

R.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 6TH DAY OF OCTOBER, 2010

PRESENT

THE HON'BLE MR. JUSTICE N.K.PATIL

AND

THE HON'BLE MR.JUSTICE H.S.KEMPANNA

M.F.A.NO.4193/2007 (MV)

C/W

M.F.A.NO.10455/2007, M.F.A.NO.3451/2007 &

M.F.A.NO.10454/2007 (MV)

M.F.A.NO.4193/2007 (MV)

BETWEEN:

1. SRI.P.ANKI REDDY
S/O LATE P.C. SANJEEVA REDDY,
AGED ABOUT 60 YEARS
2. SMT.P.JAYAMMA
W/O P.ANKI REDDY,
AGED ABOUT 55 YEARS

BOTH ARE RESIDING AT
NO.561, III MAIN,
'D' CROSS, MATHIKERE,
BANGALORE - 560 054

... APPELLANTS

(BY SRI. L.M.RAMAIAH GOWDA- ADV.)

AND:

1. THE ORIENTAL INSURANCE
COMPANY LIMITED,
NO.19, 1ST FLOOR, III CROSS,
CHIKKANNA GARDEN,



SHANKARMUTT COMPOUND,
CHAMARAJPET,
BANGALORE - 560 018.

2. SUJAL CHAKRABORTHY
S/O CHAKRABORTHY
MAJOR, RESIDING AT
NO.27, NTI COLONY,
5TH MAIN ROAD, II CROSS,
NAGASHETTIHALLI,
BANGALORE - 560 094

3. SMT.HEMAVATHI
W/O LATE MURALIMOHAN
AGED ABOUT 36 YEARS,
RESIDING AT NO.668,
4TH CROSS, 14TH MAIN,
J.P.NAGAR II PHASE,
BANGALORE - 560 078.

...RESPONDENTS

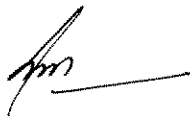
(BY SRI.A.N.KRISHNA SWAMY - ADV. FOR R-1
SRI.B.S.MANJUNATH - ADV. FOR R-2,
SRI.K.A. CHANDRASHEKAR- ADV. FOR
SRI.H.S.CHANDRAMOULI - ADV. FOR R-3)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV
ACT AGAINST THE JUDGMENT AND AWARD DATED
30.11.2006 PASSED IN MVC NO.4823/01 ON THE FILE OF
THE IV ADDL. JUDGE, MEMBER, MACT, METROPOLITAN
AREA, BANGALORE (SCCH-6), PARTLY ALLOWING THE
CLAIM PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

M.F.A.NO.10455/2007

BETWEEN:

ORIENTAL INSURANCE CO., LTD.,
NO.19/1, 1ST FLOOR, 3RD CROSS,
CHIKKANNA GARDEN,
SHANKARMUTT COMPOUND,
CHAMARAJPET,
BANGALORE - 4.



NOW REPRESENTED BY ITS
REGIONAL MANAGER,
ORIENTAL INSURANCE CO LTD.,
REGIONAL OFFICE, NO.44/45,
LEO SHOPPING COMPLEX,
RESIDENCY ROAD CROSS,
BANGALORE - 560 025. ... APPELLANT

(BY SRI.A.N.KRISHNA SWAMY - ADV.)

AND:

1. P.ANKI REDDY
S/O P.C. SANJEEVA REDDY,
NOW AGED ABOUT 61 YEARS
2. SMT.P.JAYAMMA
W/O P.ANKI REDDY,
NOW AGED ABOUT 56 YEARS
BOTH R/A NO.561, III MAIN, 'D' CROSS,
MATHIKERE,
BANGALORE - 560 045
3. SUJAL CHAKRABORTHY
S/O CHAKRABORTHY
MAJOR,
R/A NO.27, NTI COLONY,
'V' MAIN, II CROSS,
NAGASHE'TTIHALLI,
BANGALORE - 94
4. N.A.HEMAVATHI
W/O LATE MURALIMOHAN
NOW AGED ABOUT 37 YEARS,
NO.668, IV CROSS, 14TH MAIN,
J.P.NAGAR II PHASE,
BANGALORE ...RESPONDENTS

(BY SRI. L.M.RAMAIAH GOWDA- ADV. FOR R-1,
SRI.K.A. CHANDRASHEKAR- ADV. FOR
SRI.H.S.CHANDRAMOULI - ADV. FOR R-4)
SRI.B.S.MANJUNATH - ADV. FOR R-2 & R-3,
SRI.C.R.RAVISHANKAR - ADV. FOR R-6)



THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 30.II.2006 PASSED IN MVC NO.4823/2001 ON THE FILE OF THE IV ADDL. JUDGE, COURT OF SMALL CAUSES, MEMBER, MACT, METROPOLITAN AREA, BANGALORE, (SCCH-6), AWARDING A COMPENSATION OF ₹12,30,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL PAYMENT.

