

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4<sup>TH</sup> DAY OF JULY 2018

BEFORE

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

**M.F.A.No.1215 OF 2015 (MV)**

Between:

1. Smt. R.Sumangala,  
W/o. Late Parameshwaraiah,  
Aged about 29 years.
2. Master R.P.Vinay Kumar,  
S/o. Late Parameshwaraiah,  
Aged about 12 years.
- 3 Kumari R.P.Harshitha @ Spoorthy,  
D/o. Late Parameshwaraiah,  
Aged about 5 years.
4. Smt. Chamundamma,  
W/o. Late Nanjundappa,  
Aged about 66 years.

All are Residing at  
No.51, S.K.Layout, 10<sup>th</sup> Main Road,  
4<sup>th</sup> Cross, Jnanajyothinagar,  
Bangalore-560056.

Since the 2<sup>nd</sup> and 3<sup>rd</sup> appellants are  
Minors represented by their mother  
1<sup>st</sup> appellant as Natural Guardian

Native Place:

No.42/2, Masthenahalli, Rajapura,  
Jigani Hobli, Anekal Taluk,  
Bangalore Urban.

...Appellants

(By Sri. Sreenivasaiah A., Advocate)

And:

1. Sri. Shivram Reddy,  
S/o. V.Nanja Reddy,  
No.188, Iggalur Village,  
Chandapur Post, Attibele Hobli,  
Anekal Taluk,  
Bangalore-560077.

2. The Manager,  
Royal Sundaram Alliance Insurance Co. Ltd.  
No.186/7, Sri. Raghavendra Plaza,  
Hosur Main Road,  
Wilson Garden,  
Bangalore-560027.

...Respondents

(By Sri. Ravi S. Samprathi, Advocate for R2,  
R1 – Dispensed with)

This MFA is filed under Section 173(1) of MV Act against the judgment and award dated 19.11.2014 passed in MVC. No 3981/2013 on the file of the IX Additional Small Causes Judge & XXXIV ACMM, Member MACT-7, Court of Small Causes, Bangalore, (SCCH-7) partly allowing the claim petition for compensation and seeking enhancement of compensation.

This MFA coming on for admission, this day, the Court delivered the following:

**JUDGMENT**

The appeal is by the claimants challenging the judgment and award dated 19.11.2014 in MVC No.3981/2013 contending that the compensation granted by the Tribunal is inadequate.

2. The facts as made out in the claim petition was that on 9.1.2013 when the deceased was standing on the left side of the road near Iggalur Village, a jeep bearing Registration No.KA-51-MD-1290 being driven in a rash and negligent manner lost control and dashed against the deceased, who succumbed to the grievous injuries. The claimants being wife, children and mother of the deceased preferred a claim petition contending that the deceased was a mason and was earning ₹15,000/- per month.

3. The Tribunal, after considering the material on record and the oral evidence adduced, awarded the compensation in a sum of ₹9,07,100/- as follows:-

<b>Sl. No.</b>	<b>Compensation heads</b>	<b>Compensation amount</b>
1.	Loss of Dependency	Rs.7,37,100-00
2.	Loss of Consortium	Rs.1,00,000-00
3.	Funeral Expenses	Rs. 25,000-00
4.	Loss of Love and affection	Rs. 20,000-00
5.	Expenses of transportation of dead body	Rs. 5,000-00
6.	Loss of Estate	Rs. 20,000-00
	<b>Total</b>	<b>Rs. 9,07,100-00</b>

4. The claimants are seeking for enhancement contending that the income for the purpose of calculating the compensation in the absence of actual income being proved as per the Lok Adalath guidelines ought to have been taken which for the year 2013 have been ₹8,000/- per month.

5. It is also contended that the age that has been taken note of for the purpose of applying the multiplier is 41 years, however, while looking into the Election ID card (Ex.P12), the deceased would have been aged 40 years as on the date of accident and hence, contends that despite the postmortem report

pointing out that the deceased was being aged 35 years, at the least the Tribunal ought to have atleast taken the age as per the Election ID card.

6. Heard learned counsel for both parties.

7. Learned counsel for the insurer submits that as there was no 'established income', the question of awarding compensation by taking note of future prospects is impermissible and contends that the age taken by the Tribunal for the purpose of adopting the multiplier requires no interference.

8. As regards the contention of the insurer that future prospects ought not to have been awarded where there is no proof of actual income, the said aspect has been considered and it has been held that even where notional income is taken for the purpose of calculation of compensation, future prospects is an entitlement. The said aspect has been considered by the judgment of

this Court dated 6.6.2018 in MFA No.4360/2012 dated 6.6.2018.

9. It is seen that the Election I.D. card (Ex.P12), which indicates the date of birth as 07.09.1973 and if it were to be so, the deceased at the time of accident would have been 40 years. Therefore, the Tribunal appears to have erred in taking the age of the deceased as 41 years for calculating the multiplier and if the age of the deceased is taken as 40 years, then the multiplier would be '15'.

10. As regards income that ought to have been adopted, it is noticed that despite assertion of the claimants that deceased was a mason, no positive evidence has been let in to prove the actual and notional income. Hence, taking judicial note of Lok Adalath guidelines, the income could be taken at ₹8,000/- per month and future prospects would have to be reworked considering the age of deceased as 40 years and if it

were to be so, the future prospects would have to be taken as 25% and if so taken, the loss of dependency would work out to ₹13,50,000/- [8000 + 2000 (25% of 8000) = 10000 x 75% x 12 x 15].

11. As regards the compensation awarded under the other heads in the Table at page No.28 of the impugned judgment amounting to ₹1,70,000/- would have to be reduced to ₹70,000/- in the light of the guidelines for compensation under the conventional heads as laid down by the Apex Court in the case of **NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI AND OTHERS** reported in **(2017) 16 SCC 680**.

12. Accordingly, the appeal is allowed in part. The appellants shall be entitled to a enhanced compensation of **₹5,12,900/-** (₹14,20,000 – (minus) ₹9,07,100) with interest at 6% p.a. from the date of petition till the date of its realization. The other

stipulations in the award of the Tribunal remains undisturbed.

**SD/-  
JUDGE**

VGR