

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25<sup>TH</sup> DAY OF JANUARY 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

**M.F.A. NO.3861 OF 2016 (MV-I)**

BETWEEN:

THE NEW INDIA ASSURANCE CO., LTD.,  
REGIONAL OFFICE  
MAHALAKSHMI CHAMBERS  
M.G. ROAD, BENGALURU-560001  
REP. BY ITS MANAGER  
MR. A.R. LAKSHMINARAYAN.

... APPELLANT

(BY MR. ANUP SEETHARAM RAO, ADV.,)

AND:

1. SRI. CHANDRA KUMAR  
AGED ABOUT 37 YEARS  
S/O NARAYANASWAMY  
NO.16, 2ND CROSS  
SUBRAMANYA LAYOUT  
RAMAMURTHY NAGAR  
BENGALURU-560016.

R/AT. NO.12, 1ST CROSS  
MUTAMMA EXTENSION LAYOUT  
VIJINAPUR, BENGALURU-16.

2. SRI. SANJAN SHIVAJI KOLEKAR, MAJOR  
S/O SRI SHIVAJ KOLEKAR  
APT POST, ZEDKEY TALUK  
BHIWANDI DISTRICT, THANE

MAHARASHTRA - 421302  
(OWNER OF LORRY NO.MH-04-EY-4452).

... RESPONDENTS

(BY MR. R. SHASHIDHARA, ADV., FOR R1  
R2 SERVED)

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THIS M.F.A. IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 11.04.2016 PASSED IN MVC NO.873/2014 ON THE FILE OF THE 13TH ADDITIONAL SMALL CAUSE JUDGE & MEMBER, MACT, BENGALURU, AWARDED COMPENSATION OF RS.22,09,000/- WITH INTEREST AT 9% P.A. FROM THE DATE OF PETITION TILL THE REALIZATION.

THIS M.F.A. COMING ON FOR ORDERS, 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 against the judgment dated 11.04.2016 passed by the Motor Accident Claims Tribunal.

2. Facts giving rise to the filing of the appeal briefly stated are that on 30.09.2013 at about 11.30 PM, the claimant Chandra Kumar was driving a car bearing registration No.KA-01-AA-7252. When he reached near Madanayakanahalli Village, a lorry bearing registration No.MH-04-EY-4452, which was being driven by its driver in a

rash and negligent manner, applied the brakes suddenly without giving any indications due to which the car driven by the claimant dashed against the lorry. As a result of the aforesaid accident, the claimant sustained grievous injuries and was immediately shifted to Premier Sanjeevini Hospital, T Dasarahalli where he was treated as inpatient.

3. The claimant thereupon filed a petition under Section 166 of the Act *inter alia* on the ground that the accident took place on account of rash and negligent driving of the lorry by its driver, in which the claimant sustained grievous injuries. It was pleaded that at the time of accident, the claimant was aged about 35 years and was employed as a driver and was earning a sum of Rs.16,000/- per month. It was also pleaded that the accident occurred due to the rash and negligent driving of the lorry by its driver and that on account of the injuries sustained by him in the accident, the claimant is unable to work as normal and has lost his source of income.

4. The insurance company filed written statement, in which the mode and manner of the accident was denied. It

was pleaded that the accident occurred due to the rash and negligent driving of the car by the claimant himself as the lorry was parked on the extreme left side of the road. It was also pleaded that the driver of the lorry did not hold a valid and effective driving license at the time of accident and that the liability of the insurance company, if any, would be subject to the terms and conditions of the insurance policy. The age, avocation and income of the claimant was also denied and it was pleaded that the claim of the claimant is exorbitant and excessive.

5. The Claims Tribunal on the basis of the pleadings of the parties, framed the issues and recorded evidence. The claimant in order to prove his case, examined himself as PW1, Dr.PN Prakash (PW2) and Dr.Vasudha K (PW3) and got exhibited documents viz., Ex.P1 to Ex.P16. The insurance company Examined CK Suryaprakash (RW1), Ikram Pasha (RW2) and Jayaramaiah (RW3) and got exhibited namely Ex.R1 to Ex.R4. The Claims Tribunal, by the impugned judgment, *inter alia*, held that the accident took place on account of rash and negligent driving of the lorry as well as

the car by their respective drivers to the extent of 80% and 20% respectively. It was further held, that as a result of aforesaid accident, the claimant sustained injuries and that the claimant was entitled to a compensation of Rs.22,09,000/- along with interest at the rate of 9% per annum. Being aggrieved, this appeal has been filed.

6. Learned counsel for the insurance company submitted that the Tribunal erred in holding that the accident occurred on account of negligence of the driver of the lorry as well as the driver of the car to the extent of 80% and 20% respectively. It is further submitted that the Tribunal ought to have attributed negligence on the part of the claimant atleast to the extent of 50%, as the offending lorry was parked on the left side of the road and the claimant failed to exercise care in noticing the parked lorry and in driving his car cautiously. In support of his aforesaid submission, reliance has been placed on **RAJ RANI Vs ORIENTAL INSURANCE CO. LTD 2009(13) SCC 654**. It is also submitted that the Tribunal has awarded compensation for disability suffered by the claimant under the head of

"Permanent physical Impairment" as well as under the head "Loss of Amenities" which would amount to the claimant receiving double benefit in respect of the disability suffered. It is also urged that the income of the claimant assessed by the Tribunal as well as the interest awarded by the Tribunal are on the higher side.