M.F.A.NO.3451/2007

BETWEEN

DR. N.A.HEMAVATHI
W/O LATE MURALIMOHAN
AGED ABOUT 35 YRS
NO 668, 4TH CROSS, 14TH MAIN
J.P. NAGAR, II PHASE,
BANGALORE - 560 078. ... APPELLANT

(BY SRI.K.A.CHANDRASHEKAR - ADV. FOR
M/S H. S. CHANDRAMOULI & ASSOCIATES)

AND

1. SUPRIYA CHAKRAVARTHY
S/O S B CHAKRAVARTHY
AGED ABOUT 26 YEARS
NO 27, NTI COLONY
V MAIN, II CROSS, NAGASHETTYHALLI
BANGALORE - 560 094
2. SUJAL CHAKRABORTHY
S/O CHAKRABORTHY
MAJOR IN AGE, NO 27, NTI COLONY
V MAIN, 2 CROSS, NAGASHETTYHALLI
BANGALORE - 560 094.
3. THE ORIENTAL INSURANCE CO LTD
NO 19/1, 1ST FLOOR, 3RD CROSS
CHIKKANNA GARDEN, SHANKARMUTT
COMPOUND, CHMARAJPET
BANGALORE - 560 004



4. P ANKI REDDY
S/O P C SANJEEVA REDDY
AGED ABOUT 61 YEARS
5. SMT P JAYAMMA
W/O P ANKI REDDY
MAJOR IN AGE.

RESPONDENT NOS. 4 & 5 ARE:
R/AT NO 43/A, I MAIN
NEAR 3RD CROSS, CHAMUNDESHWARI LAYOUT
VIDYARANYAPURA, BANGALORE

6. BRANCH MANAGER
THE NEW INDIA ASSURANCE CO., LTD.,
UNIT NO. 67190, NO.346, 2ND FLOOR,
MANADI COURT, 27TH CROSS
JAYANAGAR, III BLOCK
BANGALORE – 560 011
7. P RAMI REDDY @ PRAMI REDDY
S/O O.P. NAGI REDDY
RAM KISHORE COLONY
GANGAVASHI ROAD, SINDHANUR
RAICHUR DISTRICT ... RESPONDENTS

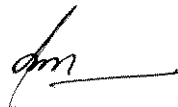
(BY SRI.L.M.RAMAIHAH GOWDA – ADV. FOR R4 & R5
SRIVAISHNAVI LAW ASSOCIATES FOR R-7,
SRI. B.S.MANJUNATH – ADV. FOR R-1 & R-2,
R-3 SERVED AND UN-REPRESENTED)

MFA FILED U/S 173(1) OF MV ACT, AGAINST THE
JUDGEMENT AND AWARD DATED 30.11.2006 PASSED IN
MVC.NO.4997/2001 ON THE FILE OF THE IV ADDITIONAL
JUDGE AND MEMBER, MACT, BANGALORE, PARTLY
ALLOWING THE CLAIM PETITION FOR COMPENSATION
AND SEEKING ENHANCEMENT FOR COMPENSATION.

M.F.A.NO.10454/2007

BETWEEN

ORIENTAL INSURANCE CO., LTD.,
NO.19/1, 1ST FLOOR, 3RD CROSS.



CHIKKANNA GARDEN,
SHANKARMUTT COMPOUND,
CHAMARAJPET,
BANGALORE – 4.
NOW REPRESENTED BY ITS
REGIONAL MANAGER,
ORIENTAL INSURANCE CO LTD.,
REGIONAL OFFICE, NO.44/45,
LEO SHOPPING COMPLEX,
RESIDENCY ROAD CROSS,
BANGALORE – 560 025. ... APPELLANT

(BY SRI.A.N.KRISHNA SWAMY – ADV.)

