

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

M.F.A. NO.7860 OF 2015 (MV)

C/W

M.F.A. NO.2928 OF 2015 (MV)

M.F.A. NO.7860 OF 2015

BETWEEN:

1. SRI. R. KALANAIIKA
S/O ROOPALANAIIKA
AGED ABOUT 61 YEARS.
2. SMT. DHANALAKSHMI
W/O R. KALANAIIKA
AGED ABOUT 56 YEARS.

BOTH ARE R/AT-548/4A, SUNIL NILAYA
SARASWATHI EXTENTION
OPP: DURGAMBIKA SCHOOL
DAVANAGERE-577002.

... APPELLANTS

(BY SRI. MANJUNATHA PATTANASHETTY, ADV.,)

AND:

1. SRI. PRABHU
S/O DYAMAPPA

AGED ABOUT 46 YEARS
 R/AT DOOR NO.54
 SATTURU VILLAGE AND POST
 DAVANAGERE DIST
 (DRIVER OF TRACTOR NO. KA-16/T-7995
 AND TRAILER NO. KA-17/TA-6097).

2. SRI. B. BHEEMAPPA
 S/O BASAPPA
 AGED ABOUT 50 YEARS
 R/AT CHOUDAPURA VILLAGE
 SATTURU POST
 HARAPANAHALLI TALUK
 DAVANAGERE DIST-583131.
3. THE DIVISIONAL MANAGER
 NATIONAL INSURANCE CO. LIMITED
 DIVISIONAL OFFICE
 MELAGIRI PLAZAQ
 MCC B-BLOCK, DENTAL COLLEGE ROAD
 DAVANAGERE-577002.

NOW REPRESENTED BY ITS
 ADMINISTRATIVE OFFICER
 SRI. E. JAYASHEELAN
 REGIONAL OFFICE
 SHUBARAM COMPLEX, M.G. ROAD
 BANGALORE 560001.

4. SRI. B. BHEEMAPPA
 S/O BASAPPA
 AGED ABOUT 50 YEARS
 R/AT CHOUDAPURA VILLAGE
 SATTURU POST, HARAPANAHALLI TALUK
 DAVANAGERE DISTRICT-583131
 DELETED IN TRIBUNAL.
5. THE MANAGER
 UNIVERSAL SOMPO GENERAL
 INSURANCE COMPANY LTD,
 DAVANAGERE BRANCH
 DAVANAGERE-577002.

... RESPONDENTS

(BY SRI. L. SREEKANTA RAO, ADV., FOR R3
SRI. H.N. KESHAVA PRASHANTH, ADV., FOR R4
R1 & R2 SERVED)

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THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:27.12.2014 PASSED IN MVC NO.993/2009 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE, MEMBER, MACT-4, DAVANAGERE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

M.F.A. NO.2928 OF 2015

BETWEEN:

THE DIVISIONAL MANAGER
NATIONAL INSURANCE COMPANY LIMITED
DIVISIONAL OFFICE, MELAGIRI PLAZAQ
M.C.C. "B" BLOCK, DENTAL COLLEGE ROAD
DAVANAGERE

NOW REPRESENTED BY IT'S
ADMINISTRATIVE OFFICER
E. JAYASHEELAN, REGIONAL OFFICE
SHUBARAM COMPLEX, M.G. ROAD
BANGALORE-560 001.

... APPELLANT

(BY SRI. L. SREEKANTA RAO, ADV.,)

AND:

1. R. KALANAIIKA
S/O ROOPALANAIIKA
AGED ABOUT 61 YEARS.
2. DHANALAKSHMI
W/O R. KALANAIIKA
AGED ABOUT 56 YEARS.

BOTH ARE RESIDING AT NO.548/4A
SUNIL NILAYA, SARASWATHI EXTENSION
OPP. DURGAMBIKA SCHOOL
DAVANAGERE.

3. PRABHU
S/O DYAMAPPA
AGED ABOUT 46 YEARS
DOOR NO.54, SATTURU VILLAGE AND POST
HARAPANAHALLI TALUK
DAVANAGERE DISTRICT.
4. B. BHEEMAPPA
S/O BASAPPA
AGED ABOUT 56 YEARS
CHOUDAPURA VILLAGE
SATTURU POST
HARAPANAHALLI TALUK
DAVANAGERE DISTRICT.
5. B. BHEEMAPPA
S/O BASAPPA
AGED ABOUT 56 YEARS
R/O. CHOUDAPURA VILLAGE
SATTURU POST
HARAPANAHALLI TALUK
DAVANAGERE DISTRICT.
6. THE MANAGER
UNIVERSAL SOMPO GENERAL
INSURANCE COMPANY LTD,
DAVANAGERE BRANCH
DAVANAGERE.

