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JUDGMENT

Though this appeal is listed for admission, with the consent of both the parties, it is taken up for final disposal.

2. The present appeal is filed by the insurance company questioning the quantum of compensation awarded in judgement and award passed in MVC No.339/2012 on the file of I Additional Senior Civil Judge and Additional MACT, Hubballi as well as not considering the contributory negligence aspect.

3. Factual matrix of the case of the claimants before the Tribunal is that on 12.04.2012 the Smt. Renuka W/o Gangappa Saunshi was travelling in tempo towards Hubballi to attend a marriage function and when the said vehicle reached near Yamanur, at that time a lorry bearing Reg.No.KA-25/C-19 came and dashed to the tempo from opposite direction. As a result, the Renuka sustained grievous injuries and immediately she was taken to PHC,



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Navalgund, thereafter to KIMS Hospital, Hubballi and she succumbed during the course of treatment on account of accidental injuries. Hence, the claimants being the dependants, laid a claim before the Tribunal.

4. In pursuance of the claim petition, notice was ordered and respondent No.1 remained absent and respondent No.2 was represented through counsel and filed detailed statement of objections. The claimants in order to substantiate their claim, have examined the husband of deceased as PW.1 and also examined one witness as PW.2 and got marked documents as Exs.P.1 to P.6. On the other hand, the respondents have not led any evidence.

5. The Tribunal after considering both the oral and documentary evidence on record, allowed the claim petition in part granting compensation of Rs.5,91,600/- with interest at the rate of 6% p.a. against respondent Nos.1 and 2.



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6. Being aggrieved by the impugned judgment and award, the present appeal is filed by the insurance company contending that there is contributory negligence on the part of the driver of the tempo in which the deceased was travelling. Learned counsel appearing for the insurance company also contended that the tempo has been used for transporting the marriage party, as such the charge sheet has been filed only against the driver of the lorry. The Tribunal has swayed away by the charge sheet and gave a finding to the effect that the accident has occurred due to the negligence on the part of the driver of the lorry alone, which is erroneous and hence it requires interference since there is contributory negligence on the part of the driver of the tempo also.

7. The other contention of the insurance company is that the claim petition has been filed by the husband of the deceased and major and married daughters of the deceased. The claimant No.1 is a retired school teacher and pensioner and major children cannot be called as



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dependants upon their deceased parents. The Tribunal instead of awarding compensation only under the head of loss of estate, has awarded compensation under the head of loss of dependency, which is erroneous.

8. The other contention of the insurance company is that claimant No.1 is the husband of deceased who has been examined as PW.1 and during his cross-examination it is elicited that at the time of marriage he was aged about 24-25 years and the age of his wife was 19 years. That means the age gap between claimant No.1-husband and deceased-wife was of six years and the accident has occurred in the year 2012 and the witness has been deposed in the year 2013. Witness has deposed in his evidence that he was aged 64 years. If the said fact is taken into consideration, the deceased was 57 years old as on the date of accident. Hence, the multiplier would be 9 and not 13 as is adopted by the Tribunal.

9. Learned counsel for the appellant-insurance company also in his argument relied upon the judgement



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of the Hon'ble Apex Court in the case of **Smt.Manjuri Bera vs. The Oriental Insurance Company Limited and Another** passed in Civil Appeal No.1702/2007 dated 30.03.2007 and referring to this judgement, he would submit that the married daughters are not dependents. Counsel also relied upon the judgement of this Court passed in MFA No.347/99 in the case of **A.Manavalagan vs. A.Krishnamurthy and Others**, wherein also this Court held about what would be the position if the claimant legal heir is not a dependent and held that question of awarding any amount under the head loss of dependency would not arise as there was no financial dependency.

10. Learned counsel referring to these two judgements, would vehemently contend that the Tribunal failed to take note of the fact that the married daughters and major children are not dependants and hence they are not entitled for compensation and hence, it requires interference of this Court.



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11. Further, learned counsel also contends that the deduction made by the Tribunal at 1/5<sup>th</sup> is erroneous and it ought to have been 1/4<sup>th</sup> considering the number of dependants and hence it requires interference of this Court.

12. *Per contra*, learned counsel for appearing for the claimants would vehemently contend that the married daughters are also entitled for compensation. In support of his contention, he relied upon the judgement of the Hon'ble Apex Court reported in **MANU/SC/0028/2020** in the case of **National Insurance Company Limited vs. Birender and Others** and brought to the notice of this Court that Hon'ble Apex Court in similar circumstances held that even major legal representatives of deceased have a right to apply for compensation and even major married and earning sons of deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether



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the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only. Hence, the very contention of the insurance company cannot be accepted.

