**IN THE HIGH COURT OF KARNATAKA**

**KALABURAGI BENCH**

**DATED THIS THE 6TH DAY OF MARCH, 2025**

**PRESENT**

**THE HON'BLE MR. JUSTICE K NATARAJAN**

**AND**

**THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL**

**MISCL. FIRST APPEAL NO.200848 OF 2024 (MV-D)**

**C/W**

**MISCL. FIRST APPEAL NO.200872 OF 2024(MV-D)**

**IN MFA.NO.200848/2024:**

**BETWEEN:**

THE DIVISIONAL MANAGER,
THE UNITED INDIA INSURANCE COMPANY LIMITED,
2ND FLOOR, CENTURY COMPLEX,
OPP. SANGAM TALKIES,
SUPER MARKET, KALABURAGI-585101.
NOW REPRESENTED BY ITS AUTHORISED
SIGNATORY.

...APPELLANT

(BY SRI. MOHD ABDUL QUAYUM, ADVOCATE)

**AND:**

1. SAVITA
   W/O LATE BHEEMASHANKAR SHILVANT,
   AGE: 40 YEARS, OCC: HOUSEHOLD,

2. SHREYA
   D/O LATE BHEEMASHANKAR SHILVANT,

Digitally signed by NIJAMUDDIN JAMKHANDI
Location: HIGH COURT OF KARNATAKA

AGE: 16 YEARS, OCC: STUDENT, MINOR U/G OF RESPONDENT NO. 1

3. SHRADHA
D/O LATE BHEEMASHANKAR SHILVANT,
AGE: 14 YEARS, OCC: STUDENT,
MINOR U/G OF RESPONDENT NO. 1
ALL RESIDENCE OF VANE GALLI VAIRAG,
TQ. BARSHI, DIST. SOLAPUR (MAHARASHTRA) - 413402,
NOW RESIDING AT H.NO. 43,
NEAR JAGRAN HANUMAN TEMPLE,
GAZIPURA, KALABURAGI-585101.

4. SANJEEV KUMAR
S/O SUBHASHCHANDRA DOSHETTY,
AGE: MAJOR, OCC: BUSINESS,
OWNER OF TANKER BEARING
REGN. NO. KA-32/C-4546,
RESIDENCE OF KAMALAPUR,
TQ. AND DIST. KALABURAGI-585313.

5. BHAGIRATHI
W/O LATE MALLIKARJUN SHILVANT,
AGE: 68 YEARS, OCC: HOUSEHOLD,
RESIDENCE OF VANE GALLI VAIRAG,
TQ. BARSHI, DIST. SOLAPUR (MAHARASHTRA) - 413402,
(MOTHER OF THE DECEASED)

…RESPONDENTS

(BY SRI. BAPUGOUDA SIDDAPPA, ADVOCATE FOR R1 TO R3;
SRI. SHIVAKUMAR S. SEERI, ADVOCATE FOR R4;
SRI. RAVI G. MADABHAVI, ADVOCATE FOR R5)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT, PRAYING TO CALL FOR THE RECORDS IN M.V.C.NO. 672/2018 BY THE III ADDL. SENIOR CIVIL JUDGE AND MACT KALABURAGI. B) SET ASIDE THE JUDGMENT AND AWARD DATED 13.10.2023 PASSED IN M.V.C.NO. 672/2018 BY THE III ADDL. SENIOR CIVIL JUDGE

AND MACT KALABURAGI EXONERATING THE APPELLANT OF ITS LIABILITY.

**IN M.FA.NO. 200872 OF 2024:**

**BETWEEN:**

THE DIVISIONAL MANAGER,
THE UNITED INDIA INSURANCE COMPANY LIMITED,
2ND FLOOR, CENTURY COMPLEX, OPP. SANGAM TALKIES,
SUPER MARKET, KALABURAGI-585101.
NOW REPRESENTED BY ITS AUTHORIZED SIGNATORY.

