



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 31ST DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE V.SRISHANANDA

MISCELLANEOUS FIRST APPEAL No.24692 OF 2011 (MV-D)

BETWEEN:

1. SMT. SHANTA W/O. SHIVANAND GENANI,
AGE: 33 YEARS, OCC: HOME MAKER,
R/O: KHAIRKODI TALUK: RAIBAG,
DIST: BELAGAVI.
2. KUMARI. POOJA D/O. SHIVANAND GENANI,
AGE: 15 YEARS, OCC: STUDENT,
R/O: KHAIRKODI TALUK: RAIBAG,
DIST: BELAGAVI.
3. KUMARI. TANUJA D/O. SHIVANAND GENANI,
AGE: 13 YEARS, OCC: STUDENT,
R/O: KHAIRKODI TALUK: RAIBAG,
DIST: BELAGAVI.
4. KUMAR. KARTIK S/O. SHIVANAND GENANI,
AGE: 11 YEARS, OCC: STUDENT,
R/O: KHAIRKODI TALUK: RAIBAG,
DIST: BELAGAVI.
5. KUMAR. GANAPATI S/O. SHIVANAND GENANI,
AGE: 9 YEARS OCC: STUDENT,
R/O: KHAIRKODI TALUK: RAIBAG,
DIST: BELAGAVI.

SINCE PETITIONER NO.2 TO 5
ARE MINORS REP. BY THEIR MOTHER
PETITIONER NO.1 NATURAL GUARDIAN,


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6. SHRI. SHANAKAR BAGAPPA GENANI,
AGE: MAJOR OCC: NIL,
R/O: KHAIRKODI TALUK: RAIBAG,
DIST: BELAGAVI.
7. SMT. MALABAI W/O. SHIVANAND GENANI,
AGE: 30 YEARS OCC: HOME MAKER,
R/O: KHAIRKODI TALUK: RAIBAG,
DIST: BELAGAVI.

...APPELLANTS

(BY SRI. ASHOK A.NAIK, ADVOCATE)

AND:

1. SRI. MOHAN MARUTI INGALE,
AGE : MAJOR, OCC: AGRICULTURE,
R/O: CHINEHALI TQ: RAIBAG,
DIST: BELAGAVI.
(OWNER OF MOTOR CYCLE NO.KA-22/S-9767)
2. THE DIVISIONAL MANAGER ,
NATIONAL INSURANCE COMPANY CO, LTD.,
DIV.OFFICE RAMADEV GALLI, BELAGAVI.

...RESPONDENTS

(BY SRI. RAJESH B. RAJANAL, ADVOCATE FOR R2;
R1 SERVED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 19.03.2010 PASSED IN MVC NO.2688/2007 ON THE FILE OF THE PRL. CIVIL JUDGE (SR.DN) AND MEMBER, ADDL. MACT, BELAGAVI, DISMISSING THE PETITION FILED UNDER SECTION 163-A OF MV ACT.

THIS MISCELLANEOUS FIRST APPEAL, COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:



JUDGMENT

Heard Sri Ashok A.Naik, advocate for appellants and Sri Rajesh B. Rajanal, advocate for respondent No.2.

2. The present appeal is filed by the unsuccessful claimant in MVC No.2688/2007 challenging the validity of the judgment and award dated 19.03.2010 on the file of the Prl. Senior Civil Judge and Additional MACT, Belgaum.

3. The facts in brief which are utmost necessary for disposal of the appeal are as under:

A claim petition came to be filed under Section 163A of the M.V.Act seeking compensation on the ground that the rider of the motor cycle bearing registration No.KA-22/S-9767 died in the road traffic accident that occurred on 12.09.2007, within the limits of Raibag, on Raibag-Bekkeri Road, at about 08.00 pm.

4. Notice of the claim petition was issued and respondent No.2- Insurance Company of the motor cycle appeared and denied the claim petition averments in *toto*.



5. The Tribunal raised necessary issues and recorded the evidence of the dependents of the rider of the motor cycle and relied on seven documentary evidence furnished on behalf of the claimants and insurance policy Ex.R.1. Tribunal after quantifying the compensation amount in a sum of Rs.4,41,500/-, dismissed the claim petition on the ground that the rider has stepped into the shoes of the owner of the motor cycle and therefore, Insurance Company is not liable to pay the compensation.

6. Being aggrieved by the same, claimants are in appeal.

7. Reiterating the grounds urged in the appeal memorandum, Sri Ashok A.Naik, advocate for the claimants contended that the Insurance Company be made liable to pay the compensation at the first instance and recover from the owner, and sought for allowing the Appeal, contending that the Tribunal has wrongly dismissed the claim petition, though it has quantified the compensation in a sum of Rs.4,41,500/-.

8. Per contra, Sri Rajesh B.Rajanal, advocate for respondent No.2-Insurance Company, supported the impugned judgment by contending that, in the absence of any extra premium paid



by the owner, the rider who is borrower of the motor cycle from the first respondent, stepped into the shoes of the original owner and as such, dismissal of the claim petition is perfectly justified.

9. Perused the material on record meticulously, in view of the rival contentions of the parties.

10. On such perusal of the material on record, there is no dispute that Shivanand Genani died in the road traffic accident involving motor cycle bearing registration No.KA-22/S-9767. Though the motorcycle was duly insured, there was no extra premium paid to cover the personal accident claim. Further, the deceased had borrowed the motor cycle from first respondent who is owner of the motor cycle viz., Mohan Maruti Ingale.

11. In the absence of any extra premium being paid, the Tribunal came to the conclusion that in a matter of this nature, in the absence of any extra premium being paid covering the personal accident claim, the deceased steps into the shoes of the original owner and therefore, dependents of the deceased



are not entitled to claim compensation for the own fault of the owner as against the insurer and dismissed the claim petition.

12. Even on re-appreciation of the material on record, this Court does not find any legal infirmity in dismissing the claim petition by the Tribunal.

13. Accordingly, the following:

ORDER

(i) Appeal is meritless and is accordingly ***dismissed***.

(ii) No order as to costs.

Sd/-
JUDGE

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List No.: 1 Sl No.: 39