

Gouramma and Ors vs Jayasingh Sitole and Anr

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Court : Karnataka Kalaburagi

Decided On : Aug-30-2025

Judge : H.P.Sandesh,T.M.Nadaf

Appeal No. : MFA/200095/2022

Appellant : Gouramma and Ors

Respondent : Jayasingh Sitole and Anr

Judgement :

-1- IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH DATED THIS THE 30TH DAY OF AUGUST, 2025 PRESENT THE HON'BLE MR. JUSTICE H.P.SANDESH AND THE HON'BLE MR. JUSTICE T.M.NADAF MISCL. FIRST APPEAL NO. 200095 OF 2022 (MV-D) BETWEEN:

1. GOURAMMA W/O MALLANNA AGE 45 YEARS, OCC.HOUSEHOLD,

2. SIDDALINGA S/O. MALLANNA AGE 22 YEARS, OCC.NIL,

Digitally 3. MAHESH signed by S/O. MALLANNAREKHA R

Karnataka ALL ARE R/O. NEAR LAXMI TEMPLE, GANDHI NAGAR, RAWOOR LAXMIPURAWADI, TQ. CHITTAPUR, DIST-KALABURAGI.

APPELLANTS (BY SRI SANJEEV PATIL, ADVOCATE) -2- AND:

1. JAYASINGH SITOLE S/O. MOHAN SITOLE AGE MAJOR, OCC.OWNER OF LORRY BEARING REGN.NO.KA-22-C-1804, R/O SADALGA, TQ.CHIKKAODI DIST.BELAGAVI-591239.

2. THE DIVISIONAL MANAGER

NEW INDIA ASSURANCE CO. LTD., SANGMESHWAR NAGAR, S.B.TEMPLE ROAD, KALABURAGI-585103. RESPONDENTS (BY SRI RAHUL R. ASTURE, ADV. FOR R2; V/O. DATED 01.02.2022 NOTICE TO R1 DISPENSED WITH) THIS MFA IS FILED U/S 173(1) OF MV ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 30.10.2021, PASSED BY THE SENIOR CIVIL JUDGE AND MACT -XV AT CHITTAPUR, IN FILE BEARING MVC NO.733/2020, BY ENHANCING THE COMPENSATION AS PRAYED FOR, AND ALSO BY HOLDING THE INSURANCE COMPANY I.E., RESPONDENT NO. 2 LIABLE TO PAY THE ENTIRE COMPENSATION AMOUNT IN THE INTEREST OF JUSTICE AND EQUITY. THIS APPEAL IS COMING ON FOR ORDERS, THIS DAY,

JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH AND

HON'BLE MR. JUSTICE T.M.NADAF

-3-

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF) This appeal is filed by the claimants calling in question the judgment and award dated 30.10.2021 in MVC No.733/2020, passed by the Senior Civil Judge and MACT - XV, Chittapur, (The Tribunal for short) the contributory negligence at 50% fastened on the deceased - rider of the motor cycle, as well as enhancement of compensation.

2. The date of accident, involvement of vehicle, death

of Mallanna alias Mallappa aged about 48 years as per PM report and liability to pay the compensation by the insurer are not in dispute. The only dispute is with regard to fastening the contributory negligence at the rate of 50% on the deceased - rider of the motorcycle and inadequate compensation.

3. Heard Sri Sanjeev Patil, learned counsel appearing for the appellant/claimants and Sri Rahul R. Asthure, learned counsel appearing for respondent No.2. Vide order dated 01.02.2022, notice of this appeal on respondent No.1 is dispensed with. -4-

