

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JANUARY, 2023

BEFORE

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

MFA NO.4286 OF 2014 (MV)

BETWEEN:

NATIONAL INSURANCE COMPANY LTD.
BRANCH OFFICE, II FLOOR
YASHARONU CHEMBUR
RATHNAGIRI ROAD
CHIKMAGALUR-577101
BY ITS BRANCH MANAGER.

... APPELLANT

(BY SMT. H.R. RENUKA, ADV.)

AND:

1 . MENPA MAISTRY
S/O PAJIA MAISTRY
AGED ABOUT 53 YEARS

R1 DECEASED
R2 IS THE LR
REPRESENTED BY RESPONDENT NO.2
PREMA
D/O MENPA MAISTRY

2 . PREMA
D/O MENPA MAISTRY
AGED ABOUT 23 YEARS

BOTH R/O KRISHNA NIVAS ESTATE
KABBINAHALLI POST AND VILLAGE
MUDUGERE TALUK
CHIKMAGALUR DISTRICT-577101.

3 . ANIL BAPTIST
S/O AGTHONE BAPTIST

AGED ABOUT 42 YEARS
R/O ADISHAKTHI
RAMAPURA POST
CHIKMAGALUR DISTRICT.

... RESPONDENTS

(BY SRI P. KARUNAKAR, ADVOCATE FOR R2;
VIDE ORDER DATED 07.06.2019 R2 IS TREATED AS
LR OF DECEASED R1)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 03.03.2014 PASSED IN MVC NO.1847/2010 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE & MEMBER, MACT, MANGALORE, AWARDED A COMPENSATION OF RS.5,50,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL ITS REALISATION OR DEPOSIT.

THIS MFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.12.2022 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

In this appeal the appellant has challenged the judgment dated 03.03.2014 passed in M.V.C.No.1847/2010 by the Principal Senior Civil Judge & Motor Accident Claims Tribunal, Mangalore (Hereinafter referred to as 'Tribunal' for short).

2. The appellant-insurance company was the second respondent, respondent Nos.1 and 2 were the petitioners, and respondent No.3 was respondent

No.1 before the Tribunal. The parties will be referred with respect to their status before the Tribunal for the sake of convenience.

3. Briefly stated, the facts are that, one Ravi, the deceased, was the son of the first petitioner and brother of second petitioner. They were the residents of Mudigere Taluk. The deceased was suffering from Jaundice. On 13.04.2010, for higher treatment, he was carried in an Ambulance bearing No.KA-13/M-0472 from Chikmagalur to Mangalore. At about 2.30 a.m., at Kodekkai Railway over bridge, Alape village it was driven by its driver in a rash and negligent manner and toppled, causing injuries to the deceased. He was succumbed to the injuries at Mangalore Hospital.

4. The petitioners moved the Tribunal seeking compensation that the deceased died on account of the accident. The claim was opposed by the respondents on the ground that there is no nexus

between the accident and death of the deceased. The Tribunal considering the evidence awarded compensation of Rs.5,50,000/- with interest @ 6%.

5. The Insurance Company is before this court on the ground that there was no nexus between the accident and death of the deceased. FSL report has suggested that the death was due to labor Pneumonia and Tuberculosis with mild steatosis of liver, and it was not on account of the accident. The Tribunal ought to have rejected the claim and also urged that the income taken and assessment of dependency was on higher side.

6. Heard Smt.H.R.Renuka, learned counsel for the insurer and Sri.P.Karunakar, learned counsel for the petitioner No.2. Respondent/Petitioner No.1 died during the pendency of this appeal.

7. It has been argued by learned counsel for the insurer referring to FSL report that death of the

deceased was due to his ailment for which he was being carried to Mangalore and the Tribunal has committed an error in assessing the compensation instead of dismissing the claim.

8. Per contra, learned counsel for the petitioners submitted that the deceased though was suffering from illness, he was being carried to Mangalore, if he had been admitted to Mangalore Hospital, he would have been survived with proper treatment, but because of the accident, his ailment was aggravated and for this reason, he died and FSL report is nothing to do with it and the death was on account of the accident and there is a nexus.

9. I have given my anxious consideration to the arguments advanced on both sides and perused the materials on record.

10. There is no dispute that the deceased was suffering from jaundice and the cause of death as

mentioned in the FSL report was on account of Jaundice. If the deceased was carried to provide him with better treatment, if he had treated at Mangalore his ailment could have been cured and walked out of the hospital, jaundice is not a fatal ailment, better treatment is available at higher medical centers like Mangalore and for that reason, he was being carried in an Ambulance. The driver though knew that he is carrying a patient, did not take precaution while driving, instead, he negligently caused the accident, due to the impact, the ailment of the deceased was aggravated and the patient died in the hospital. Hence, there is nexus to accident and cause of death of the deceased, but the percentage may vary and therefore, there is no sound argument on behalf of the insurance company. Hence, the ground urged for dismissal of claim cannot be supported with.

11. Insofar as award of compensation is concerned, the Tribunal has taken the income of the

deceased at Rs.5,000/- per month and deducted 50% towards personal expenses and applied the multiplier of '17' for the age of the deceased at 26 years and assessed loss of dependency at Rs.5,10,000/-. Under conventional heads, awarded Rs.40,000/-, in all Rs.5,50,000/-.

12. At the time of accident, deceased was alive, because of the accident he died. The reason for the death has nexus to the accident though his serious ailment aggravated death. Even assuming for the sake of argument that the accident may have impacted and aggravated the ailment, but it cannot be more than 50%. The accident was of the year 2010, the deceased was a bachelor aged 26 years, he was an earning member, without proof of income, his income is taken at Rs.5,500/- and 40% of future prospects Rs.2,200/- is added in view of **National Insurance Co.Ltd. -vs- Pranay Sethi and**

Others¹ case, then it comes to Rs.7,700/- if 50% of the impact is taken out, then it will come to Rs.3,850/-, since the deceased was a bachelor, another 50% is taken out towards personal expenses, it comes to Rs.1,925/- multiplied by '17', the loss of dependency comes to Rs.3,92,700/- (Rs.1,925/-x17x12).

13. Under the conventional heads, for love and affection Rs.40,000/-, loss of estate and funeral expenses Rs.15,000/- each if added, then compensation will come to Rs.4,62,700/- as against a sum of Rs.5,50,000/-. Hence, the second petitioner being the unmarried sister since father died during pendency of the appeal, is entitled to Rs.4,62,700/- as against Rs.5,50,000/- awarded by the Tribunal. Accordingly, the appeal needs to be allowed and order of the Tribunal needs modification.

¹ (2017) 16 SCC 680

14. In the result, I pass the following:

ORDER

The appeal is allowed in part.

The judgment and award passed by the Tribunal stands modified.

The petitioner No.2 is entitled to compensation of Rs.4,62,700/- with interest @ 6% per annum from the date of petition till its realization.

The 2nd respondent is directed to satisfy the award within 8 weeks from the date of receipt of certified copy of this judgment.

The amount in deposit, if any, shall be transmitted to the Tribunal for disbursal forthwith.

**Sd/-
JUDGE**

KNM/-