

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28<sup>TH</sup> DAY OF AUGUST 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

**M.F.A. NO.1672/2016 (MV)**

BETWEEN:

UNITED INDIA INSURANCE CO., LTD.,  
MADANAPALLE BRANCH, (AP)

THROUGH ITS REGIONAL OFFICE  
KRISHI BHAVAN BUILDING  
NRUPATHUNGA ROAD  
BENGALURU - 560009  
REP. BY ITS DEPUTY MANAGER  
SMT. SUDHA D. RAO.

... APPELLANT

(BY SRI. ANUP SEETHARAMA RAO, FOR  
SRI. B.C. SEETHARAMA RAO, ADV.,)

AND:

1. SRI. G. MUNISHA  
AGED ABOUT 33 YEARS  
S/O GOPALAPPA.
2. KUM. GOPIKA  
AGED ABOUT 7 YEARS  
D/O SRI. G. MUNISHA  
SINCE MINOR, REP. BY HER FATHER  
THE FIRST RESPONDENT HEREIN.

BOTH ARE R/AT. NO.180  
BASAVESHWARA SWAMY TEMPLE ROAD

AVALAHALLI, VIRGONA NAGAR POST  
BANGALORE-560049.

3. M/S. GNYAMBAL TRANSPORT (DELETED)  
#95/2, PONAMALLEE HIGH ROAD  
CHENNAI – 600 084 (T.N.)  
(OWNER OF LORRY BEARING  
NO.TN-01-Y-0054).

.. RESPONDENTS

(BY SMT. SUGUNA R. REDDY, ADV., FOR R1  
R2 BEING MINOR REP. BY R1  
V/O DTD:30-11-2016 R3 DELETED)

- - -

THIS M.F.A. IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 24.11.2015 PASSED IN MVC NO.3056/2014 CN THE FILE OF I ADDITIONAL SMALL CAUSES JUDGE AND XXVII ACMM, MACT, BANGALORE (SCCH-11), AWARDED COMPENSATION OF RS.28,59,027/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL COMPLETE REALISATION.

THIS M.F.A. COMING ON FOR ADMISSION, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

This appeal under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act' for short) has been filed by the insurance company being aggrieved by the compensation awarded by the Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal', for short) vide judgment dated 14.11.2015.

2. Facts leading to filing of this appeal briefly stated are that on 11.05.2014 at about 3.30 p.m. deceased S.Lakshamma alias Lakshmi was proceeding towards Tirumala from Bangalore in Indica Car bearing registration No.KA05-Z-3055 for seeking darshan of Lord Venkateshwara along with her relatives viz., Ashok Kumar, husband and daughter Gopika. When they reached near Alkuppam Village on Bangalore Palamer Road, the driver of Tanker Trolley bearing registration No.TN01-Y-0054 drove the vehicle in a rash and negligent manner in high speed and dashed the Indica car in which deceased was traveling. As a result of impact of the tractor trolley, all the persons traveling in the car sustained multiple grievous injuries. One of the passengers in the car viz., Ashok Kumar succumbed to the injuries on spot whereas, S.Lakshamma was shifted to the hospital and during the course of treatment expired on 21.05.2014.

3. The claimants thereupon filed a petition under Section 166 of the Act *inter alia* on the ground that deceased at the time of accident was aged about 21 years and was working as trimmer in M/s Prateek Apparels Pvt. Ltd., Bangalore and was earning a sum of Rs.15,000/-. It was further pleaded that deceased was only earning member of the family and the accident has occurred due to rash and negligent driving by the driver of the tanker trolley. The claimants claimed compensation to the tune of Rs.25 Lakhs along with interest. The respondent No.1 did not appear and was proceeded ex parte. The respondent No.2 filed written statement in which *inter alia* it was pleaded that the claimants have not impleaded the owner and insurer of the Indica car and therefore, the petition is bad on account of non joinder of necessary parties. However, issuance of policy in respect of offending vehicle in question was admitted. It was further pleaded that the

compensation claimed by the appellant is highly excessive, exorbitant and is imaginary.