…APPELLANT

(BY SRI. MOHD ABDUL QUAYUM, ADVOCATE)

**AND:**

1. SAVITA
   W/O LATE BHEEMASHANKAR SHILVANT,
   AGE: 40 YEARS, OCC: HOUSEHOLD.

2. SHREYA
   D/O LATE BHEEMASHANKAR SHILVANT,
   AGE: 16 YEARS OCC: STUDENT,
   MINOR U/G RESPONDENT NO. 1

3. SHRADHA
   D/O LATE BHEEMASHANKAR SHILVANT,
   AGE: 14 YEARS, OCC: STUDENT,
   MINOR U/G RESPONDENT NO. 1
   ALL ARE RESIDENCE OF VANE GALLI VAIRAG,
   TQ. BARSHI DIST. SOLAPUR (MAHARASHTRA) - 413402
   NOW RESIDING AT H. NO. 43,
   NEAR JAGRAN HANUMAN TEMPLE, GAZIPURA,
   KALABURAGI -585101.

4. SANJEEV KUMAR
S/O SUBHASHCHANDRA DOSHETTY,
AGE: MAJOR OCC: BUSINESS,
OWNER OF TANKER BEARING REGISTER
NO. KA-32/C-4546, R/O KAMALAPUR,
TALUK AND DIST. KALABURAGI-585313.

…RESPONDENTS

(BY SRI. BAPUGOUDA SIDDAPPA, ADVOCATE FOR R1 TO R3;
SRI. SHIVAKUMAR S. SEERI, ADVOCATE FOR R4)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT, PRAYING TO CALL FOR THE RECORDS IN MVC NO. 673/2018 BY THE III ADDL. SENIOR CIVIL JUDGE AND MACT KALABURAGI. B) SET ASIDE THE JUDGMENT AND AWARD DATED 13.10.2023 PASSED N MVC NO. 673/2018 BY THE III ADDL. SENIOR CIVIL JUDGE AND MACT KALABURAGI EXONERATING THE APPELLANT OF ITS LIABILITY

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

CORAM: HON'BLE MR. JUSTICE K NATARAJAN
AND
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

**ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE K NATARAJAN)

MFA No.200848/2024 is filed by the Insurance company as against the judgment and award passed by III Addl. Senior Civil Judge and MACT, Kalaburagi in MVC

No.672/2018, awarding compensation to the respondent-claimants on quantum and fixing liability on Insurance Company. MFA No.200872/2024 is filed challenging the judgment and award passed by the same Tribunal in MVC No.673/2018, awarding compensation by fixing the liability on the Insurance Company.

2. Heard the arguments of learned counsel for the appellant and learned counsel for the respondents.

3. The appellant/Insurance Company in both cases is respondent No.2 and respondent No.1 to 3 are petitioner Nos.1 to 3, the owner of the offending vehicle is respondent No.1 and the mother of the deceased is respondent No.3 before the Tribunal.

4. The ranks of the parties before the Tribunal are maintained in this appeal for convenience.

5. The case of the claimants before the Tribunal in MVC No.672/2018 was that they had filed a claim petition under Section 166 of the Indian Motor Vehicles Act, 1988,

seeking compensation of Rs.99,00,000/- for the death of petitioner No.1's husband, Bhimashankar, who died in a road traffic accident on 21.11.2017. It is alleged that on 21.11.2017 at about 8:30 a.m., the deceased Bhimashankar, along with his son Ujwal (deceased in MFA No.200872/2024), was traveling from Vairag to Revansiddeshwar Temple, Ratkal, in a cruiser jeep bearing No.MH-45/N-7878. When the jeep was about 2 km from Aurad-B to Humnabad Main Road, the driver of a tanker bearing No.KA-32/C-4546, came from the Humnabad side at high speed in a rash and negligent manner, dashed against the jeep. As a result, Bhimashankar sustained grievous injuries and succumbed on the spot. The connected appeal also states that his son Ujwal died in the same accident. Consequently, the claimants filed a claim petition seeking compensation in respective cases. The petitioners contended that the deceased Bhimashankar ran a sole proprietorship business, Mahalaxmi Jewelers, at Vairag and was also engaged in agriculture, earning about Rs.10,00,000/- per annum. Due to his untimely death, the

claimants lost their earning member. The accident occurred due to the rash and negligent driving of the tanker by its driver (the respondent No.1 is the owner of the Tanker) and therefore, respondent No.2-Insurance Company is liable to pay compensation. Hence, they filed the claim petition.

