

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19<sup>TH</sup> DAY OF OCTOBER, 2020

:BEFORE:

**THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY**

MISCELLANEOUS FIRST APPEAL NO.2245/2012(MV)

BETWEEN:

THE ORIENTAL INSURANCE CO. LTD.,  
NO.1001/56, JAYALAKSHMI MANSION,  
II FLOOR, DR. RAJKUMAR ROAD,  
4<sup>TH</sup> BLOCK, RAJAJI NAGAR,  
BANGALORE-10.

BY ITS REGIONAL OFFICE,  
THE ORIENTAL INSURANCE CO. LTD.,  
NO.44/45, 4<sup>TH</sup> FLOOR,  
LEO SHOPPING COMPLEX,  
RESIDENCY ROAD,  
BANGALORE-560 025,  
REPRESENTED BY ITS  
DEPUTY MANAGER

... APPELLANT

(BY SRI P.B. RAJU, ADVOCATE)

AND

1. SRI ANANDAIAH,  
S/O. GANGAPPA,  
AGED ABOUT 58 YEARS,  
R/AT NO.231/A, 8<sup>TH</sup> CROSS,

II PHASE, I STAGE,  
MANJUNATHNAGAR  
BANGALORE-10

2. SMT. PREMALATHA,  
W/O. ANANDAIAH,  
AGED ABOUT 48 YEARS  
R/AT NO.231/A, 8<sup>th</sup> CROSS  
II PHASE, I STAGE,  
MANJUNATHNAGAR  
BANGALORE-10
3. K.R. RAJKUMAR,  
S/O. RAMARAJU,  
NO.140, NEAR KALASIPALYA BUS STAND  
BANGALORE-02  
(OWNER)

... RESPONDENTS

(BY SRI HAREESH BHANDARY T., ADVOCATE  
FOR R1 AND R2;  
R3 – NOTICE HELD SUFFICIENT)

THIS MISCELLANEOUS FIRST APPEAL IS FILED  
U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND  
AWARD DATED: 24.09.2011 PASSED IN MVC  
NO.8495/2009 ON THE FILE OF JUDGE AND  
MEMBER-MACT, BANGALORE, AWARDED A  
COMPENSATION OF RS.12,25,452/- WITH INTEREST  
AT 6% P.A., FROM THE DATE OF THE PETITION TILL  
THE DATE OF DEPOSIT.

THIS APPEAL COMING ON FOR ADMISSION THIS  
DAY, THE COURT THROUGH VIDEO CONFERENCE AT  
BENGALURU DELIVERED THE FOLLOWING:

**:J U D G M E N T:**

This appeal is filed by the Insurer challenging the quantum of compensation as well as the liability imposed upon it to pay the compensation as awarded by the Tribunal.

2. The records disclose that, on 02.10.2009 the deceased, who was son of the claimants working as Technician in Manpower Service India (P) Ltd., was returning back to Kanakapura on his motorcycle bearing No. KA-44/H-3462 after inspecting telephone tower. At that time a private bus bearing No.KA-02/B-2187 came in a rash and negligent manner and dashed against the motorcycle. He was taken to the Kanakapura Government Hospital and then to NIMHANS, but he died on the way. The deceased was 23 years old at the time of accident and he was drawing

the salary of Rs.11,500/- per month. The claimants, who are the parents of the deceased had filed a petition before the Tribunal and the Tribunal taking into account the age of the dependents/claimants adopted '13' as the multiplier and after deducting 1/3 of the income of the deceased towards personal expenses, has awarded Rs.11,80,452/- as loss of dependency and also awarded a sum of Rs.45,000/- towards conventional heads. *Insofar* as the liability is concerned, the Tribunal directed the appellant-Insurer to deposit the compensation amount notwithstanding the evidence of RW1, who in his evidence deposed that the offending vehicle in question did not carry a permit to ply on the road. Being aggrieved, the Insurer has preferred this appeal.