4. Sri Sanjeev Patil, taking us through the judgment

and decree with all vehemence submits that the charge sheet was filed against the driver of the lorry who had parked the lorry in the middle of the road without observing any traffic rules and without placing the required warning signals to indicate that the vehicle had broken down due to mechanical

fault or otherwise. Though the charge sheet was also filed against the driver of the lorry, the Tribunal upon an erroneous finding, fastened the liability on the deceased - rider of the motorcycle at the rate of 50% holding that though the lorry was stationed/parked on the spot, the rider without taking care of any traffic Rules, rode the motorcycle in a rash and negligent way which has resulted in collusion with the stationed lorry. As such, held that, the rider of the motorcycle contributed 50% towards the accident. He further asserts that this finding of the Tribunal is erroneous and not substantiated with any materials and the Insurance Company neither examined any witnesses nor exhibited any documents to show that there is a rash and negligence on the part of the rider of the motorcycle. In these circumstances, fastening the contributory negligence on the

-5- part of the rider is unsustainable in law and required to be set aside.

5. So far as quantum is concerned, the learned counsel for the appellant submits that the Tribunal has taken the income at Rs.10,500/- per month. As per the PM report, the deceased was aged 48 years. Though the Tribunal has taken 25%

towards the future prospectus, the income taken is not appropriate. As per the chart prepared by the Legal Service Authority, the income fixed so far as unskilled labour

for the year 2020 is Rs.13,750/-. The Tribunal has failed to considered the same, therefore, the compensation under the loss of dependency requires enhancement. He further stated that the tribunal failed to award appropriate compensation under the conventional heads. In these circumstances, the same requires re-consideration at the hands of the court.

6. He further submits that, in view of the law laid

down by the Hon'ble Apex Court in the case of NATIONAL INSURANCE CO. LTD. VS. PRANAY SETHI¹, 10% escalation on the compensation awarded under the conventional heads

(2017) 16 SCC 680 -6-

ought to have been considered by the Tribunal. With these, the learned counsel submits that the appeal be allowed by setting aside the contributory negligence fastened and enhance the compensation.

7. Refuting the submissions of the learned counsel

appearing for the claimants/appellants, Sri Rahul R. Asthure with all vehemence submits that, the Tribunal, on the basis of police documents produced by the claimants, especially I.M.A report while appreciating those materials come to the

conclusion that, though the lorry was parked and the

motorcycle was having good conditioned headlights, the rider ought to have seen the parked lorry and avoided the accident. The collision on hind side of the lorry, clearly shows that, he the deceased was in a high speed as well as negligent while riding the motorcycle. In these circumstances, 50% contributory fastened negligence, for is just and proper and does not call for any interference at the hands of the Court.

8. So far as compensation is concerned, the Tribunal in the absence of any evidence towards the income of the deceased, considering the age of the deceased, has taken the -7- income at Rs.10,500/- per month and considering the number of claimants, deducted 1/4th in terms of the law and awarded

appropriate compensation under all the heads. As such, the award passed by the Tribunal does not require any interference either on liability i.e., contributory negligence or on the quantum of compensation awarded and sought to dismiss the appeal.

9. Having heard the learned counsel appearing for the parties, perused entire appeal papers as well as Trial Court Record, the points that would arise for our consideration are as follows:

i) Whether the Tribunal is justified in fastening 50% contributory negligence on the rider of the motorcycle (deceased Mallanna), if the answer is otherwise, whether the contributory negligence required to be modified and if it is to be retained, at what rate? ii) Whether the compensation awarded by the Tribunal befit within the expression just compensation? -8-

10. Our answer to the above points for consideration is partly in affirmative for the following REASONS

11. While fastening 50% contributory negligence, the

Tribunal, except in paragraph 13, nowhere discussed about the materials placed by the Insurance Company or the police records to suggest contributory negligence on the part of the rider of the motorcycle. Admittedly, even according to the Tribunal, the lorry was parked on the road without observing any traffic Rules i.e., without any parking lights or any sign boards. Admittedly, the accident had occurred at 07.45 p.m. on 15.06.2020 and there is nothing to suggest that in the road there are any street lights available as the accident had occurred on the road outside the limits of city and not within the city. In those circumstances, the only reason for the Tribunal to fasten 50% contributory negligence was that the headlight of the motorcycle was in a good condition. The deceased ought to have

