IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 17TH DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE S.SUNIL DUTT YADAV

AND

THE HON'BLE MR JUSTICE RAJESH RAI K

MISCL. FIRST APPEAL NO.200207 OF 2019 (MV-D)

BETWEEN:

PARVATI W/O LATE MURUGAYYA @ MURUGEPPA,
AGE:54 YEARS, OCC: HOUSEHOLD,
R/O PLOT NO.18, J.R. NAGAR, ALAND ROAD,
KALABURAGI.

…APPELLANT

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

AND:

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

1. LAL PATEL S/O USMAN PATEL,
   AGE: MAJOR, OCC: NOT KNOWN,
   OWNER OF MOTOR CYCLE BEARING
   NO.KA-32 EG-3576,
   R/O NO.79, VILLAGE MURADI,
   TQ. ALAND, DIST. KALABURAGI – 585102.

2. BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.
   4TH FLOOR, V A KALBURGI MANSION,
   OPP: MUNICIPAL CORPORATION,
   LAMINGTON ROAD, HUBLI 580 020.
   REPRESENTED BY ITS AUTHORIZED OFFICER.

…RESPONDENTS

(BY SRI SUBHASH MALLAPUR, ADV. FOR R2;
NOTICE TO R1 HELD SUFFICIENT)

THIS MFA IS FILED U/SEC 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THIS APPEAL AND ENHANCE THE COMPENSATION TO RS.20,00,000/- ALONG WITH INTEREST BY MODIFYING THE JUDGMENT AND AWARD OF THE MEMBER II ADDL.SENIOR CIVIL JUDGE AND MACT KALABURAGI, DATED 03.04.2018 IN MVC NO.509/2015.

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

CORAM: HON'BLE MR JUSTICE S.SUNIL DUTT YADAV
AND
HON'BLE MR JUSTICE RAJESH RAI K

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE RAJESH RAI K.,)

This Miscellaneous First Appeal is directed against the judgment and award dated 03.04.2018 passed in MVC No.509/2015 by the II Additional Senior Civil Judge and MACT, Kalaburagi, (hereinafter referred to as 'the Tribunal', for short) wherein the Tribunal dismissed the claim petition filed by the petitioner.

2. For the sake of convenience, parties are referred to as per their ranking before the Claims Tribunal.

3. Brief facts which are necessary for disposal of this appeal are that on 26.11.2014, at about 7.15 p.m.,

near Sirgapur cross on Gulbarga-Humnabad Highway road, husband of the petitioner by name Murugayya/Murugeppa was standing by the left side of the road, at that time a Hero Motorcycle bearing Registration No.KA-32/EG-3576 being driven by its rider in a rash and negligent manner dashed to Murugayya @ Murugeppa. In the result, he sustained head injury and other injuries on the vital parts of his body and became unconscious. Immediately he was shifted to Basaveshwar Hospital, Kalaburagi and treated as inpatient from 26.11.2014 to 30.11.2014. However, he succumbed to the injuries on 30.11.2014. Thereafter, the jurisdictional police registered a case in Crime No.107/2014 against the rider of the offending vehicle, as such, the petitioner being the wife of the deceased has filed the claim petition before the Tribunal seeking compensation on account of death of her husband Murugayya@ Murugeppa in the road traffic accident.

4. After service of notice, respondent No.1 did not appear, hence he was placed ex-parte. The respondent

No.2 appeared and filed written statement denying the contents of claim petition and sought for dismissal of the petition.

5. On the basis of pleadings, the Tribunal framed relevant issues for its consideration. In order to prove the claim petition before the Tribunal, the petitioner herself was examined as P.W.1 so also produced 08 documents as per Ex.P1 to P8. Respondent No.2, Insurance Company has also examined its Officers as R.Ws.1 and 2 and also got marked 05 documents as per Ex.R1 to R5.

6. The Tribunal after recording the evidence and hearing on both sides dismissed the claim petition filed by the appellant. Aggrieved by the same, the petitioner is before this Court seeking award of compensation.

7. We have heard the learned counsel for the petitioner and learned counsel for respondent-Insurance Company.

8. It is the contention of the learned counsel for the petitioner that inspite of placing sufficient materials before the Tribunal, the Tribunal grossly erred while rejecting the claim petition. According to him, the accident is not in dispute and also it is admitted fact that deceased succumbed to the injuries due to said road traffic accident. Apart from that, the jurisdictional police filed FIR against the rider of the offending vehicle so also after investigation, laid the charge sheet against him. The said charge sheet was not challenged by the Insurance Company. In such circumstance, the Tribunal ought not to have dismissed the claim petition. Further he contends that the Tribunal has not properly appreciated the material on record and dismissed the claim petition contending that timing of admission of the injured to the hospital is not in consonance with the medical records. By relying on Ex.R1 to R3, he submits that injured was admitted to the hospital after the accident at about 7.00 p.m., Accordingly, he prays to allow the petition by granting compensation.

9. *Per contra*, learned counsel for the respondent No.2-Insurance Company supports the impugned judgment and award passed by the Tribunal. He submits that on perusal of evidence of R.W.1 and R.W.2, it is clear that injured has not sustained injuries due to road traffic accident and as such, there is variation in the timing mentioned in the case register as per Ex.R1 to R3. In such circumstance, the Tribunal is justified in rejecting the claim petition and prays to dismiss the appeal.

