



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO.1930 OF 2020(MV-D)

BETWEEN:

1. RENUKHA
D/O. LATE BHASKAR KOTIAN
AGED ABOUT 35 YEARS
2. RESHMA
D/O. LATE BHASKAR KOTIAN
AGED ABOUT 33 YEARS
3. SMT. RASHMI
D/O. LATE BHASKAR KOTIAN
AGED ABOUT 30 YEARS

ALL ARE R/AT DOOR NO.4-193
THONDADPU, JODUKATTE, KADANDALE
MANGALURU TALUK
D.K. DISTRICT-574 227

...APPELLANTS

(BY SRI RAVISHANKAR SHASTRY G., ADVOCATE)

AND:

1. WILSON FERNANDES
S/O. WILLIAN FERNANDES
AGED ABOUT 23 YEARS
R/AT 4-196, NELYADKE HOUSE
KADANDAL, MOODABIDRE
MANGALURU
D.K. DISTRICT-575 001

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ANNABURNA G
Location: HIGH
COURT OF
KARNATAKA



2. THE DIVISIONAL MANAGER
NATIONAL INSURANCE CO. LTD.,
2ND FLOOR, RASIK CHAMBERS
OPP: CENTRAL MARKET
MANGALURU TALUK
D.K. DISTRICT-575 001

...RESPONDENTS

(BY SMT. DEEPTHI SHETTY, ADVOCATE FOR;
SRI DHANANJAY KUMAR, ADVOCATE FOR R-1;
SRI ASHOK M. PATIL, ADVOCATE FOR R-2)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED 04.09.2019 PASSED IN MVC NO.1223/2017 ON THE FILE OF THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, MEMBER, MACT-IV, D.K, MANGALURU, DISMISSING THE PETITION FOR COMPENSATION.

THIS MISCELLANEOUS FIRST APPEAL IS COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE UMESH M ADIGA

ORAL JUDGMENT

This appeal is filed by the claimants being aggrieved by the judgment and award dated 04.09.2019 passed by the III Additional District and Sessions Judge and Member, MACT-IV, D.K. Mangaluru (for short `Tribunal'), in MVC No.1223/2017

2. The parties are referred to as per their ranking before the Tribunal.



3. The brief facts of the case of both the parties before the Tribunal were that :

On 28.05.2017, the deceased Shakunthala was traveling as a pillion rider on a motor cycle bearing registration No.KA-19-EH-3249 and proceeding from Kadandale towards Thondadpu Nityananda Mandira in Kadandale village; the rider of the said motor cycle was riding it in a rash and negligent manner, as a result, she met with an accident. The said Shakunthala sustained grievous head injuries. She was taken to Father Muller's Hospital for treatment, while undergoing treatment she succumbed to injuries on 11.06.2017.

4. It is the further case of the claimants that the deceased was aged 55 years and earning Rs.10,000/- by rolling beedies. She was contributing her earnings to the family. Claimants are children of the deceased. With these reasons, they prayed to award compensation of Rs.15,00,000/-.



5. Respondent No.1 - was the owner and respondent No.2 was the insurer of the offending motorcycle. Both the respondents have appeared and filed their respective written statement. They denied the averments made in the claim petition. Respondent No.1 denied that the death resulted from the injuries sustained in the accident and contended that the said vehicle was insured with Respondent No.2. Therefore, in the event, if the petition is allowed then respondent No.2 would be liable to pay the same.

6. Respondent No.2, in its written statement, denied all the averments made in the petition and contended that the deceased herself was a joint tortfeasor who contributed for the occurrence of the accident. It is further stated that the deceased had filed a claim petition in MVC No. 890/2017 seeking compensation for the injuries sustained in the accident, and after her death, the present claim petition was filed. Hence, the present petition is not maintainable. With these reasons, prayed to dismiss the claim petition.



7. From the rival contentions of the parties, the Tribunal framed necessary issues.

8. The claimants to prove their case examined two witnesses as PW-1 and PW-2 and marked 28 documents, as per Exs.P-1 to P-28. Respondents did not examine any witness but marked Exs.R-1 to R3.

9. The Tribunal after hearing both the parties answered issue no.1 partly in the affirmative and held that the accident occurred due to rash and negligent driving of the offended vehicle by its rider. The Tribunal while discussing issue No.1 held that death was not result of the injuries and there was no sufficient evidence to prove that the Shakuntala died due to injuries sustained in the accident. Therefore, the Tribunal by the impugned judgment dismissed the claim petition and the same is challenged in the present appeal.

10. Heard the arguments of the learned counsel appearing for the claimants as well as learned counsel for the respondents.



11. It is pertinent to note that criminal case was registered against the rider of the offending motor cycle and he was charge sheeted for the offence punishable under Section 279, 338, 304(A) of the IPC and a copy of the charge sheet is produced at Ex.P4. Other prosecution papers are produced at Exs.P1 to P3 and P5 to P11. It is not the contention of the respondents that the charge sheet was challenged by Respondent No.1 or that the charges leveled against the rider of the motorcycle were set aside. Respondent No.1 may be contesting the allegation of rash and negligent riding before the concerned Court; however, it has not been brought to the notice of this Court that the rider of the motorcycle was acquitted on the ground that a false charge sheet had been filed against him. The documents on record *prima facie* establish that the death of Shakunthala was due to the injuries sustained in the accident.



