

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 3535-3536 OF 2017  
(Arising out of SLP(C) Nos.31402-31403 of 2015)

KEMPAIAH AND ORS. . . . APPELLANT(S)

VERSUS

S.S. MURTHY AND ANR. . . . RESPONDENT(S)

O R D E R

1. Delay condoned.
2. Leave granted.
3. We have heard the learned counsels for the parties and perused the relevant material.
4. The appeals arises out of an order of the High Court of Karnataka by which compensation, though enhanced by the High Court, has left the claimants dissatisfied giving rise to the present appeals.
5. The brief facts that will require to be noticed are as follows:

One K.Viji @ Manu, while riding pillion on a two-wheeler on 19.05.2008 died in an accident arising out of rash and negligent driving of transport vehicle which dashed against the said

two-wheeler. The deceased at the time of his death is claimed to have been working in a milk business with one Mangala Agency and earning an income of Rs.10,000/- per month. The deceased had left behind his father (40 years), mother (38 years) and a sister (17 years).

6. The learned Tribunal found that the driver of the lorry (heavy transport vehicle) to be responsible for rash and negligent driving. Thereafter the learned Tribunal in order to determine the quantum of compensation arrived at a sum of Rs.4,000/- per month as the possible income of the deceased and taking into account the age of the mother i.e. 38 years adopted the multiplier of 14 to award a total compensation of Rs.3,66,000/- along with interest at 6% per annum from the date of filing of the claim petition till the date of payment. The loss of dependency was calculated at 50% of the income of the deceased as the deceased had died a bachelor.

7. The owner of the lorry (transport vehicle) as well as the Insurer (Oriental Insurance Company Limited) were made jointly and severally liable to

satisfy the award.

8. In the appeal filed by the claimants, the High Court enhanced the income of the deceased to Rs.4,500/- per month and the multiplier to 15. On the said basis the computation was worked out at Rs.4,55,000/-. Interest at the same rate as awarded by the learned Tribunal was allowed on the enhanced amount. In the appeal filed by the Insurer, the High Court came to the conclusion that the driver of the transport vehicle involved in the accident did not have a licence to drive a heavy transport vehicle on the date when the accident had occurred, though he had a licence to drive a light motor vehicle (non-transport). Accordingly, the High Court exonerated the insurer from its liability to pay the compensation awarded and made the owner of the lorry (transport vehicle) solely liable to satisfy the same.

9. Insofar as the issue of income of the deceased is concerned, we have perused the materials laid before us, including the salary certificate (Annexure-P2) and the oral evidence of PW-3 - K.R.Ramesh, Proprietor of Mangala Agency

(Annexure-P3). We are of the view that the finding of the High Court with regard to income of the deceased does not disclose any error which would require correction. However, we have noticed that the deceased who was 20 years at the time of his death had left behind a sister who was at that point of time 17 years of age. Taking into account the said fact, we are of the view that adoption of multiplier of 18, keeping in view the age of the deceased, instead of the multiplier of 15, would be more appropriate. Accordingly, we adopt the said multiplier and taking into account 50% as loss of dependency, the compensation awardable to the claimants works out to Rs.5,36,000/- [Rs.4,500 - 50% x 12 x 18 (inclusive of the lump sum compensation of Rs.50,000/-)]. Accordingly, we enhance the compensation amount from Rs.4,55,000/- to Rs.5,36,000/-. The enhanced amount i.e. Rs.81,000/- will carry interest at the rate of 6% per annum from the date of filing of the claim petition till the date of payment.

10. Insofar as the liability of the insurer is concerned, we have noticed the evidence of RW-1

Mumtaz Sheerin (Annexure-P4), who at the relevant point of time was an administrative officer of the respondent-Insurer. The relevant part of the evidence of the said witness on the point of the driving licence of the driver of the offending transport vehicle is as follows :

"I submit that accused driver had licence to drive non transport vehicles upto 29.07.2018. But, his licence to drive transport vehicle expired on 26.09.2007. The same was renewed on 23.09.2008. There was no valid licence to drive transport vehicle on 10.09.2008, the date of accident."

11. In National Insurance Co. Ltd vs Swaran Singh & Ors<sup>1</sup>, this Court has, *inter alia*, observed as follows:

"(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has 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 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 the insured, the insurer has to prove that the insured was guilty of negligence

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1(2004) 3 SCC 297

and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time."

[Para 110 (iii)]

12. In paragraph 110(viii) of the report in *Swaran Singh (supra)*, it has been also held that the same would be the position in case the driver of the offending vehicle had a learner's licence. The ratio of the law laid down by this Court in *Swaran Singh (supra)* is in consonance with the object behind the enactment of the Motor Vehicle Act, 1988. Taking into account the same and the decision of this Court in *Swaran Singh (supra)*, we are of the view that in the facts of the present case the insurer-respondent No.2 (Oriental Insurance Company Ltd.) should be directed to satisfy the award as enhanced by us and thereafter would be at liberty to recover the said amount from the owner of the lorry (transport vehicle). In doing so we have also taken note of the fact that the respondent No.1 (S.S. Murthy), the owner of the vehicle, despite service of notice has chosen not to appear before this Court.

13. We, therefore, order accordingly and close the appeals in the above terms.

.....,J.  
(RANJAN GOGOI)

.....,J.  
(NAVIN SINHA)

NEW DELHI  
MARCH 02, 2017

ITEM NO.8

COURT NO.4

SECTION IVA

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

Petition(s) for Special Leave to Appeal (C) No(s).31402-31403/2015

(Arising out of impugned final judgment and order dated 19/08/2014 in MFA No. 2120/2011 and MFA No. 8199/2011 passed by the High Court of Karnataka at Bangalore)

KEMPAIAH AND ORS.

Petitioner(s)

VERSUS

S.S. MURTHY AND ANR.

Respondent(s)

(with appln. (s) for c/delay in filing SLP and office report)

Date : 02/03/2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s) Mr. Ashwin V. kotemath, Adv.  
Mrs. S. Usha Reddy, Adv.

For Respondent(s) Ms. Amrreeta Swaarup, Adv.  
Mr. Nikhil Jain, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Delay condoned.

Leave granted.

The appeals are closed in terms of the  
signed order.

(Neetu Khajuria)  
Court Master

(Asha Soni)  
Court Master

(Signed order is placed on the file.)