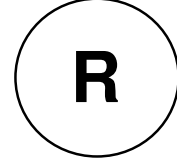




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NC: 2023:KHC-K:7481-DB
MFA No. 200517 of 2019



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 19TH DAY OF SEPTEMBER, 2023

PRESENT

**THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND**

THE HON'BLE MR. JUSTICE RAJESH RAI K

MISCL. FIRST APPEAL NO. 200517 OF 2019 (MV-D)

BETWEEN:

Digitally signed by
SOMANATH
PENTAPPA MITTE
Location: HIGH
COURT OF
KARNATAKA

...APPELLANTS
(BY SRI. SHARANAGOWDA V PATIL, ADVOCATE)

AND:



2. THE BRANCH MANAGER,
NEW INDIA ASSURANCE CO. LTD.,
GUNJ CIRCLE, RAICHUR-584102.

...RESPONDENTS

(BY SMT. PREETI PATIL ADV. FOR R2; NOTICE TO R1 SERVED)

THIS APPEAL IS FILED U/S 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THIS APPEAL BY MODIFY THE JUDGMENT AND AWARD DATED 07.01.2019, PASSED BY THE PRL. DISTRICT AND SESSIONS JUDGE , MOTOR ACCIDENT CLAIMS TRIBUNAL AT RAICHUR, IN MVC NO. 500/2017, AND ENHANCE THE AWARD COMPENSATION OF RS. 45,64,000/-, IN THE INTEREST OF JUSTICE.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, **MOHAMMAD NAWAZ J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is preferred by the claimants being aggrieved by the inadequate compensation awarded by the Tribunal and thereby seeking enhancement of compensation.

2. We have heard the learned counsel for the appellants and the learned counsel appearing for



respondent No.2/insurance company and perused the Trial Court records.

3. The appellants are the claimants in MVC No.500/2017 on the file of the Court of Motor Accident Claims Tribunal at Raichur (Tribunal for short). They have sought for a total compensation of Rs.54,50,000/- for the death of Huliraj son of appellant No.1 and 2 and brother of appellant No.3.

4. It is the case of the claimants that on 10.11.2017 at about 4.30 p.m., the deceased was proceeding on a motorcycle bearing Reg.No.KA-36/S-3889 along with a pillion and near Yermarus towards Micro tower bye-pass, in front of Madhav Cotton Mill, a Mahindra Bolero vehicle bearing Reg.No.TS-05/UB-6104, driven by its driver in a rash and negligent manner and with a high speed came from opposite direction in a zigzag manner and to the wrong side of the road so as to endanger human life. The driver of the said vehicle lost control of the vehicle and hit against the motorcycle, as a result of



which the rider and pillion rider sustained grievous injuries and Huliraj died on the spot and pillion rider by name Hari was taken to the hospital for treatment for the injuries sustained by him.

5. On behalf of the claimants, appellant No.2, father of the deceased was examined as PW1. Ex.P1 to Ex.P5 were marked. On behalf of the insurance company, RW1 was examined and Ex.R1 to Ex.R4 were marked through his evidence.

6. The Tribunal was pleased to award a total compensation of Rs.8,86,000/- along with 6% interest per annum from the date of petition till realization. However , the tribunal held that respondent No.2 is liable to the extent of 75% of the said amount and remaining 25% shall have to be borne out by the petitioners themselves.

7. The Tribunal on the basis of the document at Ex.R4, the indemnity bond executed by the owner of the vehicle and his statement given to the police stating that



deceased did not possess any driving licence and the vehicle was not having insurance coverage, proceeded to hold that, under the said circumstances 25% negligence can be attributed on the owner of the motorcycle and 75% negligence is attributable against the driver of the Bolero vehicle and liability can be fastened on the insurance company-respondent No.2 to the extent of 75%.

8. It is not in dispute that the charge sheet was filed against the driver of the Bolero vehicle bearing Reg.No.TS-05/UB-6104. The Tribunal on a perusal of Ex.P2, the spot panchanama and the sketch came to the conclusion that the Bolero jeep came from the opposite direction i.e. from Micro tower side towards Yermarus side and crossed the middle portion of the road and went another three feet towards right side and dashed to the motorcycle coming from the opposite direction. It is further observed that the rider of the motorcycle was on the correct side and on the left side of the road from Yermarus to Micro tower side. Hence came to the



conclusion that accident was only due to rash and negligent driving of the Bolero vehicle by its driver, which resulted in the death of rider of the motorcycle Huliraj, who died on the spot.

9. Having perused the spot sketch, it is clear that the rider of the motorcycle i.e. deceased Huliraj was on the left side of the road and the Bolero vehicle crossed the middle portion of the road and went to the wrong side and caused the accident. Hence, the findings recorded by the Tribunal that the accident was solely due to rash and negligent driving of the Bolero vehicle by its driver is fully justifiable. The question before us is that whether contributory negligence can be attributed to the deceased who was the rider of the motorcycle on the ground that he was not possessing driving licence and the said motorcycle was not insured.

