

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF MAY 2019

BEFORE

THE HON'BLE MR. JUSTICE H. T. NARENDRA PRASAD

MFA No.2228/2017 (MVC)

BETWEEN:

THE ORIENTAL INSURANCE COMPANY LIMITED
SATYAVATHI COMPLEX, MAIN ROAD,
B.C. ROAD, BANTWAL,
HEREIN REPRESENTED BY ITS
REGIONAL OFFICE SUMANGALA COMPLEX,
OPP: HDMC, LAMINGTON ROAD,
HUBBALLI-580 020.
BY ITS DEPUTY MANAGER

... APPELLANT

(BY SRI. LINGARAJ H S, ADV.)

AND

1. RATHNA
NOW AGED ABOUT 74 YEARS
W/O SRINIVAS SERVEGAR
2. SRINIVAS SERVEGAR
NOW AGED ABOUT 88 YEARS
S/O LATE KRISHNAYYA SERVEGAR

BOTH ARE R/AT PARTHIBETTU,
CHERKADI VILLAGE, PETHRI POST,
BRAHMAVARA
UDUPI TALUK & DISTRICT 576101.

3. ABDUL SHARIF
NOW AGED ABOUT 35 YEARS,
S/O ABBAS BYARI,
R/O ABDUL KADHAR COMPOUND,
VAMANA PADAVU, CHANITHODI VILLAGE,
BANTWAL TALUK 574211
DAKSHINA KANNADA DISTRICT.
4. MOHAMMED HAJI
MAJOR,
S/O BAPU KUNJI PODIYA HAJI
R/O BUDOLI MANE,
NERALAKATTE POST,
PERADI VILLAGE,
BANTWAL TALUK 574211
DAKSHINA KANNADA DISTRICT.

... RESPONDENTS

(BY SRI. NATARAJ BALLAL FOR R1 & R2
R3 AND 4 SERVED & UNREPRESENTED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST
THE JUDGMENT AND AWARD DATED:03.10.2016 PASSED
IN MVC NO.936/2014 ON THE FILE OF THE ADDITIONAL
SENIOR CIVIL JUDGE AND ADDITIONAL M.A.C.T, UDUPI,
AWARDING COMPENSATION OF RS. 6,96,000/- WITH
INTEREST AT 6% P.A. FROM THE DATE OF PETITION TILL
THE DATE OF REALIZATION.

THIS MFA COMING ON FOR ADMISSION THIS DAY,
THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the appellant-Insurance
Company challenging the judgment and award dated

3.10.2016 passed by the Court of Addl. Senior Civil Judge & Addl. MACT, Udupi in MVC No.936/2014.

2. Brief facts of the case:

On 31.1.2014, at about 8.30 a.m. when Ms.Jyothi was traveling as a pillion rider on a motorcycle bearing Registration No.KA-20-Y-430 along with another person namely Nagaraj and when they reached near the Badhyaru Achin Cross on Venoor Guruvayanakere State Road, a tipper lorry bearing Registration No.KA-19-D-9664 came in a rash and negligent manner from Moodabidari and dashed against the motorcycle. As a result, Ms.Jyothi fell on the road and the said lorry ran over her and she died while shifting her to the hospital. Hence, the parents of the deceased filed the claim petition before the Tribunal. In order to support their case, the father of the deceased is examined as PW-1 and Nagaraj is examined as PW-2, and submitted 8 documents. On

the other hand, the Insurance Company neither examined any witnesses nor produced any documents. After appreciation of the evidence, the Tribunal granted compensation of Rs.6,96,000/- with interest at 6% p.a. Being aggrieved by the same, the present appeal is filed by the Insurance Company.

3. The learned counsel for the Insurance Company submits that the Tribunal has erred in taking the multiplier based on the age of the deceased instead of based on the age of the mother. Further, the Tribunal is unjustified in adding 50% of the income of the deceased towards loss of future prospects while calculating the "loss of dependency". Further, the compensation of Rs.25,000/- each awarded to the claimants in the category of "loss of love and affection" is on the higher side. Therefore, he prays for allowing the appeal by reducing the compensation.

4. Per contra, the learned counsel for the claimants submits that as per the law laid down by the Hon'ble Supreme Court in the case of NATIONAL INSURANCE CO. LTD. -v- PRANAY SETHI AND OTHERS [AIR 2017 SC 5157], it is held that in case the deceased was having a permanent job and was below the age of 40 years, an addition of 50% of the established income should be made. Further, as per the said decision, while calculating the "loss of dependency", the age of the deceased has to be taken into consideration. Hence, he submits that there is no error in the finding of the Tribunal. Therefore, he prays for dismissal of the appeal.

5. Heard the learned counsel for the parties.
Perused the records.

6. It is not in dispute that the deceased died in a road traffic accident occurred on 31.1.2014 due to

rash and negligent manner driving of the tipper lorry bearing Registration No.KA-19-D-9664.

7. As per the decision of the Hon'ble Supreme Court in the case of Pranay Sethi (supra), if deceased was aged below 40 years and had a permanent job, an addition of 50% of the established income has to be made towards loss of future prospects. Further, it is held that multiplier has to be applied based on the age of the deceased and not based on the age of the mother of the deceased. In the case of MAGMA GENERAL INSURANCE CO. LTD -V- NANU RAM REPORTED IN 2018 ACJ 2782, it is held that the claimants are entitled for compensation under the head "loss of love and affection".

8. Therefore, the contentions of the learned counsel for the Insurance Company that the Tribunal has erred in taking the multiplier based on the age of

the deceased instead of based on the age of the mother and that the Tribunal is unjustified in adding 50% of the income of the deceased towards loss of future prospects while calculating the "loss of dependency, cannot be accepted and are unsustainable.

9. Accordingly, the appeal is dismissed.

The amount in deposit is ordered to be transferred to the Tribunal for disbursement.

**Sd/-
JUDGE**

DM