AND

1. DR. N.A.HEMAVATHI
W/O LATE MURALIMOCHAN
NOW AGED ABOUT 35 YRS
NO 668, 4TH CROSS, 14TH MAIN
J.P. NAGAR, II PHASE,
BANGALORE – 78.

2. SUPRIYA CHAKRAVARTHY
S/O S B CHAKRAVARTHY
NOW AGED ABOUT 26 YEARS

3. SUJAL CHAKRABORTHY
S/O CHAKRABORTHY
MAJOR.

RESPONDETS NO. 2 & 3 ARE
R/A NO 27, NTI COLONY
V MAIN, II CROSS, NAGASHETTYHALLI
BANGALORE

4. P ANKI REDDY
S/O P C SANJEEVA REDDY
NOW AGED ABOUT 61 YEARS

5. SMT P JAYAMMA
W/O P ANKI REDDY
NOW AGED ABOUT 56 YEARS



RESPONDENTS NO.4 & 5 HEREIN
R/AT NO.43/A, I MAIN
NEAR 3RD CROSS,
CHAMUNDESHWARI LAYOUT
VIDYARANYAPURA, BANGALORE

6. BRANCH MANAGER
THE NEW INDIA ASSURANCE CO., LTD.,
II FLOOR, MANADI COURT, 27TH CROSS
JAYANAGAR, III BLOCK
BANGALORE - 11
7. PRAMI REDDY
S/O P. NAGI REDDY
MAJOR
RAM KISHORE COLONY
GANAVASHI ROAD, SINDHANUR
RAICHUR DISTRICT. ... RESPONDENTS

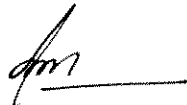
(BY SRI.K.A. CHANDRASHEKAR- ADV. FOR
SRI.H.S.CHANDRAMOULI - ADV. FOR R-1
SRI.L.M.RAMAIHAH GOWDA - ADV. FOR R4& R5,
SRI.C.R.RAVISHANKAR - ADV. FOR R-6,
SRIVAISHNAVI LAW ASSOCIATES FOR R-7,
SRI. B.S.MANJUNATH - ADV. FOR R-2 & R-3)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV
ACT AGAINST THE JUDGMENT AND AWARD DATED
30.11.2006 PASSED IN MVC NO.4997/2001 ON THE FILE
OF THE IV ADDL. JUDGE, COURT OF SMALL CAUSES,
MEMBER, MACT, METROPOLITAN AREA, BANGALORE,
(SCCH-6), AWARDING A COMPENSATION OF ₹12.30.000/-
WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITON
TILL PAYMENT.

THESE APPEALS COMING ON FOR FINAL HEARING
THIS DAY, N.K.PATIL J., DELIVERED THE FOLLOWING:-

JUDGMENT

These four appeals arise out of the impugned
common judgment and award dated 30.11.2006 passed




in MVC No.4823/2001 on the file of the IV Addl. Member, MACT, Bangalore (hereinafter referred to as the Tribunal for short). The Tribunal by its impugned judgment and award awarded a sum of ₹24,60,000/- with interest at 6% p.a. on account of the death of the deceased Sri.Muralimohan in the road traffic accident, as against the claim of the claimants for ₹1,02,00,000/- in MVC No.4997/01 and ₹80,00,000/- in MVC No.4823/2001. The claimants i.e. the parents and wife of the deceased, claiming that the quantum of compensation awarded by the Tribunal is inadequate and it requires enhancement have filed M.F.A. No.4193/2007 & M.F.A.No.3451/2007.

2. The brief facts of the case are as follows :-

The claimants being the wife of deceased and parents of the deceased have filed two separate claim petitions in MVC No.4997/2001 and MVC No.4823/2001 respectively on account of the death of the deceased late Sri.Muralimohan. On 10.10.2001, when the deceased was travelling on bike on 80 ft. road, 4th cross Sanjaynagar, due to the rash and negligent



