

Shivanandappa Vs. The Managing Director

Shivanandappa Vs. The Managing Director

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Court : Karnataka Dharwad

Decided On : Jun-20-2024

Judge : S G Pandit and G Basavaraja

Appeal No. : MFA 104227/2016

Appellant : Shivanandappa

Respondent : The Managing Director

Judgement :

- 1 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016 R IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE20H DAY OF JUNE, 2024 PRESENT THE HON'BLE MR JUSTICE S G PANDIT AND THE HON'BLE MR JUSTICE G BASAVARAJA MISCELLANEOUS FIRST APPEAL NO.103515 OF2016(MV-I) C/W MISCELLANEOUS FIRST APPEAL NO.103516 OF 2016 MISCELLANEOUS FIRST APPEAL NO.104226 OF 2016 MISCELLANEOUS FIRST APPEAL NO.104227 OF 2016 IN MFA No.103515 OF 2016 BETWEEN: THE MANAGING DIRECTOR, KSRTC NORTH WEST DIVISION, GOKUL ROAD, HOSUR-HUBLI, REPTD. BY ITS DEPOT MANAGER, NWKSRTC, HIREKERUR DEPOT, HIREKERUR, DIST: HAVERI, REP. BY CHIEF LAW OFFICER, N.W.K.R.T.C., CENTRAL OFFICE, HUBBALLI.-. APPELLANT (BY SRI M.K.

SOUDAGAR, ADVOCATE) AND: SHRI SHIVANADAPPA S/O. VEERABASAPPA MAJJIGER, AGE:

44. YEARS, OCC: AGRICULTURE AND BUSINESS, R/O: AGRAHARA MUCHADI VILLAGE, TQ: SHIKARIPURA, NOW AT PRESENT HIREKERUR, DIST: HAVERI.-. RESPONDENT (BY SRI G.S. HULMANI, ADVOCATE) THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S1731) OF M.V. ACT, AGAINST THE

JUDGMENT

& AWARD DATED 31.08.2016, PASSED IN MVC.NO.31/2012 ON THE FILE OF THE SENIOR CIVIL JUDGE AND MEMBER ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, HIREKERUR ETC., IN MFA No.103516 OF 2016- 2 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 BETWEEN: THE MANAGING DIRECTOR, KSRTC NORTH WEST DIVISION, GOKUL ROAD, HOSUR-HUBLI, REPTD. BY ITS DEPOT MANAGER, NWKSRTC, HIREKERUR DEPOT, HIREKERUR, DIST: HAVERI, IN APPEAL REP. BY CHIEF LAW OFFICER, N.W.K.R.T.C., CENTRAL OFFICE, HUBBALLI.-. APPELLANT (BY SRI M.K. SOUDAGAR, ADVOCATE) AND:

1. SMT. GOURAMMA W/O. RAMESHAPPA KOLLER, AGE:

39. YEARS, OCC: HOUSEHOLD WORK, R/O: AGRAHARA MUCHADI VILLAGE, TQ: SHIKARIPURA, NOW AT PRESENT HIREKERUR, DIST: HAVERI.

2. KUMARI. POOJA D/O. RAMESHAPPA KOLLER, AGE:

19. YEARS, OCC: STUDENT, R/O: AGRAHARA MUCHADI VILLAGE, TQ: SHIKARIPURA, NOW AT PRESENT HIREKERUR, DIST: HAVERI.

3. PUNITH S/O. RAMESHAPPA KOLLER, AGE:

15. YEARS, OCC: STUDENT, REPRESENTED BY NATURAL GUARDIAN OF THE PETITIONER NO.1 GOURAMMA W/O. RAMESHAPPA KOLLER, R/O: AGRAHARA MUCHADI VILLAGE, TQ: SHIKARIPURA, NOW AT PRESENT

HIREKERUR, DIST: HAVERI.

4. SMT. SHANTAMMA W/O. CHENNABASAPPA KOLLER, AGE:

62. YEARS, OCC: HOUSEHOLD WORK, R/O: AGRAHARA MUCHADI VILLAGE,
TQ: SHIKARIPURA, NOW RESIDING AT: HIREKERUR, DIST: HAVERI.-.
RESPONDENTS (BY SRI G.S. HULMANI, ADVOCATE) - 3 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016,
MFA No.104226 of 2016, and MFA No.104227 of 2016 THIS MISCELLANEOUS
FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT,
AGAINST THE

