

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

MFA NO.2383 OF 2013 (MV)

CONNECTED WITH

MFA NO.4448 OF 2013 (MV) DATED:21-06-2019

Smit Rita.Seal Wife of Late Dipankar Seal and Another Vs. Sri. Nallathambi .D and Others

JUDGMENT

Since both the appeals arise out of the same judgment and award rendered by the Tribunal, they are heard together and are finally disposed of by this order.

2. The appeal in MFA.No.2383/2013 is filed by the

claimants-appellants who are the legal representatives of the deceased Dipankar Seal seeking enhancement of compensation awarded by the Tribunal and the appeal in MFA.No.4448/2013 is filed by the appellant Insurer – M/s. Reliance General Insurance Company Limited challenging the quantum of compensation awarded by the Tribunal as well as the liability. By its judgment dated 15.12.2012 in MVC No.7633/2011, the Tribunal has awarded compensation in a sum of Rs. 14,26,836/to the claimants legal representatives of deceased. Being not satisfied with the said compensation, the claimants have filed MFA No.2383/2013 seeking enhancement of compensation and further seeking to set aside the finding of the Tribunal attributing 20% actionable negligence on the deceased.

3. Heard the learned counsel for the claimants appellant in MFA No.2383/2013 as well as the learned counsel for the appellant in MFA No.4448/2013- M/s. Reliance General Insurance Company Ltd. and perused alihabara the impugned judgment as well as the material on record.

4. The factual matrix is that on 11.07.2011 at about 11.15m. when the deceased Dipankar Seal was proceeding on his Bajaj Scooter bearing Regn.No.KA-02 ED-5082 from Bangalore to Hosur, when he was en proceeding in front of Perumal Stores near Neralooru, Attibele Hobli, Anekal Taluk, at that time a lorry bearing Regn.No.TN-28-AP-9333 driven by its driver in a rash and negligent manner had suddenly stopped the lorry without any caution.As a result, the scooter hit to the lorry and Dipankar Seal fell down and sustained grievous injuries.Immediately after the accident he was admitted to General Hospital, Attibele and thereafter was shifted to Fortis Hospital, Bangalore, where he was treated as an in-patient from 11.07.2011 to 21.07.2011. He was further admitted to M.S. Ramaiah Hospital and took treatment till 8.8.2011, but succumbed to the accidental injuries on that day.Thus, a huge amount me though was spent towards medical expenses but went in vain.Prior to the accident, the deceased was said to be carrying on the profession of a certified Calibration Consultant and earning Rs.3 lakh per annum.The appellants claimants were wholly dependant on the income

of the deceased. Due to the untimely death of the deceased, claimants having been put to great hardship, they filed a claim petition before the Tribunal seeking compensation.

5. On receipt of notice, neither the driver of the offending lorry-Respondent No.1 nor the owner of the offending lorry Respondent No.2 appeared and hence they were placed *ex parte*. However, Respondent No.3- Insurance Company appeared through counsel and filed its written statement admitting the policy in respect of the offending lorry and its liability, however subject to the terms and conditions of the policy. It was contended that since the deceased had dashed the lorry from behind, the accident had taken place in view of the negligence of the deceased himself. The counsel had denied the rash and negligence on the part of the driver of the lorry and denied the age, avocation and income of the deceased and hence sought for dismissal of the claim petition.

The Tribunal, after evaluating the oral and documentary evidence held that the accident had occurred due to the negligence of the deceased as well due to the fact that the deceased had dashed the lorry from behind and was responsible for the accident and fixed contributory negligence of 20% on the deceased. Thus, it proceeded to award compensation of Rs. 14,26,836/-with interest at 6% per annum from the date of petition till the date of realisation and directed Respondent Nos.2 and 3-owner and Insurer to jointly and severally pay 80% of the awarded compensation. The appellants-legal representatives of deceased have filed MFA No.2383/2013 seeking for enhancement of compensation and the Insurance Company has filed MFA No.4448/2013 seeking to totally exonerate the Insurer of its liability and further seeking to reduce the compensation awarded by the Tribunal under all heads.