... RESPONDENTS

(BY SRI. MANJUNATH PATHANASHETTY, ADV., FOR R1 & R2)

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THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:27.12.2014 PASSED IN MVC NO.993/2009 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE, MEMBER, MACT-4, DAVANAGERE, AWARDED A COMPENSATION OF RS.6,73,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION.

THESE M.F.As. COMING ON FOR ADMISSION, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

COMMON JUDGMENT

MFA No.7860/2015 has been filed by the claimants seeking enhancement of compensation, whereas, MFA No.2928/2015 has been filed by the Insurance Company under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act' for short), being aggrieved, by the judgment dated 27.12.2014 passed by the Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal' for short) in M.V.C.No.993/2009. Since, both these appeals are directed against the same judgment and arise from the same accident, they were heard analogously and are being decided by this common judgment.

2. Facts leading to filing of these appeals briefly stated are that on 08.09.2009, the deceased Sunil Kumar was riding a motor cycle bearing Registration No.KA-16-L-5061 near Veerashaiva Hostel, hadai Road, Davanagere. At that time, a tractor bearing Registration No.KA-16-T-7995 and trailer bearing Registration No.KA-17-TA-6097 (hereinafter referred to as 'the offending vehicle' for short), which was being driven by its driver in a rash and negligent manner, came

from the opposite direction and dashed against the motor cycle which the deceased was riding. As a result of the aforesaid accident, the deceased sustained grievous injuries and succumbed to the same.

3. The claimants thereupon filed a petition under Section 166 of the Act claiming compensation on the ground that the deceased was aged about 28 years at the time of accident and was engaged as a mechanical engineer at Assured Solutions, Bangalore and was earning a sum of Rs.25,000/- per month. It was further pleaded that accident took place solely on account of rash and negligent driving of the offending vehicle by its driver. The claimants claimed compensation to the tune of Rs.50,00,000/- along with interest.

4. The Respondent No.1 viz., the driver of the offending vehicle and Respondent No.2 viz., the owner of the offending vehicle filed written statement in which, inter alia, it was pleaded that there was no negligence on the part of respondent no.1 in causing the accident and that the liability to pay compensation, if any, is to be fastened on

Respondent No.4 and 5 as the offending vehicle was validly insured with them. The Respondent No.3 viz., the insurer of the tractor (hereinafter referred to as 'the Insurance Company' for short) filed written statement, in which the mode and manner of the accident was denied. It was pleaded that the accident occurred on account of the negligence of the deceased himself in riding his motor cycle. It was also pleaded that the driver of the offending vehicle was not one Prabhu D but was one Parashuramappa who did not hold a valid and effective driving license at the time of accident and that the liability of the insurance company, if any, would be subject to the terms and conditions of the insurance policy. The age, avocation and income of the deceased was also denied and it was pleaded that the claim of the claimants is exorbitant and excessive.

5. On the basis of the pleadings of the parties, the Claims Tribunal framed the issues and thereafter recorded the evidence. The claimant No.1 examined himself as PW-1, Kortramma (PW2), Rajappa (PW3), Ramesh (PW4), Paramma (PW5), Tyagaraju (PW6), Ramesh Kumar (PW7), Basavaraja

(PW8), Dasharatha Murthy (PW9) and got exhibited documents namely Ex.P1 to Ex.P18. The respondents B Bheemappa (RW1), Kumuda Krishnamurthy (RW2), Somanatha Naik (RW3), Shashidhara KN (RW4), Prabhu D (RW5) and got exhibited documents namely Ex.R1 to Ex.R13. The Claims Tribunal, by the impugned judgment, inter alia, held that the accident took place on account of rash and negligent driving of the offending vehicle by its driver. It was further held, that as a result of aforesaid accident, the deceased sustained injuries and succumbed to the same. The Tribunal further held that the claimants are entitled to a compensation of Rs.6,73,000/- along with interest at the rate of 6% per annum. Being aggrieved, these appeals have been filed.

