

Karnataka High Court M/S The Oriental Insurance ... vs Sri Nanjappa H on
21 July, 2014 Author: N.Ananda 1

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 21ST DAY OF JULY 2014

BEFORE

THE HON'BLE MR.JUSTICE N.ANANDA

M.F.A.No.829/2012 c/w MFA.CROB 146/2012 (MV)

IN MFA NO 829 OF 2012

BETWEEN

1. M/S THE ORIENTAL INSURANCE COMPANY LIMITED REGIONAL OFFICE, NO.44/45, LEO COMPLEX RESIDENCY ROAD, BANGALORE-560001 REP BY ITS REGIONAL MANAGER REPRESENTING ALSO
2. THE DIVISIONAL MANAGER M/S THE ORIENTAL INSURANCE COMPANY LIMITED, DIVISIONAL OFFICE, NEW MUSLIM HOSTEL COMPLEX, I MAIN, SARASWATHIPURAMA OPP: FIRE BRIGADE, MYSORE. ... APPELLANTS

(By Sri.K SURESH, ADV.)

AND

1. SRI NANJAPPA H S/O LATE SHIVANNAGOWDA AGED ABOUT 61 YEARS R./AT 2ND CROSS, GUTTAL COLONY, MANDYA CITY
2. SMT P BHAGYA W/O SRI NANJAI AH AGED ABOUT 55 YEARS R/AT 2ND CROSS, GUTTAL COLONY MANDYA CITY 2
3. SRI L V KRISHNA MOHAN S/O SRI VENKATESWARA RAO 3RD LINK ROAD, 4TH CROSS OPP SHARADA VIDYA PEETA S N PET, BELLARY. ... RESPONDENTS

(By Sri.SRIDHAR C K, ADV. FOR R1 & R2; R3-SERVED)

THIS APPEAL IS FILED U/S 173(1) OF MV ACT AGAINST

THE JUDGMENT AND AWARD DATED:13.09.2011 PASSED IN MVC NO.332/2009 ON THE FILE OF ADDITIONAL CIVIL JUDGE (SR.DN.) & CJM, MACT, MANDYA, AWARDING COMPENSATION WITH INTEREST AND ETC.

IN MFA.CROB 146/2012

BETWEEN

1. SRI. NANJAPPA AGED ABOUT 60 YEARS, S/O LATE SHIVAN-NAGOWDA, R/AT 2ND CROSS, GUTHAL COLONY, MANDYA CITY
2. SMT. P BHAGYA AGED ABOUT 52 YEARS, W/O NANJAIAH, R/AT 2ND CROOSS GUTHAL COLONY, MANDYA CITY .. CROSS OBJECTORS

(By Sri.SRIDHAR C K, ADV.)

AND

1. L V KRISHNA MOHAN S/O. VENKATESHWARA RAO, R/AT 3RD LINK ROAD, 4TH CROSS, OPP TO SHARADHA VIDYA PEETA, S N PET BELLARY- 583 101.
2. THE ORIENTAL INSURANCE CO.LTD DIVISIONAL OFFICE, NEW MUSLIM HOSTEL COMPLEX, 3
1ST MAIN, OPP. TO FIRE BRIGADE, SARASWATHIPURAM, MYSORE CITY REP BY THE BRANCH MANAGER ... RESPONDENTS

(By Sri.K.SURESH, ADV. FOR R.2)

THIS MFA CROSS OBJECTION IS FILED U/O 41 RULE 22

CPC, AGAINST THE JUDGMENT AND AWARD DATED:13.09.2011 PASSED IN MVC NO.332/2009 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE (SR.DN) AND CJM, MACT, MANDYA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION & ETC.

