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**(1997) 11 KAR CK 0023**

**In the Karnataka High Court**

**Case No : MFA. No"s. 1926 of 1985 and 1309 of 1986**

Smt. Parvati

APPELLANT

Vs

Hallur Halappa

RESPONDENT

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**Date of Decision :** 17-11-1997

**Acts Referred:**

**Citation :** (1999) ACJ 705 : (1998) ILR (Kar) 1374

**Hon'ble Judges :** H. Rangavittalachar, J;Ahosk Bhan, J

**Bench :** Division Bench

**Advocate :** Jayakumar S. Patil, for the Appellant; C.S. Hiremath, R-5 by B.C. Seetharama Rao, R-2 by B.V. Acharya, for the Respondent

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## **Judgement**

Ashok Bhan, J.—These two appeals arise out of the same judgment and award and are therefore disposed of by a common order. M.F.A.1926/85 is by the claimants who are aggrieved by the inadequacy of the compensation awarded by the Tribunal while M.F.A.1309/86 has been filed by the Oriental Insurance Company limited which has challenged the award in so far as the extent of its liability under the policy issued by it.

2. Brief facts are as under:

Claimants are the legal representatives of one Basavaraj who was travelling in van bearing CAI 1288 on the night intervening 8/9th April 1983 from Haveri to Davanagere. While the van was coming near Chara village on Poona - Bangalore road, a truck bearing No. MYZ 5274 came from opposite direction and there was a collision between the two vehicles resulting in the death of said Basavaraj and injuries to the claimants.

3. The claimants' case is that accident took place due to rash and negligent driving on the part of the drivers of the vehicles. Claim was made against the owner, driver and insurer of both the vehicles. Claimant No. 1 is the widow of the deceased where as claimants 2 to 4 are the minor children of the deceased. The insurer of both the vehicles and other respondents contested the claim of the

claimants. On the pleadings of the parties the following issues were framed:

(i) Whether the petitioner proves that he sustained injuries in an accident on 9.4.1983 and the accident occurred either due to rash and negligent driving of the vehicle bearing No. CAI.1288 or the vehicle bearing No. MYJ.5274 or due to rash and negligent driving of both the vehicles at the time and place as alleged?

(ii) Whether the petitioner is entitled to compensation? If so, how much and from whom?

(iii) What order?

4. Under Issue No. 1 Motor Accident Claims Tribunal, (hereinafter referred to as "the Tribunal") decided that accident occurred due to rash and negligent driving of both the vehicles and therefore the drivers, owners of both the vehicles including the insurers are liable to compensate the claimants to the extent of 50% each. Under issue No. 2 it was held that the income of the deceased at the time of his death was Rs. 1,300/- per month. His carry home salary was determined at Rs. 1,031/-. However having regard to his age and remaining portion of his service and the future prospects the salary was taken to be Rs. 1,883-65. Taking this as the basis the salary of the deceased was nationally determined at Rs. 1,300/- per month. In average the total loss of dependency was fixed at Rs. 900/- per month. After deducting the family pension of Rs. 440/- which the wife of the deceased was receiving the net loss of dependency was fixed at Rs. 460/- per month. Applying the multiplier of 12 the total loss of dependency was arrived at Rs. 66,240/-. Having done this exercise Tribunal deducted 10% towards acceleration of the receipt of the insurance amount and arrived at a final figure of Rs. 60,240/- and rounded it to Rs. 60,000/- to which the conventional compensation towards the loss of consortium, loss of estate and funeral expenses totalling to Rs. 12,500/- was added. Thus the Tribunal arrived at the total compensation of Rs. 72,500/-.

5. Claimants have not challenged the finding recorded by the Tribunal regarding apportionment of the compensation between the drivers of two vehicles. The only contention urged on behalf of the claimants is that the Tribunal is not right in making deduction of the family pension received out of the net loss of dependency. The second point urged by the claimant is that a multiplier of 12 is on the lower side keeping in view the age of the deceased. The appeal had come up for hearing before a Division Bench. This Court in SMT. SHANTHA @ SHANTHA BAI ANNAPPA GADADAVAR AND ANR. (M.F.A.No. 457/1993 decided on 22.4.1993) had taken the view that the family pension was liable to be deducted while determining the loss of dependency of the claimants. The Division Bench doubted the correctness of this decision relying upon the observation made by the Lordships of the Supreme Court in N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another, , and several decisions of different High Courts in the country. The matter was referred to a larger Bench. The matter was thereafter heard by the Full Bench consisting of three Hon'ble

Judges and the same was disposed of on 26th June 1997. It is reported in Smt. Parvati @ Baby and Others Vs. Hollur Hallappa and Others, . The question referred to the Full Bench was answered as follows:

"If the loss of dependency is calculated only on the monthly emoluments received, without adding the value of the pension factor of such emoluments, then it is unnecessary to make any deduction on account of receipt of family pension"

In view of this judgment of the Full Bench the Trial Court was in error in deducting the family pension while determining the loss of dependency of the claimants. The loss of dependency to the claimants thus has to be determined at Rs. 900/- per month. The loss of yearly dependency would come to Rs. 10,800/-. The multiplier applied by the Tribunal is on the lower side. Deceased was only 33 years of age at the time accident. The multiplier of 15 would be more just and proper keeping in view the facts and circumstances of the case. On applying the multiplier of 15 the loss of dependency would come to Rs. 1,62,000/-. We would enhance the loss of consortium to Rs. 15,000/-, loss of estate to Rs. 10,000/- and funeral expenses to Rs. 2,500/-. The total amount payable to the claimants as compensation would come to Rs. 1,89,500/- which is rounded off to Rs. 1,90,000/-. There would be joint and several liability of the amount of compensation on the drivers, owners and the Insurance Companies of both the vehicles. The claimants shall also be entitled to interest at the rate of 6% per annum between 1983 to 31st December 1988 and thereafter at the rate of 9% per annum. The amount of compensation shall be apportioned in the same ratio as was fixed by the Tribunal.

6. Now we take up the appeal M.RA.1309/86 filed by the United India Insurance Company which had insured the van CAI 1288 in which the deceased and the claimants were travelling. In MFA 1925/85 decided on 23rd October 1991 which also arose from the same impugned order before us, it has been decided that the liability of the Oriental Insurance Company would be limited to Rs. 15,000/- per passenger. Accordingly for the reasons stated in the aforesaid M.F.A.1925/85 we accept the appeal filed by the Insurance Company and limit the liability of the Insurance Company to Rs. 15,000/- per passenger.

7. Out of the sum of Rs. 1,90,000/-, the owner and insurer of the truck MYJ 5274 would be liable to pay 50% along with interest and liability of the owner and the insurer will be joint and several. Out of the balance amount of 50%, the liability of the insurer would be Rs. 15,000/- per passenger and the rest of the amount would be paid by the owner and the driver. As there are joint tort fissures, claimants would be entitled to recover the amount from either of the joint tort fissures. The appeal filed by the Oriental Insurance Company i.e., M.F.A. 1309/86 is accepted to the extent indicated above.

8. Appeal filed by the claimant is also accepted to the extent indicated in this order. No costs.