

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 14360/2016

(Arising out of impugned final judgment and order dated 05-06-2015 in MFA No. 6184/2013 passed by the High Court Of Karnataka At Bengaluru)

K. ANUSHA & ORS.

Petitioner(s)

VERSUS

REGIONAL MANAGER, SHRIRAM GENERAL
INSURANCE CO. LTD

Respondent(s)

Date : 06-10-2021 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Mr. C. B. Gururaj, Adv.
Mr. K. P. Mavi, Adv.
Mr. Pramit Chettri, Adv.
Mr. Prakash Ranjan Nayak, AOR

For Respondent(s) Mr. Sameer Nandwani, Adv.
Mr. Syed Ahmed Saud, Adv.
Mr. Daanish Ahmed Syed, Adv.
Mohd. Parvez Dabas, Adv.
Mr. Uzmi Jameel Husain, Adv.
for M/s. Shakil Ahmad Syed, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard the learned counsel for the parties at some length.

Leave granted.

The appeal is allowed.

Reasons to follow.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU BALA GAMBHIR)
COURT MASTER

List of Books :-

1) (2017) 16 SCC 680

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 14360/2016

(Arising out of impugned final judgment and order dated 05-06-2015 in MFA No. 6184/2013 passed by the High Court Of Karnataka At Bengaluru)

K. ANUSHA & ORS.

Petitioner(s)

VERSUS

REGIONAL MANAGER, SHRIRAM GENERAL
INSURANCE CO. LTD

Respondent(s)

Date : 08-10-2021 This petition was called on for hearing on 06.10.2021 and the reasoned order is being uploaded today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Mr. C. B. Gururaj, Adv.
Mr. K. P. Mavi, Adv.
Mr. Pramit Chettri, Adv.
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Mohd. Parvez Dabas, Adv.
Mr. Uzmi Jameel Husain, Adv.
for M/s. Shakil Ahmad Syed, AOR

UPON hearing the counsel the Court made the following
O R D E R

This matter was taken up for hearing on 06.10.2021 and the following order was passed :-

"Heard the learned counsel for the parties at some length.

Leave granted.

The appeal is allowed.

Reasons to follow."

Accordingly, the reasoned order is being uploaded today and the signed order is placed on the file.

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU BALA GAMBHIR)
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6237 OF 2021
(Arising out of SLP(C) No.14360 of 2016)

SMT. K. ANUSHA & ORS.

...APPELLANT(S)

VERSUS

REGIONAL MANAGER,
SHRIRAM GENERAL INSURANCE
CO.LTD.

...RESPONDENT(S)

ORDER

Leave granted.

2. Aggrieved both by the quantum of compensation determined by the High Court and the finding recorded by the Tribunal and confirmed by the High Court that the driver of the car in which the deceased was travelling was also guilty of contributory negligence and that therefore the claimants are entitled only to 50% of the amount of compensation as determined, the claimants in a motor accident claim have come up with the above appeal.

3. We have heard the learned counsel for the parties.

4. On 10.02.2011, the car in which the husband of the 1st appellant (and the father of the appellant nos. 2 and 3) was travelling, dashed against a lorry that was going in front, when the driver of the lorry allegedly stopped it all of a sudden without any signal or indicator. The victim suffered serious injuries and died on the spot.

5. Claiming that the accident occurred due to the rash and negligent driving on the part of the driver of the lorry, the appellants filed a claim before the Tribunal, seeking compensation in a sum of Rs.54,10,000/-.

6. According to the appellants, the victim was 32 years of age at the time of the accident and that he was employed as a Senior Design Engineer in a company earning a sum of Rs.45,000/- per month with bright future prospects.

7. On the issue relating to the cause of the accident, the Tribunal came to the conclusion on perusal of the police records, including the complaint, spot sketch etc., that the lorry into which the car collided, had been parked without putting any indicator or signal on NH-4. But at the same time the Tribunal concluded, on the basis of the final report filed by the police against the drivers of the lorry as well as the car, that the driver of the car was also equally negligent. Therefore, the Tribunal first held that the accident occurred due to the contributory negligence on the part of the drivers of both vehicles and fixed 50% as the factor of contribution.

8. On the quantum of compensation, the Tribunal arrived at the annual income of the deceased as Rs.2,78,700/-, after excluding certain special allowances. After adding 10% to the said income on the

ground that the deceased had a bright future, the Tribunal fixed the loss of annual income at Rs.3,09,900/-. From the said amount, the Tribunal deducted *one-third* and applied a multiplier of 16 on the balance annual income of Rs.2,06,600/-. The amount so arrived at by the Tribunal was Rs.33,05,600/- to which the Tribunal added a sum of Rs.10,000 each towards loss of consortium, love and affection and expectation of love. The Tribunal added Rs.5000/- each for the transportation of the body and for funeral expenses and arrived at a total amount of Rs.33,45,600/-. Since the Tribunal held the driver of the car equally negligent contributing to the accident, the Tribunal divided the aforesaid amount by *two* and awarded a compensation of Rs.16,72,800/-. On the said amount, interest was directed to be paid at 6% per annum.