13. Counsel also relied upon the judgement of the Hon'ble Apex Court reported in **(1987) 3 SCC 234** in the case of **Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and Another**, wherein the Apex Court held that brother of a person who dies in any motor vehicle accident is entitled to maintain a claim petition under Section 110-A of the Motor Vehicles Act if he is the legal representative of the deceased. It is further held that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family.

14. Counsel also relied on the judgement of Kerala High Court reported in **ICL 2021 (8) Ker. 893** in the case of **United India Insurance vs. Shalumol** dated



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25.08.2021, wherein it is discussed that in a petition under Section 166 of Motor Vehicles Act whether dependency is a relevant criterion in a claim petition or whether the parents and married daughters entitled to claim compensation as dependants of the deceased and held that it would be preposterous to accept the contention of the appellant that a 25 year old daughter would be no longer dependent on 49 year old mother because she was given in marriage. The bond between the mother and a daughter is eternal, no matter how she old may be, some times a girl just needs her mom. Even the dependency is a relevant criterion to claim compensation for loss of dependency, it does not mean financial dependency is the 'ark of covenant'. Dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of the money.

15. Further, learned counsel would also contend that the insurance company did not choose to examine



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any witness and now cannot contend that there was contributory negligence and hence, the appeal is liable to be dismissed.

16. Having heard the learned counsel for the parties and on perusal of the material on record, the following points would arise for consideration:

- i. Whether the Tribunal has committed error in not considering contributory negligence as contended by the insurance company?*
- ii. Whether the Tribunal has committed error in considering the major and married daughters of the deceased as dependants?*
- iii. Whether the Tribunal has committed any error in awarding higher compensation as contended in the appeal?*
- iv. What order?*

17. **Regarding Point No.1:** The main contention of the insurance company is that the tempo in which the deceased was travelling is a goods vehicle and she had been to attend the marriage and while returning to her



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native the accident has occurred in the curve and hence, contends that there is contributory negligence on the part of the driver of the tempo in which the deceased was travelling and hence the Tribunal ought to have taken contributory negligence aspect into consideration. In order to substantiate this contention first of all insurance company has not examined the driver of the offending vehicle, who is the right person to speak with regard to negligence and insurance company also not even examined the official witness of the insurance company to substantiate the said contention.

18. In the cross-examination of PW.1 except making the suggestion that the accident was occurred on account of negligence of the driver of the vehicle in which the deceased was travelling, nothing is elicited regarding negligence is concerned. When the insurance company has failed to elicit any negligence on the part of the driver of the tempo in the evidence of PW.1 and also in the cross-examination of PW.2, question of Tribunal coming to the



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conclusion of contributory negligence does not arise. Apart from that, either the investigating officer or the driver of the offending vehicle has been examined and I have already pointed out that the right person to speak with regard to the negligence on the part of the driver of the vehicle in which the deceased was proceeding, nothing is on record. Therefore, unless there is cogent evidence before the Court with regard to negligence, question of considering contributory negligence does not arise.

19. Apart from that, the claimants have relied upon the FIR which is marked as Ex.P.1, wherein specific allegation is made against the driver of the offending vehicle and charge sheet is also filed against him which is marked as Ex.P.3 and both oral and documentary evidence is against the driver of the offending vehicle. When such being the case and in the absence of any contra evidence against the driver of the vehicle in which the deceased was travelling, I do not find any force in the contention of the learned counsel for insurance company and the contention



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that the deceased was travelling in a goods tempo cannot be a ground to fasten the liability on the other vehicle owner and insurance company since there is no material to invoke contributory negligence. The Court has to see whether the driver has contributed to an accident and the same is not found in the case on hand. Hence, I answer point No.1 in negative.

20. **Regarding point Nos.2 & 3:** Now coming to the other two grounds which have been urged by the insurance company are that the married daughters of the deceased are not the dependants while claiming loss of dependency and other contention is that in the cross-examination of PW.1 it is elicited that the age difference between claimant No.1-husband and deceased-wife is only six years and he categorically admits that he was 64 years when he was examined in the year 2013.

21. In support of contention of the appellant, counsel has relied upon the judgement in the case of ***Manavalagan*** supra. The said judgement is delivered on



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17.04.2004. No doubt, this Court held that loss of dependency to be taken while quantifying the compensation on the head of loss of dependency. Per contra, counsel for the claimants relied upon the judgement in the case of **Birender** supra and the Apex Court decided the said matter on 13.01.2020, wherein categorically held that it is settled by now that legal representatives of the deceased have a right to apply for compensation. It is further observed that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only. In view of the principles laid down in **Birender's** case, judgement in **Manavalagan's** case of this Court is not applicable to the case on hand as contended by learned counsel for insurance company.



