IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 7TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS FIRST APPEAL NO.21822 OF 2012 (MV-D)

BETWEEN:

THE ORIENTAL INSURANCE COMPANY LIMITED,
DIVISIONAL OFFICE, ENKAY COMPLEX,
KESHWAPUR, HUBLI, REPRESENTED BY
IT'S ASST. MANAGER, REGIONAL OFFICE,
SUMANGALA COMPLEX, LAMINGTON ROAD,
HUBLI-29.

...APPELLANT

(BY SRI G.N. RAICHUR, ADVOCATE)

AND:

1. SRI VEERANNA @ VEERABHADRAPPA
S/O. SHARANAPPA MUDENAGUDI,
AGE: 55 YEARS, OCC: BUSINESS,
R/O: BHUMARADDI CIRCLE, COTTON MARKET,
GADAG, DIST: GADAG.

2. SMT. JAYADEVI W/O. VEERANNA
@ VEERABHADRAPPA MUDENAGUDI,
AGE: 49 YEARS, OCC: BUSINESS,
R/O: BHUMARADDI CIRCLE, COTTON MARKET,
GADAG, DIST: GADAG.

3. SRI NAGENDRA S/O. KARIYAPPA GAMANAGATTI,
AGE: MAJOR, OCC: BUSINESS,
R/O: MEDAR ONI, NEW ENGLISH SCHOOL,
SIDDARTH COLONY, OLD HUBLI, HUBLI,
DIST: DHRWAD.

4. VIJAYAKUMAR S/O MADIWALAPPA MEDAR,
AGE: MAJOR, OCC: DRIVER,
R/O: MEDAR ONI, NEW ENGLISH SCHOOL,
SIDDARTH COLONY, OLD HUBLI,
HUBLI, DIST: DHRWAD.

...RESPONDENTS

(BY SRI V.G. BHAT, ADVOCATE FOR R1 AND R2;
NOTICE TO R3 AND R4 ARE SERVED)

Digitally signed by
MALLIKARJUN
RUDRAYYA
KALMATH
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 23-01-2012 PASSED IN MVC NO.56/2008 ON THE FILE OF THE III-ADDL. SENIOR CIVIL JUDGE AND MEMBER, ADDL. MACT, HUBLI, BY ALLOWING THIS APPEAL WITH COST IN THE ENDS OF JUSTICE AND EQUITY.

THIS MISCELLANEOUS FIRST APPEAL, COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR)

This appeal is filed by the Insurance Company challenging the judgment and award dated 23-01-2012 passed in MVC NO.56/2008 on the file of the III Additional Senior Civil Judge and Member, Additional MACT, HUBLI (hereinafter referred to as 'the Tribunal' for short) on the ground that the accident was caused due to negligently stationing of lorry bearing Reg.No.KA-01/A-6324, but rashness and negligence is attributed on part of the driver of the lorry bearing Reg.No.KA-25/B-7304 is not correct. Therefore, on this ground the appeal is filed.

2. Another ground raised is that as per Ex.R-1 (insurance policy) no premium was paid for covering the risk of owner of goods loaded in the lorry. Therefore, on

these two grounds challenged the judgment and award passed by the Tribunal.

3. For the sake of convenience and easy reference, the parties are referred to as per their rankings before the Tribunal.

4. In the present case, on 24.10.2007, the deceased had loaded onion bags on the lorry bearing Reg.No.KA-25/B-7304 and was travelling from Gadag to Bengaluru along with the load of onion bags, being owner of the goods of onion bags. On 25.10.2007 at about 1.00 am (the next day) when the driver reached Harihara-Harappanahalli road and came in front of St. Mary's Convent School, Harihara, he lost his control over the lorry and dashed the stationed lorry bearing Reg.No.KA-01/A-6324 from behind and caused the accident, in the said accident the owner of goods died. Therefore, the father and mother of the deceased have filed claim petition under Section 166 of the Motor Vehicles Act (hereinafter referred to as 'the MV Act' for short) for claiming compensation.

The Tribunal by holding that the accident was caused entirely due to the rash and negligent driving of the lorry bearing Reg.No.KA-25/B-7304 and granted compensation to the claimants, considering the multiplier according to the age of the mother of the deceased.

