

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF FEBRUARY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE RAVI V. HOSMANI

MFA NO. 648 OF 2015 (MV-D)

BETWEEN:

1. SOMANNA
S/O GEJJE KALLANNA
SANNA MALIGAPPA
AGED 40 YEARS
2. PRAFUL KUMAR
S/O LATE SHIVA KUMAR B
AGED 20 YEARS
3. KUM PRANITHA
D/O LATE SHIVA KUMAR B
AGED 17 YEARS
(DATE OF BIRTH 26-8-1998)
TIPPASANDRA HOBLI,
MAGADI ROAD,
RAMANAGARAM DISTRICT-562 127

ALL ARE RESIDING AT NO.13,
12TH MAIN ROAD, BINNYPET
BENGALURU 560026

THE SECOND APPELLANT IS A MINOR
AND SHE IS REPRESENTED BY HER NEXT
FRIEND AND NATURAL GUARDIAN THE
APPELLANT NO.1 THE MATERNAL UNCLE

...APPELLANTS

(BY SRI.K V SHYAMPRASADA, ADVOCATE)

AND:

1. NAGARAJA S R
S/O SRI RAMAIAH, MAJOR
S G PALYA,
DODDESOMANAHALLI POST
TIPPASANDRA,
MAGADI ROAD
BENGALURU WEST-562 120
2. M/S NEW INDIA ASSURANCE CO LTD.,
HUDSON CIRCLE, CDUVII
VOKKALIGARA SANGHA COMPLEX
5TH FLOOR,
BENGALURU-560 027
REPRESENTED BY ITS MANAGER

...RESPONDENTS

(BY SRI.A N KRISHNASWAMY, ADVOCATE FOR R2;
V/O DATED 23.01.2017 NOTICE TO R1 IS D/W)

THIS MFA IS FILED UNDER SECTION 173(1) OF
MV ACT AGAINST THE JUDGMENT AND AWARD
DATED:07.10.2014 PASSED IN MVC NO.3584/2013 ON
THE FILE OF THE JUDGE, COURT OF SMALL CAUSES,
& XXVI ACMM, MACT, BANGALORE, PARTLY

ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 173(1) of the Motor Vehicles Act has been filed by the claimants being aggrieved by the judgment dated 07.10.2014 passed in MVC No.3584/2013 by the Motor Accident Claims Tribunal (hereinafter referred to as 'Claims Tribunal' for the sake of brevity) seeking enhancement of the amount of compensation.

2. Facts giving rise to filing of this appeal briefly stated are that one B. Shiva Kumar on 28.04.2013 was traveling as a pillion rider in a bike at Anjananagara, Magadi Road, Bengaluru, a goods vehicle bearing registration No. KA-41-1143 which was being driven in a rash negligent manner by its driver dashed against the bike. As an impact of the aforesaid accident, the

deceased fell down from the bike and sustained fatal injuries and ultimately succumbed to his injuries on 05.05.2013.

3. The claimants thereafter filed a petition under Section 166 of the Motor Vehicles Act in which, *inter-alia*, it was pleaded that at the time of accident, B. Shiva Kumar was aged about 39 years and was earning Rs.1,00,000/- p.m. and was engaged in the business of fabrications in the name and style of MSR fabrications. The claimants claimed a sum of Rs.50,00,000/- along with interest by way of compensation. The respondent on receipt of the summons had entered appearance and filed written statement. The respondent admitted that the offending vehicle was insured with respondent No.2 and insurance policy was in force. Further, the mode and manner of the accident was denied. It was further pleaded that accident took place on account of negligent driving of the rider of the bike. It was also pleaded by respondent-Insurance Company that there was a violation of conditions of the policy by the owner of the

offending vehicle. Therefore, respondent No.2 is not liable to indemnify the respondent No.1 and to pay compensation.

4. On basis of pleadings of the parties, Claims Tribunal framed issues and recorded the evidence. Claimant No.1 examined himself before the Claims Tribunal as PW-1 and got exhibited 14 documents namely Exs.P1 to P14. Respondents have examined two witnesses namely RW-1 and RW-2 and got marked Exs.R1 to R6. The Claims Tribunal vide impugned order, *inter-alia*, held that the accident took place on account of rash and negligent driving of the driver of the motor bike. It was further held that the claimants are entitled to a sum of Rs.7,90,000/- along with interest at the rate of 6% p.a. Being aggrieved this appeal has been filed by the claimants seeking enhancement of the compensation.

5. Learned counsel for the appellants submitted that the notional income of the deceased ought to have been taken at Rs.8,000/- p.m., as the accident has taken

place in the year 2015 and 25% of the amount is required to be added on account of future prospects. It is further submitted that the amount awarded to the claimants for the loss of dependency is on the lower side. On the other hand, learned counsel for the Insurance Company submitted that the award passed by the Claims Tribunal is just and proper.

6. We have considered the submissions made by the learned counsel for the parties and perused the records. Admittedly, even though before the Claims Tribunal the plea of the claimants was that the deceased was employed in the business of fabrication, however, no material has been adduced with regard to the income of the deceased. Therefore, the income of the deceased is to be treated as notional income as per the guidelines issued by the Karnataka State Legal Services Authority. Since the accident taken place in the year 2013, therefore the notional income of the deceased has to be taken at Rs.8,000/- p.m. To the aforesaid amount 25% has to be added on account of future prospects. Thus,

the monthly income of the deceased comes to Rs.10,000/-, further 1/3rd amount has to be deducted towards personal expenses. Therefore, the monthly income of the deceased comes to Rs.6,666/-. If multiplier of 15 is adopted by taking into account the age of the deceased at the time of accident, the claimants are entitled to a sum of Rs.11,99,800/-. In view of the law laid down by the Hon'ble Supreme Court in the case of '**NATIONAL INSURANCE COMPANY VS. PRANAY SETHI**', '**AIR 2017 SC 5157**', the claimants shall be entitled to Rs.70,000/- under the conventional head. Thus, in addition, the claimants shall be entitled to Rs.26,000/- on account of medical expenses incurred by them. Thus, in all claimants shall be entitled to Rs.12,95,880/-. The aforesaid amount shall carry interest at the rate of 6% per annum from the date of filing of the petition, till the amount is paid to the claimants.

To the aforesaid extent, the judgment passed by the Claims Tribunal dated 07.10.2014 in M.V.C. No.3584/2013 is modified.

Accordingly, the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

BVK