

IN THE HIGH COURT OF KARNATAKA,
CIRCUIT BENCH AT DHARWAD.

DATED THIS THE 28TH DAY OF AUGUST, 2012

PRESENT

THE HON'BLE MR.JUSTICE N.K.PATIL

AND

THE HON'BLE MR. JUSTICE B.V.PINTO

M.F.A.NO. 11052/2007 (MV)

BETWEEN:

1. SMT SHAKUNTALA
W/O SUBHAS @ SANGAPPA BARKI,
AGE: 49 YEARS, OCC HOUSEHOLD,
R/O DHARWAD.
2. SRI UTTAMKUMAR,
S/O SUBHAS @ SANGAPPA BARKI
AGE 35 YEARS, OCC MEDICAL PRACTITIONER,
R/O ISLAMPUR, TQ WALVA,
DIST SANGLI, MAHARASHTRA.
3. MRS VIMAL,
W/O RAJENDRAKUMAR,
NANDAGAON,
AGE 28 YEARS, OCC ADVOCATE,
R/O DHARWAD.
4. SRI UDAYKUMAR,
S/O SUBHAS @ SANGAPPA BARKI,
AGE 32 YEARS,
OCC MEDICAL PRACTITIONER,
R/O ISLAMPUR, TQ WALVA,

DIST SANGLI, MAHARASHTRA.

5. KUMARI MANJULA,
D/O SHANKAR SUNAGAR,
AGE 26 YEARS, OCC
R/O DHARWAD.
6. SMT BHIMAVVA,
W/O YALLAPPA BARKI,
AGE 80 YEARS, OCC HOUSEHOLD,
R/O DHARWAD. ... APPELLANTS

(BY SRI. NARAYAN V YAJI, ADV.)

AND

1. SMT SHYLAJAMMA,
W/O VISHWANATHA,
VISHWARADHYA,
AGE MAJOR,
OCC OWNER OF THE VEHICLE,
R/O DODDAPETH,
CHITRADURGA.
2. THE NEW INDIA ASSURANCE CO. LTD.,
BR. OFFICE DHARWAD.
REPTD. BY ITS MANAGER. ... RESPONDENTS

(BY SRI. D.R.NAGARAJ, ADV. FOR R1,
SRI S.S.KOLIWAD, ADV. FOR R2.)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF M.V.ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD PASSED BY THE CIVIL JUDGE (SR.DN.) AND ADDL. MACT DHARWAD IN MVC 287/2001 DATED 21.03.2007 AND AWARD THE COMPENSATIOIN AS PRAYED BY THEM IN MVC NO.287/2001 ON THE FILE OF THE CIVIL JUDGE (SR.DN.) AND ADDL. MACT, DHARWAD.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, N.K.PATIL J., DELIVERED THE FOLLOWING:

JUDGMENT

The claimants have filed this appeal assailing the judgment and award dated 21.3.2007 passed in MVC.No.287/01 on the file of the III Additional Civil Judge (Sr.Dn) and CJM, Dharwad.

2. The Tribunal by the impugned judgment, awarded compensation of Rs.9,00,000/- with interest at 6% p.a. from the date of petition till realisation, on account of death of deceased. The grievance of the claimants is that, the compensation awarded by the Tribunal towards loss of dependency and the conventional heads requires enhancement. Further, it is the case of the claimants that the Tribunal has erred in issuing direction to the 1st respondent-owner to satisfy the award instead of insurer as the policy is an Act policy.

3. The brief facts of the case on hand are, that on 31.7.2000 at about 3.00 p.m. the deceased Dr.Subhas, who

was aged 50 years met with a road traffic accident. It is the case of the claimants, that the deceased was hale and healthy and was earning Rs.30,000/- per month by his medical profession. He has also served as Principal of Dr.Shaikh Homeo Medical College, Balgaum and Professor in Bharatesh Homeo Medical College, Belgaum. He was efficient doctor and progressive in the medical field. But, due to untimely death of the deceased, the claimants have suffered severe financial loss as the deceased was the only earning member in the family and further the claimants are deprived of love and affection of the deceased. Therefore, the claimants were constrained to file claim petition under Section 166 of the M.V. Act claiming compensation against the owner and insurer of the offending vehicle.

4. In support of their case, the claimants examined two witnesses as PW.1 and PW.2 and 23 documents were marked as Exs.P.1 to P.23, while the respondent examined two witnesses as RW.1 and RW.2 and marked 5 documents as Exs.R.1 to R5.

5. The Tribunal after appreciation of oral and documentary evidence awarded compensation of Rs.9,00,000/- with 6% interest per annum from the date of claim petition till realization and fastened the liability on the insured and directed the insurer to pay and recover.

6. The Tribunal has determined the compensation towards loss of dependency by applying appropriate multiplier of 11 and taking the income of the deceased at Rs.20,000/-, awarded a sum of Rs.10,000/- towards consortium and Rs.10,000/- towards funeral expenses. Thus in all compensation of Rs.9,00,000/- has been awarded. Further the Tribunal has directed the 1st respondent-owner to satisfy the award.

7. Being aggrieved by the impugned judgment and award passed by the Tribunal, the claimants have preferred this appeal seeking enhancement of the compensation.

8. We have heard the learned Counsel for appellants and the learned Counsel for the respondents and perused the material on record.

9. Learned Counsel for appellants Sri Narayan V. Yaji, submitted that the Tribunal erred in treating the insurance policy as Act policy and in issuing direction to the insurer to satisfy its liability only upto Rs.6000/- and directing the 1st respondent owner to satisfy the award. It is his contention that the deceased was not a third party and hence the question of shifting the responsibility by the 2nd respondent does not arise. This aspect of the matter has not been considered by the Tribunal while fastening the liability on the 1st respondent. Further, the Tribunal has not awarded compensation towards loss of future income. Therefore, the impugned award is liable to be modified by enhancing the compensation awarded by the Tribunal.

10. As against this, learned Counsel for 2nd respondent –Insurer has inter alia contended that, since the compensation is awarded after due appreciation of oral and

documentary evidence and since the policy is an Act Policy, and that the 1st respondent has not produced any documents to show that she has paid additional premium to cover the risk of the passengers in the car, the judgment and award does not call for interference by this Court.

11. Learned Counsel for appellant inter alia contended that the Tribunal ought to have fastened the liability on the 2nd respondent insurer, on the ground that as on the date of accident the policy was in force. This aspect of the matter is not looked into by the Tribunal. It is not in dispute, however, that the owner has not paid any extra premium to cover the risk of the inmates of the car but the policy is in accordance with law and hence he seeks to modify the judgment.

12. After careful consideration of submissions made by Counsel for all the three parties, and after perusal of the impugned judgment and award, we do not find any error, much less, material irregularity in determining the compensation and fastening the liability on the 1st

respondent to satisfy the award. The Tribunal is justified in placing reliance on the judgment of the Apex Court in **2006 ACJ 1441**, in the case of **United Indian Insurance Co. Ltd. Vs. Tilak Singh**, holding that in the absence of the owner of the car paying the extra premium to the inmates of the car, the insurer is not liable to satisfy the award. Therefore, the Tribunal is justified in allowing the claim petition by awarding compensation of Rs.9 lakhs for the death of the deceased and issuing direction to the 1st respondent to satisfy the award. Hence, it does not call for interference by this Court.

Hence, the appeal being devoid of merits stands dismissed.

Office to draw the award accordingly.

Sd/-
JUDGE

Sd/-
JUDGE

Sub/-