IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF NOVEMBER, 2023

PRESENT

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR. JUSTICE K.V.ARAVIND

MISCELLANEOUS FIRST APPEAL No.7531/2022 (MV-D)
C/w
MISCELLANEOUS FIRST APPEAL No.5383/2023 (MV-D)

MFA NO.7531/2022:

BETWEEN:

CHOLAMANDALAM MS GIC LTD.,
NO.125/116-Q, SAMPIGE ROAD
CHAMARAJANAGAR CITY - 571 313
ALSO AT 6TH FLOOR
GOLDEN HEIGHTS BUILDING
NEAR SUJATHA THEATER
RAJAJINAGAR, BENGALURU – 560 010
REP. BY ITS CHIEF CLAIMS MANAGER ...APPELLANT

Digitally signed by PRABHU KUMARA NAIKA
Location: High Court of Karnataka

(BY SRI MURALIDHAR N, ADVOCATE)

AND:

1. SMT SHIVAMMA
   W/O LATE NANJUNDA
   AGED ABOUT 33 YEARS

2. S N ANJALI
   D/O LATE NANJUNDA
   AGED ABOUT 18 YEARS

3. SRINIVASA S N
   S/O LATE NANJUNDA
   AGED ABOUT 14 YEARS

   R3 MINOR
   REP. BY HIS NATURAL GUARDIAN
   R1 BY NAME SMT SHIVAMMA

R1 TO R3 ARE R/AT SIDDAIAHNAPURA VILLAGE
CHAMARAJANAGARA TALUK & DISTRICT
KARNATAKA - 571127

4. SIDDAPPAJI
S/O LATE PUTTAIAH
AGED ABOUT 39 YEARS
R/AT SIDDAIAHNAPURA VILLAGE
CHAMARAJANAGARA TALUK & DISTRICT
KARNATAKA – 571 127 …RESPONDENTS

(BY SRI M.R.HIREMATHAD, ADVOCATE FOR R1 & R2;
R3 MINOR REP.BY R1; R4 SERVED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 01.06.2022 PASSED BY THE ADDITIONAL SENIOR CIVIL JUDGE AND MACT, JMFC, CHAMARAJANAGARA IN MVC NO. 182/2021 AWARDING COMPENSATION OF RS. 24,00,000/- WITH INTEREST AT 6% P.A. FROM THE DATE OF PETITION TILL ITS REALIZATION.

MFA NO.5383/2023:

BETWEEN:

1. SMT SHIVAMMA
W/O LATE NANJUNDA
AGED ABOUT 34 YEARS

2. S N ANJALI
D/O LATE NANJUNDA
AGED ABOUT 19 YEARS

3. SRINIVASA S N
S/O LATE NANJUNDA
AGED ABOUT 14 YEARS

SINCE A3 IS MINOR
REP. BY HIS NATURAL GUARDIAN
MOTHER I.E. A1

ALL ARE R/AT SIDDAIAHNAPURA VILLAGE
CHAMARAJANAGARA TALUK &
DISTRICT- 517 313 …APPELLANTS

(BY SRI M.R.HIREMATHAD, ADVOCATE)

AND:

1. SIDDAPPAJI
S/O LATE PUTTAIAH
AGED ABOUT 40 YEARS

R/AT SIDDAIAHNAPURA VILLAGE
CHAMARAJANAGARA TALUK
& DISTRICT- 517 313

2. THE MANAGER
CHOLAMANDALAM MS INSURANCE
COMPANY LIMITED
NO.125/116-Q, SAMPIGE ROAD
CHAMARAJANAGAR CITY – 517 313 …RESPONDENTS

(BY SRI MURALIDHAR N, ADVOCATE FOR R2;
NOTICE TO R1 DISPENSED WITH V/C/O DTD:12.09.2023)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 01.06.2022 PASSED BY THE ADDITIONAL SENIOR CIVIL JUDGE AND MACT, JMFC, CHAMARAJANAGARA, IN MVC NO. 182/2021 PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THESE MISCELLANEOUS FIRST APPEALS COMING ON FOR FINAL HEARING, THIS DAY, **K.S.MUDAGAL.J,** DELIVERED THE FOLLOWING:

JUDGMENT

Office objection raised in M.F.A.No.5383/2023 is complied by correcting the name of respondent No.2 in the cause title of the appeal memo.