JUDGMENT

& AWARD DATED 31.08.2016, PASSED IN MVC.NO.32/2012 ON THE FILE OF
THE SENIOR CIVIL JUDGE AND MEMBER ADDITIONAL MOTOR ACCIDENT
CLAIMS TRIBUNAL, HIREKERUR, AWARDED THE COMPENSATION OF
RS.8,45,120/- WITH INTEREST AT THE RATE OF 7 P.A. FROM THE DATE OF
PETITION TILL ITS REALIZATION FROM THE RESPONDENT AND ETC., IN
MFA No.104226 OF 2016 BETWEEN:

1. SMT. GOURAMMA W/O. RAMESHAPPA KOLLER, AGE:

40. YEARS, OCC: HOUSEHOLD WORK.

2. KUM. POOJA D/O. RAMESHAPPA KOLLER, AGE:

19. YEARS, OCC: STUDENT.

3. KUM. PUNITH S/O. RAMESHAPPA KOLLER, AGE:

15. YEARS, OCC: STUDENT.

4. SMT. SHANTAMMA W/O. CHENNABASAPPA KOLLER, AGE:

62. YEARS, OCC: HOUSEHOLD WORK, ALL ARE R/O. AGRAHARA MUCHADI,
TQ: SHIKARIPURA, NOW RESIDING AT HIREKERUR, TQ. HIREKERUR, DIST:
HAVERI-581111. SINCE APPLICANT NO.3 IS MINOR REP. BY M/G NATURAL

MOTHER APPELLANT NO.1.-. APPELLANTS (BY SRI G.S. HULMANI, ADVOCATE) AND: THE MANAGING DIRECTOR, KSRTC, NORTH WEST DIVISION, GOKUL ROAD, HOSUR, HUBBALLI, REPTD. BY ITS DEPOT MANAGER, NWKSRTC, HIREKERUR DEPOT, HIREKERUR, TQ: HIREKERUR, DIST: HAVERI-581111.-. RESPONDENT (BY SRI M.K. SOUDAGAR, ADVOCATE) - 4 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, AGAINST THE

JUDGMENT

& AWARD DATED 31.08.2016, PASSED IN MVC.NO.32/2012 ON THE FILE OF THE SENIOR CIVIL JUDGE AND MEMBER ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, HIREKERUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION AND ETC., IN MFA No.104227 OF 2016 BETWEEN: SHIVANANDAPPA S/O. VEERABASAPPA MAJJIGER, AGE:

45. YEARS, OCC: AGRI. AND BUSINESS, NOW NIL, R/O. AGRAHARA MUCHADI, TQ: SHIKARIPURA, NOW RESIDING AT HIREKERUR, TQ: HIREKERUR, DIST: HAVERI-581111.-. APPELLANT (BY SRI G.S. HULMANI, ADVOCATE) AND: THE MANAGING DIRECTOR, KSRTC, NORTH WEST DIVISION, GOKUL ROAD, HOSUR, HUBBALLI. REPTD. BY ITS DEPOT MANAGER, NWKSRTC, HIREKERUR DEPOT, HIREKERUR, TQ: HIREKERUR DIST: HAVERI-581111.-. RESPONDENT (BY SRI M.K. SOUDAGAR, ADVOCATE) THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, AGAINST THE

JUDGMENT

AND AWARD DATED 31.08.2016 PASSED IN MVC NO.31/2012 ON THE FILE OF THE SENIOR CIVIL JUDGE AND MEMBER, ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, HIREKERUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION

AND ETC., THESE MISCELLANEOUS FIRST APPEALS, COMING ON FOR ADMISSION, THIS DAY, G BASAVARAJA, J., DELIVERED THE FOLLOWING: -
5 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016

JUDGMENT

These appeals arise out of common judgment and award passed by the learned Senior Civil Judge and AMACT, Hirekerur (for short Tribunal) in M.V.C. No.31/2012 c/w M.V.C. No.32/2012 dated 31.08.2016.

2. Parties are referred to as per their ranking before the Tribunal, for the sake of convenience.

3. The brief relevant facts leading to these appeals are as follows: M.V.C. No.31/2012 is filed seeking compensation for injuries sustained in an accident, while M.V.C. No.32/2012 is filed by the claimants seeking compensation for the death of Rameshappa Koller in the same road traffic accident.It is stated in the claim petitions that on 02.07.2012, at approximately 2:00 p.m., the petitioner was traveling as a pillion rider on a motorcycle bearing Registration No.KA-15/L-6562, from Agrahara Muchadi to Hirekerur, for the purpose of purchasing paddy seeds. The rider was operating the motorcycle in a slow and cautious manner on the Chikkerur-Hirekerur road. At that time, a KSRTC bus bearing Registration No.KA-25-F-2217, driven by its driver in a rash and negligent manner and in - 6 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016 violation of traffic rules and regulations, collided with the motorcycle. As a result, the petitioner, who is the claimant in MVC No.31/2012, sustained grievous injuries. The claimants in MVC No.32/2012 filed the claim petition seeking compensation for the death of the motorcycle rider, Rameshappa Koller, due to the accident. It is further submitted in the claim petition that the deceased, aged 40 years, was earning Rs. 25,000 per month, and his untimely death has resulted in the loss of the primary bread-earner for the claimants. Consequently, the claimants have sought compensation from

the respondents.