4. The Claims Tribunal on the basis of the pleadings of the parties, framed the issues. The claimant No.2 examined himself as PW1 and also examined one Narayanaswamy as PW2 and Y.Venkatraman as PW3 and got exhibited 18 documents viz., Ex.P1 to Ex.P18. The respondent No.2 did not adduce any evidence. The Claims Tribunal vide impugned judgment *inter alia* held that the accident took place on account of rash and negligent driving of the tanker trolley by its driver. It was further held that the deceased died on account of the injuries sustained by her in the accident and the claimant is entitled to compensation of Rs.28,59,027/- along with interest at the rate of 6%. Being aggrieved, the insurance company is in appeal challenging the quantum of compensation awarded by the Tribunal.

5. Learned counsel for the insurance company submitted that the Tribunal grossly erred in treating the monthly income of the deceased as Rs.15,000/-. It ought to have appreciated that the author of Ex.P13 viz., the order of appointment was not examined and in the absence of any evidence, the notional income of Rs.8,500/- p.m. ought to have been taken into account for assessment of loss on account of dependency. It is further submitted that the Tribunal ought to have appreciated that there was interpolation of document Ex.P13 and the same was not even otherwise worthy of reliance. It is also submitted that the amount on account of loss of consortium and loss of care and guidance to the minor child has been awarded in contravention of the law laid down by the five Judge bench of the Supreme Court in 'NATIONAL INSURANCE COMPANY LTD V. PRANAY SETHI', AIR 2017 SC 5157. On the other hand, learned counsel for the claimants submitted that Ex.P14 and Ex.P15 viz., the documents with regard to

insurance of the deceased by the company as well as the identity card were also furnished and the deceased was also working as a house wife. It is further submitted that the amount of compensation awarded by the Tribunal is just and proper and does not call for any interference.

6. We have considered the submissions made by learned counsel on both the sides and have perused the record. Admittedly, the deceased was aged about 29 years at the time of accident. However, it is pertinent to mention here that claimants have filed documents Ex.P13 to Ex.P15 viz., letter of appointment, document pertaining to insurance of the deceased and her identity card as an employee of M/s Prateek Apparels Pvt. Ltd., Bangalore. However, nobody has been examined to prove the aforesaid documents. In other words, the claimants have failed to adduce any evidence with regard to income of the deceased. However, the fact remains that deceased was an employee of M/s Prateek

Apparels Pvt. Ltd., Bangalore. Therefore, in the fact situation of the case, we are inclined to assess the income of the deceased at Rs.10,000/- The deceased was employed in M/s Prateek Apparels Pvt. Ltd., Bangalore. In view of law laid down by Supreme Court in 'PRANAY SETHI', supra, 40% of the amount is required to be added to the monthly income of the deceased as future prospects. Therefore, the monthly salary comes to Rs.14,000/-. Out of the aforesaid amount  $\frac{1}{3}$ <sup>rd</sup> of the amount has to be deducted towards personal expenses. Therefore, the monthly dependency of the claimants comes to Rs.9,333/-. Taking into account the age of the deceased multiplier of '17' has to be applied. Therefore, the claimants are held entitled to compensation under the head of loss of dependency to the tune of Rs.19,04,000/- ( $9333 \times 12 \times 17$ ). In addition, the claimants are held entitled to a sum of Rs.75,027/- on account of medical expenses. In view of laid down by the Supreme Court in 'MAGMA GENERAL INSURANCE



CO. LTD. VS. NANU RAM & ORS.' (2018) 18 SCC 130, which has been subsequently clarified by the Supreme Court in 'UNITED INDIA INSURANCE CO. LTD. Vs. SATINDER KAUR AND ORS.' IN CIVIL APPEAL NO.2705/2020 DECIDED ON 30.06.2020, the claimants are held entitled to sum of Rs.40,000/- each on account of loss of consortium and loss of love and affection. Thus, the claimants are entitled to a sum of Rs.80,000/- under the aforesaid head. In addition, the claimants are entitled to a sum of Rs.30,000/- on account of loss of estate and funeral expenses. Thus, in all, the claimants are held entitled to a sum of Rs.20,89,027/-. Needless to state that the aforesaid amount shall carry interest at the rate of 6% per annum from the date of filing of the petition till the payment is made. To the aforesaid extent, the judgment passed by the Claims Tribunal is modified. The amount in deposit shall be transmitted to the Claims Tribunal for disbursement.

In the result, the appeal is disposed of.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

SS

Not An Official Copy