

The Branch Manager Vs. Yeshoda

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Court : Karnataka

Decided On : Feb-21-2024

Judge : C.M. Poonacha

Appeal No. : MFA 728/2014

Appellant : The Branch Manager

Respondent : Yeshoda

Judgement :

- 1 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE21T DAY OF FEBRUARY, 2024 BEFORE THE HON'BLE MR JUSTICE C.M. POONACHA MISCELLANEOUS FIRST APPEAL No.4245 OF2014(MV) C/W MISCELLANEOUS FIRST APPEAL No.728 OF2014(MV-D) IN MFA No.4245/2014 BETWEEN:

1. SMT.YESHODA W/O LATE SUNDARA NAIK AGED ABOUT46YEARS2 SATISH NAIK S/O LATE SUNDARA NAIK AGED ABOUT27YEARS3 KUM SHASHIKALA D/O LATE SUNDARA NAIK AGED ABOUT26YEARS ALL ARE RESIDENTS OF ANEBIDDE GONIBEEDU HOBLI MUDIGERE TALUK CHIKMAGALUR DISTRICT577101 APPELLANTS (BY SRI. VINOD GOWDA., ADVOCATE) AND:

1. PRAVEEN @ PRADEEP @ PAPU S/O PUTTASWAMYGOWDA @ KENCHEGOWDA AGED ABOUT 32 YEARS R/O KASKEBYLE VILLAGE GONIBEEDU HOBLI MUDIGERE TALUK 577101 - 2 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 2. S G DEVARAJA S/O N GANGAPPA SHETTY AGED ABOUT 44 YEARS R/O GENDEHALLI BELUR TALUK HASSAN DISTRICT 570101 3. THE BRANCH MANAGER ORIENTAL INS CO LTD., BRANCH OFFICE TAPCMS COMPLEX, K M ROAD CHIKMAGALUR 577101 4. CHINNAPPA S/O RAJUVELU MOLIYAR AGE MAJOR R/O 5H CROSS, VINOBHA NAGAR SHIMOGA 578201 RESPONDENTS (BY SRI. O MAHESH., ADVOCATE FOR R3 NOTICE TO R2 IS DISPENSED WITH R1 AND R4 SERVED AND UNREPRESENTED) THIS MFA IS FILED U/S 1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 23.10.2013 PASSED IN MVC NO.521/2007 ON THE FILE OF THE 2D ADDL.DISTRICT JUDGE, CHIKMAGALUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. IN MFA No.728/2014 BETWEEN:

1. THE BRANCH MANAGER ORIENTAL INSURANCE COMPANY LIMITED BRANCH OFFICE, TAPCMS COMPLEX K M ROAD, CHIKMAGALUR BY THE DIVISIONAL MANAGER ORIENTAL INSURANCE CO LTD S S COMPLEX, SUBHASH SQUARE HASSAN-573201 BY ITS MANAGER APPELLANT (BY SRI. O MAHESH., ADVOCATE) - 3 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 AND:

1. YESHODA W/O LATE SUNDARA NAIK AGED ABOUT 46 YEARS 2. SATHISH NAIK S/O LATE SUNDARA NAIK AGED ABOUT 27 YEARS 3. KUM. SHASHIKALA S/O LATE SUNDARA NAIK AGED ABOUT 26 YEARS ALL ARE R/O ANEDIBBE GOBIBEEDU HOBLI MUDIGERE TALUK-577132 4. PRAVEEN @ PRADEEP @ PAPU S/O PUTTASWAMYGOWDA @ KENCHEGOWDA AGED ABOUT 35 YEARS R/O KASKEBYLE VILLAGE GONIBEEDU HOBLI MUDIGERE TALUK-577132 5. S G DEVARAJA S/O N GANGAPPA SHETTY AGED

ABOUT 47 YEARS R/O GENDEHALLI BELUR TALUK-573115 HASSAN DISTRICT CHINNAPPA MAJOR S/O RAJUVELU MOLIYAR R/O 5H CROSS VINOBHA NAGAR SHIMOGA-577201 RESPONDENTS (R1, R2, R3, R6 ARE SERVED AND UNREPRESENTED SERVICE OF NOTICE TO R5 IS HELD SUFFICIENT V/O DTD 29.10.2016 SERVICE OF NOTICE TO R4 IS HELD SUFFICIENT V/O DTD 17.11.2023) THIS MFA IS FILED U/S 1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 23.10.2013 PASSED IN MVC NO.521/2007 ON THE FILE OF THE II ADDITIONAL DISTRICT JUDGE, MEMBER, MACT, CHICKMAGALUR, AWARDED COMPENSATION OF - 4 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 Rs.3,69,500/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION. THESE APPEALS, COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

MFA No.728/2014 is filed by the insurer and MFA No.4245/2014 is filed by the claimants. In both the appeals the judgment and award dated 23.10.2013 passed in MVC No.521/2007 by the II Additional District Judge, Member, MACT, Chickmagalur¹, is under challenge. Hence, both the appeals are taken up together for consideration.