4. Upon service of notice, the respondent, KSRTC, appeared through its counsel and filed statements of objections in both claim petitions, contending that the petitions are defective due to non-joinder of necessary parties, as the petitioners have not included the owner and insurer of the motorcycle as party respondents. The respondent denied all the averments made in the petitions as false and asserted that the bus driver was not responsible for the alleged accident. Furthermore, the respondent stated that the bus driver had lodged a private - 7 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 complaint before the JMFC, Hirekerur, in P.C. No.11/2012, as the police did not accept the complaint filed by the bus driver. 4.1 In M.V.C. No.32/2012, the respondent argued that if the Tribunal determines that the claimants are entitled to compensation, an amount of Rs. 50,000 should be deducted from the compensation amount, as the respondent has already paid Rs. 50,000 to the legal heirs of the deceased towards funeral expenses on humanitarian grounds, despite there being no liability on its part. On these grounds, the respondent sought the dismissal of both claim petitions with costs.

5. On the basis of the pleadings of the parties, the Tribunal has framed appropriate issues.

6. To substantiate the petitioners' case, four witnesses were examined as PWs.1 to 4 in M.V.C. No.31/2012, and 137 documents were marked as Exhibits P.1 to P.137. In M.V.C. No.32/2012, one witness was examined as PW1, and eight documents were marked as Exhibits P.1 to P.8. Upon the conclusion of the petitioners' evidence, Dushanthkumar B.K., son of Kalegouda and the driver of the offending bus, was - 8 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 examined as R.W.1, and the authorization letter was marked as Exhibit R.1.

7. Upon hearing the arguments from both sides, the Tribunal partially allowed both claim petitions with costs, awarding compensation of Rs. 4,18,775 in M.V.C. No.31/2012 and Rs. 8,45,120 in M.V.C. No.32/2012, along with interest at the rate of 7% per annum from the date of the claim petition until realization.

8. Aggrieved by the impugned judgment and award passed by the Tribunal, the claimants have preferred M.F.A. Nos. 104226/2016 and 104227/2016, seeking enhancement of compensation. Conversely, the respondent, KSRTC, has preferred M.F.A. Nos. 103515/2016 and 103516/2016, challenging both the liability and the quantum of compensation. Submissions on behalf of the appellant-KSRTC:

9. Learned counsel, Sri M.K. Soudagar, appearing on behalf of KSRTC, submitted that the Tribunal has grossly erred in holding the driver of the offending bus responsible for the accident, despite the rider of the motorcycle being at fault due to rash - 9 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 and negligent driving, which caused the motorcycle to skid on the slippery road at the accident site. The counsel argued that the bus was falsely implicated in the accident, as evidenced by Exhibit P.3, the M.V.I. report, which shows that there was not a single scratch on the bus. Additionally, there were no major damages to the motorcycle, except for scratches on the right- side handlebar and front brake lever from touching the ground. 9.1 The counsel further submitted that the Tribunal failed to properly consider Exhibit P.2, which shows the location where the bus was stationary and where the motorcycle was lying. The Tribunal also erred in reckoning the claimant's income at Rs. 5,000 per month in M.V.C. No.31/2012 in the absence of any documentary evidence regarding the claimant's occupation and income. Moreover, the Tribunal awarded exorbitant compensation amount, including Rs. 15,000 towards incidental and attendant charges, Rs. 10,000 towards future medical expenses, Rs. 20,000 towards loss of income during the laid-up period, Rs. 2,52,000 towards loss of future earning capacity, and Rs. 25,000 towards loss of amenities and unhappiness.-. 10 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 10. Regarding M.F.A. No.103516/2016 (M.V.C. No.32/2012), learned counsel submitted that the driver of the bus is not responsible for the accident. The counsel further argued that the Tribunal erred in assessing the deceased's income at Rs. 5,000 per month without any documentary evidence regarding the deceased's occupation and income. Additionally, the Tribunal awarded exorbitant compensation under various heads. The respondent paid an amount of Rs. 50,000 as ex- gratia to the legal heirs of the deceased, which was admitted by them, but the Tribunal did not deduct this amount while awarding compensation. On these grounds, the counsel sought the allowance of both appeals filed by the respondent. Submission on behalf of the claimants:

