

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 28TH DAY OF JUNE 2019

BEFORE

THE HON'BLE MR.JUSTICE P.G.M. PATIL

M.F.A NO.103413 OF 2015 [MV]
C/W.
M.F.A.NO.103020 OF 2015

IN M.F.A.NO.103413 OF 2015
BETWEEN:

1. HONNURA @ HONNURAPPA S/O MASTHANAPPA
AGE: 48 YEARS,
2. SMT. RAMEEJA @ KULLAYAMMA
W/O HONNURA @ HONNURAPPA,
AGE: 44 YEARS,

BOTH R/O: WARD NO.33 NEAR JANDAKATTE,
BALLARI

... APPELLANTS

(BY SRI MANJUNATHA G. PATIL, ADV.)

AND

1. SAGANAGOUDA @ SANGAPPA
S/O GOVINDA GOUDA,
DRIVER OF LORRY BEARING REG.
NO.KA-01/8002, R/O: NEAR ESHWARA GUDI,
HERVENKULAKUNTA VILLAGE IN
KALABURGI -TQ & DIST
2. AZAAD ALI B.DINDUR S/O BASHA SAB DINDUR,

OWNER OF LORRY BEARING
REG.NO.KA-01/8002,
R/O: NO.1/6/559/2, WARD NO.1,
BLOCK NO.4, KOPPAL.

3. M/S.SHRIRAM GENERAL INSURANCE CO. LTD.,
BY ITS BRANCH OFFICE NO.10003 E-8,
RIICO INDUSTRIAL AREA, SITAPUR,
JAIPUR, RAJASTHAN – STATE.
4. RAMAPPA S/O LAKSHMAIAH
MAJOR, DRIVER NANDINI MILK VAN BEARING
REGN.NO.KA-35/5287, R/O: 5TH CROSS,
EVI NAGAR, CLUB ROAD, BALLARI.
5. G. VENKATESH S/O RAMAPPA
MAJOR, OWNER NANDINI MILK VAN BEARING
REGN.NO.KA-35/5287, R/O: 5TH CROSS,
DEVI NAGAR, CLUB ROAD, BALLARI.
6. M/S UNITED INDIA INSURANCE CO. LTD.,
BY ITS DIVISIONAL MANAGER, BALLARI.

... RESPONDENTS

(BY SRI NAGARAJ C. KOLLOORI ADV. FOR R-3.
SRI N.R. KUPPELUR, ADV. FOR R-6.
RESPONDENT NOS.1, 2, 4 & 5 DISPENSED)

THIS M.F.A. IS FILED U/S.173(1) OF MOTOR
VEHICLES ACT, 1988 AGAINST THE JUDGMENT AND
AWARD DATED: 20.06.2015 PASSED IN M.V.C.NO.1240 OF
2012 ON THE FILE OF MEMBER MOTOR ACCIDENT
CLAIMS TRIBUNAL-XII, AT BALLARI, PARTLY ALLOWING
THE CLAIM PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

IN M.F.A.NO.103020 OF 2015
BETWEEN:

THE DIVISIONAL MANAGER,
UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICE, OPP: RADHIKA TALKIES,
RAGHAVACHARI ROAD BALLARI,
REPRESENTED BY ITS DIVISIONAL MANAGER.

... APPELLANT

(BY SRI.N. R. KUPPELUR, ADV.)

AND :

1. HONNURA @ HONNURAPPA
S/O MASTHANAPPA, AGE: 48 YEARS,
OCC: COOLIE, R/O: WARD NO.33,
NEAR JANDAKATTE, BALLARI.
2. SMT. RAMEEJA @ KALLAYAMMA
W/O HONNURA, AGE: 43 YEARS,
OCC: HOUSEWIFE, R/O: WARD NO.33,
NEAR JANDAKATTE, BALLARI.
3. RAMAPPA S/O. LAKSHMAIAH
AGE:MAJOR, OCC:DRIVER,
R/O. 5TH CROSS, DEVI NAGAR,
CLUB ROAD, BALLARI.
4. G. VENKATESH S/O.RAMAPPA
AGE: MAJOR, OCC: BUSINESS,
R/O: 5TH CROSS, DEVI NAGAR,
BALLARI.
(OWNER OF THE VAN
BEARING NO.KA-35/5287).

... RESPONDENTS

(NOTICE TO RESPONDENT NOS.1 TO 4-SERVED)

THIS M.F.A. IS FILED U/S.173(1) OF MOTOR VEHICLES ACT 1988, AGAINST THE JUDGMENT & AWARD DATED:20.06.2015, PASSED IN M.V.C.NO.1240 OF 2012 ON THE FILE OF THE MEMBER ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL-XII, AT BALLARI, AWARDING THE COMPENSATION OF RS.5,76,000/- WITH INTEREST AT THE RATE OF 7% P.A. FROM THE DATE OF PETITION TILL ITS DEPOSIT.

RESERVED FOR JUDGMENT ON : 11.06.2019

JUDGMENT PRONOUNCED ON : 28.06.2019.

