NC: 2025:KHC-K:3192-DB
MFA No. 201624 of 2021

HC-KAR

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 18TH DAY OF JUNE, 2025

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS. JUSTICE K S HEMALEKHA

MISCL. FIRST APPEAL NO.201624 OF 2021 (MV-D)

BETWEEN:

THE MANAGER,
RELIANCE GEN. INS. CO. LTD.,
ASIAN PLAZA COMPLEX,
SVP CHOWK, STATION ROAD,
KALABURAGI.

...APPELLANT

(BY SMT. PREETI PATIL MELKUNDI, ADVOCATE)

Digitally signed by BASALINGAPPA SHIVARAJ DHUTTARGAON
Location: HIGH COURT OF KARNATAKA

AND:

1. ANITA
   W/O VYANKAT BIRAJADAR,
   AGE: 48 YEARS,
   OCC: HOUSEHOLD,

2. VYANKAT
   W/O KASHINATH BIRAJADAR,
   AGE: 53 YEARS,
   OCC: NIL,

3. JYOTI
   D/O VYANKAT BIRAJADAR,
   AGE: 21 YEARS,
   OCC: HOUSEHOLD,

BANGALE PLOT LOHARA,
TQ: LOHARA, DIST: OSMANABAD,
NOW RESIDING, NEAR OVER HEAD TANK,
OM NAGAR, SEDAM ROAD,
KALABURAGI – 585 101.

4. ISMAIL KADRI
S/O RAHAMUD KADRI,
OCC: OWNER OF LORRY,
HASEGAON VILLAGE,
TQ: AUSA, DIST: LATUR,
MAHARASHTRA – 413 520.

…RESPONDENTS

(BY SRI. B. ALI MOHAMMED, ADVOCATE FOR R1 TO R3;
V/O DATED 20.12.2021 NOTICE TO R4 IS DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S 173(1) OF THE MV ACT, 1988, PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND AWARD DATED 01.10.2021 IN MVC.NO.1266/2018 PASSED BY THE PRL. SENIOR CIVIL JUDGE, CJM, KALABURAGI, IN THE INTEREST OF JUSTICE AND EQUITY.

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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
HON'BLE MRS. JUSTICE K S HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MRS. JUSTICE K S HEMALEKHA)

The insurance company is in appeal assailing the judgment and award dated 01.10.2021 in MVC.No.1266/2018 on the file of the Principal Senior Civil Judge, CJM, Kalaburagi (hereinafter referred to as 'Tribunal' for short), both on liability and quantum of compensation granted.

2. A road traffic accident occurred on 14.11.2018, when Ganesh S/o. Vyankat was proceeding from Chennai to Solapur as a cleaner in lorry bearing registration No.MH-10/Z-1190. The driver of the lorry drove at a high speed and in a rash and negligent manner. As a result of the impact, the driver lost control of the vehicle, causing it to overturn. In the said accident, Ganesh S/o. Vyankat sustained grievous injuries and died on the spot. The claimants who are the parents and sister of the deceased, filed the claim petition seeking compensation. They contended that the deceased was employed as a cleaner

and earning a monthly income of Rs.15,000/- per month and they were financially dependent upon his income.

3. Respondent No.2 – insurance company denied the averments made in the claim petition and also disputed its liability to pay the compensation amount.

4. The claimants examined claimant No.1 as PW.1 and got marked Ex.P1 to P9. On the other hand, the insurance company examined one witness as RW.1, but did not choose to mark any documents.

5. The Tribunal upon considering the oral and documentary evidence, held that the accident occurred is due to the rash and negligent driving of the lorry driver and the deceased sustained grievous injuries and died on the spot. Accordingly, the Tribunal fixed the liability on the insurance company and awarded compensation of Rs.18,87,000/- with interest at the rate of 6% p.a. from the date of the petition till the date of realization.

6. Heard the learned counsel appearing for the insurance company and the learned counsel appearing for the claimants and perused the material on record.

7. Smt. Preethi Patil Melkundi, learned counsel appearing for the appellant - insurance company would contend that the Tribunal has failed to consider that the deceased was negligent and had contributed to the occurrence of the accident. It is argued that contributory negligence ought to have been attributed to the deceased. In the absence of such a finding, the judgment and award passed by the Tribunal warrants interference by this Court. The learned counsel further contends that the compensation awarded by the Tribunal is on the higher side, and therefore, requires modification.

8. *Per contra*, learned counsel appearing for the claimants vehemently contended that FIR was registered against the driver of the lorry and that the deceased being a cleaner, could not have contributed to the accident, hence, question of contributory negligence does not arise,

as contended by the insurance company - appellant herein. It is further submitted that the Tribunal, after duly considering the FIR, charge sheet, crime details and other police records, which rightly establish the rash and negligent driving of the lorry by its driver, has rightly held that the accident occurred due to the rash and negligent driving of the driver of the lorry. Therefore, fastening the liability on the insurance company is justified, which warrants no interference by this Court.

9. Having heard the learned counsel on both sides, the point that arises for consideration is:

> *"Whether the Tribunal was justified in fastening the liability on the insurance company and whether the compensation awarded is just and reasonable?"*

10. The Tribunal, while dealing with the issue of negligence has considered the documents including the FIR, statement, charge sheet and other police records marked as per Ex.P1 to P6. Based on these materials, the

Tribunal held that the charges were leveled against the driver of the lorry involved in the accident. Accordingly, negligence was rightly attributed to the driver of the lorry. Upon consideration of both oral and documentary evidence, the Tribunal has rightly concluded that the accident occurred is solely due to the rash and negligent driving of the lorry driver, which resulted in death of Ganesh S/o. Vyankat. Therefore, the findings of the Tribunal that there was no contributory negligence on part of the deceased has been properly arrived at and warrants no interference.

11. So far as the compensation awarded and assessed by the Tribunal is concerned, it has awarded a sum of Rs.17,76,600/- towards loss of dependency. In arriving at this figure, the Tribunal considered the notional income of the deceased as Rs.11,750/- per month, in the absence of any documentary evidence to establish actual income. This notional income was determined as per the guidelines of High Court Legal Service Authority for

accidents occurring in the year 2018. As the deceased was bachelor, 50% was rightly deducted towards personal expenses. Considering the age of the deceased was 22 years, the Tribunal applied the appropriate multiplier '18'. Additionally, 40% was added towards future prospects as per the decision of the Apex Court in the case of ***National Insurance Co. Ltd., Vs. Pranay Sethi***[1]. The calculation of compensation under the head of loss of dependency is therefore in consonance with settled law and is just and proper.

12. Further the award of Rs.80,000/- under the head of loss of consortium to the parents, and Rs.15,000/- each towards funeral expenses and loss of estate is also just and proper. The Tribunal having considered the entire matter in light of the law laid down by the Apex Court, has rightly awarded the compensation which warrants no interference by this Court and point for consideration is answered accordingly and we pass the following:

[1] (2017) 16 SCC 680

ORDER

i. The Miscellaneous First Appeal is hereby is ***dismissed***.

ii. The amount in deposit is remitted back to the Tribunal.

iii. The trial Court records to be returned forthwith.

iv. No order as to cost.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(K S HEMALEKHA)
JUDGE

MCR
List No.: 1 Sl No.: 24