12. The incident occurred on 28.05.2017. According to the Wound Certificate produced at Ex.P11, she had sustained following injuries:

- i. 2 x 3cm laceration on the left temperoparietal area.*
- ii. Subarachnoid haemorrhage in the basifrontal lobes.*
- iii. Multiple haemorrhagic contusions on the bifrontal lobes of the brain.*
- iv. Thin subdural hematoma on the falx cerebi.*
- v. Fracture of clivus bone extending to the base of the skull.*
- vi. Fracture of occipital bone.*

13. Ex.P27 — the in-patient and out-patient records of Father Muller's Hospital, corroborate the same. The details of the treatment administered to the deceased, Shakunthala, are mentioned in Ex.P27. Considering the multiple haemorrhagic contusions in the bilateral frontal lobes of the brain, it appears that she had sustained severe head injuries which were fatal in nature. These facts were not seriously disputed during the trial before



the Tribunal, except denial of the fact that her death was due to the injuries sustained in the accident. Such denial, however, has no force, since a charge sheet was filed against the rider of the motorcycle for offences punishable under Sections 279 and 304(A) of the IPC, and the post-mortem report does not disclose any other cause of death.

14. Shakuntala succumbed to those injuries within ten days of the accident. The records reveal that she underwent treatment from 28.05.2017 to 01.06.2017, was readmitted on 07.06.2017, and died on 11.06.2017. There was no other reason attributable to her death. The post-mortem report (Ex.P3), as referred to in the impugned judgment, discloses both the injuries sustained and the cause of death. It appears that due to severe head injuries, she suffered cardio-respiratory arrest. The materials available on record conclusively establish that the death of Shakunthala was due to the injuries sustained in the accident. Therefore, the finding of the Tribunal, being contrary to the material evidence on record, is



unsustainable. A detailed investigation on this aspect was not required, and hence, interference by this Court is warranted

15. The deceased was said to be earning an income of ₹10,000 per month by rolling beedies. She was aged about 55 years and was contributing her earnings to the claimants. The Tribunal, in the impugned judgment, assessed her income at Rs.6,000 per month, deducted one-third towards her personal expenses, applied the multiplier of '9', and computed the compensation under the head *loss of dependency*. Even if it is accepted that the claimants were unable to prove her actual income, as per the chart prepared by the Karnataka State Legal Services Authority, the notional income to be taken for the year 2017 is Rs.11,000 per month. Since the claimants had asserted that the deceased was earning Rs.10,000 per month , which is less than the prescribed notional income , the same can be reasonably accepted as her monthly earnings.



16. According to the findings of The Tribunal, the age of the deceased was 56 years. The claimants contend that she was aged about 55 years. In both the event, 10% of her income is to be added towards future prospects as per the law laid down by the Hon'ble Apex Court in the case of *National Insurance Co. Ltd., -vs- Pranay Sethi*¹. As per the judgment of the Hon'ble Apex Court, in the case of ***Sarla Verma -vs- Delhi Transport Corporation and others***,² the multiplier applicable to the facts of the present case is '9'. She was married and her husband was no more. All the claimants are married daughters. This fact was noted in the impugned judgment of paragraph No.22. It is noted that during the pendency of the petition, claimant No.3 was married on 13.05.2018. Under such circumstances, 50% of her income has to be deducted towards her personal expenses. On the basis of the aforesaid factors, the amount of compensation is calculated under the head 'loss of dependency'.

¹ (2017) 16 SCC 680

² (2009) 6 SCC 121



17. It is the further submission of learned counsel for the appellant that, as per the law laid down in ***Pranay Sethi's case (supra)*** and in the case of ***Magma General Insurance Co. Ltd., -vs- Nanu Ram Alias Chuhru Ram,***³ compensation under the conventional heads has to be awarded.

18. The claimants have contended that they have spent Rs.11,892/- towards medical expenses for treatment of the deceased. They have produced the medical bills in this regard. Claimants are entitled for the same.

19. Accordingly, the claimants are entitled for the following compensation is awarded:

Particulars	Amount in Rs.
Loss of dependency (Rs.10,000/- +10% x 12 x 9 x1/2)	5,94,000
Loss of consortium	1,20,000
Loss of estate	15,000
Funeral expenses	15,000
Medical expenses	12,000
<i>Total</i>	<i>7,56,000</i>

³ (2018) SC 1247



20. Thus, the claimants are entitled to compensation of Rs.7,56,000/- with interest at the rate of 6% per annum from the date of petition till its realization.

21. It is not in dispute that respondent No.1 is the owner and respondent No.2 is the insurer of the offending vehicle. Therefore, both the respondents are jointly and severally liable to pay the compensation.

22. Accordingly, I proceed to pass the following:

ORDER

- i) The Appeal is ***allowed in part.***
- ii) The judgment and award dated 04.09.2019 passed in MVC.No.1223/2017, by the III Addl.District and Sessions Judge, Member, MACT-IV, D.K., Mangaluru is set aside.
- iii) The claimants are entitled to compensation of Rs.7,56,000/- with interest at the rate of 6% p.a. from the date of petition till its realization



- iv) The respondent No.2 shall deposit the amount within a period of six weeks from the date of award.
- v) The claimants are entitled to equal apportionment of the compensation. They shall deposit 50% of the compensation allotted to share of each in any fixed deposit for a period of three years in any of the Nationalised Bank and remaining 50% has to be released in favour of the claimants on due identification.
- vi) Draw award accordingly.

Registry is directed to send back the records along with a copy of this judgment to the concerned Tribunal.

Sd/-
(UMESH M ADIGA)
JUDGE

AG
List No.: 1 Sl No.: 10