



IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 31ST DAY OF JULY, 2024

BEFORE

THE HON'BLE MR. JUSTICE N.S.SANJAY GOWDA

MISCL. FIRST APPEAL NO.203716 OF 2023 (MV-D)

BETWEEN:

SMT. GULASHAN
W/O MAHIBOOB PHULMAMADI @ SAYYED
AGE: 49 YEARS, OCC: HOUSEHOLD
R/O. VADAKABAL,
BASAVA NAGAR, SOLAPUR
NOW AT SIDDESHWAR NAGAR
TIKOTA ROAD, VIJAYAPURA.

...APPELLANT

(BY SRI SANGANAGOUDA V. BIRADAR, ADVOCATE)

Digitally signed
by RENUKA
Location: HIGH
COURT OF
KARNATAKA

AND:

1. M/S CHETAK LOGISTICS LTD.,
PLOT NO.8 SECTOR-6,
MAIN MATHURA ROAD,
FARIDABAD-121001
(HARYANA)
(OWNER OF LORRY NO.HR-38/U-9077).
2. THE BRANCH MANAGER
THE NEW INDIA ASSURANCE
COMPANY LIMITED
HANAMSHETTI BUILDING,
GURUKUL ROAD,



VIJYAPURA-586101.

...RESPONDENTS

(NOTICE TO R1 IS DISPENSED WITH;
SMT. PREETI PATIL MELKUNDI ADV. FOR R2)

THIS MFA IS FILED U/S 173(1) OF MV ACT, PRAYING TO EXERCISE ITS APPELLATE JURISDICTION CALL FOR THE ENTIRE LOWER COURT AND MODIFY THE JUDGEMENT AND AWARD DATED 21.08.2023 PASSED BY THE MOTOR ACCIDENT CLAIMS TRIBUNAL NO.VI, AT VIJAYAPURA IN MVC NO. 578/2019 BY ENHANCING THE COMPENSATION AMOUNT AS PRAYED FOR. AND DIRECT THE RESPONDENT NO. 2 INSURANCE COMPANY TO DEPOSIT THE ENHANCED AWARD AMOUNT AND TO RECOVER THE SAME FROM THE RESPONDENT NO. 1 AS PER THE ORDER OF HONOURABLE SUPREME COURT IN CIVIL APPEAL NO. 20962/2017 (ARISING OUT OF SLP (C) NO.29032/2015), PAPPU AND OTHERS V/S VINOD KUMAR LAMBA AND ANOTHER AND ETC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE N.S.SANJAY GOWDA



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE N.S.SANJAY GOWDA)

1. In respect of the death of Anwarali, a 20 year old boy, the Tribunal has awarded the following sums as compensation:

| Sl. No. | Nature of Heads | Compensation As awarded by the Tribunal (In Rs.) |
|---------|---|---|
| 1. | Loss of dependency $\text{Rs.}10250/- / 2 = \text{Rs.}5,125/-$ $\text{Rs.}5,125/- + 2,050/- (40\%) = \text{Rs.}7175/-$ $(\text{Rs.}7,175/- \times "18" \times 12)$ | 15,49,800/- |
| 2. | Funeral expenses | 16,500/- |
| 3. | Filial Consortium | 40,000/- |
| | Total | 16,06,300/- |

2. The Tribunal has, however, exonerated the insurance company of its liability on the ground that the driver of the vehicle did not possess a valid and effective driving licence. Since the Tribunal has recorded a finding that there was a breach of the policy condition, in light of the judgment of the Full Bench of this Court in ***New India Assurance Company Limited vs. Yallavva and***



another, reported in ***ILR 2020 KAR 2239***, the insurance company would be liable to pay the compensation and thereafter, proceed to recover the same from the owner of the offending vehicle.

3. Thus, the finding of the Tribunal insofar as it relates to exonerating the insurance company from its liability is modified and it is held that the insurance company shall satisfy the compensation payable to the claimant and thereafter proceed to recover the same from the owner of the offending vehicle.

4. As far as the compensation is concerned, the income of the deceased is correctly determined by the Tribunal and appropriate deduction and multiplier had also been applied and hence, the amount awarded towards ***loss of dependency*** will have to be maintained.

5. However, in light of the judgment rendered by the Apex Court in ***National Insurance Company Limited vs. Pranay Sethi & Others*** reported in ***(2017) 16 SCC***



680, the claimant shall be entitled to a sum of **Rs.33,000/-** under the **conventional heads** and a sum of **Rs.44,000/-** towards **loss of love and affection**.

6. In the result, the claimant would be entitled to the following sums:

| Sl. No. | Nature of Heads | Compensation As awarded by this Court (In Rs.) |
|---------|----------------------------|--|
| 1. | Loss of Dependency | 15,49,800/- |
| 2. | Loss of love and affection | 44,000/- |
| 3. | Conventional heads | 33,000/- |
| | Total : | 16,26,800/- |

7. Thus, the claimant would be entitled for compensation of **Rs.16,26,800/-** as against Rs.16,06,300/- awarded by the Tribunal, along with interest at the rate of six per cent per annum from the date of petition till its realization.

8. The disbursement of the compensation amount shall be made as per the award of the Tribunal.



9. The Insurance Company is directed to deposit the amount of compensation awarded along with interest within a period of eight weeks from the date of receipt of a certified copy of this judgment, and thereafter, proceed against the owner of the offending vehicle to recover the same.

10. The appeal is accordingly ***allowed in part.***

11. In view of the disposal of the appeal, all pending interlocutory applications, if any, stand disposed of.

Sd/-
(N.S.SANJAY GOWDA)
JUDGE

RK
List No.: 1 Sl No.: 32
CT: VD