9. The Insurance Company did not challenge the award. But the claimants filed an appeal before the High Court of Karnataka. By the judgment impugned in this appeal the High Court upheld the finding of the Tribunal relating to contributory negligence. On the quantum of compensation, the High Court took the gross annual income for the assessment year 2009-10, which was Rs.3,36,427/-. After deducting income tax of Rs.32,368/- from the said amount, the High Court arrived at the net income as Rs.3,04,060/-. From the said amount the

Tribunal deducted one-third towards personal expenses and arrived at the income available for the family as Rs.2,02,707/-. After applying the multiplier of 16, the High Court re-determined the loss of dependency at Rs.32,43,312/-. To this amount, the High Court added Rs.1,00,000/- towards loss of consortium, Rs.75,000/- towards loss of love and affection and Rs.25,000/-towards loss of estate and Rs.25,000/- funeral expenses. Thus the High Court arrived at the compensation payable as Rs.34,68,312/. Since 50% was fixed as contributory negligence, the High Court awarded half of the said amount namely, a sum of Rs.17,34,156, payable with interest at 9% per annum. Aggrieved by the said judgment, the claimants are on appeal before us.

10. The primary grievance of the appellants are two-fold namely, (i) that the finding of contributory negligence is wholly arbitrary and unjustified; and (ii) that both the Tribunal and the High Court failed to take care of the future prospects, in the light of the law laid down in ***National Insurance Company Limited vs. Pranay Sethi and Others¹***.

11. The first grievance of the appellants about the finding of contributory negligence is liable to be sustained for three reasons namely, **(i)** that even according to the Tribunal and the High Court, the

¹ (2017) 16 SCC 680

spot where the lorry was parked, as indicated in Exhibits P-1 to P-6 (*FIR, complaint, spot magazar etc.*) and Exhibit P-22 (*spot sketch*), was not a parking place; **(ii)** that according to the High court, the driver of the lorry ought to have parked the vehicle on the left side of the road by giving proper indication/signal, but it was not done; and **(iii)** that as per the finding of the High court, the accident occurred at about 4.30 A.M. when the lighting should have been poor.

12. The view expressed by the High Court to effect that if the driver of the car had been vigilant and driving the vehicle carefully following the traffic rules, the accident would not have happened, is presumptuous and not based on any evidence. There was nothing on record to indicate that the driver of the car was not driving at moderate speed nor that he did not follow traffic rules. On the contrary, the High Court holds that if the lorry had not been parked on the highway, the accident would not have happened even if the car was driven at a high speed.

13. Therefore, the entire reasoning of the High Court on Issue No.1 is riddled with inherent contradictions. To establish contributory negligence, some act or omission, which materially contributed to the accident or the damage, should be attributed to the person against whom it is alleged. In ***Pramodkumar Rasikbhai Jhaveri*** vs.

Karmasey Kunvargi Tak and Others² this Court quoted a decision of the High Court of Australia in **Astley v. Austrust Ltd.**³, to hold that “...where, by his negligence, one party places another in a situation of danger, which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence, if that other acts in a way which, with the benefit of hindsight is shown not to have been the best way out of the difficulty”. In fact, the statement of law in **Swadling v. Cooper**⁴, that “...the mere failure to avoid the collision by taking some extraordinary precaution, does not in itself constitute negligence...”, was also quoted with approval by this Court. Therefore, we are compelled to reverse the finding of the Tribunal and the High Court on the question of contributory negligence.

14. On the second question, the Tribunal merely allowed 10% as additional weightage, for the reason that the deceased had a bright future. But as held by this Court in **National Insurance Company Limited** vs. **Pranay Sethi** (supra), the appellants were entitled to an addition of 50% towards future prospects. Paragraph 59.3 and 59.4 of **Pranay Sethi** read as follows:-

“**59.3.** While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job

2 (2002) 6 SCC 455

3 (1999) 73 ALJR 403

4 1931 AC 1

and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

15. If 50% is so added to future prospects, the compensation would work out as follows:-

(i)	Gross salary for the Assessment year 2009-10 =	Rs. 3,36,427/-
(ii)	Income Tax paid	= Rs. 32,368/-
(iii)	Net annual income	= Rs. 3,04,060/-
(iv)	Deduction of one-third towards Personal expenses	= Rs. 1,01,353/-
(v)	Net amount	= Rs. 2,02,707/-
(vi)	50% towards future prospects	= Rs. 1,01,353/-
(vii)	Total of (v) and (vi)	= Rs. 3,04,060/-
(viii)	Amount after applying multiplier of 16	= Rs.48,64,960/-
(ix)	Other amounts awarded by the High Court (towards loss of consortium etc.)	= Rs. 2,25,000/- -----
	Total	Rs.50,89,960/- -----

16. Therefore in the result the appeal is allowed and the judgment of the High Court of Karnataka in MFA No.6184 of 2013 (MV) dated 05.06.2015 is modified granting, to the appellants a total

compensation of Rs.50,89,960/-. The same shall be payable with interest @ 9% per annum from the date of petition. Since appellant nos. 2 and 3 are minors, they are held entitled to a share of 25% each and the said amounts shall be deposited in any nationalized bank of the choice of the 1st appellant. The 1st appellant will be at liberty to withdraw the interest periodically. The amounts already paid/deposited by the Insurance Company shall be adjusted as against the above. No costs.

.....J.
(Hemant Gupta)

.....J.
(V. Ramasubramanian)

New Delhi
October 06, 2021