

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2561 OF 2020
(@ SPECIAL LEAVE PETITION (CIVIL) NO.7523 OF 2020)
(@ D.NO. 33974 OF 2017)

GANGARAM MAHADEV KADAM AND ANOTHER

...APPELLANT(S)

VERSUS

THE GENERAL MANAGER,
CHOLAMANDALAM M.S. GENERAL INSURANCE
COMPANY LIMITED AND ANOTHER

...RESPONDENT(S)

O R D E R

R. BANUMATHI, J.

Leave granted.

2. This appeal arises out of the judgment and order dated 31.08.2016 passed by the High Court of Karnataka, Dharwad Bench, in MFA No. 22095 of 2013 (MV) in and by which the High Court allowed the appeal preferred by the appellants-claimants and enhanced the compensation amount awarded by the Motor Accidents Claims Tribunal (MACT), Khanapur, from Rs. 3,66,000/- (Rupees three lakhs and sixty six thousand) to Rs. 7,29,000/- (Rupees seven lakhs and twenty nine thousand). Seeking further enhancement of compensation, the appellants-claimants preferred this appeal.

3. The case of the appellants is that on 28.07.2010 at about 1.15 a.m. near Vellore on National Highway, the driver of a lorry bearing registration No. KA-08/2481 negligently applied

brake and as a result of the same, the driver of Lorry bearing registration No. KA-22/A-6867 in which the deceased Jagannath was travelling as a cleaner, lost control and hit against the former Lorry bearing registration No. KA-08/2481. Due to the accident, the deceased Jagannath travelling as a cleaner in the Lorry bearing registration No. K-A22/A-6867 sustained fatal injuries and died on the spot. The vehicle owned by second respondent has been insured by Respondent No. 1 - Insurance Company. The appellants-claimants (parents of the deceased) filed a Claim Petition under Section 166 of Motor Vehicles Act, claiming compensation of Rs. 12,00,000/- (Rupees twelve lakhs) on account of death of their son.

4. The Tribunal has considered the income of the deceased at Rs. 4,000/- per month and adopted the multiplier of '14'. Pointing out that the deceased was a bachelor and appellant no. 2 i.e. the mother alone was to be considered as a dependent, the Tribunal deducted 50% towards personal and living expenses. The Tribunal has calculated loss of dependency at Rs. 3,36,000/- ($4,000 \times 12 \times 14 \times 1/2$). The Tribunal awarded conventional damages of Rs. 30,000/- and, thus, awarded total compensation of Rs. 3,66,000/-.

5. Being dissatisfied with the quantum of compensation, the appellants filed the appeal before the High Court seeking enhancement of the compensation. The High Court vide impugned judgment re-assessed the compensation awarded by the Tribunal. The High Court has taken the income of the deceased as Rs. 5,500/- per month and considering the age of 24 years, the High

Court has re-assessed the multiplier as '18'. Since the deceased Jagannath was a bachelor, the High Court also made deduction of 50% towards personal expenses of the deceased. The High Court calculated the loss of dependency at Rs. 5,94,000/- $(5,500 \times 12) \times 18 \times 1/2$. The High Court has awarded Rs. 1,00,000/- (Rupees one lakh) towards loss of love and affection and other conventional damages, loss of estate Rs.10,000/- and funeral expenses Rs. 25,000/- and thus enhanced the compensation to Rs. 7,29,000/- (Rupees seven lakhs and twenty nine thousand) which was directed to be paid along with interest at the rate of 6% per annum from the date of filing of the petition till the date of realization.

6. Mr. Anil Kumar, learned counsel appearing on behalf of the appellants has submitted that the deceased Jagannath was a cleaner and his monthly income fixed by the High Court at Rs.5,500/- is very meagre and the deceased being a cleaner would have earned not less than Rs.400/- to 500/- per day when he was on duty. It is further submitted that the High Court has not taken into account the future prospects and, thus, prayed for enhancement of compensation.

7. Ms. Meenakshi Midha, learned counsel appearing on behalf of the Insurance Company has submitted that the quantum of compensation awarded by the High Court is reasonable and it is not necessary for enhancement of the compensation.