11. On the other hand, learned counsel for the claimants in both appeals submitted that the Tribunal properly appreciated the evidence on record in accordance with law and facts regarding the respondent's liability to pay compensation, which needs no interference. The counsel further argued that the Tribunal did not award compensation in accordance with the law, facts, and the decisions of the Hon'ble Apex Court in a - 11 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 series of judgments. On these grounds, the counsel sought enhancement of compensation in both appeals.

12. Having heard the arguments from both sides and upon perusal of the appeal papers and original records, the following points arise for our consideration:

1. Whether the respondent has made out grounds to interfere with the impugned judgment and award of the Tribunal regarding the respondent's liability?.

2. Whether the Tribunal erred in not deducting the amount of Rs. 50,000 ex-gratia already paid by the respondent in M.V.C. No.32/2012, which pertains to M.F.A. No.104226/2016?.

3. Whether the appellants/claimants in both appeals are entitled to enhancement of compensation?.

4. What order or award should be passed?.

13. Our findings on the above points are as follows:

1. Point No.1: In the negative.

2. Point No.2: In the negative.

3. Point No.3: Partly in the affirmative.

4. Point No.4: As per the final order for the following reasons.-. 12 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016 REASONS14 Point No.1: We have examined the materials placed before the Court. It is stated regarding the accident that on 02.07.2012 at 2:00 p.m., the injured and the deceased were traveling on a motorcycle bearing Registration No.KA-15-L- 6562 from Agrahara Muchadi to Hirekerur as pillion riders to purchase paddy seeds. The rider of the motorcycle was proceeding in a slow and cautious manner on the Chikkerur to Hirekerur road, approximately 8 kilometers from Hirekerur. At that time, a KSRTC bus bearing Registration No.KA-25-F-2217, driven by its driver in a rash and negligent manner without adhering to traffic rules and regulations, collided with the motorcycle. As a result, the rider of the motorcycle and the pillion rider sustained grievous injuries, and subsequently, the rider succumbed to the injuries.To substantiate this, four witnesses were examined as PWs.1 to 4, and 137 documents were marked as Exhibits P.1 to P.137 in M.V.C. No.31/2012. In M.V.C. No.32/2012, one witness was examined as PW1, and eight documents were marked as Exhibits P.1 to P.8.-. 13 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016 15. The respondent has contended that the accident in question occurred not due to the rash and negligent driving by the driver of the bus, but resulted exclusively from the rash and

negligent riding of the motorcycle by the deceased. The respondent argued that the bus has been falsely implicated and that the same is apparent from the mahazar and the M.V.I. Report, which reveal that there was not a single scratch or dent found on the bus. On these grounds, the respondent sought the dismissal of the claim petitions.

16. A perusal of the material placed before this Court makes it clear that, based on the complaint filed by one Danappa, the Hirekerur Police registered a case in Crime No.114/2012 against the driver of the bus bearing Registration No.KA-25-F-2217 for offenses punishable under Sections 279, 337, and 304A of the IPC. Thereafter, the police rushed to the spot, conducted a spot panchanama and an inquest panchanama, obtained the M.V. report, postmortem report of the deceased, wound certificate of the injured, and recorded statements of witnesses. Upon thorough investigation, the investigating officer submitted a chargesheet against the driver of the - 14 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 offending bus, Dushanthkumar B.K., s/o Kalegouda, for offenses punishable under Sections 279, 337, 338, and 304A of the IPC. To substantiate this, the petitioners also adduced their oral evidence before the Tribunal. RW1 did not dispute the chargesheet submitted by the investigating officer but deposed that the police did not receive his complaint. Hence, he lodged a private complaint with the JMFC Court, Hirekerur, in P.C. No.11/2012, but he did not produce a copy of the same. Even during the course of cross-examination, he admitted that he did not know whether the private complaint had been dismissed. The respondent has not placed any legal evidence to discard the oral and documentary evidence presented by the petitioners.

17. Learned counsel for the appellant-insurer, Sri M.K. Soudagar, vehemently submits that the M.V. Report (Exhibit P.3) clearly indicates that not a single scratch was found on the bus. Additionally, there were no major damages observed on the motorcycle bearing Registration No.KA-15-L-6562, except for scratches on the right-side handlebar and front brake lever, which occurred from

contact with the ground. Therefore, the - 15 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016 counsel argues that the Tribunal erred in its consideration of Exhibit P.3 and in concluding that the driver of the bus was responsible for the accident.

