

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

DATED THIS THE 14TH DAY OF SEPTEMBER, 2011

PRESENT

THE HON'BLE MRS.JUSTICE MANJULA CHELLUR

AND

THE HON'BLE MR.JUSTICE V.SURI APPA RAO

M.F.A.No.21062/2011 (MV)

BETWEEN:

SMT. MAHADEVI W/O SHARANAPPA VEERAPUR
AGE:26 YEARS, OCC:HOUSEHOLD WORK,
R/O GOREBAL, NOW RESIDING AT NAVANAGAR,
BAGALKOT.

... APPELLANT

(By Sri.: C G MATH, ADV.)

AND

1. ABDULASAB S/O MOHAMMADASAB HALLUR
AGE:MAJOR, OCC:OWNER OF TRUCK BEARING
NO. KA-29/A-677, R/O NEAR JUMMA MASJID,
BAGAYAL GALLI, BIJAPUR.
2. THE DIVISIONAL MANAGER,
NATIONAL INSURANCE CO. LTD.,
BELGUAM.

... RESPONDENTS

(By Sri. : RAVINDRA R MANE FOR R2)

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MFA FILED U/SEC.173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED:08-11-2010 PASSED IN MVC NO.83/2009 ON THE FILE OF THE MEMBER, MACT.NO.II, BAGALKOT, DISMISSING THE PETITION FILED U/SEC.163-A OF MV ACT.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, MANJULA CHELLUR,J., DELIVERED THE FOLLOWING:

JUDGMENT

By consent of both the counsel, the matter is heard on merits.

2. It is not in dispute that the appellant herein is the legal representative and dependent of the deceased. She sought for compensation of ₹25,00,000/- along with interest at 18% p.a. It is also not in dispute that the claim petition came to be filed under Section 163A of the Motor Vehicles Act. Section 163A of the Motor Vehicles Act reads as under:-

“[163A. 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 of 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 subsection, “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 subsection (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.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.]”

3. The learned Judge of the Tribunal has framed several points for determination and the first point was with regard to the rash and negligent driving of the vehicle concerned. In the present case accident occurred when the deceased was travelling as pillion rider of a motorcycle when the said motorcycle dashed against the tipper, which was stationed by the side of the road for repairs.

4. When we look at the contents of Section 163A and the reasoning of the learned Trial Judge, the learned Judge dismissed the claim petition, mainly on the ground that the claimant was not able to establish rash and negligent act on the part of the driver of the tipper. We also note that the complaint was lodged against motorcycle, but the rider of the motorcycle and the insurer of the motorcycle are not before the Court. We also note that the tipper was not in motion at the time of accident but it was stationed. As Section 304A of IPC is invoked, there is no need to establish rash and negligent driving on

the part of the lorry driver provided the negligence in stationing the lorry without any precaution or caution by the driver of the lorry are established. It is brought to our notice that even rider of the motorcycle is no more. The best person would have been the rider of the motorcycle as the claimant is the legal representative of pillion rider.

5. In that view of the matter, we are of the opinion by remanding back the matter to the Tribunal, no prejudice would be cause to any of the parties as the same could be decided in the light of provision of Section 163A of Motor Vehicles Act, including the contention of the respondent Insurance Company that the claim of claimant regarding the income of the deceased was at ₹.6,000/- per month.

6. With these observations appeal is disposed of setting aside the award dated 8/11/2010, in MVC No.83/2009, on the file of MACT II, Bagalkot. The appellant is also at liberty to implead necessary parties i.e. the owner, the insured and the insurer of the motorcycle in question, if they desire so. All contentions are kept

open. All the parties are directed to be present before the trial Court on 28/9/2011.

Registry is directed to send back the LCR to the MACT concerned.

Sd/-
JUDGE

Sd/-
JUDGE

Vmb