



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2023

BEFORE

THE HON'BLE DR. JUSTICE H.B.PRABHAKARA SASTRY

MISCELLANEOUS FIRST APPEAL NO. 2603 OF 2017 (MV-I)

Between:

M/s. National Insurance Company Ltd.,
Motor Claims Hub,
No.144, 2nd Floor,
Subharam Complex,
M.G.Road, Bangalore - 560 001.
Represented By Rekhs S Menon.

...Appellant

(By Smt. Geetha Raj, Advocate)

And:

1. Mrs Asha,
W/o. Late A S Ganesh,
Aged About 41 Years,
2. Kumari A G Pooja
D/o. Late A S Ganesh
Aged About 20 Years,
3. Master A G Yeshwanth
S/o. Late A S Ganesh
Aged About 18 Years,

All are permanent residents of
Door No.3/46,
Nehrunagar, Police Line,
Palamenr Town, Chitoor District,
Andrapradesh - 517 408.



Permanently residing at No.109,
LVS Appartments
T C Palya, K R Puram,
Bangalore - 560 036.

4. Mr. K Harish,
S/o. K Krishna,
Aged About 43 Years,
Resident of No.3/102,
Tharesabai Compound,
Bikarnakatte,
Kulshekar Post,
Manglore - 575005.

...Respondents

(By Sri. Sathisha T., Advocate for R-1 to R-3;
R-4 - notice dispensed with vide order dt.17-10-2017)

This Miscellaneous First Appeal is filed under Section 173(1) of the Motor Vehicles Act, 1988, praying to call for the records and modify the judgment and award dated 27-01-2017, passed by the Motor Vehicles Accident Claims Tribunal, Bangalore City, SCCH-14 in M.V.C.No.3021/2016, in the interest of justice and equity.

This Miscellaneous First Appeal coming on for Final Hearing through Physical Hearing/Video Conferencing, this day, the Court delivered the following:

JUDGMENT

The present appellant was respondent No.2 in M.V.C.No.3021/2016, filed by the present respondents No.1 to 3 (claimants) against the present respondent No.4



and the present appellant, arraigning them as respondents No.1 and 2 respectively, in the Court of the Member, Motor Accident Claims Tribunal, and XVI Additional Judge, Court of small Causes, Bangalore, (hereinafter for brevity referred to as "the Tribunal").

2. The present respondents No.1 to 3, who were the claimants before the Tribunal in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter for brevity referred to as "the M.V. Act") have stated that, on the date 27-03-2016, at about 9:15 p.m., the husband of the claimant No.1, who was also the father of the claimant Nos.2 and 3 respectively was going on his Motor Cycle bearing Registration No.AP-03/AN-9551, on Palamaner-Chittoor Main Road, in Chittoor District. While he was near Rangababu Cross, a Motor vehicle Maxi Cab bearing Registration No.KA-19/D-3040, being driven by its driver at a high speed, in a rash and negligent manner, came from Chittoor side and dashed against the Motor Cycle of the deceased. Due to the said road traffic



accident, the deceased sustained grievous injuries and succumbed to the said injuries on the spot.

The claimants in their claim petition have stated that, at the time of the road traffic accident, the deceased was aged about 47 years and was earning a sum of ₹50,000/- by doing Cloths business and that all the claimants were depending upon his income. With this, they had claimed compensation of a sum of ₹50,00,000/- from respondents No.1 and 2 therein, arraigning them as the owner and insurer of the motor vehicle Maxi Cab, respectively.

3. In response to the summons from the Tribunal, both the respondents appeared through their counsels. Respondent No.2 filed its statement of objections, denying the manner of occurrence of the road traffic accident, as contended by the claimants. It also specifically denied the age, income and occupation of the deceased. It categorically stated that the rider of the Motor Cycle and the driver of the alleged offending vehicle Maxi Cab did not possess any valid and effective Driving Licence as at the



time of the occurrence of the road traffic accident. With this, it denied its liability to compensate the claimants in any manner, for the alleged death of the deceased in the said road traffic accident. The respondent No.1 (owner) before it, though appeared, did not file any statement of objections.

