IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4th DAY OF MARCH, 2020

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

M.F.A.NO.5405/2012 (MV)

BETWEEN:

Sri Savakaiah
S/o Marigunda
Aged about 62 years
R/at No.252, Subodhinilaya
Vijayashreepura
Mysuru-570 006.

...Appellant

(By Sri Arun Bhat and Sri Nagaraja Hegde,
A/w Kum. Niveditha Shetty, Advocates)

AND:

1. Mohammed Thousef
   S/o Mohammed Khasim
   Aged about 34 years
   No.3263, 2nd Cross,
   C.V.Road, Mandi Mohalla,
   Mysuru-570 021.

2. Mohammed Aslam
   S/o Mohammed Khasim
   Aged about 47 years
   No.MIG 11, 3rd Stage
   Hanumanthanagar,
   Bannimantapa Extn.,
   Mysuru-570 015.

3. M/s. United India Insurance Co. Ltd.,
Direct Agent Branch,
No.1260, 2nd Floor,
Vinobha Road, Shivarampet,
Mysuru-570 001
Represented by its Branch Manager.

...Respondents

(R1 and R2 are Served;
Sri O.Mahesh, Advocate for R3)

This MFA is filed under Section 173(1) of MV Act, against the judgment and award dated 26.03.2012 passed in MVC No.1438/2011 on the file of the Presiding Officer, Fast Track Court-I, Member, Additional MACT, Mysuru, partly allowing the claim petition for compensation and seeking enhancement of compensation.

This MFA coming on for Hearing this day, the Court delivered the following:

JUDGMENT

The appellant is before this Court being aggrieved by the judgment of the Fast Track Court-I and Member, Additional M.A.C.T., Mysore, in MVC No.1438/2011 dated 26.3.2012.

2. The case of the appellant is that on 5.5.2011 at about 1.45 p.m. the wife of the appellant was proceeding as a pillion rider on a two wheeler Scooty Pep bearing registration No.KA.02/EJ 2820, ridden

by her daughter towards Vijayashreepura from the city of Mysore. When they reached near Kalamandira in Hunsur Road, a truck bearing registration No.KA.13/2648 came from behind in a rash and negligent manner and dashed the Scooty Pep. Due to the impact, the appellant's wife fell down and sustained injuries. She was shifted to B.M.Hospital, Mysore, wherein she died at 6.40 p.m. At the time of her death, her age was 45 years and doing tailoring work and earning about Rs.6,000/- per month. On the above basis, the appellant had filed a claim petition in MVC No.1438/2011 before the tribunal. The tribunal holding that the accident occurred due to rash and negligent driving of the truck and since the owner of the truck had violated the terms and conditions of the policy and there being no fitness certificate obtained by the owner, held that the insurance company is not liable to pay any compensation and also an order for pay and recovery could not be given in view of violation of the terms of

the policy. Hence, directed that the compensation awarded would be paid by respondents No.1 and 2 being owner and driver respectively. The tribunal has awarded compensation as under:

Sl.No.	**Particulars**	**Amount in Rs.**
1	Loss of dependency	1,68,000
2	Conveyance	02,600
3	Medical expenses	29,400
4	For funeral expenses	05,000
5	For loss of consortium	05,000
	Total	**2,10,000**

3. The learned counsel for the appellant submits that the entire reasoning of the tribunal is wrong. In that when the vehicle continued to be registered, it is deemed that the fitness certificate continued to be in existence and operation. If fitness certificate had lapsed, then the registration certificate of the vehicle ought to have been cancelled. Since in the present case the registration certificate continues to be in operation, the learned counsel for the appellant would submit that the insurance company

cannot take a defense that there is no fitness certificate.

4. He submits that the above issue is no longer res-integra, in the Division Bench of this Court in the case of United India Insurance Co. Ltd., Vs. Smt.Yasmin Begum @ Yasmin and Others in MFA No.5159/2016 dated 19.7.2019 has held that not having a fitness certificate would not amount to fundamental breach of rights of policy and therefore the trial Court would have been justified in directing the owner and insurer to jointly and severally satisfy the award.

5. It is further contended that the methodology of calculation of compensation is not correct, in that for the purpose of calculation of compensation on account of loss of dependency, instead of taking the age of the deceased into account, the age of the claimant-husband has been taken into account to arrive at multiplier and further more the

compensation is calculated taking into consideration monthly earning of Rs.3,000/- per month while as per the notional income as on the date of the accident it ought to be Rs.6,500/-, which should have been taken into consideration. That apart it is contended that the amount awarded on account of funeral expenses, loss of consortium is not proper and not in accordance with applicable law.

6. *Per contra,* Sri. O.Mahesh, learned counsel appearing for the Insurance Company would submit that the age of the claimant has been rightly taken into consideration since it is the claimant who is receiving the compensation and not the deceased, since deceased is not being compensated. He further submits that the claimant has to survive to receive the compensation. Therefore, the age of the claimant ought to be taken into consideration as held by the Division Bench of this Court in the case of **H.T.Bhandary Vs. Muniyamma** reported in **1985 SCC OnLine Kar 103**.

