

IN THE HIGH COURT OF KARNATAKA

GULBARGA BENCH

DATED THIS THE 28<sup>TH</sup> DAY OF FEBRUARY, 2014

BEFORE

THE HON'BLE MR.JUSTICE A.S. PACHHAPURE

MISCELLANEOUS FIRST APPEAL No.30707/2010 (MV)

BETWEEN:

The Divisional Manager,  
The New India Assurance Co. Ltd.,  
Park Chowk, Solapur.

... Appellant

(By Sri. Sudarshan M., Advocate)

AND:

1. Sangeeta  
W/o Sharat Tambe,  
Aged about 38 years,  
Occ: H.H. Work,
2. Amar Sharat Tambe,  
Aged about 19 years,  
Occ: Student,
3. Amruta  
D/o Sharat Tambe,  
Aged about 16 years,  
Occ: Student,

4. Amit Sharat Tambe,  
Aged about 12 years,  
Occ: Student,

Since Respondent  
Nos.3 & 4 are Minors  
By their M/g by R-1.

5. Maruti Dasa Tambe,  
Aged about 71 years, Occ: Nil,

6. Hirabai  
W/o Maruti Tambe,  
Aged 68 years, Occ: Nil,

All R/at Aiganal,  
Bijapur District.

7. Chandrakant Tukanna Gavade,  
Aged Major, Occ Driver,  
R/at Palapur in Akkalkot Taluk,  
Dist. Solapur.

8. Sangappa Vithal Patil,  
Aged Major, Occ: Business,  
R/at Palapur in Akkalkot Taluk,  
Dist. Solapur.

... Respondents

(Sri. Basavaraj R. Math, Adv. for R1, R2, R5 & R6;  
R3 & R4 are minors Reptd. by R1; R7 & R8 served)

This MFA is filed U/S. 173(1) of M.V. Act,  
against the judgment and award dated 04.11.2009  
passed in MVC No.630/2004 on the file of the MACT-  
IV, Bijapur, partly allowing the claim petition and  
awarding the compensation of Rs.11,26,700/- with  
interest at 6% p.a.

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

**JUDGMENT**

Though the matter is listed today for orders, with the consent of the learned counsel for both the parties, it is taken up for final disposal.

2. The appellant-insurer challenging the judgment and award of the Tribunal granting compensation to respondent Nos.1 to 6 - claimants for the death of one Sharat in a motor vehicle accident has filed this appeal.

3. The facts reveal that on 04.05.2003, deceased Sharat was riding his motorcycle bearing No.MH-14/4075 and within the limits of Varvade village on Pune-Solapur National Highway, the driver of the jeep bearing No.MH-02/M-8093 drove it in a rash and negligent manner and hit the motorcycle. Thereby, Sharat fell down and sustained severe injuries and died on the spot. His wife, minor children and

parents made a claim for compensation for loss of dependency and conventional heads.

4. During the course of the enquiry, claimant No.1 examined herself as PW.1 and two witnesses PWs.2 and 3. In their evidence, the documents Exs.P1 to P17 were marked. On behalf of the appellant - insurer, RW.1 was examined and Ex.R1 - Insurance Policy was admitted in evidence.

5. The Tribunal, after hearing the learned counsel and on appreciation of the evidence on record, allowed the claim petition in part and granted compensation of Rs.11,26,700/- with interest @ 6% p.a. Aggrieved by the judgment and award, the insurer has filed this appeal challenging the occurrence of the accident and also the quantum of compensation granted.

6. I have heard the learned counsel for both the parties.

7. The points that arise for my consideration are,

1. Whether the respondents 1 to 6 - claimants prove the occurrence of the accident on 04.05.2003 at 11.00 a.m. due to the rash and negligent driving of the jeep bearing No.MH-02/M-8093?