18. Upon perusal of Exhibit P.3, the M.V. Report reveals no visible damages on the bus bearing Registration No.KA-25-F- 2217, while indicating damages to the motorcycle, specifically scratches on the right-side handlebar and front brake lever, with the rest of the vehicle parts in order. It is admitted that the offending vehicle is the KSRTC bus. Arguments presented on behalf of KSRTC cannot be accepted on the basis that visible damages are not a prerequisite to proving the accident; rather, actionable negligence on the part of the bus driver, supported by credible and acceptable evidence, suffices to determine whether the accident occurred due to the driver's negligence. The actionable negligence of the driver alone is adequate to establish the rash and negligent act committed. Hence, arguments raised on behalf of the appellant in this matter cannot be upheld.

19. After considering the evidence presented by both parties, the Tribunal correctly evaluated the evidence in accordance - 16 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016 with the law and facts, concluding that the accident resulted from the rash and negligent action of the bus driver. Even upon re-examining and re-evaluating the entire evidence on record, we find no legal defects or irregularities in the challenged judgment and award concerning the attribution of liability to the bus. Therefore, we answer point No.1 in the negative.

20. Point No.2: Learned counsel appearing on behalf of the respondent vehemently argued that RW1-Dushanthkumar B.K., driver of the offending bus, testified that KSRTC had paid a sum of Rs. 50,000 as ex-gratia to the legal heirs of the deceased, who are the claimants in M.V.C. No.32/2012. This fact was not disputed by the opposing party. However, the Tribunal did not provide any

rationale for not deducting this amount from the compensation awarded. Therefore, counsel sought a reduction of Rs. 50,000 from the compensation amount awarded by the Tribunal.

21. In response, learned counsel appearing on behalf of the claimant argued that the ex-gratia payment cannot be deducted from the compensation awarded to the claimants. They emphasized that ex-gratia payments differ fundamentally - 17 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 from compensation awarded under the Motor Vehicles Act. Ex- gratia payments are voluntary in nature, whereas compensation under the Motor Vehicles Act is mandatory, based on liability or contractual obligations. Therefore, the ex- gratia amount cannot be deducted from the awarded compensation.

22. The term 'ex-gratia' is not defined under the Motor Vehicles Act, 1988, or the Central Motor Vehicle Rules, 1989, including the Karnataka Motor Vehicle Rules, 1989. According to its dictionary definition, an ex-gratia payment refers to "a payment not legally required."

Such payments are considered voluntary, meaning they are made by an organization, government, or insurer to an individual for damages or claims without admitting liability.

23. "Ex gratia" derives from Latin, meaning "by favor," and is predominantly used within legal contexts. An ex gratia payment signifies a voluntary act, typically done out of kindness or grace, where the giver does not acknowledge any legal liability or obligation. According to the Oxford English Dictionary - 18 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 (Online Edn.), in legal terms, an ex gratia payment is made without the giver recognizing any legal responsibility. In Law Lexicon the word Ex-gratia payment is defined as under: Ex-gratia payment. Payment made by one who recognizes no legal obligation to pay

but who makes payment to avoid greater expense as in the case of a settlement by an insurance company to avoid costs of suit. A payment without legal consideration. In governance, ex gratia refers to a relief payment granted by the State when there is no legislative, regulatory, or policy instrument mandating such a payment. These payments are made in the public interest to compensate for losses incurred or expenses suffered, for which the State bears no legal obligation. Such payments are made without any legal consideration and are distinguished from legally-mandated payments by their voluntary nature. Ex-gratia payments are less common because they are discretionary and not compelled by law. In the insurance context, an ex-gratia payment refers to a settlement made by an insurance company voluntarily, even when it believes it is not legally obligated to do so, often - 19 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 to avoid costly legal proceedings. Unlike payments mandated by insurance policies, which are based on legal obligations and typically acknowledge liability, ex gratia payments are gestures of goodwill without admission of fault. These payments are common in situations like accidents where compensation is provided without accepting legal responsibility. Ex gratia payments have been pivotal in several humanitarian crises across India. In the aftermath of Bhopal Gas Tragedy in 1984, where a deadly gas leak from the Union Carbide plant claimed thousands of lives and caused extensive injuries, the Indian government issued ex gratia payments to victims and their families. Similarly, during the devastating floods in Jammu and Kashmir in 2014, ex gratia payments were disbursed to families who lost loved ones and individuals whose properties were damaged. These payments are also a common response to natural disasters like earthquakes, cyclones, and floods nationwide, providing crucial immediate relief to affected communities. Moreover, in instances of major railway accidents resulting in fatalities or injuries, Indian Railways has routinely offered ex gratia payments to support victims and their families during times of crisis and loss, during deadly pandemic The - 20 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 Supreme Court of India