6. MVC No.673/2018 was filed by the mother of the deceased along with the siblings, seeking compensation of Rs.25,00,000/- for the death of the minor son Ujwal. They took the same contentions as in MVC No.672/2018.

7. After service of notice, the Insurance Company appeared and filed a statement of objections, denying the rash and negligent driving of the tanker driver, as well as the age, income and occupation of the deceased. They specifically contended that the driver of the tanker bearing No.KA-32/C-4546 did not have any valid and effective driving license at the time of the accident. However, they admitted issuing an insurance policy in favor of respondent

No.1 and contended that if any liability is imposed, it should be subject to the terms and conditions of the policy. They further contended that the terms and conditions of the policy were violated by the owner of the offending vehicle. Hence, they prayed for the dismissal of the claim petitions.

8. The Tribunal, based on the pleadings, framed the following issues:

> *"In MVC No.672/2018:*
>
> *(i) Whether petitioners prove that on 21.11.2017 at about 8-30 A.M. near Aurad-B village on Humnabad Kalaburagi road, Bhimashankar husband of the petitioner No.1 met with an accident and died due to the rash and negligent driving of the Tanker bearing No.KA-32/C-4546?*
>
> *(ii) Whether the 2nd respondent proves that the driver of the Tanker bearing No.KA-32/C-4546 was not holding valid and effective D.L. as on the date of accident?*
>
> *(iii) Whether the petitioners prove that they are entitled for compensation? If so, how much and from whom?*
>
> *(iv) What order or award?*
>
> *In MVC No.673/2018:*

*(i) Whether petitioners prove that on 21.11.2017 at about 8-30 A.M. near. Aurad-B. village on Humnabad Kalaburagi road, Ujwal son of the petitioner No.1 met with an accident and died due to the rash and negligent driving of the Tanker bearing No.KA-32/C-4546?*

*(ii) Whether the 2nd respondent proves that the driver of the Tanker bearing No.KA-32/C-4546 was not holding valid and effective D.L. as on the date of accident?*

*(iii) Whether the petitioners prove that they are entitled for compensation? If so, how much and from whom?*

*(iii) What order or award?"*

9. To prove his case, claimant No.1 examined herself as PW-1 and got marked 13 documents in MVC No.672/2018. Similarly, the same petitioner was examined as PW-1 in MVC No.673/2018 and marked 9 documents. The Insurance Company examined RW-1 to RW-3 and got marked 13 documents in both cases. After hearing arguments, the Tribunal answered issue No.1 in the affirmative, issue No.2 in the negative and issue No.3 in part affirmative. It awarded compensation of

Rs.53,40,800/- in MVC No.672/2018 for the death of Bhimashankar and Rs.6,77,500/- in MVC No.673/2018 for the death of minor Ujwal. In both cases, the Tribunal fixed liability on the Insurance Company. Being aggrieved by both liability and quantum, the Insurance Company has filed these two appeals.

10. The learned counsel for the appellant-Insurance Company vehemently contended that the Tribunal erred in fixing liability on the Insurance Company. According to Ex.R-4, an extract of the driving license, the driver of the offending vehicle held only a regular driver's license without an endorsement for driving hazardous goods vehicles. The Tribunal, however, wrongly fixed liability on the Insurance Company. The appellant further submitted that Ex.R-3 and Ex.R-4, produced by the RTO, along with the evidence of RW-1 and the charge sheet filed by RW-1, were not properly appreciated by the Tribunal. The appellant also argued that some claimants had previously filed a claim petition before the Tribunal, which was

allowed and in a batch of appeals before a single judge of this Court in MFA No.200594/2020 and connected cases, the Insurance Company's appeal was partly allowed, fixing liability on the owner of the vehicle, but directing the Insurance Company to pay and recover the same from the owner of the offending vehicle. Therefore, they contended that liability should be fixed on the vehicle owner in these appeals as well. Additionally, he argued that the Tribunal incorrectly calculated Bhimashankar's income, as it considered only one year's business earnings instead of the average income over three years. He also contested the age determination of the deceased, stating that no birth certificate or documentary proof was provided.