4. Before the Tribunal, the claimants got examined claimant No.1 as PW-1 and also examined one Sri.K. Vadivelu Chetty as PW-2 and got marked documents from Exs.P-1 to P-15(a). However, on behalf of the respondents, neither any witness was examined nor any documents were got marked.

5. After framing the issues and recording the evidence led by both side, the Tribunal, by its impugned judgment dated 27-01-2017, allowed the claim petition in part, holding the respondent No.2-Insurance Company (appellant herein) before it, liable to pay the compensation to the claimants of a sum of ₹22,03,000/- under the following heads with the sum shown against them, at the



rate of ₹9% per annum, from the date of petition till the date of payment:

Sl. No.	Particulars	Amount in ₹
1	Loss of dependency	20,28,000-00
2	Loss of love and affection	60,000-00
3	Loss of estate	60,000-00
4	Transportation and funeral expenses	30,000-00
5	Loss of consortium	25,000-00
Total		22,03,000-00

It is being aggrieved by the said judgment and award of the Tribunal, wherein the Tribunal has partly allowed the claim petition filed by the claimants therein (respondents No.1 to 3 herein) and fastening the liability upon the present appellant, who, as an insurer of the alleged offending Maxi Cab, was respondent No.2 before the Tribunal, has preferred the present appeal.

6. Records were called for from the Tribunal and the same are placed before the Court.

7. Learned counsel for the appellant-Insurance Company and learned counsel for respondents No.1 to 3



(claimants) are appearing physically before the Court. On a memo filed by the learned counsel for the appellant (insurer) notice to respondent No.4 (owner) is dispensed with vide order dated 17-10-2017.

8. Heard the arguments from the learned counsel for the appellant - Insurance Company and the learned counsel for respondents No.1 to 3 (claimants). Perused the materials placed before this Court including the memorandum of appeal, impugned judgment and also the records of the Tribunal.

9. The claimants, in order to prove that the occurrence of the road traffic accident, as contended by them in their claim petition has occurred on the date, time and place and in the manner as contended by them in their claim petition, got examined claimant No.1 - the wife of the deceased, as PW-1. They have also got examined one Sri.K. Vadivelu Chetty as PW-2, projecting him as an eye witness to the alleged road traffic accident.



10. The claimant No.1, as PW-1 has reiterated the contentions taken up by the claimants in their claim petition and contended that, though her husband was riding the Motor Cycle with all care, caution and very slowly, however, the road traffic accident has occurred solely, due to the rash and negligent driving of the offending Maxi Cab by its driver. However, she stated in her cross-examination that, she was not an eye witness to the accident and that when her husband was taking a 'U' turn on the right side in a cross at palamaner-Chittoor Road, at that time, the road traffic accident in question has taken place.

11. PW-2 in his cross-examination, though has reiterated that he was an eye witness to the road traffic accident in question, however, has stated that the deceased came to the Circle from Kothapeta side. The said Kothapeta comes towards Palamaner. The deceased was in the centre of Circle and he was taking the vehicle towards his right side, at that time, the road traffic



accident in question has occurred. Thus, claiming himself to be an eye witness, he has stated that, the deceased was on the centre of the Circle and was taking his bike towards right side, by which time, the road traffic accident in question has occurred. The said evidence of the alleged eye witness when read along with the scene of offence panchanama (spot sketch) which is at Ex.P-15, would go to show that, the said road between palamaner and Chittoor near the place of occurrence of accident was with a median, as such, the road was divided into two. The width of the road on one side of the median where the accident has taken place is shown as 16 feet. The place of the road traffic accident is near a Circle and the Motor Cycle is shown to have come to the right side of the median near the Circle, when it was dashed by the Maxi Cab, said to have been coming from Chittoor side towards palamaner.

