

Karnataka High Court Sharabai Alias Sharada And Anr. vs P. Sahebkhani And Ors. on 31 May, 2005 Equivalent citations: 2005 (6) KarLJ 333 Author: S Nayak Bench: S Nayak, V Jagannathan JUDGMENT S.R. Nayak, J. 1. The dependents of the deceased not being satisfied with the compensation awarded by the Motor Accidents Claims Tribunal, Belgaum vide its award dated 29-1-2005 in MVC No. 1853 of 1999 have preferred this appeal under Section 173(1) of the Motor Vehicles Act, 1988 (for short, 'the Act'). The deceased Bhupal Janawade, by name, died in an accident occurred on 26-6-1999 due to rash and negligent driving of the motor vehicle involved in the accident insured by the second respondent- Insurance Company. The Motor Accidents Claims Tribunal on appreciation of oral and documentary evidence has recorded a finding that the accident occurred due to rash and negligent driving of the driver of the motor vehicle involved in the accident insured by the second respondent, and that finding is not assailed before us by the Insurance Company or the owner of the vehicle in any independent appeal. Therefore, there is no necessity for us to review that finding. 2. In this appeal, learned Counsel for the claimants would contend that the deceased was an agriculturist owning four acres of land in Benadi Village of Chikkodi Taluk, Belgaum District and according to the claimants he was earning monthly income of Rs. 1,00,000/-. The learned Counsel for the claimants would contend that though it cannot be said that the claimants have laid before the Motor Accidents Claims Tribunal acceptable legal evidence to sustain that claim, the Motor Accident Claims Tribunal has seriously erred in taking the monthly income of the deceased only at Rs. 2,400/- and according to the learned Counsel, the Motor Accidents Claims Tribunal at least ought to have taken the income of the deceased at Rs. 3,000/- per month. The learned Counsel would also contend that the compensation awarded under the heads of 'loss of consortium and loss of love and affection to the widow and children of the deceased' and 'loss of estate' and 'funeral expenses' are on lower side. It was also contended by the learned Counsel that even the rate of interest awarded by the Motor Accidents Claims Tribunal is on a lower side. Learned Counsel for the claimants would also contend that since the claim application was filed under Section 163-A of the Act, the Motor Accidents Claims Tribunal ought to have applied the multiplier '13' instead of multiplier '12'. 3. Sri M. Arun Ponnappa, learned Standing Counsel for the Insurance Company, per contra, would support the impugned award and contend that no case is made out for enhancement of the compensation under any head. He, on the other hand, would contend that the application filed by the claimants under Section 163-A of the Act is not maintainable, because, in the application it was claimed that the deceased was earning yearly income of Rs. 1,00,000/-. According to the learned Counsel, if a claimant files an application under Section 163-A of the Act claiming that his or the deceased's annual income is more than Rs. 40,000/-, such application, ex facie, is not maintainable and such application should be treated as the one filed under Section 166 of the Act. 4. Having heard the learned Counsels for the parties, the following two questions arise for our consideration and decision-making: (1) Whether the claim filed by the claimants-appellants under Section 163-A of the Act is maintainable? (2) Whether total compensation of

Rs. 2,39,000/- awarded by the Motor Accidents Claims Tribunal with 6% interest in the facts and circumstances of the case can be regarded as a just and reasonable compensation and if not, what can be a just and reasonable compensation? 5. Point No. (1).—The learned Standing Counsel for the Insurance Company in support of his contention noticed supra would place reliance on the judgment of the Apex Court in the case of Deepal Girishbhai Soni and Ors. v. United Insurance Co. Limited, Baroda . We have read the above judgment of the Apex Court and that judgment would not support the sweeping hypothesis put forth by the learned Counsel for the Insurance Company before us. The above judgment is an authority to state that a claimant cannot pursue his claim both under Section 163-A as well as under Section 166 of the Act. One, thus, must opt/elect to go either for a proceeding under Section 163A or under Section 166 of the Act. That is not the situation in the present case. 6. Admittedly, the appellants-claimants made application only under Section 163-A of the Act. The argument of the learned Counsel for the Insurance Company is that since in the said application it was claimed by the claimants that the deceased was earning yearly income of Rs. 1,00,000/- and since that income is more than Rs. 40,000/-, the application filed by them is not maintainable and that application ought to have been treated as the one filed under Section 166 of the Act and dealt with accordingly. This submission is not acceptable to us for more than one reason. The pleading of a party can never be placed on the pedestal of a law. Simply because the claimants have under a wrong perception or appreciation of the facts asserted a fact which they cannot prove, that circumstance itself without anything further has no legal efficacy to determine the jurisdiction of the Motor Accidents Claims Tribunal. The jurisdiction of the Motor Accidents Claims Tribunal is determined by the law and not by pleading of a party who invokes its jurisdiction. Be that as it may, it is not a finding of the Motor Accidents Claims Tribunal that the yearly income of the deceased was more than Rs. 40,000/-. On appreciation of oral and documentary evidence, the Tribunal has recorded a finding that the deceased was earning only Rs. 2,400/- per month. That means that the deceased was earning Rs. 28,800/- per annum. Therefore, we hold that the Tribunal had jurisdiction to entertain the application filed by the appellants-claimants under Section 163-A of the Act and that in entertaining that application the Motor Accidents Claims Tribunal has not committed any illegality as contended by the learned Standing Counsel for the Insurance Company. 7. Point No. (2).—It is true that though claimants made exorbitant claim that the deceased was earning yearly income of Rs. 1,00,000/-, that plea remained as a plea only without any proof. But, the fact remains that the deceased was an agriculturist by avocation and he was owning agricultural land to an extent of 4.26 acres. The accident took place on 26-6-1999. Having regard to the place and time at which the accident took place, it could reasonably be held that the deceased was earning at least Rs. 100/- per day or Rs. 3,000/- per month. We are also of the considered opinion that award of Rs. 5,000/- towards 'loss of consortium and loss of love and affection to the widow and the minor children' and Rs. 2,000/- towards 'loss of estate' are on lower side. We think that a sum of Rs. 20,000/- can be just compensation towards loss of consortium

and loss of love and affection to the widow and minor children of the deceased and a sum of Rs. 10,000/- towards loss of estate. 8. In the result and for the foregoing reasons, we allow the appeal in part and in substitution of the award passed by the Motor Accidents Claims Tribunal, we award total compensation of Rs. 3,44,000/- with interest at 6% p. a. with costs under the following heads: (i) Loss of dependency Rs. 3,12,000.00 (ii) Funeral expenses Rs. 2,000.00 (iii) Loss of consortium Rs. 20,000.00 (iv) Loss of estate Rs. 10,000.00 Total Rs. 3,44,000.00

The Advocate's fee is fixed at Rs. 1,500/-. The Insurance Company shall deposit the compensation as enhanced by us minus the compensation already deposited or paid within six weeks from today before the Motor Accidents Claims Tribunal.