7. We have considered the submissions made by the learned counsel for the parties and have perused the record. The claimant who is an eye witness to the accident has stated in his evidence that the driver of the offending lorry suddenly applied the brakes without giving any indications thereby causing the accident. The claimant has produced Ex.P1 FIR and Complaint as well as Ex.P5 Chargesheet which have been filed against the driver of the lorry, disclose that the driver of the lorry suddenly applied brakes and caused the accident. Ex.P3 Spot sketch indicates that the road is a 30 feet wide road and the offending lorry was located on the extreme left side of the road. Ex.P4 IMV report indicates that the car has sustained heavy damage to the front portion, whereas, the lorry has sustained slight

damage to the rear portion. It is pertinent to note that the claimant in his pleading has stated that the lorry was parked on the road without any indications. The insurance company in order to prove its plea of contributory negligence that the lorry was parked on the left side of the road and the driver of the car negligently hit the hind side of the lorry has examined RW2 Ikram Pasha and RW3 Jayaramaiah. However, no material inferences can be drawn from their statements. It is pertinent to note here that the insurance company has not examined the driver of the offending lorry or any other eye witness, to prove its version of the manner of the accident. It is also pertinent to mention here that the insurance company neither in the pleadings nor through oral evidence has demonstrated that the lorry was parked with parking lights or other any form of indications. It is also apparent from the evidence on record suggests that the road was 30 feet wide and that the claimant has also contributed to the causing of the accident by failing to exercise due care in noticing the lorry which appears to have been parked on the left side of the road and also in driving the car in a rash and negligent manner as is evident from the damage

sustained by the car as per Ex.P4 IMV Report. Therefore, on the basis of the evidence on record and in view of the decision of the Supreme Court in **RAJ RANI Supra**, we deem it appropriate to hold that the accident occurred on account of negligence of the driver of the lorry as well as the driver of the car equally to the extent of 50% each.

8. Now we may advert to the quantum of compensation. The Tribunal has assessed the notional income of the deceased at Rs.9,000/- per month. It is not in dispute that the claimant was a employed as a driver at the time of accident. No serious challenge has been made to the nature of his avocation in the pleadings as well as the his cross-examination. Therefore, the Tribunal has rightly assessed the income of the deceased at Rs.9,000/- per month taking into account the age, avocation and standard of living of the claimant. The claimant has suffered functional disability to the extent of 100% to the whole body. In view of the law laid down by the Supreme Court in **PAPPU DEO YADAV VS NARESH KUMAR AND ORS AIR 2020 SC 4424**, the claimant who is aged about 35 years is entitled to

an addition of 40% to his income on account future prospects which would amount to Rs.12,600/- per month. Therefore the compensation under the head 'loss of earning capacity' is quantified at Rs.24,19,200/- (Rs.12,600x12x16).

9. The Tribunal has awarded compensation twice over under the head 'Permanent Physical Impairment' as well as 'Loss of amenities and Comfort' in respect of the disability which the claimant has to suffer throughout his life . Therefore the sum granted under the head 'Permanent Physical Impairment' is set aside and an additional sum of Rs.75,000/- is granted under the head of 'Loss of amenities and discomfort' as the claimant has suffered 100% permanent disability which would affect his opportunity to enjoy his life. The amount of compensation awarded under the other heads is maintained. Therefore the claimant is held entitled to the following:

Sl. No.	Compensation under different heads	Amount in Rs.
1.	Pain and suffering	Rs.50,000 /-
2.	Loss of amenities and discomfort	Rs.1,50,000/-
3.	Attendant charges, Conveyance etc.	Rs.30,000/-
4.	Future medical expenses	Rs.30,000/-
5.	Loss of earning capacity	Rs.24,19,200/-
6.	Medical expenses	Rs.2,00,000/-

7.	Loss of income during laid up period, Nourishment expenses etc.	Rs.30,000/-
Total		Rs.29,09,200/-

Therefore, the claimant is entitled to Rs.29,09,200/- in all as total compensation and the insurance company is directed to pay Rs.14,54,600/- (50%) of the aforesaid compensation to the claimant. Since the accident is of the year 2014, the prevailing rate of interest for the year 2014 in respect of fixed deposits for one year in nationalized banks being 8%, the aforesaid amounts of compensation shall carry interest at the rate of 8% from the date of filing of the petition till the realization of the amount of compensation. To the aforesaid extent, the judgment passed by the Claims Tribunal is modified. The amount in deposit, if any, is ordered to be transmitted to the Tribunal for disbursement.

In the result, the appeal is disposed of.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**