



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MAY, 2024

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS FIRST APPEAL NO.7683 OF 2014(MV-D)

C/W

MFA CROSS OBJECTION NO. 54 OF 2020 (MV-D)

IN MFA NO.7683 OF 2014

BETWEEN:

THE NEW INDIA ASSURANCE CO LTD.
BRANCH OFFICE, KUNDAPURA.
THROUGH MOTOR THIRD PARTY CLAIMS,
HUB,M.G. ROAD, BANGALORE-560 001,
BY DULY CONSTITUTED ATTORNEY.

...APPELLANT

(BY SRI. C.R RAVI SHANKAR, ADVOCATE FOR
SRI. K. SURYANARAYANA RAO, ADVOCATE)

AND:

1. BIBI NAFISA,
W/O LATE HASSAN SHABBAR MOHTISAM,
AGED ABOUT 50 YEARS,
2. AYSHA NAYYARA MOHTISAM
D/O LATE HASSAN SHABBAR MOHTISAM,
AGED ABOUT 29 YEARS.
3. MOHAMMAD SUHAIMI
D/O LATE HASSAN SHABBAR MOHTISAM,
AGED ABOUT 28 YEARS,
ALL ARE RESIDING AT SHIROOR,





KUNDAPURA TALUK 576 201.

4. MOHAMMAD MUSTAPA
MAJOR IN AGE,
S/O MOHAMMAD HASSAN,
R/O MOTISHAMA SHEGA,
MUGALI HONDA, HOUSE NO. 131,
BHATKAL. 581 320.

...RESPONDENTS

(BY SRI. NAGARAJA HEGDE, ADVOCATE FOR R1 TO R3)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 11.08.2014 PASSED IN MVC NO.269/2009 ON THE FILE OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, ADDITIONAL MACT, UDUPI, (SITTING AT KUNDAPURA), KUNDAPURA, AWARDED COMPENSATION OF RS. 2,56,000/- WITH INTEREST @ 8% P.A. FROM THE DATE OF PETITION TILL REALIZATION.

IN MFA CROB. NO. 54 OF 2020

BETWEEN:

- 1 SMT. BIBI NAFISA,
W/O LATE. HASSAN SHABBAR MOHTISAM,
AGED ABOUT 55 YEARS.
- 2 SMT. AYSHA NAYYARA MOHTISAM
W/O LATE. HASSAN SHABBAR MOHTISAM,
AGED ABOUT 34 YEARS.
- 3 SMT. MOHAMMED SUHAIMI,
W/O LATE. HASSAN SHABBAR MOHTISAM,
AGED ABOUT 33 YEARS.
ALL ARE RESIDING AT SHIROOR,
KUNDAPURA TALUK.

... CROSS OBJECTORS

(BY SRI. NAGARAJA HEGDE, ADVOCATE)



AND:

1. SRI MOHAMMAD MUSTAPA,
S/O MOHAMMAD HASSAN,
AGE MAJOR,
R/O. MOTISHAMA SHEGA,
MUGALI HONDA,
HOUSE NO.131,
BHATKAL.

2. THE NEW INDIA INSURANCE CO., LTD.,
BRANCH OFFICE: KUNDAPURA,
REP. BY ITS
BRANCH MANAGER.

...RESPONDENTS

(BY SRI. C.R RAVISHANKAR, ADVOCATE FOR
SRI. K. SURYANARAYANA RAO, ADVOCATE FOR R2;
NOTICE TO RESPONDENT NO.1 DISPENSED WITH)

THIS MFA CROB IN MFA NO.7683/2014 FILED UNDER
ORDER 41 RULE 22 OF CPC, AGAINST THE JUDGMENT AND
AWARD DATED 11.08.2014 PASSED IN MVC NO.269/2009 ON
THE FILE OF THE ADDITIONAL DISTRICT AND SESSIONS
JUDGE AND ADDITIONAL MACT, UDUPI(SITTING AT
KUNDAPURA), KUNDAPURA, PARTLY ALLOWING THE CLAIM
PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT
OF COMPENSATION.

THIS APPEAL AND CROSS OBJECTION COMING ON FOR
HEARING, THIS DAY, THROUGH VIDEO CONFERENCING THE
COURT DELIVERED THE FOLLOWING:



JUDGMENT

MFA No.7683/2014 is filed by the Insurance Company challenging the judgment and award dated 11.08.2014 in MVC No.269/2009, passed by the Additional District & Sessions Judge and Additional MACT, Udupi (sitting at Kundapura), Kundapura, insofar as it relates to fastening liability on the Insurance Company to pay compensation. MFA.CROB.54/2020 is filed by the claimants seeking enhancement of compensation.

