



R

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 4<sup>TH</sup> DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL

MISCELLANEOUS FIRST APPEAL NO. 102120 OF 2016 (MV-D)

C/W

MISCELLANEOUS FIRST APPEAL NO. 102901 OF 2015 (MV-D)

IN MFA NO.102120/2016

BETWEEN:

1. SMT. RENUKA MAHABALESHWAR BHAT,  
AGE: 55 YEARS, OCC: HOUSEHOLD,  
R/O. KHB COLONY, SIRSI,  
SIRSI TALUKA, DIST: KARWAR.
2. GANESH MAHABALESHWAR BHAT,  
AGE: 29 YEARS, OCC: AGRICULTURIST,  
R/O. KHB COLONY, SIRSI,  
SIRSI TALUKA, DIST: KARWAR.

...APPELLANTS

(BY SRI. VINAYAK BHAT, ADV. FOR  
SRI. S. V. YAJI, ADVOCATES)

AND:

1. AZEEZ RAHMAN S/O. MOHAMMAD SHAFI SHAIKH  
AGE: 42 YEARS, OCC: BUSINESS,  
R/O. 562, KASTURABHA NAGAR,  
SIRSI, SIRSI TALUKA, DIST: KARWAR.
2. SHRIRAM GENERAL INSURANCE CO. LTD,  
REP BY-ITS BRANCH MANAGER,  
E-8, RHCO INDUSTRIAL AREA  
SITAPURA, JAIPUR, RAJASTHAN-302022.

...RESPONDENTS

(BY SRI. S. K. KAYAKMATH, ADV. FOR R2;  
NOTICE TO RESPONDENT NO.1 HELD SUFFICIENT)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S.173(1) OF  
MV ACT, 1988 PRAYING TO CALL FOR THE RECORDS AND TO  
MODIFY THE JUDGMENT AND AWARD DATED 18/04/2015 PASSED BY  
THE ADDITIONAL M.A.C.T, SIRSI IN MVC 5/2013 AND ENHANCE THE





COMPENSATION AS PRAYED FOR BY ALLOWING THE APPEAL AND PASS SUCH OTHER ORDER OR ORDERS AS THIS HON'BLE COURT DEEMS FIT UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE TO MEET THE ENDS OF JUSTICE AND EQUITY.

**IN MFA NO.102901/2015**

**BETWEEN:**

SHRIRAM GENERAL INSURANCE CO. LTD,  
REPRESENTED BY ITS BRANCH MANAGER,  
E-8, RHCO INDUSTRIAL AREA, SITA PURA,  
JAIPUR, RAJASTHAN,  
NOW REPRESENTED BY ITS  
AUTHORIZED SIGNATORY,  
SHRIRAM GENERAL INSURANCE COMPANY LTD,  
NO.5/4, 3RD FLOOR, S. V. ARCADE,  
BELEKAHALLI MAIN ROAD,  
OPP: BENNURUGHATTA ROAD,  
IIMB POST, BENGALURU-560076.

...APPELLANT

(BY SRI. S. K. KAYAKMATH, ADVOCATE)

**AND:**

1. SMT. RENUKA MAHABALESHWAR BHAT,  
AGED ABOUT 54 YEARS.
2. GANESH MAHABALESHWAR BHAT,  
AGED ABOUT 28 YEARS,  
BOTH ARE R/O. KHB COLONY, SIRSI.
3. AZEEZ REHMAN S/O. MOHAMMAD SHAFI SHAIKH,  
AGE: MAJOR, OCC: OWNER,  
R/O. H.NO.562, NO.1,  
KASTURBHA NAGAR, SIRSI.

...RESPONDENTS

(NOTICE TO R1 AND R2 SERVED,  
NOTICE TO R3 DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S.173(1) OF MOTOR VEHICLES ACT, 1988 PRAYING TO CALL FOR RECORDS, HEAR THE PARTIES, AND ALLOW THE APPEAL AS PRAYED FOR BY SETTING ASIDE THE IMPUGNED JUDGMENT AND AWARD DATED 18.04.2015 PASSED BY THE ADDITIONAL M.A.C.T, SIRSI IN MVC NO.5/2013, WITH COST IN THE INTEREST OF JUSTICE AND EQUITY.



THESE APPEALS COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

**JUDGMENT**

Though these appeals are listed for admission, with the consent of learned counsel for the parties, they are taken up for final disposal.

