



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF SEPTEMBER, 2024

BEFORE

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

MISCELLANEOUS FIRST APPEAL NO. 7089 OF 2016 (MV-D)

C/W

MISCELLANEOUS FIRST APPEAL NO. 6824 OF 2016 (MV-D)

IN MFA No. 7089/2016

BETWEEN:

THE LEGAL MANAGER,
SHRIRAM GENERAL INSURANCE COMPANY LIMITED,
NO. 305, 3RD FLOOR, S.S.CORNER BUILDING,
OPP BOWRING AND LADY CURZON HOSPITAL,
SHIVAJINAGAR, BANGALORE - 560 002.

NOW AT

SHRIRAM GENERAL INSURANCE CO. LTD.,
5/4, 3RD CROSS, S.V.ARCADE,
BELAKANAHALLI MAIN ROAD,
OPP: BANNERAGHATTA MAIN ROAD,
II M.B.POST, BANGALORE - 560 076.

BY ITS MANAGER.

...APPELLANT

(BY SRI. O. MAHESH, ADVOCATE)

AND:

1. SMT. NAGAMMA,
AGE 51 YEARS,
W/O LATE NANDISHAPPA,





2. SRI. N. RUDRESH,
AGE 31 YEARS,
S/O LATE NANDISHAPPA,

3. SRI. MAHESH N.,
AGE 27 YEARS,
S/O LATE NANDISHAPPA,

R/AT BODANAHOSAHALLI VILLAGE,
SAMETHANAHALLI POST,
ANUGONDANAHALLI HOBLI,
HOSAKOTE TALUK,
BANGALORE RURAL DISTRICT - 562 114.

4. SRI. P. VENKATESH,
MAJOR,
S/O PAPAIAH,
R/AT NO.57, CHANNASANDRA MAIN ROAD,
KADUGUDI POST, BANGALORE - 560 067.

5. SRI. PURUSHOTHAN,
MAJOR,
S/O GANGANNA,
R/AT NEAR ANGANAWADI SCHOOL,
CHANNASANDRA, KADUGUDI POST,
BANGALORE - 560 067.

...RESPONDENTS

(BY SRI. A.K. BHAT, ADVOCATE FOR R1 TO R3;
V/O DATED 20.03.2018, NOTICE TO R4 AND R5 HELD
SUFFICIENT)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 04.08.2016 PASSED IN MVC
NO.5227/2013 ON THE FILE OF THE X ADDITIONAL JUDGE,
MACT, COURT OF SMALL CAUSES, BANGALORE, AWARDING



COMPENSATION OF RS.13,88,209/- WITH INTEREST @ 9%
P.A. FROM THE DATE OF PETITION TILL REALIZATION.

IN MFA NO. 6824/2016

BETWEEN:

1. SMT. NAGAMMA,
AGED ABOUT 51 YEARS,
W/O LATE NANDISHAPPA,
2. SRI. N. RUDRESH,
AGED ABOUT 31 YEARS,
S/O LATE NANDISHAPPA,
3. SRI. MAHESH N.,
AGED ABOUT 27 YEARS,
S/O LATE NANDISHAPPA,

APPELLANTS ARE RESIDING AT
BODANAHOSAHALLI VILLAGE,
SAMETHANAHALLI POST,
ANUGONDANAHALLI HOBLI,
HOSKOTE TLAUK,
BANALORE DISTRICT.

...APPELLANTS

(BY SRI. A.K. BHAT, ADVOCATE)

AND:

1. SRI. P. VENKATESH,
MAJOR IN AGE,
S/O PAPAIAH,
RESIDING AT NO.57,
CHANNASANDRA MAIN ROAD,
KADUGODI POST,
BANGALORE-67.



2. SRI. PURUSHOTHAM,
MAJOR IN AGE,
S/O GANGANNA,
RESIDING AT NEAR ANGANAWADI
SCHOOL, CHANNASANDRA,
KADUGODI POST, BANGALORE-67.

3. THE LEGAL MANAGER,
M/S SHRIRAM GENERAL INSURANCE CO. LTD.,
NO.305, 3RD FLOOR, SS CORNER BUILDING,
OPP BOWRING AND LADY CURZON HOSPITAL,
SHIVAJINAGAR, BANGALORE.

...RESPONDENTS

(BY SRI. O MAHESH,ADVOCATE FOR R3;
V/O DATED 13.03.2019, NOTICE TO R1 AND R2 IS
HELD SUFFICIENT)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 04.08.2016 PASSED IN MVC
NO.5227/2013 ON THE FILE OF THE X ADDITIONAL JUDGE,
MACT, COURT OF SMALL CAUSES, BANGALORE, PARTLY
ALLOWING THE CLAIM PETITION FOR COMPENSATION AND
SEEKING ENHANCEMENT OF COMPENSATION.