seen the parked lorry at the spot and could have avoided the collision. -9-

12. In the absence of any evidence of rash or negligent

riding on the part of the rider at the time of the accident, either from the Insurance Company or from the police reports produced by the claimants, the finding of the Tribunal was erroneous. But at the same time, it cannot be ignored that the road shown in the spot sketch is a straight road though the lorry was stationed, but without there being any parking lights

or any sign boards. If the rider of the motorcycle is little circumspect, he could have avoided the accident. The way in which the damaged caused to vehicle shows the rashness on the part of the deceased in the circumstances though the contributory negligence fastened by the Tribunal at the rate of 50%, is disproportionate, but some negligence clearly suggests that, while looking to the injuries suffered on the head and the damages to the vehicle, the rider of the motorcycle was

negligent in riding the motorcycle. In these circumstances, if the contributory negligence fastened by the Tribunal is reduced at the rate of 10% instead of 50%, the same would meet ends of justice. In view of the above observations, the contributory negligence fastened by the Tribunal is modified to 10% as - 10 - against 50%. Accordingly, the point for consideration is answered partly in affirmative.

13. So far as quantum of compensation is concerned,

the Tribunal has failed to consider the income fixed under the chart prepared by the Legal Service Authority of this Court, wherein the income for the year 2020 is fixed at Rs.13,750/-. Looking at the age of deceased being 48 years, even according to postmortem report, in terms of law laid down by the Hon'ble Apex Court, 25% towards Future Prospectus to the existing

income as taken by the Tribunal is just and proper. The claimants are four in number, accordingly, 1/4th is required to be deducted, which the Tribunal has considered while passing

the award. So far as the compensation awarded under conventional head, is on the lower side. In view of the fact that there are four defendants, each are entitled for Rs.40,000/- towards loss of love and affection/filial consortium including spousal consortium. In view of taking the income at the higher rate, the compensation awarded under the head loss of dependency as well as loss of consortium other heads requires modification. Accordingly, the second point for consideration is

- 11 - answered partly in affirmative, as the same requires re- consideration and re-determination.

14. On re-determination, the re-determined

compensation would comes to: Loss Dependency : Rs. 20,10,938/- [13,750 + 25% x 12 x 13 x] Loss of Filial Consortium : Rs. 1,60,000/- Loss of Estate & Funeral Expenses : Rs. 30,000/- (15,000 + 15,000) 10% escalation on conventional : Rs. 19,000/- heads (for 1 term of 3 completed years) TOTAL : Rs. 22,19,938/- Accordingly, the claimants/appellants on re-determination

are entitled to a compensation of Rs.22,19,938/- which is rounded off to Rs.22,20,000/- as against Rs.16,20,664/-. The redetermined compensation shall carry interest at the rate of 6 % per annum from the date of petition till realization.

15. For the foregoing reasons, we proceed to pass the following: - 12 -

ORDER

i) The appeal is allowed in part. ii) The judgment and awarded dated 30.10.2021 in MVC No.733/2020, passed by the Senior Civil Judge and MACT - XV, Chittapur, is hereby modified and enhanced. The contributory negligence is reduced to 10% as against 50% i.e., 90% on the Insurance Company and 10% on the rider of the motorcycle. iii) The compensation on re-determination, works out to Rs.22,20,000/- as against Rs.16,20,664/-. iv) The respondent No.2 - Insurance Company shall deposit 90% of re-determined compensation along with interest at the rate of 6% per annum from the date of petition till realization before the

concerned Tribunal, within a period of six - 13 - weeks from the date of receipt of copy of this order, after deducting 50% already

been deposited in terms of the order

passed by the Tribunal. v) Apportionment and disbursement is as per the order of the Tribunal. vi) No order as to cost. Sd/- (H.P.SANDESH) JUDGE Sd/- (T.M.NADAF) JUDGE THM List No.: 1 SI No.: 4 CT:JLR

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