

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19<sup>TH</sup> DAY OF DECEMBER, 2019

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

M.F.A.No.2109/2012 (MV)

BETWEEN:

SRI. VENKATARAVANAPPA  
S/O. NARAYANAPPA  
AGED ABOUT 42 YEARS  
R/AT CHANDAGANAHALLI VILLAGE  
SADALI HOBLI  
SIDLAGHATTA TALUK  
CHIKKABALLAPUR DISTRICT-563 125. ... APPELLANT

(BY SRI. K. VISHWANATHA AND  
SRI. T.V. NANJEGOWDA, ADVOCATES)

AND:

SRI. CHANDRASHEKAR  
S/O. KADIRAPPA  
AGED ABOUT 42 YEARS  
R/AT No.65, SHANTINAGAR  
CHINTHAMANI TOWN-563 125. ... RESPONDENT

(RESPONDENT SERVED)

THIS M.F.A IS FILED UNDER SECTION 173(1) OF MV ACT  
AGAINST THE JUDGMENT AND AWARD DATED 5.11.2011  
PASSED IN MVC.NO.48/2008 ON THE FILE OF SENIOR CIVIL  
JUDGE AND MACT, CHINTHAMANI, PARTLY ALLOWING THE  
CLAIM PETITION FOR COMPENSATION AND SEEKING  
ENHANCEMENT OF COMPENSATION.

THIS M.F.A. COMING ON FOR HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

**J U D G M E N T**

This appeal is filed challenging the judgment and award dated 5.11.2011 passed in MVC No.48/2008 on the file of Senior Civil Judge & JMFC, Chinthamani.

2. The factual matrix of the case is that on 5.11.2007 at about 8.30 a.m. the deceased while doing coolie work at western side of the road near Kothahudya Village, a private bus bearing registration No. T.N.29-Z.9279 came at high speed being driven by its driver in a rash and negligent manner and dashed against the deceased Narayanappa, due to which he succumbed to the injuries and died at the spot.

3. It is the case of the claimant that he was earning Rs.150/- per day and he was contributing his entire earnings towards the maintenance of the family.

4. In pursuance of the claim petition, notice was issued to the respondent and he appeared through his counsel and filed the written statement contending that the vehicle was not

moved in the said road as on the date of alleged incident. The vehicle was surrendered to RTO, as such the RTO is necessary a party to the claim petition. The question of moving in a rash and negligent manner does not arise. The vehicle is not in the name of respondent, its owner is Shriram Chits Ltd., Madanapalli. The vehicle was fully covered with the insurance. The deceased was aged about more than 85 years and question of earning Rs.150/- per day does not arise.

5. The claimant, in support of his claim, examined himself as P.W.1 and examined another witness as P.W.2 and got marked documents Exs.P1 to P9. However, the respondent did not choose to examine any witness and also did not mark any documents.

6. The Tribunal, after considering both oral and documentary evidence, allowed the claim petition granting compensation of Rs.58,600/- with interest at the rate of 8% per annum. Being aggrieved by the said judgment and award, the present appeal is filed.

7. The main contention of the appellant is that the Tribunal has committed an error in taking the income of the deceased as Rs.3,000/- per month and ought to have taken Rs.4,500/- per month at the rate of Rs.150/- per day since he was a coolie. The Tribunal also committed an error in not awarding compensation under the head of 'loss of dependency' holding that the claimant is not a dependent of the deceased. The Tribunal also committed an error in taking 15% of the income of the deceased toward loss of estate instead of taking the entire income of the deceased.

8. This Court issued notice against the respondent and respondent did not choose to appear before this Court. Hence, the notice against respondent is held sufficient.

9. Having considered the grounds urged in the appeal memorandum and also the contentions of the learned counsel for the appellant, the points that arise for consideration of this Court are:-

1. Whether the Tribunal has committed an error in awarding just and reasonable

compensation and it requires  
interference of this Court?

2. What order?

10. **Points No.1 and 2:-** The claim of the claimant is that his father was earning Rs.150/- per day and he was contributing the entire income to his family. The accident was taken place on 5.11.2007. The Tribunal has taken the income of the deceased at Rs.3000/-. In the absence of any documentary evidence with regard to the income of the deceased, the Tribunal ought to have taken the notional income. Thus, the Tribunal has committed an error in taking the income of the deceased at Rs.3,000/- per month instead of Rs.4,000/-. The main contention of the respondent in the written statement is that the deceased was aged about 85 years. On perusal of PM report which is marked as Ex.P6, it discloses that the age of the deceased was 60 years. Hence, the relevant multiplier applicable to the case on hand would be 9. In view of the judgment of ***A.Mananvalagan Vs. A.Krishnamurthy and Others*** reported in ***ILR 2004 KAR 3285***, the Tribunal has not committed any

error in applying the multiplier as 9, since the claimant is a son, who is aged about 38 years and no material has been placed on record to show that he was dependent on the deceased. Hence, the compensation is reassessed by taking the income of the deceased at Rs.4,000/- per month. The PM report also discloses that the deceased was aged about 60 years. Since the deceased was a coolie and working in an unorganized sector, 10% of future prospects is to be added to his income. Having added 10% of the income, the quantum of compensation is recalculated as follows:-

$$\text{Rs.4,000} + (4,000 \times 10\%) = \text{Rs.4,400/-}$$

$$\text{Rs.4,400} \times 12 \times 9 \times 15 / 100 = \text{Rs.71,280/-}$$

11. The claimant is also entitled for a compensation under the conventional heads to the tune of Rs.30,000/-. Accordingly, the quantum of compensation awarded by the Tribunal is modified to the tune of Rs.1,01,280/- as against Rs.58,600/-.

12. In view of the discussions made above, I pass the following:-

**ORDER**

- (i) The appeal is allowed in part.
- (ii) The judgment and award passed in MVC No.48/2008 dated 5.11.2011 on the file of the Senior Civil Judge and JMFC, Chinthamani is modified granting a compensation to the tune of Rs.1,01,280/- as against Rs.58,600/- with interest at the rate of 8% per annum from the date of petition till realization.
- (iii) The respondent is directed to pay the amount within 8 weeks from the date of receipt of the copy of this order.
- (iv) The Registry is directed to send back the records to the Tribunal forthwith.

**Sd/-  
JUDGE**

PYR