11. Per contra, the learned counsel for claimants Nos.1 to 3 supported the Tribunal's judgment and award. The learned counsel for petitioners contended that the Tribunal has correctly accepted the respondents' arguments and RW-1's evidence, which stated that the offending vehicle's driver had a valid hazardous vehicle

license. They further argued that Ex.R-3, produced by the Insurance Company was an insufficient document. Instead, Ex.R11 and Ex.R-12, obtained from the RTO, confirmed that the driver's endorsement was valid from 13.11.2017 to 18.02.2018. These documents were not produced before the learned single judge in the earlier batch of appeals and a review petition (Review Petition No.200015/2024 and connected matters) is pending consideration before this Court. Hence, they prayed for the dismissal of the appeals.

12. The learned counsel for the claimants fairly admitted that the deceased Bhimashankar's average income over the last three years should have been considered for calculation of compensation. However, both counsels agreed that the compensation awarded for the minor child's death is undisputed, except on the liability.

13. We have considered the submissions and perused the records. The points that arise for our consideration are:

i) Whether the Tribunal was justified in fixing liability on the Insurance Company while awarding compensation?

ii) Whether the compensation awarded by the Tribunal in MVC No.672/2018 was excessive or exorbitant, requiring reduction? If so, to what extent?

iii) Whether the liability and award passed by the Tribunal requires interference?

14. On perusal of the records, it is not in dispute that the accident dated 21.11.2017 occurred due to a head-on collision between the cruiser jeep bearing No. MH-45/N-7878 and the tanker bearing No. KA-32/C-4546 on the Aurad-B to Humnabad road, due to which some persons died and some were injured. The Tribunal, after considering the evidence on record, including the FIR, charge sheet, death certificate and post-mortem report, rightly concluded that the accident occurred due to the rash and negligent driving of the tanker driver. Therefore, the only question that arises for our consideration is

whether the liability fixed on the insurance company is tenable or not. The Tribunal, while considering the liability, relied upon Ex.R-11, the RTO extract concerning the driving license of the offending vehicle's driver. Though, RW-3 produced Ex.R-4 obtained from the RTO and in cross-examination of RW-3, he has stated that he was not aware of the driver holding a hazardous vehicle license from 13.11.2017 till 18.02.2018, but he confirmed that the driver had a valid license for hazardous vehicles from 26.10.2018 till 26.07.2019 as per Ex.R-4.

15. Based on this evidence, the Insurance Company contended that there was no valid driving license for the driver of the tanker. RW-2, the investigating officer, filed the charge sheet, which also stated that the driver did not have a proper driving license. Hence, the charge sheet included an offence punishable under Section 180 of the Cr.P.C. RW-3, the insurance company officer, was also examined and he affirmed that there was no proper driving license of the driver and the tanker.

16. We have carefully examined the license extract produced by RW-3. Ex.R-4 does not reveal the driving license held by Santosh, the driver, from 13.11.2017 onwards. However, the RTO extract indicates that the driving license was valid from 26.10.2018, but there is no reference available in the said extract regarding the period between 2017 and 2018. Ex.R-5, produced and examined before the Court, contains an extract of the DL, which clearly reveals that the driver of the vehicle held a valid license for driving hazardous petroleum products from 13.11.2017 till 18.02.2018. This document corroborates with Ex.R-11. Additionally, learned counsel produced another extract of the DL before this Court dated 19.01.2024. This document clearly states at Serial Nos.9 and 10 that the endorsement for the driver to operate hazardous vehicles was valid from 13.11.2017 till 18.02.2018. The accident in question occurred on 21.11.2017. The documents produced by learned counsel for respondent No.4 clearly corroborate with Ex.R-11 and Ex.R-5, which show that an endorsement was issued by

the RTO confirming that Santosh, the driver of the offending vehicle, possessed a valid license to operate hazardous product-carrying vehicles.

17. Therefore, considering the same, we are of the opinion that the driver of the vehicle had a valid and effective driving license. Consequently, respondent No.1, the owner of the vehicle, is liable to pay compensation. The Insurance Company has not disputed the issuance of the insurance policy and there is no violation of its terms and conditions. Hence, the Insurance Company is liable to pay the compensation. The Tribunal, after considering the evidence on record has rightly held that the Insurance Company was liable to pay compensation and correctly fixed the liability on the insurance company. Hence, we do not find any error in the findings to interfere in the appeal.