6. Learned counsel for the claimants/appellants in MFA No.2383/2013 contends that they have been put to irreparable loss due to the death of the deceased. They had incurred huge amounts towards his medical expenses for the treatment of injuries. Though the deceased was a certified Calibration Consultant earning a sum of Rs. 25,000/-per month as per the Salary Certificate at Exhibit P.15, the learned counsel vehemently contends that the Tribunal erred in taking his income at just Rs.15,000/-in order to award compensation towards ' Loss of dependency '.Learned counsel further contends having regard to the fact that the deceased was said to be an experienced Calibration Consultant earning handsome salary and also his income would have increased manifold, though he being aged 58 years, in view of the decision of the Apex Court in National Insurance Company Limited -vs-Pranay Sethi (AIR 2017 Supreme Court 5157), learned counsel seeks that 10% be added to his income towards ' future prospects '.Further, the learned counsel contends that since the Tribunal has granted only *Habar* Rs.40,000/-in respect of all the conventional heads put together, in view of the very same judgment in Pranay Sethi, an additional sum of Rs.30,000/-be awarded towards ' conventional heads ' so that the total sum comes to Rs.70,000/

The learned counsel further contends that the Tribunal taking into consideration that fact that the deceased had left behind his wife and a daughter as his dependants, ought to have awarded ' filial compensation ' in respect of his daughter, which aspect has not been taken into consideration by the Tribunal. On these

grounds, learned counsel for appellants prays for allowing the appeal and enhancing the compensation awarded by the Tribunal suitably.

Further, the learned counsel contends that the finding of the Tribunal in SO far as fixing the contributory negligence at 20% in respect of the deceased is concerned, may be set aside and the Insurance Company be directed to pay the entire compensation awarded to the claimant instead of 80%.

7. Refuting the contentions of the counsel for the claimants, the learned counsel for the Insurance Company-appellant in MFA No.4443/2013 vehemently contends that though the salary certificate Exhibit P.15 had been produced the same has not been proved in evidence and hence, the Tribunal has taken the notional income of the deceased at Rs.15,000/-, which by itself is exorbitant. When that being the case, the question of increasing the notional income would not arise. Moreover, enhancing the compensation awarded by the Tribunal under any of the heads also does not awarded. Further, the learned counsel for the Insurer contends that the Tribunal was justified in fixing the negligence on the part of the deceased at 20%, which does not call for any interference. Hence, the learned counsel prays for dismissal of the present appeal as being devoid of any merits.

8. In the background of the contentions taken by learned counsel for the claimants-appellants in MFA 2383/2013 and the learned counsel for the appellant- insurer in MFA No.4448/2013, as stated supra, it is relevant to state that there is no dispute with regard to the death of deceased-Dipankar Seal who met with an accident on 11.7.2011. The claim petition is supported by the oral oral and documentary evidence such as complaint, FIR, panchanama, report, inquest panchanama, report, PM report, etc. I find justification in the contention of the learned counsel for the appellant in MFA 4448/2013-Insurance Company, in view of the fact that the deceased had driven his motorcycle in a rash and negligent manner and had dashed the lorry. Hence, I do not find any ground to interfere with the finding of the Tribunal in fixing the negligence on the part of the deceased at 20%, which does not call for any interference. But however, as contented by the learned counsel for the appellants in MFA No.2383/2013-claimants, in view of the decision of the Apex Court in Pranay Sethi (supra), the Tribunal ought to have added 10% of his income towards future prospects. Hence, adding 10% to Rs. 15,000/-, the income comes to Rs.16,500/-. Further, deducting one-third of the said income towards his personal expenses, the income comes to Rs.11,000/-. Hence, with Ps.11,000/- as the income and with multiplier ' 9 ' as adopted by the Tribunal, the compensation to be awarded towards ' Loss of dependency ' comes to Rs.11,88,000/- (11,000 x 12 x9) as against Rs. 10,80,000/- awarded by the Tribunal.