**2.** MFA No.102120/2016 is filed by the claimants challenging the contributory negligence to an extent of 40% saddled on the deceased as well as seeking enhancement of compensation, whereas, the insurance company is also in appeal in MFA No.102901/2015 challenging the liability as well as quantum of compensation awarded under judgment & award dated 18.04.2015 passed in MVC No.5/2013 by the Addl. MACT, Sirsi (for short, 'Tribunal').

**3.** Brief facts leading to filing of these appeals are that on 6.7.2012, one late Mahabaleshwar Krishna Bhat, being the rider of motorcycle bearing registration No.KA-31/J-9818 was proceeding near KHB colony on Sirsi-Hubli road. Truck bearing registration No.KA-30-3522 was parked in a dangerous manner without indication of signal. At that time, it was raining and the deceased could not see the truck, which was negligently parked



without any signal and he dashed to the truck from its behind. As a result, the said Mahabaleshwar Krishna Bhat fell down and sustained severe injuries to his head, legs, hands and other parts of the body. Immediately, he was shifted to TSS Hospital, Sirsi and in spite of best efforts of the doctor, he succumbed to the injuries. It is averred that the deceased Mahalbaleshwar was aged about 57 years, working as Music teacher and earning Rs.3,300/- per month.

**4.** Before the Tribunal, Respondent No.2/Insurance Company contested the proceedings by filing statement of objections and denied the averments made in the claim petition. It is further averred that the claim petition is liable to be dismissed as not maintainable under Section 163-A of the MV Act, 1988 as the deceased himself was responsible for the accident and just to get compensation, the claimants have falsely filed claim petition. Hence, sought for dismissal of the claim petition.

**5.** The claimant No.2, son of the deceased Mahabaleshwar, examined himself as PW1 and got marked the



documents as Ex.P1 to P7. The respondents examined one witness as RW1, but did not mark any document.

**6.** The Tribunal on scrutiny of entire material available on record, allowed the claim petition in part awarding total compensation of Rs.1,47,600/- with interest at 6% per annum from the date of petition till realization. The claimants as well as the insurance company are in appeals before this Court.

**7.** Heard the learned counsel Sri.Vinayak Bhat for Sri.S.V.Yaji, learned counsel for the claimants and Sri.S.K.Kayakamath, learned counsel for the Insurance Company.

**8.** Learned counsel for the appellants/claimants Sri.Vinayak Bhat in support of his appeal would submit that the Tribunal committed an error in holding that the deceased has contributed 40% to the occurrence of the accident in question, without taking note of the fact that the claim petition was filed under Section 163-A of the MV Act. He submits that when the claim petition was filed under Section 163-A of the MV Act, question of negligence cannot be looked into. Hence, he seeks to modify the impugned judgment and award of the Tribunal by



saddling the entire liability on the insurance company. He further submits that the Tribunal committed an error in assessing income of the deceased at Rs.3000 per month and he seeks to consider the same at Rs.40,000/- per annum.

**9.** Per contra, learned counsel Sri.S.K.Kayakamath, for appellant/Insurance Company in support of his appeal submits that the Tribunal committed an error in fastening the liability to an extent of 60% on the insurance company, which is contrary to the statutory provisions of Section 163-A of the MV Act, as no risk is contemplated under the insurance policy in respect of self negligent accident. Insofar as quantum of compensation, Sri.Kayakamath submits that the award of compensation requires to be modified as per Second Schedule of the MV Act by awarding appropriate compensation. Thus, he seeks modification of the impugned judgment and award by allowing the appeal filed by the insurance company.

**10.** Having heard the learned counsel for the parties and on perusal of the appeal papers, the only point that would arise of consideration in this appeal is *whether the impugned*



*judgment and award of the Tribunal requires to be interfered with in the facts and circumstances of the case?*

**11.** Answer to the above point would be in the 'affirmative' for the following reasons:

**12.** The parties to the proceedings do not dispute the occurrence of the accident on 6.7.2012 resulting in death of Sri.Mahabaleshwar Krishna Bhat, wife of appellant No.1 and father of appellant No.2. It is also not in dispute that the offending vehicle bearing registration No.KA-30-3522 belonging to respondent No.1 was insured with respondent No.2/insurer. It is also not in dispute that the legal heirs of the deceased have filed claim petition under Section 163-A of the MV Act.