THESE APPEALS ARE HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING :

JUDGMENT

The Insurer and the claimants being aggrieved by the Judgment and Award dated 20.06.2015 passed in M.V.C.No.1240 of 2012 by the Member Motor Accident Claims Tribunal-XII, Ballari (for short the 'Tribunal') have filed these appeals.

2. It is the case of the claimants before the Tribunal that the petitioner Nos.1 and 2 are the parents of deceased-Hussain Peera, who died in the accident which occurred on 14.10.2012 at about 10.00 p.m. in between the Lorry bearing Registration No.KA-01/8002 and Nandini Milk Van bearing Registration No.KA-35/5287. The deceased was working as cleaner in the said Nandini Milk Van. The lorry stated above was parked in the middle of the road and the Nandini Milk Van dashed to the hind portion of the said lorry, due to the said accident the deceased-Hussain Peera sustained injuries all over his body and died at the spot. The deceased was young, hale and healthy, aged about 23 years at the time of accident and he was getting salary of Rs.8,000/- per month. Due to the untimely death of deceased, the petitioners and their family members suffered physically, mentally and financially. Therefore, they claimed compensation of Rs.24,50,000/- against

the owner and insurer of both the vehicles involved in the accident.

3. In response to the notice, respondent Nos.3, 4 and 6 have appeared before the Tribunal and filed their separate written statements. The other respondents have not filed their written statements and respondent Nos.3 and 6 have specifically contended that the allegations made by the petitioners in the petition are denied and petitioners have to be put to strict proof, the compensation claimed by them is excessive and highly exorbitant. However, they have admitted the policy issued to both the vehicles. Respondent No.3 further contended that the police have filed charge sheet against the respondent No.4-driver of the Nandini Milk Van. There is a contributory negligence between both the drivers. Respondent No.4 filed written statement sought for dismissal of the claim petition and he denied that he drove the vehicle in a rash and negligent

manner and caused the accident. Accident was due to parking of the lorry without parking lights in the middle of the road.

4. On the basis of the pleadings of the parties Tribunal framed issues. In support of the claim petition, claimant-petitioner No.1 was examined as PW-1 and got marked ten documents at Ex.P.1 to Ex.P-10. On the other hand, respondents examined three witnesses as R.W-1 to R.W-3 and got marked six documents.

5. The Tribunal after hearing both the parties, passed the impugned Judgment awarding compensation amount of Rs.5,76,000/- with interest at the rate of 7% per annum from the date of petition till the date of deposit. The Tribunal further held that respondent Nos.1 to 3 and 4 to 6 are jointly and severally liable to pay compensation amount equally. Further, respondent Nos.3 and 6 were directed to deposit 50% of the compensation amount.

6. The 6th respondent-Insurance Company being aggrieved by the impugned Judgment has filed M.F.A.No.103020 of 2015 on the ground that the Tribunal has committed error of law and facts in making the appellant to pay 50% of the liability in favour of the respondents ignoring the provisions of Sections 149(2) and 66 of the Motor Vehicles Act. The driver of the insured vehicle was charge sheeted for driving the vehicle without possessing the permit. Hence, the Judgment against him requires to be set aside. It is further contended that there was no permit for the vehicle and the same is proved by producing documents at Ex.R-1 and 2 and by examination of R.W.-1 and 2.

7. The claimants being dissatisfied with the Judgment and Award have filed M.F.A.No.103413 of 2015 for enhancement of the compensation on the ground that the income of the deceased was considered

on the lower side and that the Tribunal has applied multiplier at 14 taking the age of mother of the deceased instead of taking the age of the deceased and applying multiplier 18 and further, the Tribunal ought to have awarded compensation towards future prospects by adding 40% of the income of the deceased.

8. Heard the learned counsels for the appellant-Insurer and respondents and the appellant-claimants.

9. A short question which arises for consideration before this Court in these appeals is as to whether the Insurer has made out grounds for setting aside the liability saddled against him and as to whether the claimants have made out grounds for enhancement of the compensation.

10. The appellant-Insurer-respondent No.6 before the Tribunal has taken a specific contention that the insured vehicle was plying without permit and therefore

there is a breach of policy conditions, therefore, he has not liable to pay the compensation. Ex.R-1 is endorsement issued by the R.T.O. Ballary in respect of vehicle bearing Registration No.KA-35/5287. According to which the validity of the permit was from the 24.11.2012 to 23.11.2017. The accident in the present case occurred on 14.10.2012 which is prior to one month of the issue of permit. Ex.R-2 is another endorsement issued by the R.T.O. Ballari in respect of the said vehicle and according to this endorsement validity of the permit is from 17.08.2007 to 16.08.2012. Therefore, Ex.R-2 is the permit issued for the previous period 2007 to 2012 prior to the date of accident and Ex.R-1 is the subsequent permit issued from 24.11.2012. Therefore, it is crystal clear that as on the date of the accident there was no permit to run the Milk Van bearing Registration No.KA-35/5287 insured with the appellant-Insurance Company. On this ground, the learned counsel for the appellant-Insurer submitted

that the liability fastened against him is liable to be set aside. In this regard, the learned counsel for the claimants has relied on the decision of the Hon'ble Supreme Court in the case of **Amrit Paul Singh and Another Vs. TATA AIG General Insurance Co. Ltd. and Others** in **Civil Appeal No.2253 of 2018** passed by the Hon'ble Supreme Court of India **on 17.05.2018**. In paragraph No.23 the Hon'ble Supreme Court has held as follows :