THESE APPEALS, COMING ON FOR FINAL HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA



ORAL JUDGMENT

The petitioners are seeking enhancement of compensation, whereas the Insurance Company is questioning the legality of the liability fastened against it.

2. For the sake of convenience, rank of the parties shall be referred to as per their status before the Tribunal.

3. Brief facts of the case are, one Sri. Nandishappa, the deceased, the husband of petitioner No.1 and father of petitioners No.2 and 3, as cyclist returning home on 17.06.2013 at 5.00 p.m., near Anjaneya Swamy Temple at Samethanahalli on NH-207, Hoskote-Chikkathirupathi Road, canter goods vehicle bearing No.KA-30-6744 hit against him, due to which, he fell down and sustained head injuries. He was treated at Brookfield Hospital, ESI Hospital in Bengaluru, NIMHANS, Narayana Hrudayalaya Hospital and Shirdi Sai Hospital. In spite of it, he succumbed to death on 31.07.2013.



4. The petitioners as dependants have approached the X Additional Judge, Court of Small Causes and Motor Accident Claims Tribunal, (SCCH-16) at Bangalore (in short 'the Tribunal') for grant of compensation of Rs.30,00,000/-. The claim was opposed by the Insurance Company. The Tribunal after taking the evidence and hearing both the parties, allowed the claim petition awarding compensation of Rs.13,88,209/- with interest at 9% per annum. Pleading inadequacy and seeking enhancement of compensation, the petitioners, questioning the liability and cause of the death of the deceased, the Insurance Company is before this Court.

5. Heard the arguments of Sri. A.K. Bhat, learned counsel for the petitioners and Sri. O. Mahesh, learned counsel for the Insurance Company.

6. Learned counsel for the Insurance Company has contended that at the time of accident, the vehicle in question was plying on the road without valid permit and



fitness certificate. There is a fundamental breach on part of the owner of the vehicle and the Insurance Company can avoid its liability. It is further contended that the deceased died due to cardiac arrest and such cardiac arrest was not connected with the injuries sustained by the deceased. Hence, there is no nexus between the injuries and the cause of death of the deceased. It is also contended that the Tribunal has taken 15% of future prospects instead of 10% for the age of 55 years, deduction of 1/3 for single dependant is erroneous and interest at 9% awarded is on the higher side and sought for modification.

7. Per contra, learned counsel for the petitioners has contended that due to head injury sustained in the accident, from the date of accident till the date of death, the deceased was under unconscious state. He has been treated at various hospitals, inspite of which, the petitioners could not revive him and this has been explained through medical records. The cardiac arrest was



resultant of the head injury and there is nexus between the injuries and the cause of death and supported the impugned judgment.

7.1. It is further contended that, in the year 2013, a person with no proof of income will earn not less than Rs.8,000/-, whereas the Tribunal has taken the income at Rs.7,000/-. As regarding deduction is concerned, referring to the judgment of the Hon'ble Apex Court in **Sarla Verma (Smt.) and Others -vs- Delhi Transport Corporation and Another¹**, it is submitted that in case of the deceased who is married, 1/3rd has to be deducted. There is a specific mention that only in a case of a bachelor 50% has to be deducted. Hence, the deduction of 1/3rd towards personal expenses affected by the Tribunal is proper.

7.2. It is also submitted that, in view of the evidence of RW-1, at the time of accident, the vehicle in question was not holding valid permit as well as the fitness

¹ (2009) 6 SCC 121



certificate. Even accepted that there is a fundamental breach, the Insurance Company cannot avoid its liability and the principle of 'pay and recovery' has to be applied. To support his contention, he has relied on the judgment of ***New India Assurance Co.Ltd., Bijapur -vs- Yallavva and Another***² and he has supported the impugned judgment.

8. I have given my anxious consideration to the arguments addressed by the learned counsel for both parties and perused the materials on record.

9. Occurrence of the accident is not in dispute. On 31.07.2013, the deceased was succumbed to death on account of cardiac arrest. Same is recorded in the postmortem report placed before the Court as per Ex.P8. The point that arises for consideration is, whether there is any nexus between the injuries sustained by the deceased in the accident and cause of death.