5. Learned counsel for the appellant/Insurance Company submitted that the accident was caused entirely due to the negligently stationing of lorry bearing Reg.No.KA-01/A-6324. Further submitted that extra premium is not paid for covering the risk of owner of goods lorry, therefore, the Insurance Company is not liable to pay compensation. On these grounds prays to allow the appeal.

6. Further, the learned counsel for the appellant places reliance on the judgments of Hon'ble Apex Court and this Court.

1) SUSHMA VS. NITIN GANAPATI RANGOLE AND OTHERS passed in SLP No.10648/2024.

2) ***RENUKA VS. THE COMMANDANT AND OTHERS passed in MFA Nos.102501 and 102500 of 2015.***

7. On the other hand, learned counsel for the respondents/claimants justified the judgment and award passed by the Tribunal and also prays for enhancement of compensation by exercising the power under Order XLI Rule 33 of CPC to make enhancement of compensation on the ground that the Tribunal had considered the multiplier according to the age of the mother of the deceased, but it ought to have taken according to the age of the deceased. Therefore, on this ground prays for enhancement of compensation.

8. In the present case, the deceased had loaded onion bags in the lorry bearing Reg.No.KA-25/B-7304 on 24.10.2007 and was proceeding towards Gadag to Bengaluru and was travelling along with the goods of onion bags. When the lorry reached at Harihara-Harappanahalli road and at the St. Mary's Convent School,

Harihara, the driver of the lorry bearing Reg.No.KA-25/B-7304 had dashed the stationed lorry bearing Reg.No.KA-01/A-6324 from behind and caused the accident. In the said accident, the owner of goods died. The complaint has been lodged against the driver of lorry bearing Reg.No.KA-25/B-7304.

9. Ex.P-7 is the spot panchanama, in the spot panchanama upon visualizing the place of the accident and the place where both the lorries found place after the accident, it is revealed that the lorry bearing Reg.No.KA-01/A-6324 was on the left side of the road facing towards Harihara, therefore, the lorry bearing Reg.No.KA-01/A-6324 was stationed on the correct side due to its tyre burst. The driver of the lorry bearing Reg.No.KA-25/B-7304 has dashed the above said lorry from behind. Therefore, from the spot panchanama it is proved that the accident is caused entirely due to rash and negligent driving of the lorry bearing Reg.No.KA-25/B-7304.

10. Ex.P-2 is the chargesheet, which proves the fact that the accident is caused entirely due to rash and negligent driving of the driver of the lorry bearing Reg.No.KA-25/B-7304. Therefore, the judgments relied upon by the counsel for the appellant/Insurance Company are not applicable in the present case due to difference in factual matrix in the above said cases and in the present case on hand. The lorry bearing Reg.No.KA-01/A-6324 was parked on the extreme left side of the road as it reveals from the spot panchanama that driver of the lorry bearing Reg.No. KA-25/B-7304 has dashed stationed lorry from behind. Therefore, complaint was lodged and resultantly investigation proved the fact that the driver of lorry bearing Reg.No.KA-25/B-7304 was rash and negligent in driving the lorry and caused the accident.

11. Another ground raised by the counsel for the appellant/Insurance Company that extra premium is not paid for covering the risk of the owner of the goods. It is proved from the complaint, FIR and Charge sheet that the

deceased had loaded 171 onion bags on the lorry and along with goods he was travelling by sitting inside the cabin of the lorry bearing Reg.No.25/B-7304 and unfortunately, he died in the accident. Therefore, it is proved that the deceased was travelling along with goods.

12. As per Section 147 of the MV Act, the risk is compulsorily covered for the persons who are travelling along with goods as authorized representative of goods. Therefore, whether premium is paid or not paid is immaterial, but statutorily the risk of the owner of goods is covered as per Section 147 of the MV Act. Therefore, in this regard, just because in the insurance policy there is no mentioning of collection of extra premium for covering the risk of the owner of goods, is immaterial. Where there is compulsory coverage of insurance in respect of owner of goods or authorized representative of the goods travelling in the goods vehicle and met with the accident, the covering of risk is compulsory. Therefore, on this ground

also there is no merit found in the argument canvassed by the counsel for the appellant/Insurance Company.

