

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 25TH DAY OF FEBRUARY, 2022

BEFORE

THE HON'BLE MR.JUSTICE S.VISHWAJITH SHETTY

M.F.A. No.100096/2019 (MV)

BETWEEN

SHRI MAHANTESH,
S/ O SANGAPPA BANNIMATTI,
AGE: MAJOR,
OCC: OWNER TIPPER LORRY
BEARING REG.NO. KA- 27/ A- 8377,
R/O HULAYAL,
TQ. & DIST: HAVERI- 581110.

... APPELLANT

(BY SRI B.M.PATIL, ADVOCATE)

AND

1. SMT. NETHARAVATI,
W/O BASAYYA KULKARNI,
AGE: 29 YEARS, OCC: HOUSEHOLD,
R/O GUTTAL,
TQ. & DIST: HAVERI-581108.
2. SHRI BASAYYA,
S/ O GURUSHANTAYYA KULKARNI,
AGE: 32 YEARS, OCC: COOLIE,
R/O GUTTAL, TQ. & DIST: HAVERI-581108.
3. SHRI BASAYYA,
S/O CHANNABASAYYA KULKARNI,
AGE: 26 YEARS, OCC: DRIVER,
R/O GUTTAL, TQ. & DIST: HAVERI-581108.
4. DIVISIONAL MANAGER,
CHOLAMANDALAM M.S.GENERAL
INSURANCE CO.LTD.,
KALBURGI SCAWARE,

DESHPANDE NAGAR,
HUBBALLI-580029.

...RESPONDENTS

(BY SRI I.C.PATIL, ADVOCATE FOR R3;
SRI SUBHASH J.BADDI, ADVOCATE FOR R4;
NOTICE TO R1 AND R2 SERVED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, AGAINST THE JUDGMENT AND AWARD DATED 03. 10. 2018 PASSED IN MVC No. 218/ 2015 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE AND MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL, HAVERI, AWARDED COMPENSATION OF `5, 90, 000/- WITH INTEREST AT 6% P. A. FROM THE DATE OF PETITION TILL ITS REALIZATION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 16. 02. 2022 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is preferred by the owner of the offending tipper lorry bearing registration No.KA- 27/ A- 8377 against the judgment and award dated 03.10.2018 passed by the Motor Accident Claims Tribunal, Haveri (hereinafter referred to as the 'Tribunal', for brevity) in MVC No. 218/ 2015 on the ground of liability as well as on the quantum of compensation awarded by the Tribunal.

2. Though this appeal is listed for admission, with the consent of the learned counsels appearing

for the parties, the appeal is taken up for final disposal. The parties to this appeal are referred to by their rankings assigned to them before the Tribunal for the sake of convenience.

3. Brief facts of the case that would be relevant for the purpose of disposal of this appeal are:

On 23. 11. 2014 at about 8 .00 a.m. the claimant No. 1 herein after washing cloths in Gokatti, was returning home along with her minor daughter baby Kalpana, aged about 2 years and when they reached near the building of Midiyappa Hindinmani on Guttal-Belavigi road, the offending tipper lorry bearing registration No. KA- 27/ A-8377 which was driven in a rash and negligent manner by its driver, dashed against the minor girl Kalpana and caused the accident. Kalpana who suffered grievous injuries was immediately shifted to the hospital, but she succumbed to the injuries in the hospital. A criminal case was therefore registered against the driver of the offending

tipper lorry. It is in this background, the claimants who are the parents of deceased Kalpana who was aged about 2 years as on the date of accident, had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, the 'Act') claiming compensation of `6,00,000/- with interest from the driver, owner and insurer of the offending tipper lorry bearing registration No.KA-27/ A- 8377. The said claim petition was partly allowed by the Tribunal and a compensation of `5,90,000/- with interest at 6 % per annum from the date of petition till realization was awarded and the 2nd respondent who is the owner of the offending tipper lorry was held liable to pay the compensation and accordingly he was directed to deposit the compensation amount before the Tribunal. Being aggrieved by the same, the owner of the offending tipper lorry is before this Court.

4. Learned counsel for the appellant- owner of the offending lorry submits that the Tribunal had erred in exonerating the liability of the insurer of the offending lorry, though as on the date of accident,

the insurance policy issued by the 3rd respondent-insurer was in force. He submits that the Tribunal had exonerated the liability of the insurer only on the ground that the driver of the offending lorry did not have valid and effective driving licence to drive a heavy goods vehicle as on the date of accident. He submits that admittedly the driver of the offending tipper lorry possessed a light motor vehicle driving licence and therefore since the unladen weight of the offending lorry being lesser than 7500 kg, the offending vehicle is required to be considered as a light motor vehicle and the liability to pay compensation is required to be saddled on the insurer of the offending tipper lorry. He submits that the unladen weight of the vehicle as could be seen from Ex.R 1 the 'B' register extract is only 6190 kg and therefore the same is required to be considered as a light motor vehicle though the said vehicle is categorized as heavy goods vehicle. In support of his contention, he has relied upon the judgment of this Court delivered by a co-ordinate bench in the case of