2. Brief facts of the case are as under:

It is the case of the claimants that on 12.12.2008, at about 8.45 P.M., deceased Hassan Shabbar s/o Ali Saheb was proceeding on the side of the road near Vinayaka Hotel on NH17, Ranginakatta, Bhatkal and at that time, a two wheeler came from Shirali side in a rash and negligent manner and dashed against the deceased due to which the deceased sustained grievous injuries and succumbed to the injuries on the way to the hospital. The



Tribunal after appreciating the evidence on record has awarded the compensation on various heads as follows:

01.	Loss of Dependency	Rs.2,10,000/-
02.	Loss of Consortium	Rs. 10, 000/-
03.	Love and Affection	Rs. 15,000/-
04.	Transportation of dead body	Rs. 10,000/-
05.	Cremation obsequies and religious	Rs. 8,000/-
06.	Ambulance charges	Rs. 3,000/-
	Total	Rs. 2,56,000/-

3. The Tribunal has fastened the liability on the Insurance Company to pay compensation.

4. Heard the arguments of learned Counsel on both sides and perused the records.

5. It is the submission made by the learned Counsel for the Insurance Company that the accident was caused by a minor boy, aged 16 years, who was riding the motor cycle at the time of accident. Since the rider was a



minor, he did not have a valid driving licence to ride the motor cycle. Hence, the Insurance Company is not liable to pay the compensation. Therefore, he prays for exoneration of the Insurance Company from the liability.

6. On the other hand, learned counsel for the claimants submitted that owner of the motor cycle namely, Mohammed Mustapa (respondent No.4 in the appeal) was riding the motor cycle but not the minor. He has given his evidence as R.W.1. Therefore, learned Counsel submitted that Tribunal was justified in fastening the liability on the Insurance Company.

He further prays for enhancement of compensation.

7. Upon considering the rival submissions made in this regard, the point that arises for consideration is, who was riding the motor cycle. It is the evidence of R.W.1 who is the owner of the motor cycle that he was riding the motor cycle. It is only the oral evidence of R.W.1 and he has not produced any documentary evidence. Therefore, his evidence does not have any corroboration. The



documentary evidence placed by the claimants, particularly exhibits P1 & P2 which are FIR and complaint respectively, prove that one Mushraff, s/o Hakeem Mothisham was riding the motor cycle as on the date and time of the accident which is reflected in the FIR and complaint. The accident has occurred on 12.12.2008 at 8.45 P.M. and the complaint was lodged on the same day at 10.00 P.M. and within 1 hour & 15 minutes, complaint has been lodged before the police. It is stated in the complaint that one Mushraff s/o Hakeem Mothisham was riding the motor cycle. The claimants are not related to R.W.1-Mohammad Mustapa to make any manipulation in the complaint. The incident as stated in the complaint has occurred in the natural course of way and what the claimants have seen, including the rider of the motor cycle, accordingly, Ex.P1-FIR is registered. Therefore, it is proved that one Mushraff S/o Hakeem Mothisham was riding the motor cycle and he has caused the accident. The police, after investigation, have filed the charge sheet as per Ex.R3 making accusation



against one Ibrahim Mushraff S/o Abdul Hakeem Gavayi, aged 16 years. The Insurance Company has produced Ex.R3-charge sheet wherein it is stated that the accused who has caused the accident was a minor boy aged 16 years. Therefore, Insurance Company has proved the documentary evidence that accident was caused by a minor boy aged 16 years whereas, R.W.1 did not produce any documentary evidence corroborating his oral evidence. Therefore, evidence of R.W.1 is proved to be self-explanatory in nature, deposed according to his convenience and he has tried to evade the liability upon him and made effort to fasten the liability on the Insurance Company to pay compensation. Therefore, upon analyzing the evidence, it is proved that minor boy of 16 years old was riding the motor cycle as on the date and time of accident and he has caused the accident.

