

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28TH DAY OF MARCH 2013

BEFORE

THE HON'BLE MR.JUSTICE N.ANANDA

M.F.A.No.1918/2012 (MV)

BETWEEN:

1. SRI MUNIYAPPA
S/O LATE NANJUNDAPPA
AGED ABOUT 52 YEARS
R/AT KADADENAHALLI VILLAGE
KASABA HOBLI, MALUR TALUK
KOLAR DISTRICT
2. SMT. RAMALAKSHMAMMA
W/O MUNIYAPPA, 47 YEARS
R/AT KADADENAHALLI VILLAGE
KASABA HOBLI, MALUR TALUK
KOLAR DISTRICT
3. KUMARI K M BHAVYA
D/O MUNIYAPPA, 20 YEARS
R/AT KADADENAHALLI VILLAGE
KASABA HOBLI, MALUR TALUK
KOLAR DISTRICT.

... APPELLANTS

(BY SRIYUTHS N GOPALKRISHNA & J.G.KUMBAR, ADVS.)

AND :

1. SRI M KRISHNAPPA
S/O MARANNA, MAJOR
R/AT NO.40, 1ST CROSS
MALLASANDRA T DASARAHALLI
BANGALORE - 560057

2. THE NATIONAL INSURANCE CO. LTD.
 REGIONAL OFFICE
 SUBHARAM COMPLEX
 BANGALORE - 560001
 REP: BY ITS MANAGER. ... RESPONDENTS

(BY SRI A N KRISHNASWAMY, ADV. FOR R2; R1-SERVED)

THIS APPEAL IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT DATED:09.11.2011 PASSED IN MVC NO.2267/2010, ON THE FILE OF PRINCIPAL MACT & CHIEF JUDGE, COURT OF SMALL CAUSES AT BANGALORE, DISMISSING THE PETITION AS NOT MAINTAINABLE.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

The Tribunal has dismissed claim petition. Therefore, claimants are before this court.

2. I have heard learned counsel for parties.
3. Claimants I & II are the parents and claimant No.III is the younger sister of deceased K.M.Suresh. The claim petition is filed under section 163A of the Motor Vehicles Act, 1988 (for short, 'the Act') by restricting income of the deceased to Rs.3,300/- per month.

4. In a decision reported in 2007 ACJ 1284 (in the case of Oriental Insurance Co. Ltd. Vs. Meena Variyal), the Supreme Court has held that the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."

5. In a decision reported in 2012 ACJ 1305 (*in the case of Surender Kumar Arora & another Vs. Dr. Manoj Bisla & others*), the Supreme Court has agreed with the decision of the Supreme Court, reported in 2007 ACJ 1284 (in the case of Oriental Insurance Co. Ltd. Vs. Meena Variyal).

6. The II-respondent filed objections, contending that accident was due to negligence of deceased and II-respondent is not liable to pay compensation.

7. The Tribunal framed following issues:-

1. Whether the petitioners prove that the deceased succumbed to the injuries in a motor vehicle accident that occurred on 04.01.2010 at about 11.00 pm., at Yashavanthapura Gate on Hoskote Malur Road, Malur Taluk, Kolar District on account of rash and negligent riding of the Hero Honda Splendor Motorcycle bearing registration No.KA.04/ER.9284?

2. Whether the Insurer proves that rider of the vehicle bearing No.KA.04/ER.9284 was not holding valid and effective driving licence as on the date of the accident?

3. Whether the petitioners are entitled to compensation? If so, how much and from whom?

4. To what order or award?

8. The Tribunal on appreciation of oral and documentary evidence has answered issue No.1 in negative and left out issues 2 & 3 by stating that they did not survive for consideration.

9. Therefore, learned Judge of Tribunal should not have called upon claimants to prove negligence as claim petition was filed by invoking section 163A of the Act. The entire approach of Tribunal is erroneous. Therefore, impugned judgment requires reconsideration.

10. In the result, I pass the following:-

ORDER

The appeal is accepted. The impugned judgment is set aside. The matter is remanded to Tribunal for reconsideration in the light of observations made herein and in accordance with law. The other contentions urged herein are kept open.

Sd/-
JUDGE

SNN