driving of the Suzuki Samurai No.KA-02-Q-5475, it dashed against the bike of the deceased. As a result, the deceased sustained severe injuries. He succumbed to the injuries on the way to the hospital. Be that as it may, the claimants contended that the deceased was aged about 29 years, by occupation he was a Software Engineer, having a bright career in the said field, drawing salary of ₹51,250/- p.m. But, unfortunately, on account of the severe injuries sustained in the road traffic accident, he succumbed to the injuries. Therefore, the claimants were constrained to file claim petitions seeking compensation against the insurer and the owner of the offending vehicle. The said matter had come up for consideration before the Tribunal. The Tribunal, in turn, after assessing the oral and documentary evidence and other relevant material on file and further taking into consideration his age, occupation, allowed the claim petitions in part awarding a sum of ₹24,60,000/- with interest at 6% p.a. from the date of the petition till realisation in the ratio of 50:50 to each of the claimants (i.e. wife and parents) respectively



i.e. 50% to the wife and 50% to the parents of the deceased. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the appeals whereas, the insurer has also filed two appeals questioning the quantum of compensation awarded by the Tribunal to the claimants that it is on the higher side and fixing the contributory negligence only on the rider of the motor cycle is not justifiable and is liable to be modified accordingly.

3. Learned counsel for the insurer, contended and submitted that, the Tribunal has committed grave error in not assessing the oral and documentary evidence carefully. To substantiate his contention, he took us through the Ex.P6-sketch Ex.P7-panchnama and submitted that it is crystal clear from the perusal of the same that, the accident occurred due to the negligence on the part of riders of the respective bikes as the accident took place in the middle of the road and therefore, the Tribunal ought to have fixed the contributory negligence at 50% each on the riders of

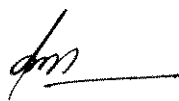


the bikes and determined the compensation towards loss of dependency and conventional heads.

4. In reply to the contention regarding the fixing of contributory negligence on the riders of both the vehicles, both the counsel appearing for the claimants submitted that, the Tribunal was justified in fixing the entire liability on the offending vehicle as the accident in question occurred due to the rash and negligent driving of the offending vehicle and therefore, the question of interfering with the same is not called for nor there is any substance in the contention of the counsel appearing for the insurer and therefore, they submitted that by modifying the judgment and award of the Tribunal, the compensation awarded may be enhanced.

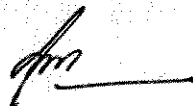
5. After careful consideration of the submissions of the learned counsel for the parties, the points that arise for consideration are :-

- i) Whether the fixing of contributory negligence at 100% on the rider of the offending motorbike and not fixing any contributory negligence on the part of the deceased is just and proper?



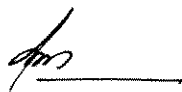
- ii) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

6. Regarding point No.1 :- The occurrence of the accident, injuries sustained, and the deceased having succumbed to the said injuries are not in dispute. It is crystal clear from the perusal of Exhibits P6 and Ex.P7 sketch and panchanama respectively that, the deceased was proceeding in his vehicle from west to east whereas, the offending rider was proceeding from east to west. When they reached near the end of junction near 4th cross connecting to 2nd stage of RMV road, the rider of the offending vehicle instead of proceeding straight has come to the off-side of the road and the deceased has also left his track to a little extent on the road resulting in the accident. Therefore, it establishes beyond reasonable doubt that there is contributory negligence on the part of the deceased as well as on the part of the rider of the offending vehicle having regard to the spot of the

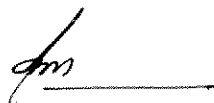


accident as seen from the sketch Ex.P6 and supported by the contents of the recitals of the panchanama Ex.P7. Therefore, holding that there is negligence on the part of the deceased also in causing the accident, we fix the contributory negligence at 30% on the part of the deceased and 70% on the part of the rider of the offending vehicle. Accordingly, we uphold the contention of the learned counsel for the insurer in part and reject the contention of the counsel appearing for the claimants.

7. Regarding point No.2. The occurrence of the accident and the resultant death of the deceased are not in dispute. Further, it is not in dispute that the deceased was a well qualified engineering graduate aged about 29 years as on the date of death, possessing excellent career in software line getting salary of ₹51,250/- p.m and annually it comes to ₹6,15,000/- and out of which if income tax and professional tax of ₹1,26,780/- is deducted, the net income comes to ₹4,88,220/- p.a. He was hale and healthy prior to the accident. The deceased was the sole bread winner in

