Hosur Road, the autorikshaw met with an accident when the lorry bearing registration No. CAK 2727 hit the autorikshaw and following the incident, Umesh Mallya sustained grievous injuries and breathed his last on 1.7.1990 at about 5.30 p.m. in St. John's Hospital and his mother, wife and children, therefore, filed a claim petition before the Tribunal for compensation. The autorikshaw was damaged in the accident and the owner of the autorikshaw^{had} also filed a claim petition for compensation.

3. The Tribunal, after considering the pleadings and the evidence placed before it, awarded Rs.9,33,080/- as



compensation to the mother, wife and children of deceased Umesh Mallya and ^{whereas} _^ the owner of the autorikshaw was awarded compensation of Rs.9,500/- towards the damage caused to the vehicle. After having recorded a finding that the driver of the lorry was solely responsible for causing the accident, the Tribunal fastened the liability on the insurer of the lorry. Aggrieved by the liability being put on it, the insurer of the lorry has preferred the appeals in M.F.A. No. 5549/1999 and M.F.A. No. 5550/1999. The claimants, being dissatisfied with the award of compensation, have sought for enhancement of the same by preferring the appeal in M.F.A. No. 5574/1999.

4. We have heard the learned counsel Sri O.Mahesh for the Insurance Company and the learned Senior Counsel Sri S.P.Shankar for the claimants in M.F.A. No. 5574/1999, and have carefully perused the decisions referred to by the respective sides in support of their contentions.



5. Sri O.Mahesh, learned counsel appearing for the Insurance Company, submitted that the main ground which is urged in the two appeals filed by the Insurance Company is with regard to the liability being fastened on it. It is contended by him that the driver of the lorry was possessing the licence to drive light motor vehicle, but the lorry in question was a heavy transport vehicle and, as such, the driver did not possess valid and effective driving licence to drive the heavy transport vehicle and, therefore, the Tribunal, at the first instance, could not have made the Insurance Company liable to pay the compensation and alternatively, the Tribunal could have given the Insurance Company the liberty to recover the compensation from the lorry owner. In support of his submission, the learned counsel Sri O.Mahesh referred to a decision of the Apex Court in Civil Appeal No. 4490/1996 (D.D. 2.9.1999) to drive home the point that a light motor vehicle can be a non-transport vehicle as well and, relying on the said decision, it was submitted that in the instant case, as the driver was possessing ^a licence ^{only to drive} ~~for~~ light motor vehicle,



the same cannot be construed as an effective driving licence to drive the heavy transport vehicle and hence, the fixing of liability solely on the Insurance Company was erroneous in law.

6. Repelling the above said argument, the learned Senior Counsel Sri S.P.Shankar, referring to the evidence on record, submitted that a look at the 'B' extract report Ex.R-2 would make it clear that the unladen weight of the vehicle in question was 5,360 kgs and though the vehicle has been described as a heavy goods vehicle as per R.C., yet, by virtue of the definition of 'Light Motor Vehicle' as per Section 2(21) of the Motor Vehicles Act, the lorry in question comes within the description of 'light motor vehicle' because, a light motor vehicle is defined as one, whose unladen weight does not exceed 7,500 kgs. Reliance was also placed on the decisions of this court in the cases of UNITED INDIA INSURANCE CO. LTD. Vs. SHIVANNA (ILR 2000 KAR 1608) and UNITED INDIA INSURANCE CO. LTD. Vs. LAKSHMAMMA (ILR 1996 KAR 2220) and our attention



was also drawn to the law laid down by the Apex Court in the case of NEW INDIA ASSURANCE CO. LTD. Vs. SWARAN SINGH, reported in 2004 ACJ 1 (SC). Therefore, it was ^{also} submitted that the Tribunal was justified in fastening the liability on the Insurance Company.

7. So far as the appeal by the claimants is concerned, the learned senior counsel submitted that the Tribunal did not choose the proper multiplicand while working out the amount under the head of loss of dependency. It was submitted that the Tribunal took the income of the deceased for the purpose of calculating the loss of dependency at Rs.6,860/- per month. But, the Tribunal did not take note of the law laid down by the Apex Court in the case of SARLA DIXIT Vs. BALWANT YADAV (AIR 1996 SC 1274). It was therefore submitted that the Tribunal should have applied the formula as advised in Sarla Dixit's case and should have taken the average of the gross salary at the time of the death and the salary which the deceased would have got had he not died



prematurely and should have arrived at the proper multiplicand and, therefore, the award of the amount under the loss of dependency requires to be enhanced.

8. Having thus heard the submissions made by the respective sides, the two points that arise for consideration are, (i) whether the Tribunal committed any error in fixing the entire liability on the Insurance Company and (ii) whether the quantum of compensation awarded under the head of loss of dependency requires to be enhanced in the light of the submissions made by the learned senior counsel for the claimants.

Point No. (i) :

9. So far as the question of liability on the part the Insurance Company is concerned, it is the specific stand of the Insurance Company that the driver of the vehicle in question was not possessing valid and effective driving licence to drive 'Heavy Goods Vehicle', but on the other hand, he was possessing licence only for ^{driving} 'Light Motor Vehicle'. The learned senior counsel Sri S.P.Shankar for the claimants contended that the



unladen weight of the lorry is 5,360 kgs. and, therefore, read in conjunction with the definition of 'light motor vehicle' in Section 2(21) of the M.V.Act, it is established that the vehicle in question comes under the category of 'light motor vehicle' and, therefore, the licence authorised the driver to drive 'light motor vehicle' and, as such, there is no merit in the submission that the driver was not possessing effective and valid driving licence to drive the vehicle in question. In support of his submission, he referred to the decisions in ILR 2000 KAR 1608 and ILR 1996 KAR 2220.