8. Learned Counsel for the claimants submitted that an order of pay and recovery can be made. In support of his submissions, learned Counsel has placed reliance on



several judgments of the Hon'ble Supreme Court and this Court including the judgment in *New India Assurance Company Ltd. Vs. Yellavva & Another* (ILR 2020 KAR 2239). Upon perusal of the facts and circumstances in the settled judgments of the Hon'ble Supreme Court and this Court, it can be seen that facts are different from this case. In the above stated cases, the drivers of the offending vehicles were majors. But in the present case, a minor boy of 16 years old who was riding the motor cycle has caused the accident. This makes a difference in the factual matrix in the settled cases and the present case. Therefore, settled cases are not helpful to the case of the claimants. In the present case, the rider was a minor and aged 16 years. For such persons who are below the age of 18 years, driving licence cannot be granted and issued. A minor boy is not qualified to apply for a driving licence.

9. For applying the principles of pay and recovery as per sub-sections (1) & (2) of Section 149 of the Motor



Vehicles Act, 1988, if any of the conditions is violated, though Insurance Company can be exonerated from the liability, but the order of pay and recovery can be made. But in the present case, while considering Sub-Clause (ii) of Sub-Section (2) of Section 149 of the Motor Vehicles Act, in the case of a minor boy of 16 years old who was riding the vehicle and caused the accident, this proviso is not applicable so as to say that terms and conditions of the Insurance Company are violated. Where a minor boy under the age of 16 years cannot be said to be a qualified person to apply for driving licence, it cannot also be categorized that he is not duly licenced so as to come within the ambit of sub-clause (ii) of sub-section (2) Section 149 of the MV Act when a minor boy of 16 years old inherently is not a qualified person so as to apply for driving licence. Therefore, the principle of pay and recovery is not applicable in case minor boy drives the vehicle and causes the accident. Hence, the prayer of pay and recovery is hereby rejected.



10. Respondent No.4-Mohammad Mustapa being the owner of the motor cycle has handed over the motor cycle to the minor boy. Hence, in this regard, owner of the vehicle namely, Mohammad Mustapa alone shall pay the compensation to the claimants and not the Insurance Company. Hence, judgment and award of the Tribunal fixing the liability on the Insurance Company is set aside.

11. Coming to the question of quantum of compensation awarded by the Tribunal, it is seen from the records that the deceased was aged 61 years at the time of accident. In the absence any proof of income, the Tribunal has taken the notional income at Rs.5,000/- p.m. The claimants are wife and two children. Therefore, $1/3^{\text{rd}}$ of the amount will have to be deducted towards personal expenses. The appropriate multiplier is '7'. If the amount is calculated towards loss of dependency, it works out to Rs.2,79,972/- ($\text{Rs.}5,000 \times 2/3^{\text{rd}} \times 7 \times 12$).



12. If the loss of consortium is taken at Rs.44,000/- for each dependent (Rs.40,000/-+ 10% escalation), the amount would work out to (Rs.44,000x3) Rs.1,32,000/-.

13. The amount towards loss of estate can be awarded at Rs.16,500/- (Rs.15,000/- + 10% escalation).

14. The amount towards funeral expenses can be awarded at Rs.16,500/- (Rs.15,000 + 10% escalation).

Hence, the total compensation is worked out as under:

Sl.No.	Particulars	Amount
01.	Loss of dependency	Rs.2,79,972-00
02.	Loss of consortium	Rs.1,32,000-00
03.	Loss of estate	Rs. 16,500-00
04.	Funeral expenses	Rs. 16,500-00
	Total	Rs.4,44,972-00

15. In view of the aforesaid observations, the judgment and award passed by the Tribunal is liable to be set aside. Hence, I proceed to pass the following:



ORDER

- (i) MFA No.7683/2014 is ***allowed***;
- (ii) The judgment and award dated 11.08.2014 in MVC No.269/2009 passed by the Additional District & Sessions Judge and Additional Motor Accidents Claims Tribunal, Udupi (sitting at Kundapura), Kundapura, is hereby set aside;
- (iii) The Insurance Company is exonerated of the liability to pay compensation to the claimants;
- (iv) MFA.CROB.54/2020 is ***allowed in part***;
- (v) The compensation awarded by the Tribunal is enhanced to Rs.4,44,972/- as against Rs.2,56,000/- awarded by the Tribunal with interest at the rate of 6% p.a from the date of petition till the date of realization;
- (vi) The owner of the motor cycle namely, Mohammad Mustapa(respondent No.4 in the appeal) is alone liable to pay compensation to the claimants.
- (vii) The claimants are not entitled to get interest for the delayed period of 665 days in presenting the MFA.Crob.



(viii) The amount deposited by the Insurance Company shall be transmitted to the Tribunal for the purpose of refunding the same to the Insurance Company.

(ix) Registry shall return the records to the Tribunal along with a copy of this order.

Sd/-
JUDGE

Yn.