² ILR 2020 KAR 2239



10. It is pertinent to note that, soon after the accident on 17.06.2013, the deceased was brought to Brookfield Hospital and he was treated till 10.07.2013. On 11.07.2013, again the deceased was admitted to Shirdi Sai Hospital and he was discharged on 23.07.2013. On perusal of the inpatient records, discharge summary and the treatments provided to the injured goes to explain that from the date of accident till 23.07.2013, the deceased was under unconscious state. The discharge summary issued by Shirdi Sai Hospital as per Ex.P26 on 23.07.2013 makes a specific mention as follows - *"No gain in consciousness during the stay in hospital"*. This clearly demonstrates that even from 17.06.2013 to 23.07.2013, the deceased was under unconscious state and inspite of several treatments, he was not recovered. Within 7 days thereafter, he was succumbed to death.

11. The manner in which treatment was provided and the medical records itself speaks that from the day one till the date of death, the deceased was under



unconscious state. Mere mentioning of cardiac respiratory arrest in the postmortem report is not a ground to urge that the death was not connected to the accident. Medical evidence persuaded that the deceased was succumbed to death on account of head injury sustained in the accident and the petitioners are able to demonstrate the nexus between the injuries and the cause of death.

12. As regarding quantum of compensation is concerned, the Tribunal has taken the income of the deceased at Rs.7,000/-. The deceased was said to be a mason and no evidence is placed in proof of the income. He has to be treated as a person with no proof of income. In the year 2013, notional income of a person with no proof of income will be Rs.8,000/-. The deceased was aged 55 years, future prospects is to be considered at 10% and applicable multiplier is 11.

13. As regarding deduction towards personal expenses is concerned, it is argued on behalf of the



Insurance Company that, the petitioners No.2 and 3 are major sons, economically independent and they are not the dependants of the deceased. Even accepting the said argument, the dependant remains is the spouse. The judgment in **Sarla Verma** (supra) is also relied by the Insurance Company. The Hon'ble Apex Court discussed the deduction towards personal expenses in case of married person as well as bachelor at paragraph Nos.30 and 31, which reads as follows:

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having a considered several subsequent decisions of this Court, we are of the view that when the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even



otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father."

14. The Hon'ble Apex Court while dealing with a married person, clearly said that 1/3rd has to be deducted. But there is no specific mention either in paragraph Nos.30 and 31 or in body of the judgment that, in case of a married person died leaving behind spouse alone, 50% has to be deducted towards personal expenses. The Hon'ble Apex Court specifically mentioned with reference to the bachelor that 50% has to be deducted towards personal expenses. If the intention of the Hon'ble Apex Court to deduct 50% in case of a spouse, it could have been mentioned specifically in paragraph No.30. Under such circumstances, argument of the Insurance Company is not persuasive to deduct 50% towards personal



expenses in a case of married person. Hence, it is proper to deduct 1/3rd towards personal expenses. Then loss of dependency is Rs.8,000/- + 800(10%) = 8,800 - 2,933 (1/3rd) = 5,867 x 12 x 11 = Rs.7,74,444/-.

15. As regarding medical expenses is concerned, between 17.06.2013 and 23.07.2013, the deceased was under hospitalization, bills have been placed before the Tribunal, even during the hospitalization, the deceased was taken to the various hospitals intermittently for head injury including NIMHANS. Under such circumstances, the medical bills amounting to Rs.4,04,765/- placed by the petitioners has to be reimbursed.

16. Under conventional heads, loss of consortium to the wife, love and affection to two sons at Rs.40,000/- each and Rs.15,000/- each towards funeral expenses and loss of estate has to be assessed. 10% of the appreciation has to be allowed on the conventional heads by applying the principles in ***National Insurance Co. Ltd. -vs-***



Pranay Sethi and Others³. The compensation under conventional head comes to Rs.1,65,000/-. If all the heads are put together, total compensation comes to Rs.13,44,209/- as against Rs.13,88,209/- awarded by the Tribunal, thereby reduction of Rs.44,000/-. It is the just compensation that the petitioners are entitled to, in the facts and circumstances of the case.

17. As regarding rate of interest is concerned, the Tribunal has awarded the interest at 9% per annum. In the year 2013, no banks will offer interest at such rate and therefore, the argument of the Insurance Company is sustained. The Tribunal did not record any special reason for awarding higher rate of interest. Unless reasons are recorded, interest ought to be awarded at 6% per annum.