Thus the evidence of the alleged eye witness as PW-2 when read with the spot sketch at Ex.P-15 would go to show that, the deceased has not taken his Motor Cycle



around the Circle from its left side, but circumvented the Circle and took an immediate right turn, as such, the spot of the accident has fallen in the middle of the road, leading from Chittoor side to Palamaner prior to the centre spot of the Circle. Had the deceased taken a round to the said Circle, keeping himself on the left side and if still assuming that the accident has taken place, then the spot of the accident could not have been on the same spot what is shown in the spot sketch at Ex.P-15, but it should have been much prior to that, since the rider of the Motor Cycle (deceased) was intending to go to his right side by taking a turn. Since he has avoided to take a round of the Circle and must have tried to take a right turn immediately, thus, immediately after he took a turn to circumvent the Circle, the accident has taken place on the other side of the road. Thus the evidence of PW-2 when read along with the documentary evidence at Ex.P-15 would go to show that, there is contribution from the deceased's side also, as the rider of the Motor Cycle for the cause of the road traffic accident. As such, merely because a charge sheet is said



to have been filed against the driver of the Maxi Cab for the offences punishable under Section 304-A of the Indian Penal Code, 1860 and Section 134(a) and (b) of the M.V. Act, by that itself it cannot be concluded that the absolute negligence was solely on the part of the driver of the Maxi Cab only. It is also for the reason that, neither side parties are in a position to submit as to what happened to the alleged crime said to have been registered against the driver of the Maxi Cab.

Thus, considering the evidence of PW-2, who claims himself to be an eye witness and the spot sketch at Ex.P-15, it would go to show that the deceased also, being the rider of the Motor Cycle bearing registration No.AP-03/AN-9551 has contributed to the occurrence of the road traffic accident, by taking his Motor Cycle in a wrong direction circumventing the Circle, as such, there is contributory negligence on the part of the rider of the Motor Cycle also.



No doubt the respondent No.2 (Insurance Company) before the Tribunal has not taken a specific contention by making use of the word 'contributory negligence' in its Statement of Objections, however, it has categorically denied that the accident has occurred in a manner as stated by the complainants (claimants) in their claim petition. It is for the claimants to prove that there was rash and negligent driving of the alleged offending vehicle Maxi Cab by its driver. In the said process, if they are unable to prove that the sole rash and negligent driving was only on the part of the driver of the Maxi Cab and on the other hand, if the respondent/Insurer could able to show that the road traffic accident has not occurred in the manner as agitated by the claimants and could able to establish that there is some contribution on the part of the deceased rider of the Motor Cycle also, then, the Tribunal should not hesitate in fixing the contributory negligence even on the part of the deceased rider of the Motor Cycle also.



12. In the instant case, the claimants could not be able to establish the absolute and total negligence and rashness on the part of the driver of the Maxi Cab in driving the said vehicle. On the other hand, the evidence led by none else than PW-2 coupled with the spot sketch at Ex.P-15 would go to show that, the deceased, who was the rider of the Motor Cycle bearing registration No.AP-03/AN-9551 also has contributed to the occurrence of the road traffic accident. Thus the circumstances of the case, the location/spot of the occurrence of the alleged road traffic accident and the nature of the vehicles would enable this Court to fix the contributory negligence on the part of the deceased rider of the Motor Cycle bearing registration No.AP-03/AN-9551 at 20% and the remaining negligence which would be 80% upon the driver of the Maxi Cab. The Tribunal did not notice these aspects, however being impressed by the charge sheet which was filed against the driver of the Maxi Cab/Tempo traveller bearing registration No.KA-19/D-3040, jumped to the conclusion



that the entire rash and negligent driving of the vehicle was solely on the part of the driver of the said Maxi Cab.

13. The claimants have contended that the deceased was aged about 47 years at the time of the accident and by running a cloth business, was earning a sum of ₹50,000/- per month. The age of the deceased as 47 years is not in dispute and the same is further corroborated with the Post-Mortem report at Ex.P-5. However, the respondents before the Tribunal have seriously disputed the alleged income of the deceased.