13. The Tribunal has awarded compensation under various heads as follows:

Sl. No.	Heads	Amount
1.	Towards loss of dependency	Rs.2,94,000/-
2.	Towards transportation of dead body and funeral expenses	Rs.15,000/-
3.	Towards loss of love and affection	Rs.15,000/-
4.	Towards loss of estate	Rs.10,000/-
	Total	**Rs.3,34,000/-**

14. While awarding compensation under the head loss of dependency, the Tribunal has committed error in choosing multiplier according to the age of the mother of the deceased, this is not correct as the multiplier could be chosen according to the age of the deceased as per the judgment of Hon'ble Supreme Court in the case of ***SMT.SARLA VERMA & OTHERS. VS. DELHI TRANSPORT CORPN AND ANOTHER*** reported in ***AIR 2009 SC 3104*** and in the case of ***NATIONAL INSURANCE CO. LTD. VS. PRANAY SETHI*** reported in

(2017) 16 SCC 680. Therefore, the claimants being parents of the deceased are suffering injustice by choosing wrong multiplier as discussed above. Therefore, the multiplier is to be determined according to the age of the deceased.

15. The deceased was aged 25 years old at the time of accident. Therefore, the appropriate applicable multiplier is 18. The accident is caused on 25.10.2007 and before the accident, the deceased was working as agriculturist. Therefore, in absence of proof of income of the deceased, notional income of Rs.4,000/- as recognized by the Karnataka State Legal Service Authorityl, is to be taken for consideration for the year 2007. The deceased was a bachelor. Therefore, 50% of the income is to be deducted towards his personal and living expenses. Therefore, the quantum of compensation under the head loss of dependency is liable to be redetermined and quantified by exercising power under Order XLI Rule 33 of

CPC in order to give substantial justice by correcting the injustice done by the Tribunal in this regard.

16. Further, as per principle of law laid down by the Hon'ble Apex Court in the case of ***NATIONAL INSURANCE CO. LTD. VS. PRANAY SETHI*** reported in ***(2017) 16 SCC 680***, considering the age of the deceased, 40% of his monthly income is to be added towards 'loss of future prospects in life'. Hence, the compensation under the head 'Loss of Dependency' is hereby recalculated and quantified as follows:

Rs.4,000/- + 40% minus 50% x 18 x 12 = Rs.6,04,800/-.

17. Since the claimants have not preferred any appeal, no disturbance is to be made in the compensation awarded by the tribunal under other heads. Therefore, by exercising the power under Order XLI Rule 33 of CPC, in the appeal filed by the Insurance Company, though there is no appeal by the claimants for enhancement, the

quantum under the head loss of dependency only is modified.

18. Thus, in all the claimants are entitled compensation under the various heads as follows:

Sl. No.	Heads	Amount
1.	Towards loss of dependency	Rs.6,08,400/-
2.	Towards transportation of dead body and funeral expenses	Rs.15,000/-
3.	Towards loss of love and affection	Rs.15,000/-
4.	Towards loss of estate	Rs.10,000/-
	Total	**Rs.6,48,400/-**

19. Therefore, the claimants are entitled for total compensation of Rs.6,48,400/- as against the compensation of Rs.3,34,000/- awarded by the Tribunal along with interest at the rate of 6% p.a. from the date of petition till its realization. The appellant/Insurance Company is directed to deposit the compensation amount within eight weeks from the date of receipt of certified copy of this judgment.

20. Hence, I proceed to pass the following:

ORDER

i. The appeal is dismissed.

ii. The impugned judgment and award dated 23.01.2012 passed in MVC No.56/2008 by the III Additional Senior Civil Judge and Additional MACT, Hubli, is modified holding that the claimants are entitled to total compensation of Rs.6,48,400/- along with interest at the rate of 6% p.a. as against Rs.3,34,000/- awarded by the Tribunal.

iii. The appellant/Insurance Company is directed to deposit compensation within eight weeks from the date of receipt of copy of this judgment.

iv. Amount in deposit made by the appellant/Insurance Company shall be transmitted to the Tribunal.

v. No order as to costs.

vi. Send back the Trial Court Records along with certified copy of this judgment forthwith.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

SRA
List No.: 1 Sl No.: 78