



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

MISCELLANEOUS FIRST APPEAL NO.1629 OF 2013 (MV)

BETWEEN:

THE MANAGER
NATIONAL INSURANCE CO. LTD.
MANJUNATHA COMPLEX
HASSAN,
NOW REP. BY REGIONAL MANAGER
NATIONAL INSURANCE CO. LTD.
REGIONAL OFFICE,
SUBHARAM COMPLEX
144, M.G.ROAD,
BANGALORE - 560 001

... APPELLANT

(BY SRI. A.N.KRISHNA SWAMY, ADV.)

AND:

1. SMT. KUMARI
W/O LATE CHANNABASAWEGOWDA
NOW AGED ABOUT 36 YEARS
2. CHETHAN
S/O LATE CHANNABASAWEGOWDA
NOW AGED ABOUT 19 YEARS
3. KUMARI CHITHRA
D/O LATE CHANNABASAWEGOWDA
NOW AGED ABOUT 17 YEARS

RESPONDENT NO.3 HEREIN SINCE
MINOR REP. BY HER NATURAL GUARDIAN
MOTHER THE 1ST RESPONDENT HEREIN

ALL ARE R/AT KABBINAHALLY VILLAGE
KASABA HOBLI,
HASSAN DISTRICT - 573 201

Digitally signed by
PRAJWAL A
Location: HIGH
COURT OF
KARNATAKA



4. CHANDRASHEKAR K. B.
S/O BOREGOWDA
NOW AGED ABOUT 42 YEARS
R/O BOGARA KOPPALU
KUDURUGUNDI POST
HASSAN TALUK AND DISTRICT - 573 201

... RESPONDENTS

(BY SRI.NARENDRA GOWDA, ADV. FOR R1 & R2;
R3 MINOR REP. BY R1;
SRI.CHETHAN B., ADV. FOR R4)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 4.12.2012 PASSED IN MVC NO.1935/2011 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT -2 MACT, HASSAN, AWARDED A COMPENSATION OF RS.5,68,600/- WITH INTEREST AT 6% P.A., FROM THE DATE OF PETITION TILL THE DATE OF REALIZATION.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, **T.G.SHIVASHANKARE GOWDA, J.**, DELIVERED/PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

CAV J U D G M E N T

(PER: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA)

In this appeal, the Insurance Company is questioning the judgment and award dated 04.12.2012 passed in M.V.C.No.1935/2011 by the Presiding Officer-FTC-II and MACT, Hassan (*'the Tribunal'* for short).



2. For the sake of convenience, the rank of the parties shall be referred to as per their status before the Tribunal.

3. The brief facts of the case are, one Channa Basavegowda, the deceased, who is the husband of the first petitioner and father of the petitioner Nos.2 and 3 while riding his motorcycle bearing Reg.No.KA-46/E-4805, another motorcycle bearing Reg.No.KA-13/K-6168 (in short 'offending motorcycle') ridden by its rider and dashed against the deceased at 7.00 p.m. on 21.08.2010 near Arabica College of Alur Kudige. Due to which, the deceased has sustained the injuries, he was admitted to the Government Hospital, Hassan. In the said Hospital, statement of the deceased was recorded and law was set into motion against the rider of the offending motorcycle. Unfortunately, the deceased succumbed to death on 23.08.2010. As dependents, the wife and children of the deceased have approached the Tribunal for grant of compensation of Rs.25,00,000/-. The insurer of the



offending motorcycle has opposed the claim on the ground that, the said vehicle was not caused the accident, the deceased himself fell down from his motorcycle and sustained the injuries. The Tribunal, after taking the evidence and hearing both the parties, allowed the claim petition granting compensation of Rs.5,68,600/- with interest @ 6% per annum. Aggrieved by the same, the Insurance Company is before this Court.

4. Heard the arguments of Shri. A.N.Krishna Swamy learned Counsel for the Insurance Company, Shri. Narendra Gowda, learned Counsel for the petitioners and Shri Chethan B., learned counsel for the owner of the offending motorcycle.

5. It is the contention of the learned counsel for the Insurance Company that, the motorcycle in question was not involved in the accident. When the deceased as an injured brought to the Hospital, history was clearly furnished i.e. sustained the injuries involving the motorcycle and a car. There is one day delay in filing the



complaint. The car has been misplaced with the offending motorcycle, intended to claim the compensation. When the offending motorcycle was not involved in the accident, there is no question of the petitioners claiming compensation against the Insurance Company to indemnify the insured.