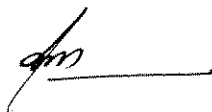


the family and his parents were fully dependent on him. Due to his untimely death they have lost their social and financial security and the only aspiration in life as the deceased was their only son. Further it emerges from the records that, Unfortunately, the wife of the deceased and the deceased had earlier filed a divorce petition by mutual consent. The wife has stayed with the deceased hardly for one year or so and thereafter, unfortunately due to the misunderstanding between the deceased and the wife, they had been staying separately. Taking these relevant factors into consideration, if we deduct 1/3rd (₹1,62,740/-) towards the personal expenses of the deceased from the annual income of the deceased, the net amount comes to ₹3,25,480/-p.a. (₹4,88,220/-₹1,62,740/-). The deceased was aged about 29 years and the appropriate multiplier applicable is '17' as per Sarla Verma's case (2009, ACJ 1298) and we re-determine the compensation payable towards loss of dependency at ₹55,33,160/- (₹3,25,480/- x 17 multiplier).



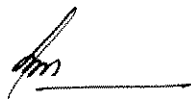
8. Having regard to the facts of the case referred to above, we deem it fit to award ₹10,000/- towards loss of consortium, ₹10,000/- towards loss of estate, ₹15,000/- (₹5,000/- x 3) towards loss of love and affection, ₹10,000/- towards transportation of dead body and funeral expenses. In all the claimants are entitled to compensation of ₹55,78,160/-. Out of which, if 30% is deducted towards contributory negligence, it comes to ₹39,04,712/-, which is the net enhanced compensation. Accordingly, we modify the impugned judgment and award passed by the Tribunal by enhancing the compensation awarded by the Tribunal from ₹24,60,000/- to ₹39,04,712/-. The enhanced compensation comes to ₹14,44,712/- with interest at 6% p.a. from the date of the petition till realisation.

9. Further, so far as the apportionment of compensation by the Tribunal in the ratio of 50:25:25 to wife, father and mother of deceased is concerned, it can be seen that the parents of the deceased are his real dependents rather than his wife since, the deceased and his wife had filed a divorce petition by mutual consent



and the wife had hardly stayed with the deceased for one year after marriage and this fact is not disputed. The parents are deprived of their future hopes, social and financial security in life and have lost the love and affection of their son permanently on account of the untimely death of their son. Having regard to the peculiar and unfortunate facts and circumstances of the case, we hereby set aside the apportionment made by the Tribunal and apportion the total compensation of ₹39,04,712/- in the ratio of 35:30:35 in favour of wife, father and mother respectively.

10. For the foregoing reasons, the instant appeals filed by the claimants and the insurer are allowed in part. The impugned common judgment and award passed by the Tribunal dated 30.11.2006 in MVC Nos.4997/01 and 4823/01 is hereby modified, awarding compensation of ₹39,04,712/- as against ₹24,60,000/- awarded by the Tribunal with interest at 6% p.a. from the date of the petition till realisation. Out of the said compensation, wife – claimant in MVC No.4997/2001 is entitled to 35% i.e. ₹13,66,650/-; father – first claimant

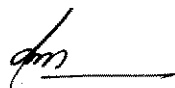


in MVC No.4823/2001 is entitled to 30% i.e. ₹11,71,414/- and mother – second claimant in MVC No.4823/2001 is entitled to 35% i.e. ₹13,66,648/- .

The insurer is directed to deposit the remaining compensation amount with interest within four weeks from the date of receipt of the copy of this judgment.

Out of the total compensation of ₹25,38,062/- awarded to the parents, ₹10,00,000/- each shall be invested in their individual names in fixed deposit in any Nationalised/Scheduled Bank for a period of 3 years renewable for a further period of 3 years and they are entitled to withdraw the interest accrued on it periodically. The remaining ₹5,38,062/- with interest shall be released in their favour in equal proportion immediately on deposit by the insurer.

Out of the compensation of ₹13,66,650/- awarded in favour of the wife i.e. appellant in MFA 3451/2001, ₹10,00,000/- with proportionate interest shall be kept in her name, in fixed deposit in any Nationalised/Scheduled Bank for a period of 5 years, renewable for a further period of 5 years with liberty to



withdraw the interest accrued on it periodically. The remaining ₹3,66,650/- with interest shall be released in her favour immediately on deposit by the insurer.

The amount deposited by the insurer shall be transmitted to the jurisdictional Tribunal forthwith.

The office to draw the award accordingly.

**Sd/-
Judge**

**Sd/-
Judge**

rs