
(2018) 03 KAR CK 0024

In the Karnataka High Court

Case No : Miscellaneous First Appeal No.103557 of 2016

**Shriram General Insurance Company Limited @APPELLANT@Hash
Smt.Laxmi and Ors**

Date of Decision : 20-03-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 166, 173(1)
Code of Civil Procedure, 1908 — Section 34
Provisions of Interest Act, 1978 — Section 2(c)

Citation : (2018) 03 KAR CK 0024

Hon'ble Judges : KRISHNA S.DIXIT, J

Bench : Single Bench

Final Decision : allowed

Judgement

1. The judgment and award dated 19.07.2016 made by the V Addl. District and Sessions Judge & VI Addl. MACT, Belagavi, in MVC No.1673 of

2013 are in challenge before this Court in the appeal filed by the Insurance Company.

In view of the memo dated 22.03.2018, notice to respondent No.3 is dispensed with, since he is not a necessary party nor a proper party.

2. In a motor vehicular accident that happened on 12.06.2013 involving a car bearing registration No.KA-49/M-2360, one Sri.Siddappa Kallappa

Katagal, who was fatally injured succumbed to the injuries, because of rash and negligent driving.

3. The claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short "the Act") was resisted by the respondent-Insurance

Company by filing Written Statement. To prove her case, the claimant No.1 examined herself as PW-1 and 13 documents were marked as Exs.P-1 to

P-13. On the side of the Insurance Company, one Sri.Prabhakar Manjunath Naik, the Law Officer, was examined as RW-1 besides one more witness

as RW-2 and the documents were marked as Exs.R-1 to R11.

4. The MACT after considering the pleadings of the parties and evidentiary material on record entered a judgment and award, awarding a

compensation of Rs.17,21,000/-, which are impugned in this Appeal.

5. The learned counsel for the appellant insurance company points out that in view of the law declared by the Apex Court at paragraph 61 in National

Insurance Company Limited Vs. Pranay Sethi, AIR 2017 SC 5157, there cannot be an award of compensation for more than Rs.70,000/-payable

under the conventional heads whereas in the instant case, the MACT has awarded Rs.4,25,000/- and therefore, the same requires to be scaled down

to the permissible limits fixed by the Apex Court.

6. The learned counsel for the other side opposed the same saying that the fact matrix of the case does not warrant invocation of the ratio in

paragraph 61 of National Insurance Company Limited Vs. Pranay Sethi, AIR 2017 SC 5157 case. However, how that ratio is not invocable is not

forthcoming in the arguments.

7. I feel there is lot of force in the contention of the learned counsel for the appellant insurance company and therefore, the compensation awarded by

the MACT under this head is reduced to Rs.70,000/- in aggregate, since no special circumstances are shown to award more by transcending the

guidelines in Pranay Sethi's case.

8. The learned counsel for the appellant insurance company next contends that the interest payable under the provisions of sub-section (1) of Section

149 of the Motor Vehicles Act 1988 cannot be more than 6% since the said Section employs the expression "interest on that sum by virtue of any

enactment relating to interest on judgments".

The learned counsel submits that this expression takes us to the provisions of Section 34 of the Code of Civil Procedure, 1908 which as a norm

prescribes the rate of interest at 6% in respect of interest on judgments. The relevant provision of Section 34 reads :

"34. Interest (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the

Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest

adjudged on such principal sum for any period prior to the institution of the suit, [with further interest at such rate not exceeding six per cent. Per annua s the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fitâ??.

9. Per contra, the learned counsel for the claimants submits that the provisions of Interest Act, 1978 provide for grant of higher rate of interest and

therefore, this Act should be treated as the right law relating to the interest on judgments. However, the counsel for the Insurance Company at once

refutes this contention by taking through the provisions of the said Act.

10. I have carefully considered the contentions of the either side. The Interest Act, 1978 is not applicable to the facts and circumstances of the case

inasmuch as Section 2(c) of the said Act defines â??Debtâ?? which specifically excludes a judgment on debt. Section 2(c) reads as under:

â?? 2. Definitions.-

In this Act, unless the context otherwise requires:-

(a) x x x

Â x x x

(c) ""debt"" means any liability for an ascertained sum of money and includes a debt payable in kind, but does not include a judgment debt;â??