6. Per contra, learned counsel for the petitioners has contended that, soon after the accident, one Prakash had witnessed the incident involving both the motorcycles as eyewitness to the incident. Therefore, on behalf of the petitioners, he was examined who clearly explains the involvement of the motorcycle only in the accident and nothing is brought from his mouth about involvement of the car. When the deceased was brought to the Hospital, his condition was not good, no evidence is placed on record to explain who gave the history of the accident. When the positive evidence is placed before the Tribunal, same is accepted and the evidence on behalf of the Insurance Company did not point out the accident was



between the motorcycle and the car. The Tribunal has rightly appreciated the evidence of the petitioners that the accident was proved involving the motorcycle and the offending motorcycle and thereby assessed the compensation.

6.1. It is further contended that the accident is of the year 2010. The Tribunal has assessed the income of the deceased at Rs.4,000/- per month though a person with no proof of income will earn not less than Rs.5,500/ per month. Though the petitioners have not filed any appeal, he sought for interference of this Court for enhancement of compensation.

7. Learned counsel for the owner of the offending motorcycle has argued in support of the Insurance Company.

8. I have given my anxious consideration to the arguments addressed on behalf of the parties and perused the records.



9. The materials on record clearly point out that there was an accident at 7.00 p.m. on 21.08.2010 near Arabic College of Alur Kudige when the deceased was riding the motorcycle bearing Reg.No.KA-46/E-4805. The question is whether the offending motorcycle was caused the accident or the car. In order to explain the involvement of the car, the Insurance Company has examined one S.Raju, the Investigating Officer as RW.1, who has investigated the matter did not point out anything in support of Insurance Company. Whose evidence clearly points out the involvement of the motorcycle and the offending motorcycle in question and filing of the charge sheet against the rider of the offending motorcycle.

10. In the objection statement, the Insurance Company did not take any defense that the car was involved in the accident, only in the evidence, it is urged about the involvement of the car. Even in the cross-examination of the first petitioner and also PW.2-Prakash



nothing is suggested or brought out that the accident was involving the motorcycle and the car.

11. The trump card of the Insurance Company is Accident Register Extract issued by the S.C Hospital, Hassan marked as Ex.R1. On perusal of the said document, it is pertinent to note that there was an accident on 21.08.2010 involving the deceased while riding the motorcycle near Bharathvalli and the general condition of the patient was not good. It also point out that the patient was brought to the Hospital in 108 Ambulance, it did not point out either PW.2 or anybody carrying the deceased to the Hospital. No evidence is placed on behalf of the Insurance Company to prove Ex.R1 by examining the casualty medical officer or the person who recorded Ex.R1. Even the evidence of PW3- Dr.Vishwanath D., the Assistant Professor, Forensic Medicine, H.I.M.S. Hassan did not point out anything about the history that the accident was between the motorcycle and the car. It is the Insurance Company



which arguing in the appeal without any pleadings that the accident was involving the motorcycle and the car.

12. On careful perusal of the materials on record, it is pertinent to note that within 50 feet, PW.2 had witnessed the accident involving the two motorcycles and as a neighborhood land holder, it was he who helped the deceased to be shifted to the Hospital involving his friend one Devraj. The investigation culminated in filing of the charge sheet, same is marked as Ex.P2 where PW.2 Prakash and Devraj were cited as CWs.2 and 3.

13. Ex.P3 is the spot mahazar clearly point out that it is PW.3 who shown the place of accident for drawing up of the mahazar. The argument of the learned counsel for the Insurance Company that there were no visible damages on the offending motorcycle is concerned, it is pertinent to note that the motorcycle was examined on 18.12.2010 after four months of the accident. Ex.P4 is the seizure mahazar of the motorcycle, which clearly point out that there are scratch marks on the right safeguard and



right hind carrier guard of the offending motorcycle. This clearly goes to show the involvement of the said vehicle in the accident.

14. Ex.P15 is the Register pertains to Autopsy which point out the history as 'RTA'. Hence, on the basis of sole document, reference cannot be made that the accident was involving the motorcycle and the car. Hence, the Insurance Company has failed to persuade non involvement of the offending vehicle in the accident. The only evidence i.e. reliable is PW.2-Prakash. Mere some reference that bike versus car will not going to dislodge the petitioners or create any doubt in the mind of the Court that the accident in question was not at all occurred. Hence, there are no grounds to interfere with the well-reasoned order of the Tribunal.

15. Adverting to the quantum of compensation, learned counsel for the petitioner though argued that the income of the deceased ought to have been taken at Rs.5,500/- minimum. In the claim petition, it is alleged



that the deceased was doing agriculture and earning Rs.10,000/- per month, but there is no proof of income placed before the Tribunal. The petitioners have not questioned the quantum of compensation assessed by the Tribunal. The Insurance Company is only questioning the involvement of the offending motorcycle. Hence, it is not proper to *sue moto* enhance the compensation.

16. In view of the above discussion, the appeal is devoid of merits, in the result, the following.

ORDER

The appeal is ***dismissed***.

Amount in deposit shall be transmitted to the Tribunal.

**SD/-
(T.G.SHIVASHANKARE GOWDA)
JUDGE**

MKM/-
CT:HS