18. In this regard, the Division Bench of this Court in **Ms.Joyeeta Bose and Ors. -vs- Venkateshan.V. and Ors.** in M.F.A.No.5896/2018 c/w M.F.A.Nos.4444/2018

³ (2017) 16 SCC 680



and 4659/2018 (MV) DD 24.08.2020 with reference to Section 149(1) of Motor Vehicles Act, 1988, Rule 253 of Karnataka Motor Vehicles Rules, 1989 and Section 34 of Civil Procedure Code, at Para 52 has laid down principles regarding award of interest, it reads thus:

"52. Thus, under Section 34 of CPC being squarely applicable to the interest awarded by the tribunal and Section 34 empowering the tribunal to award pendente lite interest and discretion being vested with the Court/Tribunal to award interest from the date of suit or petition is to the maximum extent of 6% p.a. or in other words, not exceeding 6% p.a., the contention raised by the learned Advocates appearing for the Insurance Company deserves to be accepted and accordingly, it is accepted."

In view of the law laid down as above, the petitioners are entitled for compensation with interest at 6% per annum.

19. As regarding the liability is concerned, the evidence placed by the Insurance Company through RW-1 points out that the vehicle in question was not holding valid permit and fitness certificate while plying on the road at the time of accident. The driver of the vehicle has been prosecuted under Sections 66, 56 of the Motor Vehicles



Act, 1988 (for short 'MV Act') and also under Rule 52 of the Central Motor Vehicles Rules, 1989 (for short 'CMV Rules'). It is treated as a fundamental breach of terms and conditions of the policy. The Insurance Company can avoid its liability as defence is available under Section 149(2)(a)(i)(a) of the MV Act.

20. But at the same time, the petitioners are placing reliance on the judgment of the Hon'ble Apex Court in the case of **National Insurance Co. Ltd., v. Swaran Singh and others**⁴ and also the Full Court judgment of this Court in the case of **Yallavva** (supra). The Hon'ble Apex Court in **Swaran Singh's** case while summing up the findings at paragraph No.102(iii) of its judgment held as follows:

"102 (iii). The breach of policy conditions, e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2) (a) (ji) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at

⁴ 2004 ACJ 1



the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."

21. The Full Bench of this Court in **Yallavva's** case, while answering the questions referred to at paragraph No.(i) at page No.265 which reads as follows:

"i) The Insurer is liable to pay the third party and recover from the insured even if there is breach of any condition recognized under Section 149(2), even if it is a fundamental breach (that is breach of condition which is the cause for the accident) and the insurer proves the said breach, in view of the mandate under Section 149(1) of the Act. But no such order can be passed against the insurer, if, on the facts and circumstances of a case, a finding is given by the court that the third party (injured or deceased) had played any fraud or was in collusion with the insured, individually or collectively, for a wrongful gain to themselves or cause wrongful loss to the insurer."

22. It is the argument of the Insurance Company that when once the fundamental breach is demonstrated,



the Insurance Company can avoid its liability completely, it is for the owner to compensate the petitioners. With reference to the judgment of the Hon'ble Apex Court in ***Swaran Singh's*** case and also the full bench judgment of this Court in ***Yallavva's*** case, it is argued that Court interpretations cannot be applied against the statute. Main reliance is placed on the charge sheet filed against the driver of the vehicle under Sections 56, 66 of the MV Act and Rule 52 of the CMV Rules. This argument cannot be sustained as the law has been settled by the Hon'ble Apex Court and also the full Bench of this Court, which are binding in nature.

23. In view of the law laid down by ***Swaran Singh's*** case as well as ***Yallavva's*** case, even though this is a case of fundamental breach, the Insurance Company can avoid its liability, as the petitioners are 3rd parties in view of the contract of insurance, the Insurance Company has to pay the compensation and recover the same from



the owner of the vehicle. Hence, principle of pay and recovery is applicable to facts of this case.

24. In view of the above discussions, the appeals filed by the petitioners and the Insurance Company merits consideration, in the result, the following:

ORDER

- (i) Both the appeals are ***allowed-in-part***;
- (ii) The impugned judgment and award passed by the Tribunal is modified;
- (iii) The petitioners are entitled to total compensation of **Rs.13,44,209/-** instead of Rs.13,88,209/- with interest at the rate of 6% per annum from the date of petition till the date of deposit;
- (iv) The owner of the vehicle is held liable to pay the compensation;
- (v) The Insurance Company is directed to deposit the entire compensation with interest (supra) within eight weeks from the date of receipt of certified copy of this judgment and recover it



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from the owner of the vehicle in the same proceedings.

- (vi) The amount in deposit shall be transmitted to the Tribunal forthwith along with the trial Court records.

SD/-
(T.G. SHIVASHANKARE GOWDA)
JUDGE

MCR