

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5<sup>TH</sup> DAY OF FEBRUARY, 2010

PRESENT

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

AND

THE HON'BLE MR.JUSTICE B.SREENIVASE GOWDA

M.F.A.No. 2110 OF 2006 (MV)

BETWEEN:

1. Jayarama Shetty,  
S/o. Late Sanjeeva Shetty,  
Age 50 Years.

2. Suresh Shetty,  
S/o. Late Sanjeeva Shetty,  
Age 38 Years.

(Deleted on 5.2.2010 in view of his death on  
19.8.2007)

corrected vide  
chamber order  
dt.13.7.2010.

3. Sathish Shetty,  
S/o. Late Sanjeeva Shetty,  
Age 35 Years.

4. Smt. Asha V. Shetty,  
W/o. Vasu Shetty,  
Age 33 Years.

5. Miss .Udayakshi @ Udayashri Shetty,  
Age 31 Years.



All are residing at  
Moodukere Guthu House,  
Kandavara Village and Post,  
Bajpe, Mangalore Taluk,  
(D.K.)

... Appellants

(By Sri. B .S .N. Bhat, Advocate)

AND :

1. M/s Durgamba Motors,  
Represented by its  
Partner, N.H.17,  
Kundapura,  
Udupi District.
2. The Branch Manager,  
New India Assurance Co Ltd.,  
Pushpa Building Main Road,  
Kundapura,  
Udupi District.

... Respondents

(By Sri. K. Surya Narayan Rao, Advocate for R2;  
Notice to R-1 - dispensed with v/o dated 8/1/2009)

This MFA is filed U/S 173(1) of MV Act against the judgment and award dated: 09.09.2005 passed in MVC No.1485/2001 on the file of the I Addl. Civil Judge (Sr.Dn) & MACT-V, Mangalore, D.K., partly allowing the claim petition for compensation and seeking enhancement of compensation.

This M.F.A. coming on for Hearing this day, **N.K. PATIL J.** delivered the following:



**:JUDGMENT:**

This appeal is arising out of the impugned judgment and award dated 09.09.2005 passed in MVC No.1485/2001 on the file of the I Additional Civil Judge (Sr.Dvn) & Motor Accident Claims Tribunal-V, Mangalore, D.K., (hereinafter referred to as 'Tribunal' for short).

2. The Tribunal by its judgment and award has determined a sum of Rs.1,00,000/- and awarded a sum of Rs.75,000/- with interest at 6% per annum from the date of petition till its deposit, after deducting 25% towards contributory negligence on the part of the deceased, as against the claim of the appellants for a sum of Rs.5,00,000/-, on account of the death of the deceased Sri. Dinesh Shetty, in the road traffic accident. Being aggrieved by the said judgment and award, the appellants have presented this appeal, for enhancement of compensation, on the ground that, the amount awarded by the Tribunal is inadequate.



3. In brief, the facts of the case are:

The appellants are the brothers and sisters of the deceased Sri. Dinesh Shetty, who was aged about 29 years, working as Manager cum Supervisor in a Bar and Restaurant, drawing the salary of more than Rs.4,000/- per month. The appellants being the legal representatives of the deceased Sri. Dinesh Shetty, have filed a claim petition before the Tribunal claiming compensation of Rs.5,00,000/-, contending that, on 8.7.2001 at about 8.40 p.m., when the deceased was crossing the road at Pedestrian crossing near RTO office to go to catch the bus to go to Kandavara, at that time, the driver of the bus bearing Reg. No. KA.20.A.287 drove the same in a rash and negligent manner and dashed against him, due to which, he fell down and sustained grievous injuries on the head and other parts of the body. Immediately, he has been shifted to Wenlock Hospital, Mangalore, where he succumbed to the injuries on 9.7.2001 at 10.45 a.m. The said claim petition had come up for consideration before the



Tribunal, which in turn, after assessing the oral and documentary evidence and other material available on file, has allowed the claim petition in part and determined the compensation of Rs.1,00,000/- and awarded a sum of Rs.75,000/- after deducting 25% towards contributory negligence, with interest at 6% p.a. from the date of petition till its deposit. Being aggrieved by the said judgment and award, the appellants have presented this appeal.

4. We have heard the learned counsel appearing for appellants and learned counsel appearing for second respondent-Insurance company.

5. After careful perusal of the impugned judgment and award passed by the Tribunal, we are of the considered view that, the contributory negligence fixed by the Tribunal at 25% on the part of the deceased is just and proper. Further it emerges that, the Tribunal has erred in not awarding reasonable compensation towards loss of estate, transportation and funeral expenses. The compensation of Rs.1,00,000/-



determined by the Tribunal is inadequate and it needs to be enhanced. It is the case of the appellants that, the deceased Sri. Dinesh Shetty was aged about 29 years, working as Manager-cum-Supervisor in a Bar and Restaurant and drawing the salary of Rs.4,000/- per month. Having regard to the age and occupation of the deceased and since the accident was occurred in the year 2001, if the income of the deceased is taken at Rs.3,000/- per month it would be just and reasonable and accordingly, it is taken. Out of which, if 50% is deducted towards the personal expenses of the deceased, since he was bachelor at the time of his death, the net income comes to Rs.1,500/- per month. The deceased was aged about 29 years and the appropriate Multiplier applicable to the instant case is '17', in view of the law laid down by the Apex Court in the case of **Sarla Verma and other Vs. Delhi Transport Corporation and another** reported in **2009 ACJ 1298**. Therefore, we award a sum of Rs.3,06,000/- (Rs.1500/- x 12 x 17) towards loss of estate. Further, we award a



sum of Rs.10,000/- towards transportation and funeral expenses. In all, we award a sum of Rs.3,16,000/- instead of Rs.1,00,000/- awarded by the Tribunal.

6. Having regard to the facts and circumstances of the case, the appeal filed by the appellants is allowed in part and the impugned judgment and award passed by the Tribunal in MVC No.1485/2001 is hereby modified, granting the compensation of Rs.3,16,000/- instead of Rs.1,00,000/- awarded by the Tribunal.

Out of Rs.3,16,000/-, if 25% is deducted towards contributory negligence on the part of the deceased, the net compensation comes to Rs.2,37,000/-. Out of which, if Rs.75,000/- awarded by the Tribunal is deducted, the enhanced compensation comes to Rs.1,62,000/-.

The Insurance Company is directed to deposit the enhanced compensation of Rs.1,62,000/- together with interest at 6% p.a., from the date of petition till the date of realisation, within a period of four weeks from the date of receipt of a copy of this judgment and award.



The enhanced compensation shall be released in favour of the appellants in equal proportion, immediately, on deposit by the Insurance Company.

Office is directed to draw the award, accordingly.

Sd/-  
JUDGE

Sd/-  
JUDGE

*tsn\**