



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL NO.10501/2018 (MV-D)

BETWEEN:

1. MAMTAZ
W/O MOHAMMAD SADIQ
AGED ABOUT 50 YEARS
2. MOHAMMED SADIQ
S/O BNT ABBU
AGED ABOUT 57 YEARS

BOTH ARE R/O FARANGIPETE HOUSE
PUDU VILLAGE, BANTWAL TALUK
PRESENTLY R/AT
C/O MOHAMMED ARIEF
AIKAY COMPOUND, KOORNADKA
KEMMINJE VILLAGE, PUTTUR TALUK, D K ... APPELLANTS

(BY SRI.GURUPRASAD B R, ADVOCATE)

AND:

1. VIDYUTH SHETTY
AGED ABOUT 32 YEARS
R/O 4-2221, BHARATH NAGAR CROSS ROAD
BEJAI, MANGALORE
D.K. DISTRICT - 575 001
2. ORIENTAL INSURANCE CO. LTD.
REPRESENTED BY ITS DIVISIONAL MANAGER
BEAUTY PLAZA, HAMPANKATTA
MANGALORE TALUK
DAKSHINA KANNADA -575 001 ... RESPONDENTS

(BY SRI.S.V.HEGDE MULKHAND, ADVOCATE FOR R2;
SERVICE OF NOTICE TO R1 IS HELD SUFFICIENT V/O
DTD:11.11.2024)

Digitally
signed by K S
RENUKAMBA
Location:
High Court of
Karnataka



THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 29/08/2018, PASSED IN MVC NO.1715/2016, ON THE FILE OF THE V ADDITIONAL DISTRICT & SESSIONS JUDGE, AND MEMBER, ADDITIONAL MACT, D.K. MANGALURU, SITTING AT PUTTUR, D.K., DISMISSING THE CLAIM PETITION FOR COMPENSATION.

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

CORAM: HON'BLE MRS JUSTICE K.S.MUDAGAL
AND
HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

ORAL JUDGMENT

(PER: HON'BLE MRS JUSTICE K.S.MUDAGAL)

Challenging dismissal of their claim petition claimants in MVC No.1715/2016 on the file of V Additional District and Sessions Judge and Member, Additional MACT, D.K. Mangaluru sitting at Puttur, D.K, have preferred this appeal.

2. Appellants were claimant Nos.1 and 2 and respondents were respondent Nos.1 and 2 before the Tribunal. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the Tribunal.

3. Claimants are the parents of deceased Mohammad Shafiq. On 24.02.2016 at 2.15 p.m., when Mohammad Shafiq and his friends were traveling in Hyundai Car bearing registration No.K.A-19-MD-6736 near Katageri village of



Madikeri Taluk, Tipper lorry bearing registration No.K.A-19-AB-2073 hit the said Car. In the accident Mohammad Shafiq suffered grievous injuries. He succumbed to the injuries when he was being shifted to the hospital. At the relevant time, respondent Nos.1 and 2 were the registered owner and insurer of Tipper lorry bearing registration No.K.A-19-AB-2073.

4. Claimants filed MVC No.1715/2016 against the respondents claiming compensation of Rs.25,00,000/- contending that the accident and consequential death of Mohammad Shafiq took place due to the actionable negligence on the part of the driver of Tipper lorry bearing registration No.K.A-19-AB-2073. They further contended that the deceased was working as supervisor, earning Rs.19,000/- per month and they were all dependent on his income. They claimed that due to the death of Mohammad Shafiq they have suffered damages of Rs.25,00,000/- and respondents are liable to pay the same.

5. Respondent No.1 did not contest the petition. Respondent No.2 contested the petition denying actionable negligence on the part of driver of insured Tipper lorry, age, occupation, income of the deceased and its liability to pay the compensation. Respondent No.2 contended that driver of Car



bearing registration No.K.A-19-MD-6736 was also equally negligent and accident occurred due to actionable negligence on his part also.

6. Before the Tribunal on behalf of claimants, PWs.1 to 3 were examined and Exs.P1 to P12 were marked. Respondents did not lead any evidence. However, Exs.R1 to R5 namely judgment and award in MVC Nos.559/2016, 706/2016, 712/2016 and 1645/216 were marked on behalf of respondent No.2.