8. The accident was occurred on 28.07.2010 at which time the deceased Jagannath was travelling as a cleaner in the lorry bearing registration no. KA-22/A-6867. Being a cleaner, the

deceased Jagannath definitely earned Rs.350/- to 450/- per day while he was on duty. Being a cleaner, the deceased Jagannath would not have worked all the days of month. That apart, after some time the deceased Jagannath would have become a driver and earned more. Considering the age of the deceased and that he was working as a cleaner, monthly income fixed at Rs.4,000/- per month by the Tribunal. Since the deceased was aged 24 years, 40% of Rs.7000/- that is Rs. 2800/- ($7000 \times 40 / 100$) has to be added towards the future prospects. Thus monthly income of the deceased is calculated at Rs. 9800/- per month (Rs.7000/- + Rs.2800/-) Since the deceased Jagannath was a bachelor, 50% of Rs. 9800/- i.e. 4900/- has to be deducted for personal expenses. Thus loss of dependency is calculated at Rs. 10,58,400/- ($4900 \times 12 \times 18 \times 1/2$).

9. The High Court has awarded Rs.1,00,000/- towards love and affection, Rs.10,000/- towards loss of estate and Rs. 25,000/- for funeral expenses. As per the Constitution Bench Judgment reported in 2017 (13) Scale 13 titled as National Insurance Company Limited vs. Pranay Sethi and Others the claimants are entitled to Rs. 40,000/- towards the loss of love and affection, Rs. 10,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses . However, considering the facts and circumstances of the case and that the accident occurred in the year 2010 and that the claimants have lost their son, the conventional damages is restricted to Rs. 1,00,000/- (Rupees one lakh) instead of Rs. 1,35,000/- awarded by the High Court. Thus the claimants are entitled for total compensation of Rs. 11,58,400/- (Rupees eleven lakhs fifty eight thousand and

four hundred).

10. The compensation amount awarded by the High Court is enhanced to Rs. 11,58,400/- (Rupees eleven lakhs fifty eight thousand and four hundred) payable along with interest at the rate of 6% per annum from the date of filing of the petition till the date of realization.

11. The civil appeal is partly allowed. The enhanced compensation is payable with 6% interest per annum from the date of filing of the petition till the date of realization within a period of eight weeks. Both parties shall bear their respective costs.

.....J.
[R. BANUMATHI]

.....J.
[INDU MALHOTRA]

NEW DELHI
4TH JUNE, 2020

.....J.
[ANIRUDDHA BOSE]

ITEM NO.29

Virtual Court 4

SECTION IV-A

S U P R E M E C O U R T O F I N D I A

R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 33974/2017

(Arising out of impugned final judgment and order dated 31-08-2016 in MFA No. 22095/2013 passed by the High Court Of Karnataka Circuit Bench At Dharwad)

GANGARAM MAHADEV KADAM & ANR.

Petitioner(s)

VERSUS

THE GENERAL MANAGER CHOLAMANDALAM

M.S. GENERAL INSURANCE COMPANY LTD & ANR. Respondent(s)

(IA No. 111110/2017 - CONDONATION OF DELAY IN FILING)

Date : 04-06-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI

HON'BLE MS. JUSTICE INDU MALHOTRA

HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Mr. Anil Kumar, AOR

For Respondent(s) Ms. Meenakshi Midha, Adv.
Mr. Kapil Midha, Adv.
Mr. Abhivandana Chowdhury, Adv.
Mr. Chander Shekhar Ashri, AOR

UPON hearing the counsel the Court made the following

O R D E R

The Court is convened through video conferencing.

We have heard Mr. Anil Kumar, learned counsel appearing for the petitioners and Ms. Meenakshi Midha, learned counsel appearing for the respondent.

Delay condoned. Leave granted.

The impugned amount is enhanced to Rs.11,58,400/-.

The enhanced amount along with accrued interest at the rate of 6% be paid by the respondent-Insurance Company to the appellant(s) within eight weeks from the today.

The appeal is accordingly partly allowed.

Both the parties to bear their respective costs.

(MAHABIR SINGH)

AR-cum-PS

(BEENA JOLLY)

BRANCH OFFICER

(Signed order is placed on the file)

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(MAHABIR SINGH)
AR-cum-PS

(BEENA JOLLY)
BRANCH OFFICER

(Signed order to follow)