2. For the sake of convenience, the parties herein are referred to as per their rank before the Trial Court.

3. It is the case of the claimants that on the date of accident i.e., 3.6.2007 when one Sundar Naik² was returning from work along with one Theerthaprasad in a motor cycle, a lorry came in a high speed and hit the motor cycle in which the deceased was riding as a pillion rider causing the accident in question wherein, the deceased sustained grievous injuries and succumbed to the same. Claiming compensation for the death of the deceased, his wife and children filed a claim petition 1 Hereinafter referred to as the Tribunal 2 Hereinafter referred to as the

deceased - 5 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 arraying the driver, owner and insurer of the lorry as respondent Nos.1 to 3 respectively. The said respondents entered appearance and filed their statement of objections. Subsequently, respondent No.4 was impleaded as the RC owner of the lorry. Claimant No.1 examined herself as PW.1. Exs.P1 to P4 were marked in evidence. The police official was examined as RW.1, the representatives of the insurer as RWs.2 and 3. Exs.R1 to R8 were marked in evidence. The Tribunal by its judgment and award dated 23.10.2013 allowed the claim petition and awarded a compensation of `3,69,500/- together with interest at 6% pa. Being aggrieved, the present appeals are filed.

4. Learned counsel for the insurer assailing the judgment and award passed by the Tribunal submits that the charge sheet (Ex.R1) is filed under Section 302 of the Indian Penal Code, 18603 and not under Section 304A of IPC. That the insured vehicle was used for committing a murder, as a result of which the accident has occurred. That the death of the deceased not having arisen due to an accident, the question of awarding compensation under the provisions of the 3 Hereinafter referred to as IPC - 6 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 Motor Vehicle Act, 19884 does not arise. It is further contended that the claimants have averred in the claim petition that the income of the deceased is `6,000/- pm., and hence, the claim petition under Section 163A of the Act was not maintainable by the claimants. Hence, he seeks for allowing of the above appeal and granting of the reliefs sought for. In support of his contention, he relied on the following judgments: i) United India Insurance Co.Ltd., & Ors., v. Anitha & Ors.,⁵; ii) Bangalore Metro Transport Corporation v. Lakshamma & ors.,⁶.

5. Per contra, learned counsel for the claimants submits that the deceased was riding as a pillion rider in the motor cycle and the murder that was sought to be committed was of the rider of the motor cycle, namely, one Theerthaprasad, and there was no intention to commit the murder of the deceased who was riding as a pillion rider. Hence, the finding of the Tribunal regarding the said aspect of the

matter is just and proper and not liable to be interfered with. Further, he submits that the quantum of compensation 4 Hereinafter referred to as the Act 5 ILR 2007 KAR286 ILR 2007 KAR4488- 7 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 awarded by the Tribunal is required to be enhanced. In support of his contentions, he relies on the following judgments: i) Sharabai & anr., v. P.Sahebkhani & ors.,⁷; ii) Kurvan Ansari v. Shyam Kishore Murmu⁸.

6. The submissions of both the learned counsel have been considered and the material on record including the records of the Tribunal have been perused. The questions that arise for consideration are: i) Whether the findings recorded by the Tribunal on issue No.1 as to the claimants proving that the death of the deceased was as a result of a road traffic accident from the use of the insured vehicle is just and proper?. ii) Whether the quantum of compensation awarded by the Tribunal is required to be enhanced?. Re.Question No.(i) 7. The claimants have averred in the claim petition that when the deceased was riding as a pillion rider on the motor cycle, the offending lorry came and hit the motor cycle causing the accident in question wherein the deceased sustained 7 2006 ACJ2298 2022 ACJ166- 8 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 grievous injuries and succumbed to the same. The FIR (Ex.P1) discloses that the same is filed under Section 302 r/w 34 of IPC. The charge sheet is also filed under Section 302 of IPC.

8. PW.1 is claimant No.1 and she is not an eye witness to the accident. RW.1 who is the investigating officer has stated that one Theerthaprasad was the rider and the deceased was the pillion rider and that the motor cycle belonged to the rider. It is stated that after investigation, he filed a charge sheet against the persons under Sections 302, 120B, 114 r/w 34 of the IPC. In the cross-examination, RW.1 has categorically admitted that during the investigation, he found that there was no enmity between the accused and the pillion rider who was the deceased and the enmity was only between the accused and the rider of the motor cycle - Theerthaprasad.