10. We are unable to agree with the said submission made by the learned senior counsel. Section 2(21) of the M.V.Act defines a 'light motor vehicle' as under :

“(21) “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms;”

From this, it is clear that in order to come within the definition of 'light motor vehicle', the gross vehicle



weight must not exceed 7,500 kgs. In the instant case, the 'B' register extract of the lorry in question, which has been produced and marked as Ex.R-3 clearly mentions that the vehicle CAK 2727 is categorised as "Tata HGV" and further the laden weight of the vehicle is shown as 15,660 kgs. and the unladen weight as 5,360 kgs. There is no dispute with regard to the said document Ex.R-2. From this document, it is clear that the laden weight of the vehicle was more than 7,500 kgs. In other words, ^{we hold that} the lorry CAK 2727 does not come within the purview of the definition of 'light motor vehicle'. Added to this, the very document also describes the vehicle as 'HGV' (Heavy Goods Vehicle). The copy of the history sheet of the driver mentions that he is authorised to drive light motor vehicle, medium passenger vehicle, heavy passenger vehicle and it is also ^{therein} mentioned _^ that, as paid employee, he is authorised to drive public service vehicle. It is thus clear from the document Ex.R-3 that the licence was not for driving "Heavy Goods Vehicle".



11. From the above discussion, it thus becomes clear that the driver of the lorry CAK 2727 was holding licence to drive 'light motor vehicle', but not 'heavy goods vehicle'. The stress put on by the learned senior counsel on the unladen weight does not come into picture because, the said unladen weight is only applicable in cases of the vehicles which have been described in the said definition i.e., in respect of motor car or tractor or road-roller. Hence, the rulings referred to by the learned senior counsel in this regard are not applicable to the case on hand because, insofar as light motor vehicle is concerned, we are only concerned with the "gross vehicle weight", but not unladen weight. In the instant case, as the laden weight of the vehicle being 15,660 kgs, the vehicle, therefore, ceases to come within the definition of 'light motor vehicle'.

12. Now coming to the question of liability aspect, the Apex Court has held in the case of NATIONAL INSURANCE CO.LTD. Vs. SWARAN SINGH (2004 ACJ 1), thus :



“(iii) The breach of policy conditions, e.g., disqualification of driver or invalid driving licence of the driver, as contained in subsection (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.”

13. Therefore, in the instant case also, the Insurance Company, in the first instance, will have to pay the compensation to the claimants and recover the same from the insured. We accordingly answer the first point.



14. So far as the appeal filed by the Insurance Company questioning the quantum of compensation awarded for the damage caused to the autorikshaw is concerned, we do not find any error committed by the Tribunal and the award amount cannot be termed as excessive.

Point No. (ii) :

15. So far as the enhancement of compensation sought by the claimants in M.F.A.No. 5574/1999 is concerned, the Tribunal has awarded Rs.9,33,080/- and the main grievance of the claimants before us is that the salary of the deceased was taken at a lower figure ignoring the fact that the deceased had long years of service ahead of him and, therefore, the formula devised by the Apex Court in Sarla Dixit's case, supra, ought to have been applied. We find enough force in the contention urged by the learned senior counsel for the claimants. The salary of the deceased at the time of the accident was Rs.9,332/- per month and he was aged 40 years at that time. The Tribunal ought to have applied



the formula that has been laid down by the Apex Court in the case of Sarla Dixit, supra. On applying the said proposition of law to the case on hand, keeping in view the future prospects of the deceased, the average gross future monthly will have to be arrived at by adding the actual gross income at the time of the death (Rs.9,332/- and the maximum which otherwise he would have got had he not died a premature death i.e., Rs.15,000/-) and dividing the said figure by 2. Thus, the average gross monthly income will work out to Rs.12,166/-. 1/3 of the said amount will have to be deducted towards personal expenses of the deceased. Then, the net figure will be Rs.8,111/- per month and the amount per annum will be Rs.97,332/-. Applying the multiplier 14 having regard to the age of the deceased, the amount under the head 'loss of dependency' will come to Rs.13,62,648/-. To this, the conventional sums awarded by the Tribunal viz., towards medical expenses Rs.20,000/-, towards loss of consortium Rs.10,000/-, towards loss of love and affection to the children Rs.10,000/-, and towards funeral expenses Rs.5,000/-,



if added, the total compensation will work out to Rs.14,07,648/-, which is rounded off to Rs.14,08,000/-. The claimants, therefore, are entitled to the said amount as total compensation.

16. In the result, the two appeals filed by the Insurance Company in M.F.A.Nos. 5549 & 5550/1999 are allowed insofar as its right to recover the compensation from the insured is concerned.

The appeal filed by the claimants in M.F.A.No. 5574/1999 is also allowed in part and the impugned award shall stand modified as above. The rate of interest on the enhanced amount will be at 6%.

So far as apportionment and deposits are concerned, the wife of the deceased is entitled to a sum of Rs.8,00,000/- ^{with proportionate interest} and the two minor children shall each be entitled to Rs.2,54,000/- ^{with proportionate interest}, and the mother of the deceased is entitled to Rs.1,00,000/- ^{with proportionate interest}. The compensation awarded to the minor children shall be kept in fixed deposit in a nationalised bank till they attain the age of majority and the interest thereon shall be paid to their

Am * corrected vide
order dt. 03/01/2013.

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mother towards education of the children. Out of the amount awarded to the wife of the deceased, a sum of Rs.4,00,000/- shall be kept in fixed deposit in a nationalised bank for a period of five years and the interest thereon shall be paid to her.

Per Chidananda Ullal, J :

Being the companion judge in the Division Bench, I have perused the judgment of my Brother and I concur with the same.

Sd/-
JUDGE

Sd/-
JUDGE

ckc/-