Admittedly, the claimants have not produced any income tax returns of the deceased. On the other hand, they have produced two Pass Books of the Bank Account at Ex.P-8. Admittedly, those two Bank Pass Books are not of any Business Account. One of the Bank Pass Book is of the Indian Bank, which is a Joint Account Pass Book, standing in the name of both the deceased and his wife, who is claimant no.1. Admittedly, it was the deceased alone who was running the business, as such, there was



no necessity for him to have a Business account joined by his wife in the form of a Savings Bank account. The other Bank Pass Book in the same exhibit number is of a Savings Bank Account of the deceased with Saptagiri Grameena Bank. The said Bank Pass Book also is not of a Business Account nor it contains the business transactions nor even it is a Profit and Loss statement. As such, merely looking at a Bank Pass Book, it cannot be inferred that the deceased had a particular quantum of income. Needless to say, the alleged occupation of the deceased was business, as such, it is not even an income from salary, so that from the Savings Bank Pass Book, the credit of the salary amount could have been ascertained. Therefore, the only other document which is available to know and assess about the avocation and income of the deceased is the Registration Certificate with the Labour Department at Ex.P-7. The said Certificate, except showing that a Cloth shop is registered in the name of 'Sri Sai Selections' and stands in the name of the deceased Sri. A.S. Ganesh, it throws no more light, much less about



the alleged income of the deceased. However, considering the fact that PW-1, in her evidence has stated that they were living in their own residential house and that the Labour Department Certificate at Ex.P-7 also shows that the deceased had an established business. Hence, the prevailing notional income for the relevant year, which is ₹9,500/- per month is too low to accept. Similarly, it also cannot be believed that the deceased had an income as was stated by PW-1 at a sum of ₹50,000/- per month. Had really the deceased had such an income of ₹50,000/- per month, he should have definitely been an income-tax assessee and that the claimants should have necessarily produced his income-tax returns and other necessary documents to show his income. Thus, the income of the deceased at ₹15,000/- per month, which is taken by the Tribunal as the income of the deceased appears to be quite reasonable and just in the circumstances of the case and I retain the same as the income of the deceased.



As such, the argument of the learned counsel for the appellant (insurer) that the income of the deceased was taken on the higher side by the Tribunal than at ₹9,500/- per month, which was the notional income, is not acceptable.

The Tribunal has added 30% to the income of the deceased towards future prospects, whereas, as per the decision of the Hon'ble Apex Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and others**, reported in **(2017) 16 Supreme Court Cases 680**, for the age group of the deceased, who was aged 47 years, for self-employed persons, the future prospects was required to be taken at 25%. Thus, the total income of the deceased per month would come to a sum of ₹15,000/- + ₹3,750/- = ₹18,750/-.

14. Considering the total number of dependents upon the income of the deceased, who are three in number, the deduction towards personal expenses, as



rightly taken by the Tribunal, is to be taken at $1/3^{\text{rd}}$. Thus, after deducting $1/3^{\text{rd}}$ (i.e. ₹6,250/-) towards the personal and living expenses of the deceased from a sum of ₹18,750/-, the balance would be a sum of ₹12,500/-, which is the contribution of the deceased towards his family, per month. For the age of the deceased being 47 years, the multiplier applicable is '13'. Thus, the quantum of compensation towards loss of dependency would be a sum of ₹19,50,000/- (i.e. ₹12,500/-x12x'13').

15. The claimant No.1 being the wife of the deceased is entitled for compensation towards loss of consortium. Thus, the compensation under the conventional heads including loss of consortium, funeral expenses and loss of estate at ₹40,000/- + ₹15,000/- + ₹15,000/- as per **Pranay Sethi's case (supra)**, would come to a total sum of ₹70,000/-. The parental consortium/loss of love and affection to the two children of the deceased would be at a sum of ₹40,000/- each, which in total comes to a sum of ₹80,000/- (₹40,000/-x2).



