IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

M.F.A.NO.2841/2013 (MV-D)

BETWEEN:

M/S. ORIENTAL INSURANCE COMPANY LIMITED,
BRANCH OFFICE-II,
P.B.NO.210, NO.618,
CHAMARAJA DOUBLE ROAD,
MYSURU-570 024,
NOW REPRESENTED BY
ITS REGIONAL OFFICE,
NO.44/45, LEO SHOPPING COMPLEX,
REESIDENCY ROAD,
BENGALURU-560 025,
REPRSENTED BY ITS
AUTHROIZED SIGNATORY ... APPELLANT

(BY SRI K.S.LAKSHMINARASAPPA, ADVOCATE FOR
SRI A M.VENKATESH, ADVOCATE [THROUGH VC])

AND:

1. LAXMAMMA
S/O LATE THAMMEGOWDA,
AGED ABOUT 55 YEARS,
R/O.P.NO.2938/A, 7TH CROSS,
GANDHINAGAR, MANDYA.

2. PANDU RAGHU RAO
S/O.SURAIAH GUNADALA,
VIJAYAWADA,
KRISHNA DISTRICT-520 001
ANDHRA PRADESH.

3 . MR. P. NANCHARAIAH
S/O.SATHYANARAYANA,
80-20/3-21, 1-B,
SHASTRY STREET,
SEETHARAMAPURAM,
VIJAYAWADA-520 001
ANDHRA PRADESH. ... RESPONDENTS

(BY SMT.ARCHANA MURTHY P., ADVOCATE FOR R1;
VIDE ORDER DATED 20.02.2017,
NOTICE TO R2 IS HELD SUFFICIENT
VIDE ORDER DATED 16.07.2015,
APPEAL AGAINST R3 IS DISMISSED)

THIS M.F.A., IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 29.11.2012 PASSED IN MVC NO.765/2009 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (SR.DN) AND MACT, MANDYA, AWARDING COMPENSATION OF Rs.6,06,000/- WITH INTEREST @ 6% P.A., FROM THE DATE OF PETITION TILL REALIZATION.

THIS M.F.A., COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

Heard the learned counsel appearing for the appellant-Insurance Company and the learned counsel appearing for respondent No.1-claimant.

2. This appeal is filed challenging the judgment and award dated 29.11.2012 passed in M.V.C.No.765/2009 on the file of Principal Civil Judge (Sr.Dn.) & MACT., Mandya [‘the Tribunal’ for short].

3. The parties are referred to as per their original rankings before the Tribunal to avoid confusion and for the convenience of the Court.

4. The factual matrix of the case of the claimant before the Tribunal is that her son passed away in the accident. Hence, she made a claim. The Tribunal after considering both oral and documentary evidence placed on record, allowed the claim petition in part and granting compensation of Rs.6,06,000/- with interest at 6% p.a. from the date of petition till its realization. The Tribunal while calculating the compensation considered the income of Rs.6,000/- per month. Hence, the present appeal is filed by the Insurance Company contending that the income taken by the Tribunal as Rs.6,000/- is on higher side and it was the accident of the year 2005. The learned counsel would contend that the accident was on account of the negligence on the part of the deceased himself and the contributory negligence has not been taken. The learned counsel also would submit that in the written statement, it is specifically pleaded negligence on the part of the deceased. Hence, it requires an interference of this Court.

5. Per contra, the learned counsel appearing for the respondent – claimant would submit that though the defense of contributory negligence was taken in the written statement, not led any evidence before the Court and not examined the driver of the offending vehicle and the Tribunal rightly not considered the contributory negligence. Hence, the question of taking contributory negligence does not arise. The learned counsel also would submit that even though the Tribunal has taken the income of Rs.6,000/- per month, the deceased was a driver by profession and Ex.P7-Driving License of the deceased was produced before the Court, the Tribunal taken the income of Rs.6,000/- and not added future prospects while calculating the loss of dependency. Hence, the Tribunal has not committed any error.

6. Having heard the respective counsel and on perusal of the material available on record, no doubt, in the written statement defense of contributory negligence was taken and the claimant produced the documents-Ex.P1-certified copy of FIR, Ex.P3-certified copy of IMV report, Ex.P4-certified copy of IMV intimation and Ex.P5-certified copy of charge-sheet. The charge-

sheet is also filed against the driver of the offending vehicle. In order to take the contributory negligence, there must be cogent evidence before the Court, unless the driver has been examined. He is the right person to speak with regard to the contributory negligence is concerned and no such evidence has been led before the Court. Considering the material on record, the Tribunal rightly came to the conclusion that the accident was occurred due to the negligence on the part of the driver of the offending vehicle. Hence, I do not find any error committed by the Tribunal and no material is placed before the Court with regard to contributory negligence on the part of the deceased.

7. Now coming to the aspect of the quantum of compensation is concerned, admittedly, the accident is of the year 2005. Ex.P7-Driving License is also produced before the Tribunal and when he was having a skill to drive the vehicle and also no future prospects has been added while calculating the loss of dependency, even assuming that his income was of Rs.4,500/- per month in view of Driving License he was having and if future prospects is added, it will not make any difference and it comes more than the amount awarded by the Tribunal.

Hence, I do not find any ground to allow the appeal and modify the judgment and award of the Tribunal.

8. In view of the discussions made above, I pass the following:

ORDER

(i) The appeal is dismissed.

(ii) The amount in deposit, if any, be transmitted to the concerned Tribunal forthwith.

(iii) The Registry is directed to transmit the records to the concerned Tribunal, forthwith.

Sd/-
JUDGE

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