9. In view of the decision of the Apex Court in National Insurance Company Limited -vs-Pranay Sethi (AIR 2017 Supreme Court 5157), the compensation awarded under ' ' conventional conventional heads ' should not exceed Rs.70,000/- or should not be below Rs.70,000/-. However, in the present case on hand, only a sum of Rs.40,000/- has been totally granted under various conventional heads. Hence, the compensation under four of the conventional heads is totally increased by Rs.30,000/- SO that the compensation under all the conventional heads put together comes to Rs.70,000/-.

10. Further, as contended by the learned counsel for the appellants-claimants, having regard to the ratio of the reliance in the case of MAGMA GENERAL INSURANCE CO. LTD. vs.Vs. NANU NANU RAM (2018 SCC ONLINE SC 1546), I find it is just and proper to grant parental consortium ' to Appellant No.2 in MFA No.2383/2013 who is the daughter of the deceased, in view of the death of her father at an unexpected age.In the said judgment, the Apex Court has held thus:

" Parental consortium is granted to the child upon the premature death of a parent, for loss of " parental aid, protection, affection, society, discipline, guidance and training."

In accordance with the said ruling, I hereby grant a sum of Rs.40,000/-to Appellant No.2 under the head " Loss of Parental consortium ".

11. In view of the discussion made above and with the altered factors, the compensation is re-worked out as under:

<b>Particulars</b>	<b>Compensation awarded by MACT</b>	<b>Compensation enhanced by this Court</b>	<b>Total</b>
Loss of dependency	10,80,000	1,08,000	11,88,000
Loss of consortium	10,000	30,000	70,000
Loss of love and affection	10,000		
Funeral expenses	10,000		
Loss of estate	10,000		
Medical expenses	3,06,836	Nil	3,06,836
Parental consortium to Appellant No.2 ii : MFA 2383/2013	Nil	40,000	40,000
<b>TOTAL</b>	<b>14,26,836</b>	<b>1,78,000</b>	<b>16,04,836</b>
Compensation to be paid by Insurer-Rs. 12,83,869/- (After deducting 20% of the compensation towards negligence)			

Thus, in all, the claimants/appellants in MFA 2383/2013 are entitled to total compensation of Rs.16,04,836/-as against Rs.14,26,836/-awarded by the tribunal. The enhanced compensation would come to Rs. 1,78,000/-.

But however, deducting 20% negligence as adopted by the Tribunal, the claimants shall be entitled to only 80% of the amount awarded by the Tribunal as well as enhanced by this Court. Thus, the appellants in MFA 2383/2013 are entitled to total compensation of Rs. 12,83,869/-, which is 80% of the total award amount.

Accordingly, I proceed to pass the following:

#### ORDER

MFA 2383/2013 is allowed in part. The impugned judgment and award dated 15.12.2012 passed by the Tribunal in MVC No.7633/2011 is hereby modified. The claimants/appellants in MFA 2383/2013 are entitled for total compensation of Rs. 12,83,869/-with interest @ 6% p.a. from the date of petition till realisation. Appellant in MFA No.4448/2013-Insurer shall deposit the entire compensation of Rs. 12,83,869/-with interest before the tribunal within six weeks from the date of receipt of a copy of this judgment and on such deposit, the same shall be disbursed to the claimants, on proper identification. Any amount already in deposit shall be adjusted. Further, any amount in deposit before this court shall be remitted to the concerned Tribunal. However, the impugned judgment and award, in so far as it relates to the rate of interest, deposit and apportionment is concerned shall remain unaltered.

MFA No 4448/2013 filed by the Insurance Company stands rejected.

The LCR shall be forwarded to the concerned Tribunal, forthwith.

There shall be no order as to the costs. Office to draw the decree accordingly.