2. Challenging the award in M.V.C.No.182/2021 on the file of the Additional Senior Civil Judge and JMFC, MACT, Chamarajanagar, the Insurer and the claimants have preferred the above appeals.

3. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the Tribunal.

4. Claimant No.1 is the wife, claimant Nos.2 and 3 are minor children of the deceased Nanjunda. On 26.01.2021 at 2.00 p.m. when Nanjunda was traveling in Mahindra Jeeto Goods vehicle bearing No.KA-10-A-1329 near Chikkahole-Yellekatte Road within the jurisdiction of Chamarajanagar East Police Station, he fell down from the vehicle and suffered grievous injures. He was shifted initially to JSS Hospital, Chamarajanagar. From there he was shifted to JSS Hospital, Mysore. He succumbed to the injuries on 27.01.2021 at 5.00 a.m. in JSS Hospital, Mysore. At the relevant time, respondent Nos.1 and 2 were the registered owner and Insurer of the vehicle in question.

5. On the complaint against the driver of the Mahindra Jeeto Goods vehicle bearing No.KA-10-A-1329, the police on investigation filed the charge sheet against him. In the charge sheet it was alleged that the driver of the said vehicle, without properly closing the cabin door of the vehicle drove the vehicle rashly and negligently, got into the ditch, resultantly the door opened and Nanjunda was thrown out of the vehicle. He suffered grievous injuries on his head and ears and died.

6. The claimants filed M.V.C.No.182/2021 against the respondents contending that the deceased was traveling in the said vehicle for loading tomatoes and the accident occurred due to actionable negligence on the part of the driver of the said vehicle. They further contended that deceased was earning Rs.20,000/- to Rs.25,000/- per month as loader and from agricultural work and they were dependent on his income. They claimed compensation of Rs.46,10,000/- on different heads from the respondents.

7. The respondents contested the petition denying actionable negligence on the part of the driver of the vehicle in question, age, occupation, income of the deceased and their liability to pay compensation. They contended that the deceased himself had not closed the cabin door properly and the accident occurred due to his negligence only. Respondent No.1 contended that the risk was covered by the policy issued by respondent No.2. Whereas, respondent No.2 contended that the vehicle was being plied without permit, fitness certificate and driving licence, therefore it is not liable to indemnify the damages.

8. On the basis of the pleadings, the Tribunal framed the relevant issues. To substantiate the claim of the

claimants, claimant No.1 was examined as PW.1 and Exs.P1 to P26 were marked. The respondents did not adduce any evidence.

9. The Tribunal on hearing the parties rejected the contention of the respondents regarding negligence on the part of the deceased himself. Relying on Exs.P1 to P9 the charge sheet and other police records, the Tribunal held that the accident occurred due to actionable negligence on the part of the driver of the vehicle in question. The Tribunal relying on Ex.P22 the aadhar card, considered the age of the deceased as 40 years and notionally considered his income at Rs.15,000/- per month, added 25% of the same by way of future prospects, deducted 1/3rd out of the same for his personal expenses, applied 15 multiplier and awarded compensation of Rs.22,50,000/- on the head of loss of dependency. The Tribunal in all awarded compensation of Rs.24,00,000/- as per the table below:

Sl. No.	**Particulars**	**Compensation Amount in Rs.**
1.	Loss of dependency	22,50,000/-
2.	Loss of consortium	1,20,000/-
3.	Towards transportation of dead body & funeral expenses	15,000/-
4.	Loss of estate	15,000/-
	Total	**24,00,000/-**

10. The Insurer has challenged the award both on the ground of liability and quantum. The claimants have challenged the award on the ground that the compensation awarded is not just.