10. We have carefully gone through the evidence and materials placed before us. The points that arise for our consideration are:

i. Whether the Tribunal is justified in rejecting the claim petition?

ii. If not, what is the quantum of compensation to be awarded to the appellant?

11. On perusal of records, it could be seen that death of the deceased Murugayya/Murugeppa in the road traffic accident is not seriously disputed by respondent No.2. It is the specific case that said Murugayya admitted as inpatient in the hospital on 26.11.2014 till 30.11.2014 and on that day, he succumbed to the injuries. To substantiate the said aspect, the petitioner placed reliance on the Post Mortem Report. Further, the jurisdictional police have also filed FIR in Crime No.107/2014 against the rider of the offending vehicle which covers with the insurance policy of the respondent No.2. After a detailed investigation, the police have filed the charge sheet in the said case. Admittedly, the said charge sheet has not been challenged by the Insurance Company. In such circumstance, death of the deceased Murugayya in the road traffic accident is proved. On perusal of impugned judgment passed by the Tribunal, the Tribunal has opined that police papers reveals that the accident was occurred on 26.11.2014 at about 7.15 pm., but the injured was admitted to the hospital at about 5.00 pm., on

26.11.2014. However, as rightly pointed out by the learned counsel for the appellant that on perusal of MLC and case sheet as per Ex.R1, the accident was occurred at about 5.00 pm., and the injured was admitted to the hospital at about 7.42 pm, Though in Ex.R3, date of admission is stated as 26.11.2014 at about 9.36 pm, and discharged on 30.11.2014 at about 2.15 am, the said timing is only in respect of admission of the injured in the ward. However, he was brought to the hospital at about 7.42 pm, as per Ex.R1. In such circumstance, it could be inferred that deceased died due to the accident.

12. In view of the above discussion, we are of the view that the Tribunal has erred while dismissing the claim petition only on relying the variation in timing of admission of the injured to the hospital by relying on Ex.R3. Hence, we answer point No.1 in the ***negative***.

13. In view of our answer to point No.1 in negative, point No.2 is answered as follows:

14. Insofar as quantum of compensation is concerned, it is contended that he was doing agricultural work and he was LIC Agent, and earning Rs.1,50,000/- per annum, however, no such document has been placed to prove the income of the deceased. In support of the contention, the petitioner has not tendered any evidence. In the absence of any evidence or proof of income, the notional income of the deceased can be assessed as per the guidelines issued by the Karnataka State Legal Services Authority. Since the accident has taken place in the year 2014, the notional income has to be taken at Rs.7,500/- per month as per chart. In view of the law laid down by the Constitutional Bench of the Hon'ble Supreme Court in ***National Insurance Company Limited, Vs. Pranay Sethi and others*** reported in ***AIR 2017 SC 5157***, to the aforesaid amount, 10% is to be added towards future prospects as the deceased was aged about 60 years. Thus, the monthly income comes to Rs.8,250/. Out of which, it is appropriate to deduct 1/3rd towards

personal expenses and therefore, the monthly income comes to Rs.5,500/- (8,250-2,750).

15. As on the date of the accident, the deceased was aged 60 years, as per the decision of Hon'ble Supreme Court in the case of ***Sarla Verma (Smt) & Others vs. Delhi Transport Corporation & Another,*** reported in ***(2009) 6 SCC 121***, the multiplier applied to the age group of the petitioner is '9'. Therefore, the petitioner is entitled to a sum of Rs.5,94,000/-(5,500/- x 12 x 9) on account of loss of dependency.

16. In addition, the compensation of Rs.33,000/- towards 'funeral expenses' and on account of 'loss of estate' is awarded.

17. In view of the law laid down by the Hon'ble Supreme Court in ***Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram & Others*** reported in ***2018 ACJ 2782***, the petitioner is entitled to a sum of Rs.44,000/- under the head of 'loss of consortium'.

18. Thus, the petitioner is entitled to a total compensation of Rs.6,71,000/-.

19. Accordingly, we proceed to pass the following:

ORDER

(a) The appeal is ***allowed***.

(b) The judgment dated 03.04.2018 passed by the II Additional Senior Civil Judge and MACT, Kalaburagi in MVC No.509/2015 is set aside.

(c) The appellant is entitled to compensation of Rs.6,71,000/- along with interest at the rate of 6% p.a. from the date of claim petition till the date of realization of amount.

(d) The Respondent No.2, Insurance Company is directed to deposit the compensation amount along with interest before this Court, within a period of eight weeks from the date of receipt of copy of this judgment.

(e) If the amount is deposited by the respondent No.2 Insurance Company, the

appellant is at liberty to withdraw the same.

(f) In view of the order dated 08.11.2014, the appellant is not entitled to interest for the delayed period of 207 days.

Sd/-
(S.SUNIL DUTT YADAV)
JUDGE

Sd/-
(RAJESH RAI K)
JUDGE

VNR
List No.: 1 Sl.No.: 18
CT: PS