

The Divisional Manager vs Smt. Rukmavva W/O. Shrishail Kamble

The Divisional Manager vs Smt. Rukmavva W/O. Shrishail Kamble

SooperKanoon Citation : sooperkanoon.com/1604147

Court : Karnataka Dharwad

Decided On : Jan-23-2025

Judge : Hanchate Sanjeevkumar

Appeal No. : MFA/102676/2023

Appellant : The Divisional Manager

Respondent : Smt. Rukmavva W/O. Shrishail Kamble

Judgement :

-1- IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE 23RD DAY OF JANUARY, 2025 BEFORE THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR MISCELLANEOUS FIRST APPEAL NO.102676 OF 2023 (MV-D) BETWEEN: THE DIVISIONAL MANAGER, CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD., HUBBALLI BRANCH OFFICE, 1ST FLOOR, V.A. KALBURGI SQUARE, DESAI CROSS, DESHPANDE NAGAR, HUBBALLI TRAFFIC ISLAND S.O. HUBBALLI, DIST. DHARWAD-580020 NOW REPRESENTED BY ITS AUTHORISED SIGNATORY. APPELLANT (BY SRI SUBHASH J.BADDI, ADVOCATE) AND:

1. SMT. RUKMAVVA

W/O. SHRISHAIL KAMBLE, AGE. 47 YEARS, OCC. HOUSEHOLD WORK,
Digitally signed by MALLIKARJUN 2. MR. RAJU RUDRAYYA KALMATH S/O.
SHRISHAIL KAMBLE, Location: HIGH AGE. 26 YEARS, COURT OF
KARNATAKA OCC. COOLIE,

3. MISS. VIDYASHREE D/O. SHRISHAIL KAMBLE, AGE. 22 YEARS, OCC.
HOUSEHOLD WORK,

4. KU. GEETA D/O. SHRISHAIL KAMBLE, AGE. 19 YEARS, OCC. STUDENT,

5. KU. DHARSHAN S/O. SHRISHAIL KAMBLE, -2- AGE. 17 YEARS, OCC.
STUDENT,

6. KUMARI. AMULYA D/O. SHRISHAIL KAMBLE, AGE. 15 YEARS, OCC.
STUDENT, SINCE THE APPELLANT NOS.5 TO 6 BEING MINORS
REPRESENTED BY THEIR MINOR GUARDIAN NATURAL MOTHER
RESPONDENT NO.1.

7. SMT. GUNAVANTI W/O. MALLAPPA KAMBLE, AGE. 75 YEARS, OCC. NIL,
R/O. SHEGUNSHI, TAL. ATHANI, DIST. BELAGAVI, PRESENTLY RESIDING AT
ANJANEYA NAGAR, BELAGAVI-590016.

8. SHRI NAVEEN S/O. DODDAPPA AWAIT, AGE. 39 YEARS, OCC. OWNER,
R/O. AINAPUR, TAL. ATHANI, DIST. BELAGAVI, PIN CODE-591303.

RESPONDENTS (BY SRI S.S. KATAGERI, ADVOCATE FOR R1 TO R4 AND R7;
(R5 AND R6 ARE MINORS REPRESENTED BY R1); SRI V.S. TELI, ADVOCATE
FOR R8) THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER

SECTION 173(1) OF MOTOR VEHICLES ACT 1988, PLEASED TO ALLOW THE
APPEAL, BY SETTING ASIDE THE JUDGMENT AND AWARD DATED
02.02.2023 PASSED IN MVC NO.1550/2021 ON THE FILE OF THE IX
ADDITIONAL DISTRICT JUDGE AND ADDITIONAL MOTOR ACCIDENT
CLAIMS TRIBUNAL, BELAGAVI AT BELAGAVI, WITH COST IN THE INTEREST
OF JUSTICE AND EQUITY.

-3- THIS MISCELLANEOUS FIRST APPEAL, COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR) Though the appeal is listed for admission, but with consent of both the learned counsels appearing for the parties, the matter is taken up for final disposal.

2. This appeal is filed by the appellant/Insurance

Company challenging the judgment and award dated 02.02.2023 passed in MVC No.1550/2021 by the IX Additional District Judge and Additional MACT, Belagavi (hereinafter referred to as the Tribunal for short) seeking to reduce the compensation awarded by the Tribunal.

3. For the sake of convenience and easy reference, the parties are referred to as per their rankings before the Tribunal.

4. In this case, the factum of accident, death of deceased in the said accident and coverage of insurance are not in dispute. -4-

5. The Tribunal has awarded compensation under the various heads as follows:
Sl. Heads. Amount in No. (Rs.)

1. Towards loss of dependency. 22,23,000/-

2. Towards funeral expenses. 15,000/-

3. Towards loss of estate. 15,000/-

4. Towards parental consortium. 1,20,000/-

5. Towards spousal consortium. 40,000/-

6. Towards filial consortium. 20,000/- Total: 24,33,000/-

6. The Tribunal has awarded compensation of

Rs.24,33,000/- along with interest at the rate of 6% p.a. from the date of petition till its realization holding that respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the claimants.