United India Insurance Co.Ltd., V/s Lakshmamma and others reported in *ILR 1996 Karnataka 2220* and also the judgment of another co- ordinate bench of this Court rendered in MFA No.6284/ 2013 c/w MFA No.11421/ 2012 (MV) disposed off on 02.08. 2021 in the case of *Sarasa Bhandartha and others V/s Smt.Geetha and another*. He submits that the Tribunal has not properly appreciated the judgment of the Hon'ble Supreme Court in the case of *Mukund Dewangan V/s Oriental Insurance Company Limited* reported in (2017) 14 SCC 663, which has resulted in erroneously exonerating the insurer from its liability. He also submits that the compensation awarded to the claimants is on the higher side. He submits that the deceased was aged about 2 years as on the date of accident and therefore the claimants are entitled only for a sum of `2, 75, 000/- as compensation having regard to the judgment of the Hon'ble Apex Court in the case of *Rajendra Singh and others*

V/s National Insurance Company Limited and others reported in (2020) 7 SCC 256.

5. *Per contra*, learned counsel appearing for the insurer of the offending vehicle submits that admittedly the driver of the lorry did not possess licence to drive heavy goods vehicle and as on the date of accident, he was only holding a light motor vehicle driving licence. The vehicle in question is a transport vehicle and the gross weight of the vehicle is much more than 7500 kg as could be seen from Ex.R 1. Therefore, the Tribunal has rightly exonerated the insurer from its liability. He submits that this question has been considered by the Hon'ble Supreme Court in the case of *Mukund Dewangan* and it has been held that the transport vehicles of which gross weight is more than 7500 kg cannot be considered as a light motor vehicle.

6. The claimants who have been served in the matter have remained unrepresented before this Court.

7. I have carefully considered the arguments addressed on both sides and also perused the material on record.

8. The undisputed facts of the case are that in the road traffic accident that had occurred on 23. 11. 2014, wherein the offending tipper lorry bearing registration No. KA- 27/ A- 8377 was involved, the minor daughter of the claimants baby Kalpana, aged about 2 years had died. It is not in dispute that the offending tipper lorry which was involved in the accident was duly insured with the 3rd respondent- Insurance Company and as on the date of accident, the said policy was in force. The Tribunal had exonerated the liability of the insurer to pay the compensation on the ground that the driver of the offending lorry did not possess valid and effective driving licence to drive a heavy goods vehicle as on the date of accident. The vehicle in question was a tipper lorry and the material on record would go to show that the unladen weight of the said vehicle which is categorized as a heavy goods

vehicle is 6190 and the gross weight of the said vehicle is 16200 kg.

9. Learned counsel for the appellant has submitted that since the unladen weight of the vehicle involved in the accident, though it is a heavy goods vehicle, is less than 7500 kg and therefore the same has to be considered as a light motor vehicle and accordingly the insurer of the offending vehicle is required to be saddled with the liability to pay the compensation. The question whether transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and the holder of licence to drive class of light motor vehicle as provided in Section 10(2)(d) would be competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg was referred to larger bench by a division bench of the Hon'ble Supreme Court in the case of *Mukund Dewangan V/s Oriental Insurance Company Limited and others* reported in (2016) 4 SCC 298 and the Hon'ble Supreme Court in the case of *Mukund*

Dewangan V/s Oriental Insurance Company Limited reported in (2017) 14 SCC 663 while answering the said question has held that a transport vehicle and omnibus, gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and the holder of driving licence to drive class of light motor vehicle as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. Therefore, there is no merit in the contention of the learned counsel for the appellant that the Tribunal had erred in exonerating the liability of the insurer and that the Tribunal had not properly appreciated the judgment of the Apex Court in the case of *Mukund Dewangan V/s Oriental Insurance Company Limited* reported in (2017) 14 SCC 663. The vehicle in question which is categorized as a heavy goods vehicle comes within the meaning of Section 2(16) of the Motor Vehicles Act, 1988 as the gross vehicle weight undisputedly exceeds 12000 kg. Under the circumstances, the Tribunal was fully justified in holding that the offending vehicle was

used in violation of the terms and conditions of the policy and therefore the insurer of the offending vehicle was not liable to pay the compensation. I find no illegality or irregularity with regard to the finding recorded by the Tribunal insofar as it relates to exonerating the liability of the insurer and holding the insured/owner of the offending vehicle liable to pay the compensation.