6. Learned counsel for the Insurance Company submitted that the Tribunal erred in fastening liability to pay the compensation on the Insurance Company without appreciating the fact that the offending vehicle was being driven by one Parashuramappa who did not possess a valid and effective driving licence to drive the offending vehicle at

the time of the accident and not Prabhu D as mentioned in Ex.P1 FIR. In this regard, our attention has been invited to EX.R3, Ex.P1 and the evidence of RW4 Shashishekhara KN and PW9 Dasharatha Murthy to argue that the claimants in collusion with the police authorities have implicated the name of one Prabhu @ Parashuramappa when the offending vehicle was actually being driven by another Parashuramappa who did not possess a valid driving licence to drive the offending vehicle at the time of the accident. It is further submitted that one Prabhu D @ Parashuramappa was also acquitted of the charge of negligent driving by a criminal court and therefore, the Tribunal holding that the accident occurred due to his negligence is not sustainable.

7. On the other hand, learned counsel for the claimants submitted that the Tribunal upon meticulous appreciation of the entire evidence on record has found that the accident was caused by one Prabhu @ Parashuramappa, whose negligent driving of the offending vehicle caused the accident in which the deceased sustained injuries and succumbed to the same. It is further submitted that the Tribunal erred in

assessing the income of the deceased at Rs.4,500/- per month when Ex.P11 and Ex.P12 clearly indicate that the deceased was a mechanical engineer with Assured Solutions, Bangalore earning Rs.25,000/- per month. It is also submitted that the Tribunal is not making any additions towards future prospects. It is urged that the amount of compensation awarded by the Tribunal under the conventional heads are on the lower side and the same deserves to be enhanced suitably.

8. We have considered the submissions made by learned counsel for the parties and have perused the record. The Supreme Court in '**MANGALA RAM VS. ORIENTAL INSURANCE CO.**', (2018) 5 SCC 656 has held that the proceeding under the Act has to be decided on the basis of preponderance of probabilities and the claimant is not required to prove the accident beyond reasonable doubt. In the instant case, PW2 who is an eye witness to the accident has stated that the accident occurred due to the negligence of the driver of the offending vehicle. He has further stated that he was traveling next to the deceased at the time of the

accident and that he too sustained minor injuries in the accident. Nothing to the contrary has been elicited in his cross examination. PW8 who is also an eye witness, has also deposed to the aforesaid effect and nothing to the contrary has been elicited from his cross examination. EX.P1 FIR and Ex.P7 Chargesheet have been filed against the driver of the offending vehicle. Ex.P2 Mahazhar and Ex.P3 IMV Report corroborate the version of accident as pleaded by the claimants. Per contra, no evidence has been adduced by the Insurance Company to prove the version of accident as alleged by them. It is pertinent to note here that the involvement of the offending vehicle in the accident is not disputed by the Respondents, though, there is dispute with regard to the identity of the driver of the offending vehicle. The fact that the driver of the offending vehicle has been acquitted of the charge of negligence by a criminal court is of no consequence to the claim of the claimants under Section 166 of the Act which is to be decided on the basis of preponderance of probabilities of the evidence adduced by the parties. The Tribunal after meticulous appreciation of the entire evidence on record has recorded a finding that the

accident occurred due to the negligence of the driver of the offending vehicle. Therefore, the finding of the Tribunal that the accident occurred due to the negligence of the driver of the offending vehicle is affirmed.

9. Now we may advert to the quantum of compensation. Ex.P11 are the degree marks sheets and certificates of the deceased which disclose that the deceased was a mechanical engineer. Ex.P12 is the salary certificate issued by the proprietor of Assured Solutions where the deceased was employed indicating that the claimant was drawing a salary of Rs.25,000/- per month. However, the contents of the said document has not been proved in accordance with law by examining the author of the document. The Tribunal has assessed the income of the deceased notionally at Rs.4,500/- per month. The guidelines issued by Karnataka Legal Services Authority with regard to the income of the deceased in motor vehicle accident cases to be adopted by the Lok Adalaths for the accident of the year 2009 is Rs.5,000/- per month. Therefore, though no proof of income of the deceased is adduced by the claimants,

taking into consideration the age of the deceased, the fact that the deceased was an engineering graduate and the guidelines issued by the Karnataka Legal Services Authority, we assess the income of the deceased at Rs.8,000/- per month notionally.