7. He further submits that the notional income is one which is arrived at only at Lok Adalath and cannot be taken as ready reckoner to arrive at in any other case. He submits that deceased in the present case is the wife, there are no details produced as regards claimant-husband being depending on the deceased-wife. Therefore, no amount can be awarded on account of loss of dependency.

8. Heard Kum.Niveditha Shetty, the learned counsel for the appellant and Sri.O.Mahesh, the learned counsel for respondent No.3. Perused the case papers.

9. The tribunal though has allowed the claim petition, has rejected the contention of the appellant that the insurance company is liable on the ground that there is no fitness certificate and therefore there is violation of the policy of the insurance company, relying on several decisions of this Court. This Court subsequently in the case of United India Insurance

Co. Ltd., Vs. Smt.Yasmin Begum @ Yasmin and Others in MFA No.5159/2016 dated 19.7.2019 held that even if there is violation of the terms of the insurance policy, the same is not a fundamental breach of the terms and conditions. Vehicle continuing to have a registration is assumed to have fitness certificate and therefore this Court held insurance company liable to make payment and recover the money from the owner of the vehicle. In view of the binding judgment of this Court as cited above and applying the same to the present case also, the finding of the tribunal that the insurance company is not liable, is not sustainable in law and therefore, I am of the considered opinion that the insurance company would be liable to make payment of the compensation as awarded subject to however the right of the insurance company to recover the same from the insured of the vehicle.

10. As regards the calculation of compensation on account of loss of dependency though

Mr.O.Mahesh has argued that it is the age of the claimant which has to be taken into consideration and not that of the deceased, since it is the claimant who survives the deceased and is being compensated for the loss suffered due to the death of the deceased, the Supreme Court and in this Court in several decisions having held that it is the age of the deceased which has to be taken into consideration, the said argument would not hold any water, more so for the reason that such a situation would create more confusion since if there are three claimants namely the husband of the deceased and children of the deceased or wife of the deceased and children of the deceased it would not be possible to arrive at and chose as to whose age is to be taken for consideration while determining the multiplier.

11. The loss which is being compensated is the loss of the deceased. The guidelines adopted in taking into consideration the age of the deceased according

to my considered opinion would be proper and correct guideline.

12. Sri.O.Mahesh further addressed an argument and stated that deceased is the wife and the claimant being the husband. There is no proof of her husband being dependent on the wife and therefore the claim of the husband in this regard ought to be rejected. There is no dispute that the deceased was working as a tailor, it is not that the deceased had no avocation at all. There is no contention raised by the Insurance Company that the deceased was unemployed and had no avocation or even if the deceased had an avocation, the earning of the deceased was not contributed towards the family. When such being the case, the deceased admittedly being a tailor and working, notional income ought to be taken into consideration and as on the date of the accident, the notional income being Rs.6,500/- per month. The tribunal erred in taking into consideration an amount of Rs.3,000/- towards the

same. Therefore, for calculation and compensation on account of loss of dependency the income that would have to be taken into consideration for earning is Rs.6,500/- per month. The deceased being aged about 50 years as on the date of the accident and notional income being Rs.6,500/- per month. 25% of the said amount should have to be added towards her future prospects, which comes to Rs.8,125/-, 50% of the same would have to be deducted towards personal expenses of the deceased which comes to Rs.4,062.5/- which needs to be annualized, which comes to Rs.48,750/- and applying the multiplier of '13' would come to Rs.6,33,750/- instead of Rs.1,68,000/-.

13. As regards the other contention of Sri.O.Mahesh that the notional income ought not to be taken into consideration since that is only consented income for Lok Adalath and not for the purpose of advisorial proceedings, I am of the considered opinion that the notional income which

has been arrived at is in the form of a guideline to be followed, so that there would be equality of treatment in all cases where people were unable to produce any proof of income. In fact the notional income is much lower than the minimum wages prescribed. Once a person is stated to be employed, the minimum wages could have been taken into consideration. However, since many of the claimants in motor vehicle accidents are from the unorganized sector, as a ready recknor and in order to maintain equality, the notional income is to be considered. Therefore, on this ground also, I am of the considered opinion that the notional income as fixed for the purpose of Lok Adalath could be taken into consideration in advisorial proceedings.

14. The trial Court has ordered a sum of Rs.5,000/- on account of loss of consortium and other heads. In terms of the latest decision in the case of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017)16 SCC 680,** the

same is increased to Rs.70,000/-. The rest of the award and conditions thereof remains the same.

Sl.No.	**Particulars**	**Amount in Rs.**
1	Loss of dependency	6,33,750
2	Conveyance, medical, funeral expenses and for loss of consortium	70,000
	Total	**7,03,750**

15. Since there is allegation as regards the insured not having fitness certificate and since according to Mr.O.Mahesh there is breach of policy which has been committed, apart from breach of law though he has submitted that pay and recovery cannot be ordered, I am of the considered view that since as stated above, the insurance company is being ordered to pay the compensation, they would be eligible to recover the same from the insured in accordance with applicable law.

The other terms of the order of the tribunal remain undisturbed.

Sd/-
JUDGE

*AP/-