

**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 16TH DAY OF DECEMBER 2022

PRESENT

THE HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV

AND

THE HON'BLE MR. JUSTICE UMESH M ADIGA

MFA NO.101420/2019 (MV)

BETWEEN:

- 1 . SMT.PUSHPALATA W/O LATE M SHAMBLINGA
AGED:ABOUT 24 YEARS, OCC:NIL
2. MASTER SHIDDHARTH S/O LATE M. SHAMBULINGA
AGED:ABOUT 4 YEARS,
MINOR UNDER THE GUARDIANSHIP OF HIS NATURAL
MOTHER PETITIONER NO.1
SMT.PUSHPALATA W/O M. SHAMBULINGS
3. M.BASAVARAJ S/O LINGAPPA MENSIGI
AGED ABOUT 25 YEARS, OCC:NIL
4. KUMARI THANUJA D/O LINGEPPA MENSIGI
AGED ABOUT 20 YEARS, OCC:NIL

ALL ARE R/O.5TH WARD, SRIRAMANAGAR,
TALUK GANGAVATHI, DISTRICT:KOPPAL

...APPELLANTS

(BY SRI.BHAGYALAXMI BIKKANAVAR, ADV. FOR
SRI.Y.LAKSHMIKANT REDDY, ADV.)

AND

- 1 . SHARANABASAPPA S/O PAMPAPATHI
AGED:ABOUT 30 YEARS,
OCC:OWNER OF HERO H F DELUXE MOTOR CYCLE
BEARING ITS REGN NO. KA-37/Y-0712
R/O.WARD NO.6, KANAKAGIRI
TALUK GANGAVATHI
DIST:KOPPAL

- 2 . THE MANAGER (LEGAL) IFFCO TOKIO
GENERAL INSURANCE COMPANY LIMITED,
CUSTOMER SERVICE CENTER,
SRI.SHANTI TOWER,
5TH FLOOR IIIRD MAIN NO.141,
EAST STOP
NGEF LAYOUT KASTURINAGAR,
BENGALURU-560084

...RESPONDENTS

(BY SRI.M.Y,KATAGI, ADV. FOR R2,
R1 SERVED)

THIS APPEAL IS FILED UNDER SECTION U/S.173 (1) OF MOTOR VEHICLES ACT, AGAINST THE JUDGMENT AND AWARD DATED 05.02.2019 PASSED IN MVC NO.82/2017 ON THE FILE OF THE SENIOR CIVIL JUDGE AND MOTOR ACCIDENT CLAIMS TRIBUNAL, GANGAVATHI, DISMISSING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 02.11.2022 COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **UMESH M ADIGA J.**, DELIVERED THE FOLLOWING:

JUDGEMENT

This appeal is filed against the judgment and award dated 05.02.2019 passed in MVC No.8/2017 by the Senior Civil Judge and MACT, Gangavathi.

2. For the sake of convenience, parties are referred to as per their ranking before the Tribunal.

3. It was the case of the appellants/petitioners that on 13.04.2016 at 8.30 p.m., the deceased Shambulinga was riding the motorcycle bearing KA-37/Y-0712 and going on Sindhanur-Gangavathi main road; At Pragatinagar, pedestrian by name Hulugappa came across the road. Deceased tried to avoid the accident and in that process, he lost control of the motorcycle and fell down. He sustained grievous injuries and he was shifted to SDM Hospital, Dharwad; While undergoing treatment, he succumbed to the injuries on 01.05.2016.

4. It was further contended that the deceased was aged about 25 years, working as driver and earning

Rs.3,333/- p.m. Claimants were depending upon the earnings of the deceased, who are his wife, minor son, brother and sister respectively of the deceased Shambhulingappa. With these reasons, petitioners claimed compensation of Rs.22,88,200/-. This petition was filed under Section 163-A of M.V.Act.

5. Respondent No.2 has contended before the Tribunal that rider of the motorcycle i.e., deceased Shambhulingappa was not holding valid driving licence. The owner of the vehicle violated the conditions of the policy. The accident was caused due to negligence of the rider of the motorcycle. Therefore, petition is not maintainable and legal heirs of the deceased cannot claim compensation under Section 163-A of M.V.Act. The amount of compensation claimed is exorbitant and prayed to dismiss the petition.