18. As regards the judgment passed by the Single Bench of this Court in MFA No.200594/2020 and six connected appeals, the Single Judge of this Court fixed the liability on the owner of the vehicle, but directed the

Insurance Company to pay and recover the compensation. However, the endorsement produced by learned counsel for respondent No.4 shows that Ex.P-11 was not placed before the Single Judge. Learned counsel for respondent No.4 now submits that he has already filed a review petition in RP No.200015/2024 and connected matters, which is pending consideration. In such a case, the judgment passed by the Single Judge cannot be considered for allowing this appeal in favor of the insurance company.

19. Therefore, the Trial Court is justified in fixing the liability on the insurance company. Hence, issue No.1 is answered in favor of claimants and against the insurance company.

20. Regarding the quantum of compensation awarded by the Tribunal for the death of Bhimashankar in MVC No.672/2018, the income considered by the Tribunal was Rs.4,00,648/- and Rs.9,011/- was deducted towards taxes. Learned counsel for the appellant contended that

the previous three years' income had been produced and therefore, the average income of three years should have been taken into account for calculating his income. However, upon perusal of paragraph No.18 of the impugned judgment, it is evident that the Tribunal considered only the income of the year of the accident of the deceased, which is not correct. We are of the opinion that the average income for the years 2015-16, 2016-17, and 2017-18 should have been considered while calculating the compensation. The deceased's income for the year 2015-16 was Rs.3,06,744/-, as per Ex.P-9; for 2016-17, it was Rs.3,39,932/-, as per Ex.P-10; and for 2017-18, it was Rs.4,00,648/-, as per Ex.P-11. The total of these amounts works out to Rs.10,47,324/-, and the average comes to Rs.3,49,108/-.

21. The taxes paid over three years were calculated as Rs.2,465/-, Rs.5,828/-, and Rs.9,011/-, totaling Rs.17,304/- and the average works out to Rs.5,768/-.

22. If Rs.5,768/- is deducted from Rs.3,49,188/-, it comes to Rs.3,43,340/-. This would be the net income. Since the deceased was aged between 40 and 50 years and was an unsecured employee earning based on personal skills, 25% needs to be added towards future prospects, as per the judgment of the Hon'ble Apex Court in the case of ***National Insurance Company Limited V. Pranay Sethi and Others*** reported in ***AIR 2017 Supreme Court 5157***. Hence, Rs.85,835/-, being 25%, is added to Rs.3,43,340/-, resulting in Rs.4,29,175/-. If 1/4 of the income is deducted towards personal expenses, it works out to Rs.3,21,881/-. When this amount is multiplied by 14, it comes to Rs.45,06,337/-, which will be the actual compensation under the head of dependency.

23. Regarding the consortium, an amount of Rs.1,60,000/- (considering there were three claimants and respondent No.5, the mother) and Rs.30,000/- towards conventional heads are awarded, the total comes to Rs.46,96,337/-.

24. Hence, we propose to award Rs.46,96,337/- as compensation, as against Rs.53,40,800/- awarded by the Tribunal.

25. As regards MFA No.200872/2024, we have already held that liability is fixed on the insurance company and the quantum is not in dispute. Therefore, the appeal deserves to be dismissed.

26. Accordingly, we pass the following order:

**ORDER**

i. MFA No.200872/2024 is dismissed.

ii. MFA No.20848/2024 is allowed in part, and the compensation is reduced to Rs.46,96,337/- from Rs.53,40,800/-, along with 6% interest per annum, from the date of petition, till realization of entire compensation.

iii. The liability is fixed on the insurance company.

iv. Eight weeks' time is granted for the insurance company to deposit the balance compensation amount.

v. The amount in deposit is ordered to be transmitted to the Tribunal forthwith along with TCR.

vi. The apportionment of compensation shall be as per the order of the Tribunal.

**Sd/-**
**(K NATARAJAN)**
**JUDGE**

**Sd/-**
**(VIJAYKUMAR A. PATIL)**
**JUDGE**

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