**13.** Section 163-A of the MV Act reads as under:

**163-A. Special provisions as to payment of compensation on structured formula basis.—**

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or



permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

**14.** The Hon'ble Apex Court in the case of ***United India Insurance Company Limited Vs. Sunilkumar & Another***<sup>1</sup>,

at paragraph-8 of the judgment held as under:

*8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid Section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time.*

*In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.* **(Emphasis supplied)**

**15.** The Hon'ble Apex Court in the case of ***Shivaji & Another Vs. Divisional Manager, United India Insurance***

---

<sup>1</sup> 2018 ACJ 1





***Company Limited & Others<sup>2</sup>***, reiterates the enunciation of law laid down by it in ***Sunilkumar's*** case referred supra. The relevant paragraph of the said judgment reads as under:

**5.** The issue which arises before us is no longer res integra and is covered by a recent judgment of three judges of this Court in *United India Insurance Co. Ltd. v. Sunil Kumar & Anr.*, wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is "final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time". The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163-A of the Act, it would "bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention". Consequently, it was held that in a proceeding under Section 163-A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation.

**16.** On perusal of the provision of law and also decisions of the Hon'ble Apex Court referred supra, it is crystal clear that in a proceedings under Section 163-A of the MV Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation. Hence, this Court is of the considered view that the Tribunal has committed an error in fastening the liability on the deceased to an extent of 40%. Keeping in mind the law laid down by the Hon'ble

---

<sup>2</sup> AIR 2018 SC 3705



Apex Court in the judgment referred supra and also provision of law, this Court is of the considered view that the entire liability is to be saddled on the insurance company to pay compensation to the claimants.

**17.** Insofar as quantum of compensation, the Tribunal has assessed income of the deceased at Rs.3,000/- per month. As per Second Schedule appended to the MV Act, maximum income of deceased is fixed at Rs.40,000/- per annum. Hence, taking note of the same, this Court assesses the income of the deceased at Rs.40,000/- per annum. There is no dispute with regard to age of the deceased as 57 year and multiplier of 9. Thus, the claimants would be entitled to compensation under the head of loss of dependency as under:

$$\text{Rs.40,000} \times 9 \times 2/3^{\text{rd}} = \text{Rs.2,40,000/-}$$

**18.** The Tribunal awarded a sum of Rs.10,000/- under the head of loss of consortium, Rs.10,000/- towards funeral expenses and Rs.10,000/- towards loss of love and affection, which are on the higher side and contrary to Second Schedule to the MV Act. As per Second Schedule of the MV Act, the appellants/claimants are entitled to **Rs.2,000/-** towards



funeral expenses, **Rs.5,000/-** towards loss of consortium and **Rs.2,500/-** towards loss of estate.

**19.** Thus, the claimants would be entitled to modified compensation on the following heads:

<b>Particulars</b>	<b>Amount (in Rs.)</b>
Loss of dependency	2,40,000/-
Loss of estate	2,500/-
Funeral expenses	2,000/-
Loss of consortium	5,000/-
<b>Total</b>	<b>2,49,500/-</b>

Thus, the claimants are entitled to total compensation of **Rs.2,49,500/-** as against Rs.2,46,000/- awarded by the Tribunal.

**20.** It is to be noted that this Court vide order dated 4.3.2024, while condoning the delay of 343 days in filing the appeal, made an observation that the appellants/claimants would not be entitled for interest for the delayed period, in case if they succeed in the appeal. Hence, the claimants would not be entitled for the interest on the enhanced compensation for the aforesaid delayed period.

**21.** In the result, I proceed to pass the following:



**ORDER**

- a) Both appeals stand ***allowed in part.***
- b) The impugned judgment and award of the Tribunal is modified to an extent that the claimants would be entitled to total compensation of ***Rs.2,49,500/-*** as against Rs.2,46,000/- awarded by the Tribunal.
- c) The enhanced compensation amount shall carry interest at the rate of 6% per annum from the date of petition till the date of payment.
- d) The appellant/insurance company is liable to pay entire compensation amount and is directed to deposit the same with accrued interest before the Tribunal within a period of six weeks from the date of receipt of certified copy of this judgment.
- e) Out of total compensation amount of Rs.2,49,500/-, claimant No.1/wife of the deceased would be entitled to a sum of Rs.2 lakhs and claimant No.2/son of the deceased would be entitled to remaining amount of Rs.49,500/-, which shall be released



in his favour. Out of the compensation awarded to claimant No.1/wife of the deceased, 50% shall be kept in fixed deposit in her name in any nationalized bank for a period of three years with liberty to her to withdraw periodical interest accrued thereon and remaining 50% shall be released in her favour.

- f) Needless to say that the appellants/claimants would not be entitled to interest on the enhanced compensation amount for the aforesaid delayed period. Registry to take note of the same while drawing award.
- g) The amount in deposit made by the appellant/insurer be transmitted to the Tribunal forthwith.
- h) Draw modified award accordingly.

**Sd/-  
JUDGE**