Analysis

11. There is no dispute that Nanjunda died while he was traveling in the vehicle in question. It is also not disputed that he was thrown out of the vehicle since the cabin door opened when the vehicle was in motion.

Reg. Negligence:

12. The claimants contended that the driver of Mahindra Jeeto Goods vehicle bearing No.KA-10-A-1329 had not closed the door of the vehicle properly, whereas the respondents claimed that Nanjunda himself had not closed the door properly. Basically, it is the duty of the driver of the vehicle to see that the doors of the vehicle are closed properly before the vehicle starts moving, that too when another person is traveling in the said vehicle. Further, on the complaint that the driver of Mahindra Jeeto Goods vehicle bearing No.KA-10-A-1329 was negligent, the police after investigation filed the charge sheet holding that the driver of the vehicle himself was rash and negligent. Such charge sheet is *prima facie* proof of negligence on the part of the

driver of the vehicle. To rebut that, the respondents did not examine the driver of the said vehicle. Therefore the presumption under Ex.P1 the charge sheet was not rebutted.

13. The Hon'ble Supreme Court in the judgment in ***Raj Rani & Ors. v. Oriental Insurance Co. Ltd.***[1] relied on by learned Counsel for the Insurer held that contributory negligence ordinarily means failure of a person to use reasonable care for the safety of either himself or his property.

14. In the present case the duty of closing the cabin door of the vehicle in question was basically on the driver of the said vehicle for safety of himself and other inmates of the vehicle. Therefore, the said judgment is not applicable to the facts of the present case. For the aforesaid reasons, this Court does not find any error in the findings of the Tribunal that the accident occurred due to actionable negligence on the part of the driver of Mahindra Jeeto Goods vehicle bearing No.KA-10-A-1329.

Reg. quantum:

15. In the petition, the claimants contended that the deceased was aged 40 years. To prove that they rely on the

[1] (2009) 13 SCC 654

postmortem report Ex.P2, Exs.P3 to P5 the records of JSS Hospital and Ex.P22 the aadhar card of the deceased.

16. The respondents disputed that the deceased was aged 40 years. Therefore the burden was on the claimants to prove the same. The age mentioned in the documents produced by the claimants was not consistent. In the postmortem report, the age of the deceased was shown as 40 years. In the hospital records, his age was shown as 38 years. In Aadhar card his date of birth is shown as 01.01.1981 indicating that as on 2021 he was aged 40 years.

17. PW.1 in her cross examination unequivocally admits that at the time of death of her husband, he was aged 42 years. Such admission was not clarified by re-examining her. When PW.1 gave such admission, the burden was on the claimants to clarify the correct age of the deceased. The basis of the entry in Ex.P22 were not produced. Therefore the Tribunal was not justified in considering his age as 40 years as against clear admission of PW.1. Therefore the age of the deceased has to be taken as 42 years.

18. The claimants though contended that the deceased was earning Rs.20,000/- to 25,000/- per month as

loader and agriculturist, they did not adduce any evidence in proof of actual income of the deceased. Therefore the Tribunal was justified in assessing his income notionally. The accident took place in the year 2021. Considering the age of the deceased, prevailing wage rates and cost of living during 2021, the Tribunal notionally assessed the income at Rs.15,000/- which is just and reasonable.

19. The deceased had three dependants. Therefore, the Tribunal following the judgment of the Hon'ble Supreme Court in ***Sarla Verma v. Delhi Transport Corporation***[2] rightly deducted 1/3rd from his income towards personal expenses. Therefore his contribution to family comes to Rs.10,000/- (Rs.15,000/- x 2/3).