10. The judgment in the case of *Lakshamma and others* reported in *ILR 1996 Karnataka 2220* was rendered by the co-ordinate bench of this Court much prior to the judgment of the Hon'ble Supreme Court in the case of *Mukund Dewangan* (supra). The Hon'ble Supreme Court in the case of *Mukund Dewangan* has held that a transport vehicle, the gross weight of which does not exceed 7500 kg would be a light motor vehicle and the holder of the driving licence to drive class of light motor vehicle as provided under Section 10(2)(d) is competent to drive a transport vehicle, the gross vehicle weight does not exceed 7500 kg. The word "gross vehicle weight" as defined in

Section 2(15) of the Act means, in respect of any vehicle, the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle. Ex.R1 which is the 'B' register extract of the offending vehicle would go to show that the registered laden weight of the said vehicle is 16200 kg which is much more than 7500 kg. Therefore, the gross weight of the offending vehicle if considered as 16200 kg, the said vehicle is required to be considered as a heavy goods vehicle in view of Section 2(16) of the Act, which states that any goods carriage the gross weight of which exceeds 12000 kg would be considered as heavy goods vehicle. In view of the judgment of the Hon'ble Supreme Court in the case of *Mukund Dewangan*, the judgment in the case of *Lakshmamma and others* reported in *ILR 1996 Karnataka 2220* is therefore no more a good law.

11. In the case of *Sarasa Bhandarathi and others*, the co- ordinate bench of this Court having taken into consideration that the driver of the offending vehicle was having a driving licence to drive

light motor vehicle and also heavy goods transport vehicle has held that in the said case that there was no breach of terms and conditions of the policy. However in the case on hand, the driver of the offending vehicle admittedly possessed only a driving licence to drive light motor vehicle and he does not possess driving licence to drive heavy transport vehicle and therefore the judgment in the case of *Sarasa Bhandarathi and others* cannot be made applicable to the present case.

12. Learned counsel for the appellant has also submitted that the compensation awarded by the Tribunal to the claimants is on the higher side. The deceased girl was aged about 2 years as on the date of accident. In respect of a non-earning member, the compensation was being awarded based on the notional income fixed under Section 163-A of the Act which is at `15,000/- per annum. Though the Hon'ble Supreme Court in the cases of *Puttamma and others V/s K.L.Narayana Reddy and another* reported in (2013) 15 SCC 45 and *R.K. Malik and another V/s Kiran Pal and others* reported in (2009) 14 SCC 1 had

observed that the notional income fixed under Section 163- A of the Motor Vehicles Act was required to be enhanced and increased, the same continued to exist without any amendment since 14.11.1994 . Therefore, the Hon'ble Supreme Court subsequently in the case of *Kishan Gopal and another V/s Lala and others* reported in (2014) 1 SCC 244, fixed the notional income at `30 ,000/- per annum in respect of a child who had died in the accident at the age of 10 years. Subsequently in the case of *Kurvan Ansari alias Kurvan Ali and another V/s Shyam Kishore Murmu and another*, Civil Appeal No.6902 of 2021 disposed of on 16 .11.2021 , in a case where the deceased child was aged about 7 years considering the earlier judgments in the case of *R. K. Malik* and *Kishan Gopal*, the Hon'ble Supreme Court has held that the notional income is required to be increased taking into consideration the inflation, devaluation of rupee, cost of living etc., and accordingly fixed the notional income at `25,000/- per annum in the said case and after applying the multiplier of '15' as prescribed under

Schedule II of Section 163 - A of the Act, a compensation of `3,75 ,000/- was awarded towards loss of dependency. Even in the present case, the same principle is required to be applied and a compensation of `3,75 ,000/- is therefore awarded to the claimants towards loss of dependency. Towards loss of filial consortium, the claimants are entitled for a sum of `40,000/- each and towards funeral expenses, they are entitled for another sum of `15,000/-. Therefore altogether they are entitled for a compensation of `4,70 ,000/- as against `5 ,90,000/- awarded by the Tribunal. The compensation awarded to the claimants shall carry interest at 6% per annum from the date of petition till realization.

13. The judgment of the Hon'ble Supreme Court in the case of *Rajendra Singh*, which is relied upon by the learned counsel for the appellant has been taken into consideration in the case of *Kurvan Ansari*. Considering the fact that the judgments in *Puttamma and others*, *R. K. Malik and others* and *Kishan Gopal and another* were rendered taking into account the

inflation, devaluation of the rupee and the cost of living, the Hon' ble Supreme Court in the case of *Kurvan Ansari* has not followed the judgment in the case of *Rajendra Singh*.

14. The appellant who is the owner of the offending tipper lorry is directed to deposit the balance amount of compensation with interest before the Tribunal within a period of six weeks from the date of receipt of certified copy of this order.

15. The amount in deposit before this Court is directed to be transferred to the Tribunal for the purpose of disbursement. The order passed by the Tribunal insofar as it relates to apportionment, disbursement and deposit etc., remains unaltered. The Miscellaneous First Appeal is accordingly partly allowed.

Sd/-
JUDGE

CLK