2. Whether the quantum of compensation awarded is on the higher side?

8. Learned counsel for the appellant-insurer would submit that the complaint was against an unknown vehicle and as it was a hit and run case, subsequently, the police have developed a case against the owner of the jeep, falsely involving the said vehicle in the said accident and therefore, he submits that the Tribunal has committed an error in accepting the evidence of the claimants. He also submits that the quantum of compensation awarded by the Tribunal is on the higher side. On the other hand, learned counsel for respondent Nos.1 to 6 -

claimants submits that the material placed on record is sufficient to prove the negligence and the compensation awarded is just and reasonable.

9. The learned counsel for both the parties have made available the copy of the complaint and other documents produced before the Tribunal and perusal of the complaint dated 05.05.2003 would reveal that on 04.05.2003, Sharat (the deceased) was riding his motorcycle and an unknown vehicle hit the motorcycle on the National Highway. This complaint was registered for the offence punishable under Sections 279, 304(A), 338, 426 of IPC and other offences under the Motor Vehicles Act; it was registered in Crime No.57/2003. After the investigation, a chargesheet was filed by the police against the driver of the jeep bearing No.MH-02/M-8093.

10. The claimants have made available the copy of the chargesheet at Ex.P2, the inquest mahazer at

Ex.P3, the scene of occurrence panchanama at Ex.P4 and PM report at Ex.P5. They have also examined PW.3 - Shivaji, an eyewitness to the incident, who was travelling in the aforesaid jeep on the date of the accident. He has stated in his evidence that on the date of the accident, he was proceeding in the jeep and at the relevant time, the driver of the jeep went on the wrong side and hit the motorcycle; the rider fell down and sustained grievous injuries and died on the spot. He also states that the driver of the jeep did not stop the vehicle and proceeded ahead. He states that on the second day, the police approached him and he stated upon this incident to the police as well. Apart from his evidence, the material reveals that a chargesheet was also filed against the driver.

11. It is no doubt true that the complaint is against the unknown vehicle, but that itself is not sufficient to discard the other evidence, which is

made available. It is possible that after an accident, the tort-feasor do not stop his vehicle at the place of accident and runs away and the persons may not have an opportunity to look into the number of the vehicle. It is for the investigating agency to collect the material about the accident and submit the chargesheet. It is accordingly to the police to file the chargesheet against the driver of the said vehicle. To discard this evidence, which has been placed on record by the claimants, the insurer has not made any material available. Though RW.1 is examined, he is not a witness to the incident; he is an official and he does not know anything about the accident; his evidence is of no help to the appellant to discard the material which is placed on record.

12. The insurer ought to have examined the Investigating Officer about the manner in which the investigation was held and to create the doubt in



acceptance of the evidence of the claimants. In the absence of which the evidence adduced cannot be discarded. It is for this reason, the Tribunal has rightly held that the accident has been proved. The material placed on record is also sufficient to hold that it was the driver of the jeep was rash and negligent in driving the vehicle.

13. So far as the quantum of compensation is concerned, a feeble submission is made by the learned counsel for the appellant stating that the Professional Tax has not been deducted from the salary of the deceased. Sharat (the deceased) was a Teacher, he was getting a salary of Rs.8,823/- per month. After deducting the personal expenses, the Tribunal has considered his salary. Addition of salary towards the loss of prospects has not been considered, though the deceased was aged 38 years. In this context, mere fact that the Professional Tax was not deducted does not make any difference so far

as the quantum of compensation is concerned. As the claimants have not preferred any appeal and if it was so preferred, the claimants were entitled to the loss of future prospects as well. That apart, only a sum of Rs.15,000/- has been granted towards the conventional heads. Looking to the quantum of compensation that has been awarded, I do not find any justifiable grounds to interfere with the same.

Accordingly, point No.1 is answered in affirmative and point No.2 is answered in negative.

Consequently, the appeal fails and is accordingly dismissed.

The amount in deposit is ordered to be transmitted to the jurisdictional Tribunal.

**Sd/-  
JUDGE**

LG