3. The Insurer in this appeal contends that since the deceased was bachelor, the Tribunal ought to have

deducted 50% of his income towards his personal expenses, but the Tribunal committed an error in deducting 1/3<sup>rd</sup>. Learned counsel for the Insurer/appellant contended that in view of the judgment of the Apex Court in the case of **AMRIT PAUL SINGH AND ANOTHER V. TATA AIG GENERAL INSURANCE COMPANY LTD., AND OTHERS - AIR 2018 SUPREME COURT 2662**, the Insurer is entitled to pay and recover the compensation which the Tribunal did not consider.

4. I have heard the learned counsel for the parties and perused the oral and documentary evidence available on record.

5. It is seen that the Tribunal committed palpable errors in the matter of determining compensation and has failed to award just compensation. The Tribunal

ought not to have accepted the age of the mother of the deceased for the purpose of applying the multiplier, as it is now well settled in view of the law laid down by the Apex Court in the case of **Chikkamma and Another vs. Parvathamma and Another**, reported in **AIR 2017 SC 1732** that the age of the deceased has to be taken into consideration. Further, the Tribunal ought to have deducted 50% of the income of the deceased towards his personal expenses, in view of the judgment of Apex Court in the case of **M. Mansoor vs. United India Insurance Company Limited** reported in **2013(15) SCC 603** as he was a bachelor and the Tribunal ought to have granted future prospects at 40% of his actual income, as the deceased was only 23 years old at the time of his death and would have progressed well in his career. These factors would have resulted in awarding just compensation to the claimants. The impugned award passed by the Tribunal shocks the conscience of

this Court. The litigants cannot be denied the reliefs due to the mistake of the Court in not applying the correct position of law and in not providing the reliefs that the parties are clearly entitled to. Order 41 Rule 33 of the CPC is therefore inserted enabling an appellate Court to grant the relief to which the parties are entitled to, notwithstanding that such party has not filed an appeal therefrom. Since, this is an exceptional case where the Tribunal has passed the award without noticing the settled position of law, this Court deems it appropriate to exercise jurisdiction under Order 41 Rule 33 of CPC by modifying the award of the Tribunal by recalculating the compensation as follows:

- i) Towards Loss of dependency including loss of future prospects at 40% :

$$\begin{aligned} & 11,500 + 40\% \text{ of } 11,500 / 2 \times 12 \times 18 \\ & = \text{Rs.}17,38,800/-; \end{aligned}$$

- ii) Towards funeral and transportation expenses of the dead body Rs.25,000/-;
- iii) Towards loss of estate at Rs.25,000/-; and
- iv) Towards loss of love and affection at Rs.25,000/-.

6. In view of the above, the compensation awarded by the Tribunal at Rs.12,25,452/- is enhanced to a sum of Rs.18,13,800/-.

7. Insofar as the question of liability is concerned, the Apex Court in the case of **AMRIT PAUL SINGH AND ANOTHER** has held that, in case the offending vehicle has no permit to ply on the road but is covered by an insurance, then the Insurer is liable to pay the compensation amount to the claimants and recover it from the owner of the offending vehicle bearing registration No.KA-02/B-2187. In that view of the matter, the liability imposed upon the Insurer to pay compensation awarded by the Tribunal deserves to the



modified and the Insurer is directed to pay and recover the compensation as determined by this Court.

8. The appeal is allowed in part. The appellant-Insurer is directed to pay the compensation as determined by this Court along with the interest at the rate of 6% per annum from the date of petition till realization. The Insurer is entitled to recover it from the owner of the offending vehicle bearing registration No.KA-02/B-2187. The Insurer is directed to deposit the compensation amount within a period of two months from the date of receipt of a copy of this judgment.

Amount in deposit is directed to be transmitted to the Tribunal for further orders. Upon deposit, 50% of the enhanced award amount shall be invested in a

Fixed Deposit in the names of the claimants in any  
Nationalized Bank, for a period of two years.

**Sd/-**  
**JUDGE**

Sbs\*