7. The Tribunal on hearing the parties and relying on Exs.R1 to R5 held that the accident occurred solely due to actionable negligence on the part of driver of Car and dismissed the petition. Claimants have preferred the above appeal challenging the said award.

8. Sri Guruprasad B.R, learned Counsel for the appellants-claimants submitted copy of judgment in MFA No.9019/2017 and connected appeals rendered on 10.11.2020 by this Court, wherein, this Court has reversed the finding of MACT that accident occurred solely due to actionable negligence on the part of driver of Car. This Court has held that



the accident occurred solely due to actionable negligence on the part of driver of lorry.

9. Sri S.V.Hegde Mulkhand, learned Counsel for respondent No.2 fairly conceded that the judgment in MFA No.9019/2017 has attained finality. Claim petition in the present appeal also arose out of the same accident. Therefore, finding of the Tribunal that the accident occurred due to actionable negligence on the part of the driver of the Car does not sustain. It has to be held that the accident occurred solely due to the actionable negligence on the part of the driver of the insured lorry. Then the only question that remains for consideration what would be the just compensation payable.

10. As per Ex.P10/copy of the driving licence, date of birth of the deceased was 20.07.1996. Accident occurred on 24.02.2016. Therefore, as on the date of accident he was aged 20 years. Though claimant relied on the evidence of PW.3 to claim that the deceased was working as supervisor in Arafa Trading and Company and receiving salary of Rs.19,500/- per month, except the salary slip, no other material was produced to show the existence of business and company of PW.3 by name Arafa Trading and Company and employment of the



deceased in such company. No Bank statements or income tax returns of the said company were produced. Therefore, employment and income of the deceased as stated by PW.3 and Ex.P12 cannot be accepted. Therefore, notional income has to be taken.

11. As per the chart prepared by Karnataka State Legal Services Authority to assess notional income, in the year 2016, the notional income of a person is Rs.9,500/-. Considering the age of the deceased, his employment and judgment of Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi and Others¹**, 40% has to be super added to his income by way of future prospects. As the deceased was bachelor, 50% of his income has to be deducted for his personal expenses. Applicable multiplier is 18. Therefore compensation on the head of loss of dependency comes to $(Rs.9,500 + 3800(40\%) = 13,300 \times 50\% \times 12 \times 18) = Rs.14,36,400/-$.

12. As per the judgments of Supreme Court in **Pranay Sethi's** case referred to supra and in **Magma General Insurance Company Limited vs. Nanu Ram & Ors²**, claimants

¹(2017) 16 SCC 680

²(2018) 18 SCC 130



are entitled to the consortium at the rate of Rs.40,000/- each with escalation at 10%. Further on conventional heads of loss of estate, funeral expenses and transportation of dead body, claimants are entitled to sum of Rs.15,000/- + Rs.15,000/- each with escalation at 10%. Therefore, the just compensation payable is as follows:

| Particulars | Amount (Rs.) |
|--|--------------------|
| Loss of dependency | 14,36,400/- |
| Loss of consortium | 88,000/- |
| Loss of estate | 16,500/- |
| Funeral expenses and transportation of dead body | 16,500/- |
| Total | 15,57,400/- |

13. As the vehicle was covered with policy issued by respondent No.2 - insurer is liable to compensate the damages with interest at 6% p.a. The appeal deserves to be allowed in part. Hence, the following:

ORDER

- i. The appeal is allowed in part.
- ii. The impugned judgment and order of the Tribunal dismissing the claim petition in MVC No.1715/2016 is hereby set aside.



iii. The claimants are entitled to compensation of Rs.15,57,400/- with interest thereon at 6% p.a. from the date of petition till its realization.

iv. Respondent No.2 - insurer shall deposit the said amount within four weeks from the date of receipt of copy of this order.

v. Out of the compensation amount, claimant Nos.1 and 2 are entitled to 50% each.

vi. On deposit of amount, the Tribunal shall digitally release the amount to them according to their shares.

Sd/-
(K.S.MUDAGAL)
JUDGE

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE