



MFA No. 5640 of 2018
C/W MFA No. 333 of 2018
MFA No. 334 of 2018

ADDITIONAL SENIOR CIVIL JUDGE & 7TH MACT, DAVANAGERE,
AWARDING COMPENSATION OF Rs.4,43,000/- WITH INTEREST
AT 8% P.A. FROM THE DATE OF PETITION UNTIL
REALIZATION.

IN M.F.A.No.334/2018:

BETWEEN:

G PRABHAKAR, S/O GONEPPA,

.....
(BY SRI.SHASHIDHARA.R., ADVOCATE)

...APPELLANT

AND:

1. KUM.VASILA, D/O MUJIB,

.....
DAVANAGERE DISTRICT.

2. ATHAULLA KHAN

.....
3. CHANDRASHEKAR
.....



4. THE LEGAL MANAGER
NATIONAL INSURANCE CO,LTD.,
MELGIRI PLAZA,
OPP DENTAL COLLAGE,
MCC BL BLOCK,
DAVANAGERE-577 001

...RESPONDENTS

(R-1 AND R-2 ARE SERVED AND UNREPRESENTED;
BY SRI.N.R.RANGE GOWDA, ADVOCATE FOR R-3;
SMT. S.NIRMALA, ADVOCATE FOR R-4 (VC))

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:03.11.2017 PASSED IN MVC No.621/2015 ON THE FILE OF THE III ADDITIONAL SENIOR CIVIL JUDGE, AND VII ADDITIONAL MACT, DAVANAGERE, AWARDDING COMPENSATION OF Rs.1,54,00/- WITH INTEREST @ 8% P.A. FROM THE DATE OF PETITION TILL REALIZATION.

THESE APPEALS, COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

1. MFA.5640/2018 is by the claimant seeking for enhancement of compensation and also challenging the finding regarding exoneration of liability of the Insurer.
2. MFAs.333 and 334/2018 are by the owner of the vehicle challenging exoneration of liability of the Insurer.



3. The case put forth by the claimant was that when the deceased Shukru Sab along with his grand-daughter Vasila was standing near Bhadri shop, a car bearing registration No.KA-17/N-5130 driven by Athaulla Khan collided with them, as a result of which, Shukru Sab suffered grievous injuries and ultimately succumbed to the same and Vasila, his grand-daughter also suffered injuries. They, therefore, sought for compensation.

4. The said claim was resisted only by the Insurance Company.

5. The driver and the owner of the car did not contest the proceedings.

6. The Insurer, as usual, denied all the averments in the claim petition. The Insurer also contended that there was delay in lodging the complaint which was unexplained and it also contended that Athaulla Khan was not involved in the accident because in the MLC register and the wound certificate, the name of the driver was shown as Akthar



son of Ameer Jan Khan who had caused accident. It was contended that Akthar did not have any driving licence to drive the car and therefore, Athaulla Khan had been implicated as a driver. It was, therefore, contended that the Insurer could not be made liable since an attempt was made to implicate Athaulla Khan as the driver instead of Akthar.

7. It was also argued that the police had in collusion with the claimant filed a charge sheet against Athaulla Khan and therefore, it would have no consequence.

8. The Tribunal accepted the contentions of the Insurer by taking into consideration that there were discrepancies in the name of the driver in the medical records and accordingly exonerated the Insurer.

9. Learned counsel for the owner contends that this allegation of the Insurer that the driver was implicated could not be accepted since the driver of the car was not only charge sheeted, but was also convicted by the



Criminal Court. He submitted that since the Criminal Court had found that Athaulla Khan had driven the car in a rash and negligent manner it had convicted him and it would not be permissible for the Insurer to contend that he was not the driver and the driver of the car was one Akthar.

10. Learned counsel for the Insurer, however, contended that in the MLC register as well as in the other medical records, the name of the car driver was shown as Akthar and only subsequently, the name was shown as Athaulla Khan and therefore, the Tribunal was justified in coming to the conclusion that there was implication of the driver.

11. It is not in dispute that after the accident, the driver of the car also suffered injuries and was admitted to the Hospital. The Doctor, who was examined as R.W.1, has stated that Aktharulla Khan was in a semiconscious stage and was under the influence of alcohol. He has also stated that the name of the patient was as indicated in the MLC register.



12. In order to establish that the person who was hospitalised was different than one who was arrayed as 1st respondent (Athaulla Khan), no evidence has been adduced by the Insurer apart from merely trying to take advantage of the entries in the medical records. The eye witness to the accident was not examined to indicate that the person who was driving the car was the person other than Athaulla Khan.

13. The police, after investigation, have proceeded to charge sheet Athaulla Khan and the Criminal Court, after trial, has concluded that it was this Athaulla Khan who was driving the car in a rash and negligent manner and has also convicted him.

14. In my view, in the light of the conviction that Athaulla Khan suffered at the hands of Criminal Court, it cannot be held that he was not the driver of the car at the time of the accident. It is to be noticed here that if this assertion of the Insurer is accepted that Athaulla Khan was not the driver, essentially Athaulla Khan would stand



acquitted and the order of conviction itself would be overturned in a proceeding under the Motor Vehicles Act, which is clearly impermissible. Since the Competent Court has come to the conclusion that Athaulla Khan had driven the car in a rash and negligent manner and was responsible for causing the death of Shukru Sab and causing injuries to his grand-daughter Vasila, the finding of the Tribunal that the driver of the car was the person other than Athaulla Khan cannot be accepted. Consequently, the finding in this regard is set aside and *the Insurer is held liable for payment of compensation for the death of Shukru Sab as well as for payment of compensation to Vasila.*

15. As far as compensation is concerned, the Tribunal has awarded a sum of Rs.4,43,000/-. In arriving at the same, the Tribunal has assessed the notional income of the deceased at Rs.5,500/- on the ground that there was no evidence to establish the actual income of the deceased. In such cases, it would be prudent to adopt the



notional income determined by the Karnataka State Legal Services Authority, which, for the accident of the year 2015, would be Rs.9,000/-.

16. Since the deceased was aged 53 years as on the date of the accident, 10% requires to be added to the said income towards future prospects, which makes his income to be Rs.9,900/-.

17. Since the deceased was aged 53 years, it cannot be expected that he would spend 50% of his income towards his personal expenses. Hence, 1/3rd of his income requires to be deducted from Rs.9,900/-, which makes his income to be Rs.6,600/-.

18. Consequently, the claimant would be entitled to **Rs.8,71,200/-** (Rs.6,600/- X 12 X 11) towards loss of dependency.

19. Since the claimant, being the wife of the deceased, she would be entitled to a sum of **Rs.44,000/-** towards



loss of consortium. In addition, she would be entitled to **Rs.33,000/-** under conventional heads.

20. Thus, in modification of the award of the Tribunal, the claimant would be entitled to the following sums along with interest at 6% per annum from the date of petition till its realization:

Sl. No.	Particulars	Amount (In Rs.)
1.	Loss of Dependency	8,71,200/-
2.	Loss of Consortium	44,000/-
3.	Conventional Heads	33,000/-
	Total	9,48,200/-

21. The Insurance Company is directed to deposit the amount of compensation awarded within a period of two months from the date of receipt of a certified copy of this judgment.

22. The amount deposited by the owner in both the appeals shall be refunded to him through online payment



MFA No. 5640 of 2018
C/W MFA No. 333 of 2018
MFA No. 334 of 2018

on his furnishing the required documents to the registry after due identification.

23. The disbursement of the amount of compensation to the claimant shall be in terms of the award of the Tribunal.

Accordingly, the appeal of the claimant as well as the appeals of the owner are allowed.

Sd/-
JUDGE

PKS
List No.: 1 SI No.: 18