20. Considering the age of the deceased and his occupation as per the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi***[3]***,*** 25% has to be superadded to his income and not 40% as considered by the Tribunal. 25% of Rs.10,000/- comes to Rs.2,500/-. Therefore his monthly contribution to family comes to Rs.12,500/- (Rs.10,000/- x 25% = 2,500/-).

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[2] AIR 2009 SC 3104
[3] AIR 2017 SC 5157

21. As per the judgment of the Hon'ble Supreme Court in ***Sarla Verma's*** case referred to *supra*, the applicable multiplier for his age is 14. Therefore, the compensation payable on the head of loss of dependency comes to Rs.21,00,000/- (Rs.12,500/- x 12 x 14).

22. The claimants being the wife and minor children of the deceased were entitled to compensation on the head of loss of consortium. As per the judgment of the Hon'ble Supreme Court in ***Pranay Sethi's*** case referred to *supra* and ***Magma General Insurance Company Ltd. v. Nanu Ram[4],*** they are entitled to compensation of Rs.40,000/- each with escalation of 10% on the head of consortium which comes to Rs.1,32,000/-.

23. As per the aforesaid judgments, the claimants are entitled to compensation of Rs.15,000/- on the head of loss of estate and Rs.15,000/- for funeral expenses and transportation with escalation at 10%. The compensation payable on the said heads comes to Rs.33,000/-.

24. Learned Counsel for the Insurer relying on the judgment of the Hon'ble Supreme Court in ***Shri Ram General***

[4] 2018 (18) SCC 130

Insurance Co. Ltd. v. Bhagat Singh Rawat[5] and submits that on the conventional heads the claimants are entitled to compensation of Rs.70,000/- only. Reading of the said judgment shows that in that case, the Tribunal had awarded Rs.50,000/- on the head of loss of love and affection and Rs.40,000/- towards loss of consortium which in all comes to Rs.90,000/-. Thus awarding compensation on the head of consortium and again awarding compensation on the head of love and affection amount to duplication. Therefore it was held the claimants are entitled to compensation on conventional heads as per the judgment of the Hon'ble Supreme Court in ***Pranay Sethi's*** case referred to *supra*. Therefore, the said judgment is not applicable to the facts of the present case.

25. For the aforesaid reasons, the just compensation payable to the claimants in this case is as follows:

Sl. No.	**Particulars**	**Compensation Amount in Rs.**
1.	Loss of dependency	21,00,000/-
2.	Loss of consortium	1,32,000/-
3.	Loss of estate & funeral expenses	33,000/-
	Total	**22,65,000/-**

[5] 2023 (2) TAC 713

Reg. Liability:

26. Learned Counsel for the Insurer submits that the deceased was an unauthorized passenger, therefore the Insurer is not liable to indemnify the damages. First of all such defence was not taken in the statement of objections filed by the Insurer. The burden of proving breach of policy condition would be on the Insurer. The Insurer did not lead any evidence to show that the deceased was unauthorized passenger. Therefore, said contention deserves no merit.

27. For the aforesaid reasons, the appeals deserve to be allowed in part. Hence, the following:

ORDER

The appeals are partly allowed.

The award of the Tribunal is modified as follows:

(i) The claimants are entitled to compensation of Rs.22,65,000/- with interest thereon at 6% p.a. from the date of the petition till its realization.

(ii) Respondent No.2 being the Insurer shall deposit the compensation before the Tribunal on adjusting the compensation already deposited, if any, within four weeks from the date of receipt of copy of this order.

(iii) The award of the Tribunal with regard to apportionment and investment is maintained.

(iv) Registry shall transmit the amount in deposit and the trial Court records to the Tribunal forthwith.

(v) The Insurer has not paid costs of Rs.500/-. The same shall be included in the award.

In view of disposal of the appeals, pending IAs if any stood disposed of.

Sd/-
JUDGE

Sd/-
JUDGE

KSR
List No.: 1 Sl No.: 37