7. Learned counsel for the appellant/Insurance

Company submitted that the Tribunal has committed an error in considering the notional income of the deceased at Rs.14,250/- and compensation awarded under the head loss of dependency. There are seven dependents on the deceased, who are mother, wife, a major son and three daughters and a minor son. Major son i.e., respondent No.2 -5- and one among the daughters is married woman i.e., respondent No.3 herein. Therefore, deduction of 1/5th income towards personal and living expenses is not correct and that ought to have been 1/4th. On these grounds, prays to reduce the compensation awarded under the head loss of dependency.

8. On the other hand, learned counsel for the respondents/claimants justified the judgment and award passed by the Tribunal.

9. The Tribunal while awarding compensation under

the head loss of dependency, deducted 1/5th of income towards his personal and living expenses on the reason that there are seven legal heirs i.e., mother, wife, one major son, three daughters and minor son. But respondent No.2 herein is major son and respondent No.3 is married daughter of the deceased. Therefore, major son and married daughter could not be considered as dependents on the deceased and are not been considered in calculating loss of dependency. -6-

10. The deceased was aged 48 years as on the date

of accident and was a mason by profession. The accident is of the year 2021. Hence, in the absence of proof of income, notional income is to be taken at Rs.14,250/- as recognized by the Karnataka State Legal Services Authority. In view of the decision of the Honble Apex Court in case of NATIONAL INSURANCE COMPANY LIMITED VS. PRANAY SETHI AND OTHERS, REPORTED IN (2017) 16 SUPREME COURT CASES 680, considering the age of the deceased, 25% of

the income is to be added towards loss of future prospects in life. There are totally 7 legal heirs, among them one is major son and another one is married daughter. Therefore 1/4th of the income is to be deducted towards personal and living expenses. Considering the age of the deceased, the appropriate applicable multiplier is 13. Therefore loss of dependency is re-assessed and quantified at Rs.20,84,004/- (Rs.14,250/- + 25% minus 1/4th x 12 x 13).

11. In view of the decision of the Honble Supreme

Court in the case of MAGMA GENERAL INSURANCE CO. -7- LIMITED VS. NANU RAM AND OTHERS, reported in 2018 ACJ 2782 and in the case of PRANAY SETHI (supra), the claimants are entitled to Rs.40,000/- each under the head loss of consortium along with 10% escalation. There are seven claimants i.e., mother, wife, three daughters, major son and one minor son. Accordingly, Rs.3,08,000/- (Rs.40,000/- x 7 + 10%) is to be awarded under the head loss of consortium including loss of love and affection.

12. The Tribunal has awarded compensation of

Rs.15,000/- under the head loss of estate, which is on lower side. The claimants are entitled to a compensation of Rs.16,500/- (15,000/- + 10%) under the head loss of estate.

13. Further, the Tribunal has awarded compensation

of Rs.15,000/- under the head loss of estate, which is on lower side. The claimants are entitled to a compensation of Rs.16,500/- (15,000/- + 10%) under the head funeral expenses and transportation of dead body.

14. Thus, the claimants would be entitled for total compensation under various heads as under: -8- Sl. Heads. Amount in No. (Rs.)

1. Towards loss of dependency. 20,84,004/-

2. Towards loss of consortium. 3,08,000/- (40,000 x 7 + 10%)

3. Towards loss of estate. 16,500/-

4. Towards funeral expenses. 16,500/- Total: 24,25,004/-

15. Therefore, the claimants are entitled for total

compensation of Rs.24,25,004/- along with interest at the rate of 6% p.a. from the date of filing of the petition till realization, as against Rs.24,33,000/- awarded by the Tribunal. Therefore, the appellant/Insurance Company is directed to deposit the compensation within eight weeks from the date of receipt of a certified copy of this judgment.

16. Hence, I proceed to pass the following:

ORDER

i. The appeal is allowed in part. ii. The judgment and award dated 02.02.2023 passed in MVC No.1550/2021 by the IX Additional District Judge and Additional MACT, Belagavi is hereby modified holding that the claimants are entitled for total compensation of Rs.24,25,004/- along with interest at the -9-

rate of 6% p.a. from the date of petition till its realization, as against the compensation of Rs.24,33,000/- awarded by the Tribunal. iii. The appellant/Insurance company shall deposit the amount within a period of eight weeks from the date of receipt of a copy of this judgment. iv. Send back the Trial Court Records along with a copy of this judgment to the Tribunal forthwith. v. No order as to costs. vi. Draw award accordingly. vii. The amount in deposit made by the appellant/Insurance Company shall be transmitted to the Tribunal.

Sd/- (HANCHATE SANJEEVKUMAR) JUDGE SRA List No.: 1 SI No.: 49

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com