



**IN THE HIGH COURT OF KARNATAKA,
KALABURAGI BENCH**

DATED THIS THE 9TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

MISCL. FIRST APPEAL NO. 202574 OF 2019 (MV-D)

BETWEEN:

1. SATISH
S/O MAHADEV GOLASANGI @ GOLANSAGEKAR
AGE: 39 YEARS, OCC: COOLIE
R/O: BHAWANI PETH, SOLAPUR.

...APPELLANT

(BY SRI. SANGANAGOUDA V. BIRADAR, ADVOCATE)

AND:

1. MOHAMMED HANIF
S/O NURULLAH HUSSAIN
AGE: 47 YEARS, OCC: BUSINESS
R/O: DINIXHI GALLI, VIJAYA BANK ROAD
LINGASUGUR, RAICHUR DISTRICT-584 101.
2. THE BRANCH MANAGER
ORIENTAL INSURANCE COMPANY LIMITED
VIJAYAPURA-586 101.
3. SHAIKH FIROZ HASSAN
AGE: 47 YEARS, OCC: BUSINESS
R/O: SASURE, TQ: BARSHI
DIST: SOLAPUR-416 416.
4. THE BRANCH MANAGER
NEW INDIA ASSURANCE COMPANY LIMITED
HANAMASHETTY BUILDING

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AL BHAGYA
Location: High
Court of Karnataka



GURUKUL ROAD
VIJAYAPURA-586 101.

...RESPONDENTS

(BY SRI. V.M. ASHRIT, ADVOCATE FOR R1;
SRI. UDAY P. HONGUNTIKAR, ADVOCATE FOR R2;
SRI. MANVENDRA REDDY, ADVOCATE FOR R4;
NOTICE TO R3 HELD SUFFICIENT V/O/D 01.03.2024)

THIS MFA IS FILED U/S. 173(1) OF MV ACT, PRAYING TO,
ALLOW THIS APPEAL AND ENHANCE THE COMPENSATION AS
CLAIMED IN THE CLAIM PETITION BY MODIFYING THE
JUDGMENT AND AWARD DATED 19.12.2018 PASSED BY THE
COURT OF II ADDITIONAL SENIOR CIVIL JUDGE MACT NO.VII,
AT VIJAYAPURA, IN M.V.C.NO.934/2012, IN THE INTEREST OF
JUSTICE AND EQUITY.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

The claim petition is filed by the husband for having
lost his wife Nandini in a road traffic accident dated
15.04.2012. The appellant/claimant contended that the
deceased was hardly aged 30 years and was earning
Rs.6,000/- by doing coolie work. The Tribunal in absence



of income proof, assessed the income at Rs.3,000/- and has awarded Rs.3,06,000/- under the head of loss of dependency. In all, Tribunal has awarded a sum of Rs.3,86,000/- with interest at the rate of 9% p.a. from the date of petition till its realization.

2. Referring to the charge sheet materials, the Tribunal has attributed negligence in the ratio of 30:70 on the driver of the goods truck bearing No.MA-13-AX 2339 and the driver of the offending truck bearing No.KA-36-A-2976 who had illegally parked the truck in the middle of the road.

3. The Tribunal having apportioned the negligence dismissed the claim petition against respondent No.4/New India Insurance company on the ground it is not liable to pay 70% of compensation since the inmates of the goods vehicle were traveling as gratuitous passengers. The claim petition was in fact allowed against the owner of the offending truck i.e. respondent No.3 and 30% liability was fastened on respondents 1 and 2 primarily fixing the



liability on respondent No.2/Oriental Insurance Company Limited.

The present appeal is filed questioning the quantum as well as the negligence.

4. Heard the learned counsel for the appellants /claimants and the learned counsel appearing for respondent No.2/Oriental Insurance Company as well as the learned counsel appearing for respondent No.4/New India Assurance Company limited.

FINDING ON NEGLIGENCE:

5. This Court in MFA.No.202567/2019 considering the arguments advanced by the counsel appearing for the claimants and the counsel appearing for both the Insurance Companies has after meticulous examination of the material on record and on an elaborate discussion held that both the drivers of the truck were negligent and therefore, attributed negligence in the ratio of 50:50. Accordingly, negligence is attributed in the ratio of 50:50



on the drivers of both the vehicles involved in the accident. Further more, since the truck bearing No. MH-13-AX-2339 was used in violation of the policy conditions permitting 30 passengers to travel in the goods vehicle, Respondent No.3, who is the owner of the truck bearing No. MH-13-AX-2339 is liable to deposit 50% of the compensation awarded. Respondent No.2/Insurance Company who is the insurer of the goods vehicle bearing No. KA.36/A.2976 which was illegally parked is jointly and severally liable along with respondent No.1 to deposit 50% of the compensation awarded.

FINDING ON QUANTUM:

6. The Tribunal in absence of income proof has assessed the income at Rs.3,000/- notionally, which is on the lower side. Therefore, this Court is of the view that having regard to the income chart prepared by the KSLSA, the income has to be notionally assessed at Rs.6,500/- in respect of the accidents of the year 2012. However, in the case on hand, the claimant has specifically pleaded that



his wife was earning Rs.6,000/- per month. Accepting the same, the income is assessed at Rs.6,000/- per month. By adding 40% towards future prospects, the income is assessed at Rs.8,400/-. After deducting $1/3^{\text{rd}}$ towards personal expenses and applying the multiplier 17, compensation payable under the head of loss of dependency works out to $(\text{Rs.}(8,400 - 8,400 \times 1/3) \times 12 \times 17) = \text{Rs.}11,42,400/-$.

7. Under conventional heads, Rs.70,000/- is awarded. Additionally, 10% escalation for every three years is awarded on the conventional heads applying the principles laid down by the Apex Court in the case of ***National Insurance Co. Ltd., vs. Pranay Sethi and Ors¹***. Accordingly, Rs.14,000/- additional amount is added under the conventional heads. Hence, the total compensation re-determined by this Court works out Rs.12,26,400/- as against Rs.3,86,000/- awarded by the Tribunal. Thus, the enhanced compensation works out to Rs.8,40,400/-, which the appellant is held entitled with

¹ 2017 ACJ 2700 SC



interest at 6% p.a. from the date of petition till its realization.

8. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) The appeal is allowed in part.

(ii) The impugned judgment and award dated 19.12.2018 passed by the Tribunal in MVC.No.934/2012 is hereby modified.

(iii) The appellant/claimant is held entitled for the enhanced compensation of Rs.8,40,400/- with interest at the rate of 6% p.a. from the date of petition till its realization.

(iv) The negligence is fixed in the ratio of 50:50 on the drivers of both the vehicles. Respondents 1 and 2 are jointly and severally held liable to deposit 50% of compensation awarded and balance 50% shall be paid by respondent No.3/Owner of the offending vehicle i.e. MH-13-AX-2339.



(v) The amount in deposit shall be remitted to the Tribunal to enable the claimants to withdraw the same.

**SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE**

ALB
List No.: 2