THIS APPEAL ALONG WITH MFA CROB COMING ON FOR

HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

MFA 829/2012 is filed by the insurance company seeking reduction of compensation inter alia contending that the deceased was guilty of contributory negligence and compensation awarded by the tribunal is on higher side. MFA.CROB 146/2012 is filed by the claimants for enhancement of compensation. 2. The claimants are the parents of deceased H.N.Hemanth, aged about 29 years, who died in a motor vehicle accident that took place at about 12.30 a.m., on 22.06.2008 (intervening night of 21/22.06.2008) near Johnson Distillery, Nayan-dahalli, Mysore Road, Bangalore. 3. The learned counsel for insurance company would submit that the deceased had dashed his motorcycle against parked Lorry, therefore, the deceased was guilty of contributory negligence. 4. The learned counsel for claimants would submit that the insured Lorry was left unattended on the main road. The driver of Lorry had not taken precautions to indicate the stationery Lorry. The parking lights of Lorry were not burning. There was contravention of Section 122 of the Motor Vehicles Act, 1988. Therefore, the tribunal was justified in holding that driver of Lorry was guilty of absolute negligence. 5. The learned counsel for claimants has relied on the judgment of this court reported in ILR 2002 KAR 893 (in the case of Kumari Jyothi & Others -vs- Mohd. Usman Ali & Others) wherein this court has held: “13. Nothing has been elicited in their cross- examination to show that lorry had parked with any sign or indicator. Neither the driver nor the cleaner of the lorry was examined to say that any sign or indication was provided in regard to the parked vehicle. Section 122 of the Motor Vehicles Act, 1988 provides that no person in charge of a motor vehicle shall cause or allow the vehicle to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers. In similar circumstances, the High Court of Gujarat in PREMLATA NILAMCHAND SHARMA -Vs- HIRABHAI RANCHHODBHAI PATEL, the High Court of Punjab and Haryana in NIRMAL BHUTANI -vs- HARYANA STATE and the Delhi High Court in PUSHPA RANI CHOPRA -Vs- ANOKHA SINGH have held that where the place was dark and where the vehicle was parked without any sign or indication to warn other Road users, the negligence is on the driver of the parked vehicle and not the driver of any vehicle which dashes into such parked vehicle.” 6. In the case on hand, the accident had taken place during midnight (intervening night of 21/22.06.2008). The Lorry had been parked on the main road without taking necessary precautions to indicate its existence. The tail lights of Lorry were not burning. There was clear contravention of Section 122 of the Motor Vehicles Act, 1988. In the circumstances, there are no reasons to interfere with the finding recorded by the tribunal on the issue of negligence. 7. The tribunal has determined the income of deceased at Rs.8,000/- per month. The deceased was aged about 29 years. He had passed SSLC examination by securing 37% in the examination held in the month of April’1996. 8. The claimants have made an unsuccessful attempt to establish that the deceased was working as Business Process Executive in M/s.Radiant Infosystems. The salary certificate produced by the claimants does not inspire confidence. Apart from this, they have not produced the bank account main-

tained by the deceased. The deceased had completed SSLC examination by securing 37%. It is not the case of claimants that deceased had acquired further qualification to work as Business Process Executive. The tribunal notwithstanding this discrepancy has determined the income of deceased at Rs.8,000/- per month. The tribunal after deducting 50% of same towards personal and living expenditure of the deceased has awarded compensation by applying multiplier appropriate to the age of the mother of deceased. 9. The learned counsel for claimants would submit that the tribunal should have added 50% of income of the deceased towards 'loss of future prospects' in terms of the judgment of the Supreme Court reported in 2012 ACJ 1428 (in the case of Santosh Devi -vs- National Insurance Company Ltd., and Others). 10. In the discussion made supra, I have held that the tribunal has determined the income of deceased without any basis. There is no proof that the deceased was either self-employed or working on fixed wages. Therefore, there are no reasons either to enhance or reduce the compensation. 11. In the result, I pass the following: ORDER MFA 829/2012 and MFA.CROB 146/2012 are dismissed. The amount deposited by insurance company shall be transferred to the tribunal. SD/- JUDGE Np/-