11. The learned counsel for the claimant submits that since Section 2 employs the expression â??unless the context otherwise requiresâ? some liberty

is left for invoking the definition of â??debtâ? and if this is done, the claimant would be entitled to higher rate of interest. I am not impressed by this

argument in as much as when the Act uses the word â??contextâ? , ordinarily one cannot transcend the provisions of the said Act. However, if the

Act were to employ the expression â??unless the circumstances otherwise requireâ? perhaps the contention of the counsel would have gained

acceptability. There is a certain legal difference between the meaning of the expression â??unless the context otherwise requiresâ? and the

expression â??unless the circumstance otherwise meanâ? or â??unless the circumstance otherwises requireâ? or the like. Even otherwise also the

counsel is not in a position to point out which circumstance requires a different meaning in his case.

12. This Court does not have any quarrel with the propositions that where the context makes the definition given in the interpretation clause

inapplicable, a defined word when used in the body of the statute may have to be given a meaning different from that contained in the interpretation

clause; all definitions given in an interpretation clause are therefore normally enacted subject to the qualification "unless there is anything

repugnant in the subject or context", or "unless the context otherwise requires". Even in the absence of an express qualification to that

effect also such a qualification is always implied.

13. Therefore, the Interest Act is not applicable and inevitably the Court has to navigate to the provisions of Section 34 of the Code of Civil Procedure

as rightly contended by the learned counsel for the insurance company. Thus, the MACT is not legally justified in awarding interest at the rate more

than 6% per annum and accordingly, the rate of interest is scaled down to 6% per annum, keeping in line with the statutory ceiling limit.

14. The learned counsel for the claimants although has not filed cross-objection submits that the accident is of 2013 and the notional income has been

taken to be Rs.6,000/- per month. This is short of what is ordinarily operated by the income chart of the Lok Adalat which prescribes Rs.7,000/-.

Therefore, he submits that even in the absence of cross-objections or cross appeals by the claimants too, it is open to the claimants to point out to this

court that the compensation awarded is not just and proper. There is a legal duty on the Tribunal and consequently, appeal being continuation of the

original proceedings, such duty rests on this Court also, to ensure awarding of "just and proper compensation".

15. There is lot of force in the above submission and therefore, the notional income of the deceased for the year 2013 is taken at Rs.7,000/- instead of

Rs.6,000/- which was wrongly taken by the MACT and the compensation has been reworked out with the altered values as under: Loss of

dependency:

$\text{Rs.7,000/-} \times \frac{1}{3} = \text{Rs.2,333/-}$

$\text{Rs.7,000} - 2,333 = \text{Rs.4,667/-}$

$\text{Rs.4667/-} \times 12 \times 18 = \text{Rs.10,08,072/-}$

(Rounded off to Rs.10,08,000/-)

16. The learned counsel for the claimants next contended that the MACT has not considered paragraph 61(iv) of the Pranay Sethi's case (supra),

which requires some addition to be made to the notional income of the deceased. The said paragraph reads:

¶61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) x x x

(ii) x x x x x x

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the

deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the

deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the

income minus the tax component. ¶..

17. I have carefully considered the script of this paragraph appearing in the apex court judgment which employs two important expressions viz.,

¶established income¶ and ¶permanent job¶. The judgment does not say that when the income is from some other occupation different from

the job, the same principle would be invocable as rightly contended by the learned counsel for the insurance company. Thus, the claim petition both in

pleadings and proof are lacking in the fact matrix for the invocation of the ratio of the Apex Court judgment and therefore the said contention of the

claimant side is rejected.

18. This Court takes the altered values and recalculate the compensation as per the table below:

Sl. No. Heads Amount Amount

1 Loss of dependency: Rs.10,08,000/-

Rs.7,000/- x 1/3 = Rs.2,333/-

Rs.7,000+2,333/-= Rs.4,667/-

Rs.4667/- x 12 x 18 =

Rs.10,08,072/- (Rounded off to

Rs.10,08,000/-) Rs.10,08,000/-

2 Other conventional heads: Rs.70,000/- Rs.70,000/-

Â TOTAL: Rs.10,78,000/-

19. For all the reasons stated above, the appeal deserves to be partly allowed. Accordingly, I pass the following:

(a) The appeal is partly allowed;

(b) The impugned judgment and award dated 19.07.2016 passed by the V Addl. District and Sessions Judge & VI Addl. MACT, Belagavi, in MVC

No.1673 of 2013 is modified;

(c) The compensation amount awarded by the MACT at Rs.17,21,000/- after recalculation is reduced to Rs.10,78,000/-; so also the rate of interest is

scaled down from 9% to 6% per annum;

(d) All other terms and conditions are kept intact;

(e) The amount in deposit in the Registry of this Court shall be transmitted to the jurisdictional MACT.