“23. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek

*absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or , for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in **Swaran Singh** (supra) and **Lakhmi Chand** (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had not permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with*

*interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in **Swaran Singh** (supra) and other cases pertaining to pay and recover principle.”*

Therefore, the facts in the said case were that there was no permit at all in respect of the offending vehicle either on the date of accident or prior to the date of accident or subsequent to the date of accident. Under those circumstances, the Hon'ble Supreme Court has held that the order passed by the Tribunal as well as the High Court directing the insurer to pay the compensation to the claimants with interest and that the insurer shall be entitled to recover the same from the owner and driver is legal and proper. The Hon'ble Supreme Court has further held that the said directions are in consonance with the principles stated in **Swaran Singh's** case and other cases pertaining to pay and recovery principle. Therefore, in the present case also

the insurer has proved that though the insured vehicle had permit prior to the date of accident and there is also permit for the period subsequent to the accident, it is clearly made out that as on the date of accident the insured vehicle had not permit to ply. In view of the dictum of the Hon'ble Supreme Court in the case stated *supra*, the appellant-Insurer in the present case has to be directed to pay the compensation and that he is entitled to recover the same from the owner and driver of the vehicle. Therefore, the appeal filed by the insurer deserves to be allowed to this extent.

11. The learned counsel for the claimants submitted that enhancement of the compensation on the above referred ground the claimants have contended that the deceased was aged 23 years and he was working as cleaner in the Nandini Milk Van and getting monthly salary of Rs.8,000/-. However, the claimants have not produced any positive evidence to prove his

income. In the absence of such evidence, the Tribunal has considered the income of the deceased as Rs.5,000/- per month. Considering the age and occupation of the deceased and the year of the accident and further the guidelines provided for settlement of cases before the Lok-Adalath, it is just and necessary to consider the income of the deceased at Rs.6,500/- per month for the purpose of awarding compensation.

12. Further, in view of the pronouncement of the Hon'ble Supreme Court in the case of **National Insurance Company Limited v. Pranay Sethi and others**, reported in **AIR 2017 SC 5157**, the claimants are entitled for addition of 40% of the income of the deceased towards future prospects and the claimants being parents of the deceased-Hussain Peera are entitled for parental consortium of Rs.40,000/- each in view of the Judgment in the case of **Magma General Insurance Co. Ltd., V. Nanu Ram and others**,

reported in **2018 ACJ 2782**. Therefore, the compensation awarded to the claimants requires reassessed as follows :

The income of the deceased is considered at Rs.6,500/- per month and addition of 40% towards future prospects thereby the income comes to Rs.9,100/- per month. Out of it, 50% has to be deducted towards the personal and living expenses of the deceased as the deceased was bachelor. Therefore, the remaining income of the deceased comes to Rs.4,550/- per month by taking the age of the deceased multiplier 18 has to be applied. Thus, (Rs.4,550/- X 12 X 18) the sum of Rs.9,82,800/- is awarded towards loss of dependency. A sum of Rs.80,000/- awarded for parental consortium at the rate of Rs.40,000/- each to the claimants. A sum of Rs.30,000/- is awarded under the conventional heads. Thus, the total compensation of

Rs.10,92,800/- is awarded against the compensation awarded by the Tribunal at Rs.5,76,000/-.

13. The point for consideration in these appeals is answered accordingly, both the appeals deserve to be partly allowed. In the result this Court proceed to pass the following :

ORDER

The appeal in M.F.A.No.103020 of 2015 is allowed in part and the Judgment and Award dated 20.06.2015 passed in M.V.C.No.1240 of 2012 by the Member Motor Accident Claims Tribunal-XII, Ballari is set aside so far as to saddling of liability to pay the compensation on respondent No.6-United India Insurance Company Limited and is modified. The appellant-Insurer-United India Insurance Company Limited is directed to pay 50% of the compensation amount along with interest to the claimants and it shall be entitled to recover the

same from the driver and owner who are arrayed as respondent Nos.4 and 5 in the claim petition.

The appeal in M.F.A.No.103413 of 2015 is allowed in part. The claimants are awarded enhanced compensation amount of Rs.5,16,800/- along with interest at the rate of 7% p.a. from the date of petition till the date of deposit. The order regarding deposit and disbursement as passed by the Tribunal holds good.

The amount of compensation deposited in M.F.A.No.103413 of 2015 shall be transmitted to the concerned Tribunal forthwith.

Sd/-
JUDGE

Ckk