10. Firstly, the Tribunal has proceeded to hold that the rider of the motorcycle was not having a driving licence, on the basis of the statement of the owner



recorded during the investigation in the criminal case registered against the driver of the Bolero vehicle. The said statement recorded by the police itself cannot be basis to come to a conclusion that the rider was not holding a valid driving licence as on the date of accident. Even otherwise, when there is clear finding to the effect that the accident was solely due to the rash and negligent driving by the driver of the Bolero vehicle, which was insured with respondent No.2, the Tribunal was not proper in fixing contributory negligence on the rider of the motorcycle. It is useful to refer to the decision of the Hon'ble Apex Court in ***Sudhir Kumar Rana V/s Surinder Singh and others***, reported in **(2008) 12 SCC 436**, wherein it is held that, though driving a vehicle without a licence is an offence, but the same, by itself, may not lead to a finding of negligence as regards the accident. Hence, apportionment of award, not justifiable. Para 6 and 9 of the said judgment are extracted here under:



6. A contributory negligence may be defined as negligence in not avoiding the consequences arising from the negligence of some other person, when means and opportunity are afforded to do so. The question of contributory negligence would arise only when both parties are found to be negligent.

9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.



11. In the light of the above discussion, the findings recorded by the Tribunal that the deceased has contributed to the accident to an extent of 25% cannot be sustained and the same is set aside.

12. Insofar as the quantum of compensation awarded by the Tribunal is concerned, according to the claimants, the deceased was having income from agricultural source and by doing water selling business, to the tune of Rs.30,000/- per month. It is stated that he was the sole bread winner of the family. However, the claimants have failed to adduce any convincing evidence to show that the deceased was in fact having the income as claimed by them. But, the notional income of Rs.8,000/- per month taken by the Tribunal is on the lower side. The accident has taken place in the year 2017. Hence, the notional income of the deceased could be taken as Rs.10,250/- as it is computed in other cases, to maintain uniformity.



13. According to the claimants, the deceased was aged about 20 years at the time of accident. The learned counsel for the appellants would contend that the Tribunal has committed a grave error in taking the age of the deceased as 30 years instead of 20 years. However, we find that the Tribunal has properly appreciated the evidence on record and came to the conclusion that the deceased was not aged 20 years as on the date of incident. The reason assigned is that according to the claimants, the deceased had completed SSLC, but they failed to produce the marks card or any authenticated documents to prove the date of birth. PW1 has admitted in his evidence that his marriage was solemnized about 35 years back and about 2 years after the marriage, his first daughter was born and at regular interval after 2 years, other two children are born. Hence taking in to consideration the said admission, the Tribunal has rightly held that the deceased could not be aged about 20 years as on the date of accident.



14. The Tribunal has failed to award any amount under the head 'loss of future prospects'. Considering the age of the deceased, 40% of the income has to be added towards future prospects. The appropriate multiplier applicable to the age of the deceased is 17. Further, it is admitted that deceased was a bachelor. Hence, one half of the income is deductible towards personal and living expenses. Therefore, the claimants are entitled for a total sum of Rs.14,63,700/- towards loss of dependency ($10,250 + 4,100 \div 2 \times 12 \times 17$).

15. Claimants are the parents and minor sister of the deceased. As held by the Hon'ble Apex Court in ***United India Insurance Co. Ltd. vs Satinder Kaur @ Satwinder Kaur***, reported in ***2021 (11) SCC 780***, apart from spousal consortium, parental and filial consortium is payable. Hence, the claimants namely appellant Nos.1 and 2 being the parents are entitle for a sum of Rs.88,000/- for loss of filial consortium. A sum of



Rs.33,000/- is awarded towards loss of estate and funeral expenses. Hence, the claimants are entitled for a total compensation of Rs.15,84,700/-, rounded off to Rs.15,85,000/- as against Rs.8,86,000/- awarded by the Tribunal.

16. Respondent No.2 is liable to pay the entire compensation.

17. Hence, we proceed to pass the following:

ORDER

- (a) The appeal is allowed in part.
- (b) The impugned judgment and award dated 07.01.2019 passed by the Tribunal is modified. The appellants / claimants are entitled for a total compensation of Rs.15,85,000/- as against Rs.8,86,000/- awarded by the tribunal.
- (c) The appellants/claimants are entitled for an enhanced compensation of Rs.6,99,000/-



along with interest at the rate of 6% per annum from the date of petition till the date of realization.

- (d) The respondent No.2 is liable to pay the entire compensation.
- (e) The compensation shall be deposited before the Tribunal within a period of six weeks from the date of receipt of copy of the order.

Sd/-
JUDGE

Sd/-
JUDGE