



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCELLANEOUS FIRST APPEAL NO. 5778 OF 2016 (MV-D)

BETWEEN:

PHYARIJAAN,
W/O LATE ABDUL SAMAD @ ABSUL SAMEER,
AGED ABOUT 53 YEARS,
R/AT MARANAYAKANAPALYA,
DEVARAYAPATNA POST,
TUMAKURU TALUK AND DISTRICT.

...APPELLANT

(BY SRI HARISH N.R. FOR
SRI PATEL D. KAREGOWDA, ADVOCATE)

AND:

MAHADEVIAIAH S @ MAHADEVAPPA,
SINCE DEAD BY LRS.

1(a) SMT. PARVATHAMMA,
W/O LATE MAHADEVIAIAH.S,
AGED MAJOR,
R/AT MARANAYAKANAPALYA,
DEVARAYAPATNA POST,
TUMAKURU TALUK & DIST.

1(b) SRI KANTHARAJU,
S/O LATE MAHADEVIAIAH.S,
AGED MAJOR,
R/AT, MARANAYAKANAPALYA,
DEVARAYAPATNA POST,
TUMAKURU TALUK & DIST.



- 1(c) SRI BHARATH,
S/O LATE MAHADEVIAIAH.S,
AGED MAJOR,
R/AT MARANAYAKANAPALYA,
DEVARAYAPATNA POST,
TUMAKURU TALUK & DIST.
2. THE MANAGER,
THE NEW INDIA ASSURANCE CO. LIMITED,
SERVICE CENTRE AT BRANCH OFFICE,
1ST FLOOR, TUMAKURU SHOPPING COMPLEX,
B H ROAD, TUMAKURU 572 102.

...RESPONDENTS

(R-1 (a) & R-1(c) SERVED AND UNREPRESENTED;
V/O DATED 28.02.2024 NOTICE TO R-1(b) IS DISPENSED
WITH;
SRI K KISHORE KUMAR REDDY, ADVOCATE FOR R-2)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 23.4.2016 PASSED IN MVC
NO.776/2013 ON THE FILE OF THE II ADDITIONAL SENIOR
CIVIL JUDGE, JMFC, MACT, TUMAKURU, DISMISSING THE
CLAIM PETITION FOR COMPENSATION.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE C M JOSHI

ORAL JUDGMENT

Heard the learned counsel appearing for the
appellant and the learned counsel for respondent No.2.

2. Being aggrieved by the judgment and award in
MVC.No.776/2013 by learned II Additional Senior Civil



Judge and MACT, Tumakuru dated 23.04.2016, the petitioner is before this Court in appeal.

3. The factual matrix of the case is as below:

It is the case of the petitioner that on 18.09.2012 at 10.00 a.m., the deceased Abdul Samad was traveling as a pillion rider on TVS XL two wheeler bearing No.KA-06-EG-6388 from Maranayakanapalya towards Siddagange cross and the rider of the vehicle Mahadevaiah drove it in high speed and negligent manner and caused the accident resulting in injuries to the deceased Abdul Samad. He was shifted to Government Hospital, Tumakur and thereafter, he was taken to NIMHANS, Bengaluru, where during the treatment, he succumbed to the injuries on 24.09.2012. The petitioner along with her major children performed the last rites of the deceased. Learned counsel for the petitioner contended that the deceased was a mason earning ₹ 10,000 per month, aged about 60 years and therefore, she is entitled for compensation from the owner and insurer of the two wheeler. It is also contented that



the jurisdictional Police had registered a case in Cr.No.311/2012 and the charge sheet had been filed against the rider-Mahadevaiah.

4. On service of notice, respondent Nos.1 and 2 appeared before the Tribunal and respondent No.1 did not resist the petition by filing any written statement. Respondent No.2 filed a written statement denying entire pleadings including the relationship of the petitioner and the deceased-Abdul Samad. However, respondent No.2 contended that the vehicle was covered by the policy and the policy was in force as on date of the accident, but however, there is violation of terms and conditions of the policy and as such, the liability of respondent No.2 may be absolved.

5. On the basis of the above contentions, the Tribunal framed appropriate issues including the one for the relationship between the petitioner and the deceased.



6. The petitioner was examined as PW.1 and Exs.P1 to 8 were marked in evidence. One witness was examined as PW.2. The respondent No.2 examined its official as RW.1 and one witness was examined as RW.2. Ex.R1 to 3 were marked in evidence.

7. After hearing the arguments, the Tribunal came to the conclusion that the petitioner has failed to prove her relationship with the deceased and as such, though it held Issue No.2 regarding the negligence in the affirmative, dismissed the claim petition filed by the petitioner.

8. Being aggrieved, the petitioner is before this court in appeal.

9. Learned counsel appearing for the petitioner would submit that he has filed an application under Order XLI Rule 27 of CPC seeking to produce material to establish the relationship between the parties. It is submitted that Exs.P6, P7 and P8, which depicted the relationship between the parties have not been



appreciated in a proper way by the Tribunal and therefore, in addition to Exs.P6, 7 and 8, the petitioner wants to produce the death certificate of the deceased-Abdul Samad, the amended Aadhar Card and the widow pension order in favour of the petitioner. It is contented that these documents would adequately prove the relationship between the parties and as such, the impugned judgment and award has to be set aside and compensation has to be awarded to the petitioner.

10. *Per contra*, learned counsel appearing for the respondent No.2 would submit that the application filed under Order XLI Rule 27 of CPC would not be maintainable since it is ridden with delay and those documents could have been produced before the Tribunal. He further submits that the name of the deceased as mentioned in the Aadhar Card of the petitioner at Ex.P7 and that of the deceased at Ex.P8 show that the husband of the petitioner was one Abdula Sameera and the deceased is Abdulla Samad and therefore, the finding of the Tribunal cannot be



faulted. He contends that if for any reason this Court holds that the relationship has been proved, the matter has to be remanded to the Tribunal for fresh inquiry.