6. The Tribunal has framed relevant issues. Petitioners have examined P.Ws.1 and 2 and got marked Exs.P1 to P95.

7. Respondent No.2 examined R.W.1 and got marked Ex.R1. The Tribunal appreciating the pleadings and evidence on record dismissed the petition by the impugned judgment. The same is challenged by the claimants.

8. We have heard the arguments.

9. The following points emerge for our determination:

- i) Whether petition is maintainable and claimants are entitled for compensation?
- ii) What order?

10. This petition was filed under Section 163-A of the M.V.Act. The main contention of respondent No.2 was that deceased had taken the vehicle from the owner and was riding the same in a rash and negligent manner; due to his negligence, the accident had taken place and he died in the accident. The Tribunal relied on the judgment of the Hon'ble Supreme Court in **Civil Appeal No.3538/2009** in the case of **Ningamma and Another v. United India**

Insurance Company Ltd. held that borrower of the vehicle steps into the shoes of the owner of the vehicle and therefore, borrower of the vehicle or his legal heirs are not entitled for compensation. The Tribunal has also relied on the judgment of the Hon'ble Supreme Court in the case of **Oriental Insurance Company Ltd. Vs. Josef** reported in **2012(2) KLT 132** and held that petition was not maintainable.

11. Learned counsel for the insurance company relied on the judgment of the Hon'ble Supreme Court in the case of **Ramkhaladi and Another vs. United India Insurance Co.Ltd., and Another** reported in **2020 ACJ 627** and submitted that claim petition is not maintainable.

12. Learned counsel for the claimants relied on the judgment of the Hon'ble Supreme Court in **Civil Appeal No.2527/2020** dated 08.06.2020 in the case of **Chandrakanta Tiwari vs. New India Assurance Company Ltd. & Another** and contended that in view of

law laid down in the above said judgment, claimants are entitled for compensation.

13. We have considered contentions of both side.

14. The submission of the learned counsel for the appelant is not tenable. The facts in the case of **Chandrakanta Tiwari (supra)** are different from the facts of the present case. In the above referred case, the deceased was a pillion rider and the rider of the motorcycle was different person. Therefore, it was held that pillion rider was third party and hence, claimants were entitled for compensation. But in the present case, the deceased himself was riding the motorcycle and according to petition averments, he was riding the motorcycle in a high speed and he could not control the vehicle thereby he dashed against a pedestrian and caused the accident. Therefore, he stepped into the shoes of the owner of the vehicle and he hence, he cannot maintain claim petition against the insurance company.

15. In the case of **Ramkhilladi (supra)**, is held as under:

"In the view of the above and for the reasons stated above, in the present case, as the claim under section 163-A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under section 163-A of the Act against the driver, owner and/or the insurance company of the offending vehicle, i.e., RJ 29-2M 9223, being a third party to the said vehicle."

16. In this case also, the deceased steps into the shoes of the owner of the vehicle, the claimants cannot claim compensation against the insurance company of the said motorcycle. However, in the above said case, as per the contract of insurance, owner-cum-driver was entitled compensation of Rs.1,00,000/-. Therefore, Hon'ble

Supreme Court was awarded compensation of Rs.1,00,000/- to the claimants.

17. In this case, policy of insurance was produced as Ex.R1. As per it, premium of Rs.50/- was collected to cover the risk of personal accident of owner, driver to the maximum limit of Rs.1,00,000/-. According to the said contract of insurance, claimants are entitled for compensation of Rs.1,00,000/-. To that extent, respondent No.2 is liable to pay the compensation and the claimants are not entitled for compensation as claimed in the petition.

18. Claimants are the wife, minor son, brother and sister of the deceased. Brother and sister are not directly depending on the deceased and they are majors. Therefore, the said meager amount of compensation has to be equally apportioned to petitioner Nos.1 and 2 with interest at the rate of 6% p.a. from the date of petition till realization of the entire amount. Accordingly, we answer the above points and proceed to pass the following:

ORDER

The appeal is allowed in part with costs.

Claimants are entitled for compensation of Rs.1,00,000/- with interest at the rate of 6% p.a. from the date of petition till realization of the entire amount.

Respondent No.2 is directed pay the compensation amount.

The amount of compensation shall be equally apportioned to petitioner Nos.1 and 2. Petitioner No.2 is minor. The said amount shall be kept in interest bearing deposit till he attains majority.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

MBS