

IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 31ST DAY OF AUGUST 2017

BEFORE

THE HON'BLE MR.JUSTICE L. NARAYANA SWAMY

MISCELLANEOUS FIRST APPEAL NO.101182/2014 (MV)

BETWEEN:

1. THE DIVISIONAL MANAGER,
SHRIRAM GENERAL INSURANCE
COMPANY LTD., E-8, EPIP, RIICO
INDUSTRIAL AREA, SITAURA-JAIPUR,
RAJASTHAN-302022, NOW REP. BY
ITS AUTHORISED SIGNATORY,
SHRIRAM GENERAL INSURANCE CO.
LTD., LEGAL CELL, E-8, EPIP,
RIICO INDUSTRIAL AREA, SITAPURA,
JAIPUR-302022, RAJASTHAN STATE.

...APPELLANT

(BY SRI. S.K. KAYAKMATH, ADV.)

AND:

1. SMT. SUMITHRA W/O LINGAPPA
SHETTY, AGE:52 YEARS, OCC:HOUSE WIFE,
R/O ASAR ONI, OLD HUBLI,
TQ:HUBLI, DIST:DHARWAD,
NOW AT GANDHI NAGAR, DHARWAD.
2. SRI. SHIVAJI S/O YALLAPPA KALAL
AGE:MAJOR, OCC:BUSINESS & OWNER
OF THE LORRY BEARING REG. NO.
KA-22-A-8798, R/O 5236/A/2, NEAR
GUJARATH BHAVAN, L.B.BUILDING,
BELGAUM.

...RESPONDENTS

(BY SRI. CHANDRASHEKAR M HOSAMANI, ADV. FOR R1.)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, 1988 AGAINST THE JUDGMENT AND AWARD DATED 18.1.2014 PASSED IN MVC NO.313/2012 ON THE FILE OF THE I ADDL. SENIOR CIVIL JUDGE AND CJM AND ADDL. MACT, DHARWAD AWARDING THE COMPENSATION OF RS.10,24,079/- WITH INTEREST AT THE RATE OF 8% PER ANNUM FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT.

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

JUDGMENT

This appeal is filed by the Insurance company challenging the judgment and award dated 18.1.2014 passed by the Addl. MACT, Dharwad in MVC No.313/2012.

2. Though this matter is listed for admission, with consent of the learned counsel for the parties, it is heard and taken up for final disposal.

3. Brief facts of the claimant before the Tribunal is that, on 12.3.2012 at about 4.00 p.m. on P.B. Road near Ganesh Vilas Hotel, K.C. Circle, Hubli, deceased Sudheer was proceeding on a motor cycle bearing Reg.No.KA-25-X-37 as a pillion rider, at that time, Lorry bearing Reg.No.KA-22-A-8798

came in high speed and rash and negligent manner and dashed to the motor cycle from behind. Due to which, the deceased had sustained fatal injuries and subsequently he succumbed to the injuries in KLE Hospital, Belgaum on 24.3.2012. The claimant has spent huge sum of Rs.6,00,000/- towards treatment, medical expenses as well as transportation of dead body, funeral and obsequies. The accident in question occurred solely due to rash and negligent driving of offending vehicle by its driver against whom Hubli East Traffic Police Station registered a criminal case in Crime No.14/2012 for the offence punishable under Sections 279, 337, 304A of IPC and under Section 187 of Motor Vehicles Act, 1988. Prior to the accident, the deceased was hale and healthy and he was doing hotel business and earning a sum of Rs.20,000/- per month and contributing the same for his family maintenance. Owing to death of the deceased, mother of the deceased has lost his only son and put to untold loss and hardship in all aspects.

4. After notice being served, the respondent-insurer entered appearance through its counsel and filed written statement denying the averments made in the claim petition. On the basis of the pleadings of the parties, the Tribunal has framed 4 issues. After appreciating the materials placed on record on behalf of both side, the Tribunal proceeded to allow the claim petition in part awarding a compensation of Rs.10,24,079/- with interest at the rate of 8% per annum from the date of petition till deposit. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in this appeal on the ground that the same is exorbitant.

5. Learned counsel for the appellant-Insurance Company assailing the impugned judgment and award submits that the Tribunal has grossly erred in adding 50% of the income towards future prospects of the deceased. He further submits that the compensation awarded by the Tribunal is contrary to law and material on records. He also submits that the Tribunal ought to have considered the age of

mother of the deceased instead of age of the deceased, since he was a bachelor. Hence, he seeks reduction of compensation under the head of loss of dependency.

6. Learned counsel for respondent No.1-claimant supports the impugned judgment and award and vehemently submits that the Tribunal after appreciating the material available on record has awarded the compensation. Hence, no interference is called for by this Court and appeal filed by the Insurer may be dismissed.

7. Having heard the rival submissions of the parties, I have gone through the grounds urged in the memorandum of appeal and also the lower court records.

8. The occurrence of the accident on 12.3.2012 resultant death of the deceased is not in dispute. The mother is only the claimant of the deceased son, who was a bachelor and doing hotel business and earning a sum of Rs.20,000/- per month. But in order to prove the same, no evidence has

been produced nor examined any witness. Though the claimant has not produced any evidence to prove the income of the deceased, but it is for the Tribunal to assess the reasonable income taking into account the place of accident, residence of the deceased and size of the family etc. In the instant case, the deceased was a resident of Dharwad, it is presumed that the deceased must have been earning considerable income in order to feed his family members and himself. Under this circumstance, the income of the deceased assessed at Rs.5,000/- per month is on the lower side, hence, the same is re-assessed at Rs.7,000/- per month taking into account year of the accident i.e. 2012. So far as adding 50% of the income towards future prospects of the deceased, the Hon'ble Supreme Court has observed in the case of **Bhogireddi Varalakshmi & Others Vs. Mani Muthupandi & Others, SLP(CIVIL) No.1636/2016**, decided on **3.3.2017**, not to award future prospects since the said aspect has been referred to larger Bench. Under the said circumstance, I feel it is not appropriate to award future prospects. Applying the

same, the loss of dependency would work out to **Rs.6,72,000/-** (Rs.7,000 -50% x 12 x 16). The compensation awarded under the other heads remains intact as the same is just and reasonable. Thus, in all, the compensation is reduced to **Rs.9,76,079/-** instead of Rs.10,24,079/-, with same interest at the rate of 6% per annum from the date of petition till payment.

9. Accordingly, the appeal is allowed in part. The impugned judgment and award of the Tribunal is modified by reducing a compensation to **Rs.9,76,079/-** as against Rs.10,24,079/-.

10. The amount in deposit shall be transmitted to the concerned Tribunal forthwith.

**Sd/-
JUDGE**

JTR