issued directives regarding ex-gratia payments for COVID-19 victims' families. Under Section 12(3) of the Disaster Management Act, 2005, families of deceased COVID-19 victims are entitled to Rs 50,000 from the State Disaster Response Fund (SDRF), disbursed through District Disaster Management Authorities (DDMA), as humanitarian gestures, not as admissions of liability.

24. In the High Court of Judicature at Bombay in Civil Appellate Jurisdiction First Appeal No.180/2023 in paragraph No.9, the Court has observed as under: 9. In respect of issue ex-gratia amount. The dictionary meaning of ex-gratia payment is a payment not legally required. An ex-gratia payment is considered voluntary. The ex-gratia, means by favour. It is an payment, made to an individual by an organization, government or insurer for damages or claims but is does not require the admittance of liability by the party making the payment. In my view, the ex-gratia amount is different from the compensation awarded under the M.V. Act. The ex- gratia payment is voluntary, whereas compensation under M.V. Act is mandatory on the basis of liability or contractual liability. Hence, I do not see merit in - 21 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016 contention of learned counsel for the Appellant, that an ex-gratia is received by the claimants, they are not entitled for compensation.

25. A co-ordinate bench of this Court in M.F.A. No.1692/2012 (MV) dated 22.04.2013 in the case of United India Insurance Co. Ltd. Vs. Smt. Velangini @ Velangani & Others, at paragraph nos.4 to 6, has held as under: 4. It is not in dispute that the fifth respondent-KSRTC is the registered owner of bus involved in the accident and it was insured with appellant - Insurance Company. The KSRTC had paid a sum of Rs.50,000/- as ex-gratia payment immediately after the accident. It was an act of grace. Therefore, it should not have been deducted from compensation awarded to claimants. Similarly, the Insurance Company should not have been directed to pay the same to KSRTC.

5. Shri Nagaraj, learned Counsel for the KSRTC would submit KSRTC had paid a sum of Rs.50,000/- as ex-gratia to the claimants which was a benefit that had

accrued to claimants due to accident.

6. I am not persuaded to accept this submission. The State owned Corporation had paid a sum of Rs.50,000/- as ex-gratia to the claimants who were in state of distress having lost bread winner of the family. Any amount paid in grace cannot be taken into consideration while computing compensation vis--vis liability of parties.-. 22 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016 Therefore, this submission cannot be accepted. The approach of the Tribunal is erroneous. Therefore, I hold that the appellant - Insurance Company is liable to pay compensation of Rs.7,85,000/- with interest @ 6% per annum from the date of petition till realization to the claimants.

26. Following the above judgment, a co-ordinate bench of this Court in M.F.A. No.201475/2015 (MV) dated 04.02.2020 between The Divisional Controller, NWKRTC, Raichur Vs. Mumtaj @ Mumtaj Parveen and others has held that the KSRTC has paid a sum of Rs.50,000/- as Ex-gratia payment immediately after the accident. It was an act of grace. Therefore, it should not have been deducted from the compensation awarded to the claimants.

27. The respondents have not placed any materials before the Tribunal on which circumstances/ schemes the respondent has paid a sum of Rs.50,000/- as Ex-gratia. The terms and conditions in payment of Ex-gratia amount of Rs.50,000/- also not explained by the respondent.

28. In the given set of circumstances keeping in mind the dictionary meaning of the word Ex-gratia and also the - 23 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016 meaning defined in The Law Lexicon and the aforesaid decisions, we are of the considered view that Ex-gratia amount is different from the compensation awarded under the M.V. Act. Ex-gratia payment is voluntary, whereas the compensation awarded under the M.V.

Act is mandatory on the basis of liability or contractual liability. Hence we do not see merit in any contentions of the learned counsel for the NWKRTC that Ex-gratia is received by the claimants and hence they are not entitled for compensation. The said contention is hereby rejected. Accordingly, point no.2 is answered in the negative.