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22. No doubt learned counsel for insurance company also relied upon judgement in **Manjuri Bera** decided on 30.03.2007, wherein the Apex Court discussed earlier the contention taken by married daughter and the same was rejected as she is not dependent. But in view of recent judgement in **Birender**, the Apex Court discussed in detail regarding the word 'legal representatives of the deceased' and considering an application under Section 166(1) of Motor Vehicles Act and the judgement in **Manjuri Bera** is also taken note of by the Apex Court and held that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation irrespective of the fact whether legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. Hence, the said contention of insurance company cannot be accepted in view of **Birender's** case.

23. The Apex Court in the said judgement further held even married sons are also entitled for compensation.



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This Court also cannot make any discrimination whether they are married sons or married daughters and hence, very contention that married daughters of deceased are not entitled for compensation cannot be accepted and the Court has to take note of the rationale behind in coming to the conclusion of even married sons and major sons are eligible to claim compensation and hence the married daughters also entitle for compensation on all the heads and not to limit only for conventional heads.

24. Counsel for respondents/claimants also relied upon a judgement of Kerala High Court in the case of ***Shalumol*** supra. In paragraph Nos.50 and 51 of the said judgement, Kerala High Court also held that bond between the mother and daughter is eternal and further observed that even if the dependency is relevant criterion to claim compensation for loss of dependency, it does not mean financial dependency is the 'ark of the covenant'. Dependency includes gratuitous service dependency, physical dependency, emotional dependency,



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psychological dependency so on and so forth, which can never be equated in terms of the money.

25. Having considered the principles laid down in the judgements referred to supra, this Court has taken note of recent judgement of the Apex Court in ***Birender***, wherein it is held that even married sons are entitled for compensation not only on conventional heads but also on loss of dependency. Hence, the very contention of the appellant-insurance company cannot be accepted.

26. This Court also would like to rely upon the judgement of the Division Bench of this Court in MFA No.118/2018 dated 26.03.2021, wherein also this Court by relying upon the judgement in ***Birender***, held that even married sons are also entitled for compensation not only on conventional head but also on loss of dependency.

27. The other contention of the insurance company is that 13 multiplier adopted by the Tribunal is erroneous and in order to substantiate the said contention except



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eliciting answers from cross-examination of PW.1 that deceased might have six years younger to him, nothing is on record and the Court has to take note of the age of the deceased based on documentary evidence. On perusal of material on record, the claimants have relied on Ex.P.4- postmortem report, wherein age of the deceased is mentioned as 48 years and in order to controvert the said age, respondents have not placed any material before the Tribunal and also not even examined any witnesses.

28. No doubt I have already pointed out that an answer is elicited from the mouth of PW.1 regarding age difference and when the documentary evidence is available before the Court, the documentary evidence prevails against oral evidence and doctor who conducted postmortem has categorically mentioned the age of deceased as 48 years and hence, very contention of insurance company that Tribunal ought to have taken 9 multiplier and not 13 cannot be accepted.



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29. The Tribunal based on the Ex.P.4-postmortem report and while giving reasons also in the order it is mentioned that in order to prove the age of the deceased, the claimants have produced Ex.P.4 which shows the age as 48 years and also taken note of charge sheet which is marked as Ex.P.3, wherein also age of the deceased is mentioned as 48 years as on the date of accident. Hence, the Tribunal has taken the age of deceased as 48 years as on the date of accident and to rebut the said material, no other evidence has been placed before the Tribunal by the respondents. Hence, the said contention also cannot be accepted.

30. It is also important to note that while assessing loss of dependency, the Tribunal has taken note of Ex.P.6 which is warranty card regarding purchase of durby sewing machine. The Tribunal has taken the income of the deceased as Rs.4,500/- and deducted 1/5<sup>th</sup> of the income towards personal expenses considering husband, daughters and also sons as dependants and the very



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contention that the Tribunal ought to have deducted 1/4<sup>th</sup> of the income cannot be accepted. Apart from that future prospects also has not been considered by the Tribunal while calculating loss of dependency and no appeal is filed by the claimants as against the quantum of compensation and having taken note of this aspect into consideration, I do not find any force in the contention of learned counsel for insurance company that exorbitant compensation has been awarded by the Tribunal. Hence, I answer point Nos.2 and 3 in the negative.

31. **Regarding point No.4:** In view of the discussions made above, I pass the following:

ORDER

Appeal is dismissed. No cost.

**Sd/-  
JUDGE**

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