11. At the first instance, it is to be noted that the remand of the matter is required only if there is no such adequate evidence available on record. If there is evidence on record and the Tribunal failed to consider an issue regarding quantum of the compensation amount, there is no necessity of remanding the matter to the Tribunal. It would suffice to hold that the procedure adopted by the Tribunal is erroneous and such errors can be rectified in the appeal. The Tribunal should have determined the compensation amount when it has framed an issue to that effect. Conspicuously, by relying on its finding on Issue No.1, it did not determine the compensation. Such conclusion of the Tribunal cannot be sustainable. Even though the petition could have been dismissed by the Tribunal for its finding on Issue No.1, it was bound to



determine the compensation amount by answering Issue Nos.2 and 3.

12. Coming to the merits of the appeal, the perusal of Ex.P7 would show that the name of the husband of the petitioner is shown as Abdula Sameera in the Aadhar Card. In Ex.P8, the name of the deceased is shown as Abdulla Samad. It is relevant to note that in Ex.P6, the son of the deceased Abdul Samad is shown as Sukhur S/o Abdul Samar. The Investigator has clearly mentioned in the charge sheet at Ex.P6 that Sukhur S/o Abdul Samar is the son of the deceased. Similarly, the name of CW.3-Dilshad is shown as daughter of the deceased Abdul Samad. It is worth to note that in the investigation, the Investigating Officer had found that one Sukhur and Dilshad were the son and daughter of the deceased Abdul Samad. This aspect coupled with Exs.P7 and 8 would have indicated that the petitioner is the wife of the deceased Abdul Samad.



13. It is also pertinent to note that the inquest mahazar at Ex.P3 would also show that Dilshad was the daughter of deceased Abdul Samad. In the statement of the said Dilshad, who is shown as CW.3 in the charge sheet, she had made a categorical statement before the Investigating Officer that Abdul Samad is her father and Pyari Jan i.e., petitioner is her mother. This clearly shows that the Tribunal had not bestowed its attention on the statement made by the Dilshad in Ex.P3-Inquest Report of the deceased Abdul Samad.

14. Coming to the documents produced by the petitioner under Order XLI Rule 27 of CPC, it may be noted that the pension certificate is the subsequent event and therefore, in view of the judgment of the Apex Court in the case of Union of India Vs. Ibramhim uddin and another¹, the same deserves to be allowed. Subsequent events have to be taken into consideration by the appellate Court and also that the said document being a public document it has

¹ (2012) 8 SCC 148



to be accepted. In that view of the matter, the application filed under Order XLI Rule 27 of CPC is allowed only to the extent of production of the additional evidence in respect of the widow pension certificate issued by the Revenue Authorities. In the said certificate, it is stated that Abdul Samad was the husband of Pyari Jan.

15. In that view of the matter, the finding of the Tribunal on Issue No.1 that the relationship between the petitioner and the deceased has not been proved has to be set aside.

16. In view of the fact that the petitioner was a pillion rider, the question of contributory negligence do not arise. As such, the testimony of RW.2 that deceased was found to be under intoxicated condition would not be a relevant matter in this case.

17. Insofar as quantum of compensation is concerned, the said aspect would not hold this Court for long. The deceased was aged about 60 years as



mentioned in the petition and as depicted in Ex.P8-Aadhar Card. Therefore, the appropriate multiplier would be '9'.

18. The petitioner has not produced any material to show the income of the deceased and as such, the notional income has to be considered. The guidelines issued by the Karnataka State Legal Services Authority for the purpose of settlement of disputes before the Lok-Adalath prescribe a notional income of Rs.7,000/- for the year 2012. In umpteen number of decisions, it has been held that the said guidelines issued by the KSLSA are in general conformity with the wages fixed under the Minimum Wages Act. Therefore, the notional income of the deceased is considered at Rs.7,000/- per month. The deceased was aged 60 years as on the date of accident. Therefore, the 'loss of dependency' is to be calculated by adding 10% to the notional income of the deceased towards future prospects, the multiplicand comes to Rs.7,700/-. Hence, the 'loss of dependency' is calculated as $\text{Rs.7,700/-} \times 12 \times 9 \times \frac{2}{3} = \text{Rs.5,54,000/-}$.



19. In addition to it, the petitioner is also entitled for 'loss of consortium' of Rs.44,000/- and Rs.16,500/- each under the head of 'funeral expenses' and 'loss of estate' as per the dictum of the Hon'ble Apex Court in the case of ***NATIONAL INSURANCE COMPANY LIMITED VS. PRANAY SETHI AND OTHERS²***.

20. Thus, the petitioner is entitled for compensation under different heads as below:

PARTICULARS	AMOUNT (IN RS.)
Loss of dependency	5,54,000/-
Loss of consortium	44,000/-
Funeral expenses	16,500/-
Loss of estate	16,500/-
TOTAL	6,31,400/-

21. Thus, the petitioner is entitled for compensation of Rs.6,31,400/- with interest and therefore, the appeal deserves to be allowed. Hence, the following:

ORDER

(i) The appeal is allowed.

² AIR 2017 SC 5157



(ii) The petitioner is entitled for compensation of Rs.6,31,400/- along with interest at the rate of 6% per annum from the date of petition till its deposit before the Tribunal.

(iii) The respondent No.2-Insurance Company is directed to deposit the compensation amount before the Tribunal as provided under Section 168(3) of the Motor Vehicles Act.

(iv) In the event of deposit of compensation amount, the entire amount be released to the petitioner

Sd/-
(C M JOSHI)
JUDGE