9. The Tribunal considering the said aspect of the matter, upon a detailed appreciation of the oral and documentary evidence, has recorded the following findings: 12. Further on careful perusal of the charge sheet and statements given by the first petitioner, her daughter which are marked at Ex.R2 and R3 which reveals that there was no ill will between the first respondent and others with the deceased Sundar Naik, there was a ill-will between the first - 9 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 respondent and others with one Theerthaprasad regarding issuance of cheque and other incidents. As per the averments of the charge sheet, the first respondent and other accused had an intention to eliminate Theerthaprasad, they hatched a plan and used the vehicle bearing No: KA203327 and committed murder of Threerthaprasad. It does not indicate either from the charge sheet or from the statement given to by the witnesses that the accused in Sessions Case had an intention to commit murder of deceased Sundar Naik. Their intention was to eliminate Theerthaprasad. The first and third petitioners have given re- statement during the course of the investigation before police in criminal case as per Ex R2 and R3 wherein they have stated that the accused had intentionally caused the death of Theerthaprasad by dashing against the motor cycle on which the deceased and Theerthaprasad were proceeding and there was no ill-will between the deceased Sundar Naik and the first respondent. It appears from the police papers that the accused in Criminal case had intention only to commit murder of Theerthaprasad and not deceased Sundar Naik. The deceased had died in the process of committing murder of Theerthaprasad.

13. RW1 has clearly stated in his evidence that on investigation, he found that there was no enmity between the accused and the pillion rider Sundar Naik; there was only enmity between Theerthaprasad and accused. On careful perusal of the evidence of RW1, which clearly establishes that the motor cycle bearing No: CNB3327 and lorry bearing No: KA203327 were involved in the accident and deceased met with an accident and the accident occurred due to enmity between accused and Theerthaprasad with intention to eliminate Theerthaprasad; first respondent caused the accident and during that process deceased Sundar Naik met with accident and died at the spot itself. (emphasis supplied) - 10 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 10. Having regard to the aforementioned, it is clear that the material on record indicate that there was no intention to commit murder of the deceased and the intention was to eliminate the rider of the motor cycle and in the said process, in the accident caused, the deceased sustained injuries and succumbed to the same. The Tribunal having considered the said aspect of the matter, the appellant-insurer has failed in demonstrating that the finding of the Tribunal is erroneous and liable to be interfered with. Hence, question No.(i) framed for consideration is answered in the affirmative. Reg. Question No.(ii) 11. It is the contention of the learned counsel for the appellant - insurer that the claim under Section 163A is not maintainable having regard to the fact that the claimants have averred the monthly income of the deceased as Rs.6,000/- pm.

12. In the case of United India Insurance Co.Ltd.,⁵ relied upon by the learned counsel for the insurer, a Division Bench of this Court was considering a case wherein a claim petition was initially filed under Section 166 of the Act and subsequently converted into one under Section 163A of the Act.-. 11 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 Thereafter the Tribunal recorded a finding that the income of the deceased was `1,20,000/-. However, the income was confined to `40,000/- pa., so as to consider the case within the ambit of Section 163A of the Act. In the said factual situation, this Court relying upon the judgment of the Hon'ble Supreme Court in the case of Deepal Girishbhai Soni & ors., v. United India Insurance Co.Ltd.,⁹ has upheld the contention of the insurer and has held as follows: 6. . It is, therefore, clear from the above decision in law that only persons whose annual income is upto Rs. 40,000/- can take the benefit of Section 163-A and no other persons and all other clients are required to be dealt with in terms of Section XII of the Act. Such being the decision in law, the Tribunal could not have allowed the petition as if it was under Section 163-A by scaling down the annual income from Rs. 1,20,000/- to Rs. 40,000/- so as to bring the case within the purview of Section 163A. As such, we find enough force in the submission made by the learned counsel for the insurance company and the Tribunal ought not to have allowed the petition under Section 163-A. Therefore, the appeal No.8622/2003 is concerned, on this score alone, the

appeal filed by the insurance company deserved to be allowed by setting aside the order of the Tribunal.

12.1 In the case of Bangalore Metro Transport Corporation⁶ relied on by the learned counsel for the insurer, a Division Bench of this Court was considering a fact situation wherein the deceased was a sweeper and an employee of the 9 204 ACJ934- 12 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 Corporation of City of Bangalore and the salary certificate was produced which indicated his gross salary as in excess of `40,000/- pa., and hence, held that a claim petition under Section 163A of the Act is not maintainable.