29. Point No.3: In M.V.C. No.32/2012, pertaining to M.F.A. No.104226/2016, the Tribunal awarded a total compensation of Rs.8,45,120/- Notably, Rs.6,00,120/- of the total compensation was designated for loss of dependency, calculated based on an assumed monthly income of the deceased at Rs.5,000/-. The evidence provided by PW1 the wife of the deceased, indicated that the deceased earned Rs.25,000/- per month. Supporting her claim, RTC extracts (Exs.P.6 and P.7) registered under the name of deceased's - 24 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 father, Rameshappa, and Ex.P.8, records from the Milk Producers Co-Operative Society in Muchadi, were submitted.

30. Though the petitioners have produced the aforesaid documents, the Tribunal has not considered the same and assessed notional income of the deceased at Rs.5,000/- per month. When there is no document to prove the exact income of the deceased, the Tribunal can assess notional income of the deceased as per the chart issued by the Karnataka State Legal Services Authority but the same is not considered by the Tribunal. As the accident pertains to the year 2012, as per the said chart, a sum of Rs.6,500/- per month is to be assessed as notional income. The Tribunal has rightly assessed age of the deceased as 40 in view of the postmortem report and the relevant applicable multiplier is 15 as per Smt. Sarla Verma & Others Vs. Delhi Transport Corporation & Anr.1

31. The Tribunal has not considered future prospects of the deceased as per the decision of the Honble Apex Court in National Insurance Co. Ltd., Vs. Pranay Sethi and Others² 1 AIR 2009 SC31042 AIR 2017 SC5157- 25 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 The deceased was aged 40 years and hence 40% of the assessed income should be added to the monthly income of the deceased. Then it comes to Rs.6,500/- + Rs.2,600/- = Rs.9,100/-. 1/3rd of the said sum should be deducted towards personal and living expenses of the deceased as the number of dependents are 4. Then it comes to Rs.6,067/- (Rs.9,100/- - Rs.3,033/-). Thus, the claimants are entitled for compensation of Rs.10,92,060/-(Rs.6,067/- x 12 x

15) towards loss of dependency.

32. The Tribunal has awarded compensation of Rs.25,000/- towards funeral expenses of the deceased without any supporting evidence. The Tribunal has also awarded compensation of Rs.50,000/- towards loss of estate which is on higher side and not in consonance with the decision of Honble Supreme Court in the case of Pranay Sethi (supra). The Tribunal has not awarded any compensation towards love and affection of petitioners no.1 to 4. Keeping in mind the decision of Honble Apex Court in Sarla Verma; Pranay Sethi (supra) and Magma General Insurance Co. Ltd., Vs. Nanu Ram - 26 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 alias Chuhru Ram and others³ it is just and proper to modify the compensation awarded by the Tribunal as under:

1. Loss of dependency 10,92,060.00

2. Loss of consortium (Rs.40,000/- x

4) 1,60,000.00

3. Loss of estate 15,000.00

4. Transportation and funeral expenses 15,000.00 Total 12,82,060.00 Accordingly, the claimants are entitled for a total compensation of Rs.12,82,060/- as against Rs.8,45,120/-.

33. As regards M.V.C. No.31/2012 the petitioner-injured has sought for compensation of Rs.13,80,000/- as he has sustained grievous injuries in the road traffic accident. The petitioner has produced injury certificate-Ex.P.5. As per opinion of Doctor, injury no.1 and 2 are simple in nature and injury no.3 is grievous in nature. As per the feedback report of the Casualty Medical Officer of City Central Hospital, Davanagere, the petitioner has sustained fracture wound. In Ex.P.6-discharge summary issued by the City Central Hospital, Davanagere, petitioner was admitted to the hospital on 02.07.2012 and discharged on 09.07.2012. The petitioner was admitted as inpatient for 7 days. The CT Scan of Mandible shows Maxilla 3 AIR ONLINE 2018 SC1249- 27 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016 and brain (plain study) - fracture involving ramus of mandible on the left side, fractures involving anterior/postero lateral wall of maxillary sinus, lateral wall of orbit, zygoma and zygomatic arch on the right side with minimal hemosinus.

34. The petitioner has submitted medical bills, x-ray films, and prescriptions as evidence. It is claimed that due to the injuries sustained in the accident, the petitioner is permanently unable to perform agricultural work, has incurred loans, and experiences mental and physical distress. RTC extracts (Ex.P.126 to

129) indicate that agricultural lands are registered under the petitioner's father. The petitioner stated earning Rs.30,000 per month from agriculture and Rs.10,000 from dairy work, although no formal income documents were provided. Consequently, the Tribunal assessed the petitioner's notional income at Rs.5,000 per month, diverging from the Karnataka State Legal Services Authority's guidelines which suggest Rs.6,500 for accidents occurring in 2012.