16. Thus, the claimants (respondents No.1 to 3 herein) would be entitled to the total modified compensation as tabulated below:

Sl. No.	Particulars	Amount in ₹
1	Loss of dependency	19,50,000-00
2	Loss of consortium and towards loss of love and affection to claimant No.1/respondent No.1 herein	40,000-00
3	Transportation and funeral expenses	15,000-00
4	Loss of estate	15,000-00
5	Loss of filial consortium for claimants No.2 and 3/respondents No.2 and 3 herein @ ₹40,000 to each	80,000-00
Total		21,00,000-00

However, the Tribunal, while awarding the compensation under other heads including the compensation towards loss of love and affection, loss of estate and funeral expenses, has, without any reason since has awarded higher compensation, the same requires to be substituted with the computation made as



above. Thus the quantum of compensation awarded by the Tribunal being higher in a sum of ₹1,03,000/- than what the actual computation now comes, the same deserves to be reduced to the said extent.

17. As observed above, the Tribunal has not considered the contributory negligence on the part of the deceased rider of the Motor Cycle bearing registration No.AP-03/AN-9551, which is now fixed by this Court at 20%, as analysed above. Thus the compensation for which the claimants are entitled to from the appellant herein (respondent No.2 before the Tribunal) would be 80% i.e. a sum of ₹16,80,000/- (after deducting 20% towards the contributory negligence fixed on the part of the deceased, from the total sum of compensation awarded by this Court at ₹21,00,000/-).

18. In addition to the above, without attributing any reasons, the Tribunal has awarded interest at the rate of ₹9% per annum on the compensation awarded by it.



Considering the fact that the rate of interest on the term and fixed deposits in the nationalised Banks in these years are reducing, the awarding of interest at the rate of ₹9% per annum is also on the higher side and thus the same is required to be reduced and re-fixed at ₹6% per annum.

19. It is for this limited purpose of modification in the quantification of the compensation including rate of interest and also fixing the contributory negligence upon the deceased rider of the Motor Cycle also at 20%, the interference in the impugned judgment and award is warranted.

20. Barring the above, the appellant/Insurance Company has not raised any other ground worth to be considered and no arguments on any other point were also canvassed from the appellant's side.

Accordingly, I proceed to pass the following:



ORDER

[i] The appeal filed by the appellant - Insurance Company stands ***allowed in part;***

[ii] The impugned judgment and award, passed by the Court of the Member, Motor Accident Claims Tribunal, and XVI Additional Judge, Court of small Causes, Bangalore, dated 27-01-2017, in M.V.C.No.3021/2016, is hereby modified to the extent that the compensation awarded at **₹22,03,000/-** is reduced and restricted to a sum of **₹21,00,000/-** (Rupees Twenty One Lakhs only).

[iii] The order of the Tribunal fixing the entire negligence on the part of the driver of the Maxi Cab bearing registration No.KA-19/D-3040 and directing the respondent No.2 - Insurance Company (appellant herein) to deposit the entire compensation is modified and the contributory negligence is fixed at 20% on the part of the



deceased rider of the Motor Cycle and the remaining 80% on the part of the driver of the Maxi Cab bearing registration No.KA-19/D-3040;

In view of the contributory negligence fixed at 20% on the part of the deceased rider of the Motor Cycle bearing registration No.AP-03/AN-9551, the claimants are held entitled to a total compensation of a sum of **₹16,80,000/-**;

[iv] The rate of interest ordered by the Tribunal at the rate of ₹9% per annum also stands modified and fixed at ₹6% per annum, from the date of the claim petition till the date of payment;

[v] The appellant - Insurance company is directed to deposit its share of compensation with interest at the rate of ₹6% per annum from the date of the claim petition till the date of payment, within thirty days from today;



[vi] The apportionment of the total compensation awarded to claimants 1 to 3 (respondents No.1 to 3 herein) gets proportionately reduced to the extent of reduction of compensation, however, the terms regarding the release of the amount shall remain unaltered and unmodified.

The amount in deposit by the appellant – Insurance Company in the Registry be transmitted to the Tribunal without delay;

Draw the modified award accordingly.

Registry to transmit a copy of this judgment to the concerned Tribunal along with its records, without delay.

**Sd/-
JUDGE**

BMV*
List No.: 1 Sl No.: 62