13. The learned counsel for the claimants relied upon a Division Bench judgment of this Court in the case of Sharabai⁷ wherein this Court considering a similar contention made by the insurer and also referring to the judgment of the Hon'ble Supreme Court in the case of Deepal Girishbhai Soni⁹ has held as follows: 6. Admittedly, the appellants-claimants made application only under Section 163-A of the Act. The argument of the learned Counsel for the Insurance Company is that since in the said application it was claimed by the claimants that the deceased was earning yearly income of Rs. 1,00,000/- and since that income is more than Rs. 40,000/-, the application filed by them is not maintainable and that application ought to have been treated as the one filed under Section 166 of the Act and dealt with accordingly. This submission is not acceptable to us for more than one reason. The pleading of a party can never be placed on the pedestal of a law. Simply because the claimants have under a wrong perception or appreciation of the facts asserted a fact which they cannot prove, that circumstance itself without anything further has no legal efficacy to determine the jurisdiction of the Motor Accidents Claims Tribunal. The jurisdiction of the Motor Accidents Claims Tribunal is determined by the law and not by pleading of a party who invokes its jurisdiction. Be that as it may, it is not a finding of the Motor Accidents Claims Tribunal that the yearly income of the deceased was more than Rs. 40,000/-. On appreciation of oral and documentary - 13 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 evidence, the Tribunal has recorded a finding that the deceased was earning only Rs. 2,400/- per month. That means that the deceased was earning Rs. 28,800/- per annum. Therefore, we hold that the Tribunal had jurisdiction to entertain the application filed by the appellants-claimants under Section 163-A of the Act and that in entertaining that application the Motor Accidents Claims Tribunal has not committed any illegality as contended by the learned Standing Counsel for the Insurance Company. (emphasis supplied) 14. In the present case, it is averred by the claimants that the deceased was a coolie and doing mason work. Although it is averred in the claim petition that the deceased was earning `6,000/- pm., the Tribunal, considering the fact that no documents have been produced to prove the income has assessed the monthly income at `3,000/- pm.

15. It is forthcoming that the judgment of the Division Bench of this Court in Sharabai⁷ arose from a similar fact situation and hence, it is expedient that the ratio laid down by this Court in the case of Sharabai⁷ be followed.

16. Learned counsel for the claimants further relied on the judgment of the Hon'ble Supreme Court in the case of Kurvan Ansari⁸ contending that the compensation under conventional heads is required to be enhanced. It is - 14 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 forthcoming that in the case of Kurvan Ansari⁸ the Hon'ble Supreme Court in a claim arising under Section 163A of the Act has assessed the loss of consortium as `40,000/- each to the claimants and awarded `15,000/- towards funeral expenses. The said compensation is required to be awarded in the present case also.

17. In the present case the claimants being the wife, son and daughter are entitled to compensation under conventional heads. Hence, loss of consortium is reassessed as ($\text{`40,000/-} \times 3$ ) `1,20,000/-. Further, funeral expenses of `15,000/- is awarded as against `2,000/- awarded by the Tribunal.

18. The Tribunal has assessed the monthly income at `3,000/-, deducted 1/3rd towards personal expenses and applied the appropriate multiplier as 15 and assessed the loss of dependency `3,60,000/-, which is just and proper.

19. In view of the aforementioned, the compensation is reassessed as follows: - 15
- NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 Sl.No
Compensation Amount Awarded by Amount awarded Head the Tribunal () by this
Court () 1 Loss of 360000.00 360000.00 dependency 2 Loss of 5000.00
120000.00 consortium 3 Funeral 2000.00 15000.00 expenses 4 Loss of estate
2500.00

0.00 Total 369500.00 495000.00

20. Accordingly, the Claimants are entitled to enhanced compensation of
(`4,95,000/- - `3,69,500/-) = `1,25,500/- together with interest at 6% p.a., from date
of petition till the date of payment.

21. In view of the aforementioned, I pass the following

ORDER

i) MFA No.728/2014 filed by the insurer is dismissed; ii) MFA No.4245/2014 filed
by the claimants is allowed in part; iii) The judgment and award dated 23.10.2013
passed in MVC No.521/2007 by the II Additional District Judge, Member, MACT,
Chickmagalur, is modified to the extent stated hereinabove. In all other respects,
the judgment and award of the Tribunal remains unaltered; - 16 - NC:

2024. KHC:7531 MFA No.4245 of 2014 C/W MFA No.728 of 2014 iv) The
appellants in MFA No.4245/2014 - claimants are entitled to an enhancement of
`1,25,500/- together with interest @ 6% per annum from the date of petition till the
date of realization, in addition the compensation awarded by the Tribunal. v) The
amount deposited by the appellant in MFA No.728/2014 - insurer be transmitted to
the Tribunal for disbursement to the claimants in terms of the award of the
Tribunal; vi) The appellant in MFA No.728/2014 - insurer shall deposit the balance
compensation awarded by the Tribunal as also the enhancement made by this
court together with accrued interest within a period of eight weeks from the date of
receipt of a copy of this judgment; vii) Registry to draw modified decree. No costs.
SD/- JUDGE ND /List No.:

1. SI No.:

7.

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