35. To prove the disability, the petitioner examined Dr. Umanath Ullal as PW4 and Dr. Prasanna B.J.

as PW2. Exhibit P.7 being the disability certificate issued by Dr. Ullal. The - 28 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 Tribunal assessed a 40% loss of physical function to the brain region based on clinical, radiological, and structural factors. Dr. Ullal, examined as PW4, confirmed his examination of the injured as per Ex.P.7. However, during cross-examination, he admitted that the injured had not been admitted to his hospital for treatment within two years of the accident, which occurred on 02.07.2012. PW2, Dr. Prasanna B.J, a Dentist from Davanagere, stated that he had treated the injured, obtained X-ray films, and diagnosed disabilities affecting teeth No.2 to 5, with two mandible fractures and a 30 to 35% disability. He issued a disability certificate as per Ex.P.132.

36. Admittedly, PW2 is not a treating doctor. PWs 2 and 4 did not provide treatment to the petitioner but issued disability certificates as per Ex.P.7 and P.132 respectively. Dr. K.P. Basavaraj, examined as PW3, stated that he is an ENT specialist and examined the petitioner, recommending the adoption of a left hearing aid machine. He issued a disability certificate as per Ex.P.134, indicating a 65% disability in the left ear. According to the evidence of PW2, there is a disability affecting the teeth to an extent of 30 to 35%.-. 29 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016, and MFA No.104227 of 2016 37. Considering the oral and documentary evidence presented by the petitioner, the Tribunal assessed a disability of 30% to the whole body, which is deemed just and reasonable and requires no interference. At the time of the accident, the petitioner was 42 years old. The Tribunal appropriately applied a multiplier of '14' as per the Sarla Verma case. Therefore, the claimant is entitled to compensation of Rs.3,27,600 (Rs.6,500 x 12 x 14 x 30%) towards future loss of earnings.

38. The Tribunal awarded Rs.40,000/- for pain and suffering, Rs.20,000/- for loss of income during the laid-up period, and Rs.10,000/- for incidental and attendant charges, which are perceived as inadequate. Considering the severity of injuries, pain and suffering, and disability as observed by this Court, it is deemed appropriate to grant an additional Rs.20,000/- for pain and suffering, Rs.10,000/- for incidental and attendant charges, and Rs.25,000/- for loss of amenities, in

addition to the Tribunal's original award.-. 30 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016 39. With regard to the other heads, the amount awarded by the Tribunal requires no interference. Accordingly, the claimant is entitled to compensation as follows:

1. Loss of future income 3,27,600.00
2. Pain and suffering 60,000.00
3. Incidental and attendant charges 25,000.00
4. Medical expenses 56,775.00
5. Future medical expenses 10,000.00
6. Loss of income during laid up period 20,000.00
7. Loss of amenities and unhappiness 50,000.00 Total 5,49,375.00 Thus the claimant is entitled for total compensation of Rs.5,49,375/- as against Rs.4,18,775/- awarded by the Tribunal.

40. For the foregoing reasons, the following order is passed.

ORDER

a) M.F.A. No.103515/2016 and M.F.A. No.103516/2016 filed by the KSRTC are dismissed. b) M.F.A. No.104226/2016 and M.F.A. No.104227/2016 filed by the appellants/claimants are allowed in part. c) The impugned judgment and award passed by the Tribunal in M.V.C. No.32/2012 (M.F.A. No.- 31 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016 104226/2016) is modified to the extent that the claimants will be entitled to total compensation of Rs.12,82,060/-, as against Rs.8,45,120/- awarded by the Tribunal. d) The impugned judgment and award passed by the Tribunal in M.V.C. No.31/2012 (M.F.A. No.104227/2016) is modified to the extent that the claimants will be

entitled to total compensation of Rs.5,49,375/-, as against Rs.4,18,775/- awarded by the Tribunal. e) The enhanced compensation amount shall carry interest at the rate of 7% per annum from the date of petition until the date of payment. f) Respondent-KSRTC shall deposit the enhanced compensation amount along with accrued interest before the Tribunal within a period of six weeks from the date of receipt of a certified copy of this judgment. g) Upon such deposit, the said amount shall be apportioned in favor of the claimants in both appeals as per the award of the Tribunal.-. 32 - NC:

2024. KHC-D:8235-DB MFA No.103515 of 2016 C/W MFA No.103516 of 2016, MFA No.104226 of 2016,and MFA No.104227 of 2016 h) Registry to transmit any deposited amount, along with the original records, to the Tribunal forthwith. i) Draw up the modified award accordingly. Sd/- JUDGE Sd/- JUDGE BVV List No.:

1. SI No.: 9

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