10. In view of the law laid down by the Constitution Bench of the Supreme Court in '**NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI AND OTHERS'** **AIR 2017 SC 5157**, 40% of the amount has to be added on account of future prospects as the deceased. Thus, the monthly income comes to Rs.11,200/-. Since, the deceased was a bachelor, therefore, half of the amount has to be deducted towards personal expenses and therefore, the monthly dependency comes to Rs.5,600/-. Taking into account the age of the deceased which was 27 years at the time of accident, the multiplier of '17' has to be adopted. Therefore, the claimants are held entitled to (Rs.5,600x12x17) i.e., Rs.11,42,400/- on account of loss of dependency.

11. In view of laid down by the Supreme Court in **'MAGMA GENERAL INSURANCE CO. LTD. VS. NANU RAM & ORS.'** (2018) 18 SCC 130, which has been subsequently clarified by the Supreme Court in **'UNITED INDIA INSURANCE CO. LTD. Vs. SATINDER KAUR AND ORS.'** AIR 2020 SC 3076 each of the claimant's are entitled to a sum of Rs.40,000/- on account of loss of consortium and loss love and affection. Thus, the claimants are held entitled to Rs.80,000/-. In addition, claimants are held entitled to Rs.30,000/- on account of loss of estate and funeral expenses. Thus, in all, the claimants are held entitled to a total compensation of Rs.12,52,400/-. Needless to state that the enhanced amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of the petition till the payment is made.

12. Now we may advert to the issue of liability to pay the compensation. It is the specific case of the Insurance Company that there is a violation of the policy condition as the driver of the offending vehicle viz., one Parashuram did not have a valid driving license at the time of the accident

and that the police authorities in collusion with the claimants and the owner of the offending vehicle have implicated the name of one Prabhu D @ Parashuram who had a valid driving licence as the driver of the offending vehicle. To substantiate the aforesaid contention, the Insurance Company has examined RW4 who was an investigator with the Insurance Company, who has stated in his evidence that the driver as mentioned by the police in Ex.P7 Chargesheet viz., one Prabhu D @ Parashuramappa is not the driver of the offending vehicle but one Parashuramappa s/o Giddahalappa who did not possess a valid and effective driving licence. He further stated that the aforesaid statement made by him is on the basis of the investigation undertaken by him and that Ex.R2 and R3 are report of his investigation and the electronic record of the conversation he had with one Parashuramappa s/o Giddahalappa regarding the accident in which the said Parashuramappa s/o Giddahalappa has admitted that he was driving the offending vehicle and had caused the accident. Ex.R5 to Ex.R10 are said to be the statements of relatives of said Parashuramappa s/o Giddahalappa to the effect that the said Parashuramappa s/o

Giddahalappa was the driver of the offending vehicle at the time of the accident.

13. Per contra, the claimants have examined the aforesaid relatives of the said Parashuramappa s/o Giddahalappa who have denied making such statements to RW3. It is pertinent to note here that the police authorities have after conducting a through investigation have filed a chargesheet against one Prabhu D @ Parashuramappa who was driving the offending vehicle at the time of the accident. Moreover, none of the aforesaid relatives were eye witnesses to the accident and none of their statements with regard to the accident can be taken to be reliable. Ex.R3 Memory Card, though pertains to a conversation, no reliance can be placed on the same is not authentic evidence of the identity of the said Parashuramappa s/o Giddahalappa. The evidence adduced by the Insurance Company in particular Ex.R3, Ex.R2 as well as the testimony of RW4, in our opinion do not give rise to an inference that the chargesheet filed by the police is false and cannot be said to rebut the presumption raised by the Chargesheet that one Prabhu @

Parashuramappa was the driver of the offending vehicle which has been recorded on the basis of the witness statements made under Section 161 of the Criminal Procedure Code 1973. Therefore, the Respondent No.1 to No.3 and No.5 in M.V.C.No.993/2009 are held jointly and severally liable to pay the aforesaid total amount of compensation. In view of the existence of a valid insurance policy in respect of the offending vehicle with Respondent No.3 and Respondent No.5, they are directed to pay the total amount of compensation to the extent of 50% each within 6 weeks from today.

To the aforesaid extent, the judgment passed by the Tribunal in M.V.C.No.993/2009 is modified. The amount of deposit, if any, shall be transmitted to the Tribunal.

Accordingly, MFA No.7860/2015 is partly allowed, whereas, MFA No.2928/2015 is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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