

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26th DAY OF JUNE 2012

BEFORE

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

MISCELLANEOUS FIRST APPEAL NO.1324/2009(MV)

BETWEEN:

1. Sri.S.B.Murudappa,
S/o Eshwarappa,
Aged about 47 years,
Agriculturist,
R/at Sugar village,
Shimoga taluk.
 2. Smt.Nanjamma,
W/o S.B.Murudappa,
Aged about 42 years,
R/at Sugar village,
Shimoga taluk.
 3. Smt.Manjula d/o Murudappa,
Aged about 27 years,
R/at Sugar village,
Shimoga taluk.
 4. Smt.Latha d/o Murudappa,
Aged about 20 years,
R/at Sugar village,
Shimoga taluk.
 5. Sri.S.B.Nandyappa,
S/o Danna Eshwarappa,
Aged about 52 years,
R/at Sugar village,
Shimoga taluk.
- ...APPELLANTS

(By Sri.M.U.Maheshwarappa, Adv.)

AND:

1. Sri.K.D.Dikshith
S/o D.N.Dixit,
Aged major,
Owner of tempo trax
Bearing Regn.No.KA-17/M-3226,
R/o 8th main road, 8th cross,
P.J.Extension, Davangere.
2. Sri.Bheemappa @ B.G.Naikar,
S/o late Gyanappa,
Aged major,
Driver of tempo trax,
Bearing Regn.No.KA-17/M-3226,
R/o No.3226, 6th cross,
Sr Rama Extn., Nitwalli,
Davangere.
3. The Oriental Insurance Co., Ltd.,
Tiluvalli complex, P.B.Road,
Davangere. ...RESPONDENTS

(By Sri.Shankara Reddy, Adv. for R3, R1 sd,
R2 notice dispensed with)

This M.F.A. is filed u/S 173(1) of M.V.Act against the judgment and award dated 20.02.2007 passed in M.V.C.No.1485/2006 on the file of the Presiding officer, FTC-2, Member, M.A.C.T., Shimoga, partly allowing the claim petition for compensation and seeking enhancement of compensation.

This M.F.A. coming on for orders this day, the Court delivered the following:

JUDGMENT

Though this matter is listed for orders, by the consent of learned counsel appearing for both sides, the matter was heard on merits.

2. This appeal is by the claimants seeking enhancement of compensation on being dis-satisfied with the quantum of compensation awarded by the tribunal. The claim petition was filed seeking compensation for the death of one Mohan son of the appellant Nos. 1 and 2 and brother of appellant Nos. 3 and 4 in the motor vehicle accident that occurred on 08.11.2000. The claimants contended that the deceased was a student of I year BBM and he was assisting his parents in the agricultural operations and was earning not less than Rs.10,000/- per month. The claim petition was opposed by the insurer of the offending vehicle. The tribunal on assessment of oral and documentary evidence, answered the issue regarding the actionable negligence in the 'affirmative' in favour of the claimants. By determining the monthly

income of the deceased at Rs.3,000/- and as the deceased was a bachelor, the tribunal deducted 50% of the monthly income towards his personal and living expenses and by adopting the multiplier of 13 on the basis of the average age of the parents, quantified the loss of dependency to Rs.2,34,000/-. To this, the tribunal added Rs.10,000/- towards love and affection, Rs.5,000/- towards medical expenses and Rs.5,000/- towards funeral expenses. Thus, the tribunal awarded total compensation of Rs.2,54,000/- and directed the insurer of the offending vehicle to pay the said amount with interest at 6% p.a. from the date of petition till the date of payment.

3. The grievance of the claimants is that the tribunal has committed error in determining the monthly income of the deceased at Rs.3,000/-. It is also the contention of the claimants that having regard to the fact that the deceased was a young person studying in BBM, after his studies he would have got employment and would have drawn good salary and therefore, the tribunal ought to have given additional

weightage for the future prospects and on that basis, loss of dependency ought to have been quantified. It is also their contention that proper compensation has not been awarded under conventional heads.

4. The tribunal in the judgment under appeal accepted the case of the claimants that the deceased was a student of I year BBM. The tribunal also accepted the contention of the claimants that the family owns agricultural lands and the deceased was rendering assistance in the agricultural operations. Nevertheless, the tribunal quantified the monthly income of the deceased at Rs.3,000/-. The tribunal appears to have proceeded on the premise that for the whole of his career the deceased would have earned only Rs.3,000/-. No additional weightage is added for the future prospects while determining the income of the deceased. The Apex Court in a recent decision in the case of *Satosh Devi vs. National Insurance Co., Ltd., and another in Civil Appeal No.3723/12* has held that the additional weightage for future prospects required to be given even in cases of persons who were self employed or daily

wages earners. In this decision, the thumb rule evolved by the Apex Court in *Sarla Verma's* case has been explained and it is held that the said thumb rule laid down in *Sarla Varma's* case is not an absolute rule.

5. In the case on hand, having regard to the fact that the deceased was studying in I year BBM, within another two years, he would have completed his BBM degree and thereafter, he would gainfully employed elsewhere. Therefore, the income of the deceased would not forever continued to be Rs.3,000/-. In this view of the matter and in the light of the law laid down by the Apex Court in *Santhosh Devi's* case, it is just and appropriate to add another 50% of the income of the deceased as determined by the tribunal towards future prospects since the deceased was hardly aged about 22 years as on the date of the accident. On that basis, the average income of the deceased works out to Rs.4,500/- per month. As rightly observed by the tribunal, 50% of his monthly income should be deducted towards personal and living expenses of the deceased and remaining 50% should be taken as loss of dependency.

The tribunal has rightly adopted the multiplier of 13 having regard to the age of the parents. On this basis, the loss of dependency worked out to Rs.3,51,000/- (Rs.2,250x12x13). The claimants are entitled to Rs.3,51,000/- towards loss of dependency. The award of Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses is just and proper and does not warrant enhancement. However, the claimants are entitled to Rs.10,000/- for loss of estate. Thus, the claimants are entitled to total compensation of Rs.3,76,000/- as against Rs.2,54,000/- awarded by the tribunal. In view of the above, the appeal deserves to be allowed.

6. Accordingly, the appeal is allowed in part. The compensation awarded by the tribunal at Rs.2,54,000/- is enhanced to Rs.3,76,000/-. The respondent-Insurance company is directed to deposit the enhanced compensation of Rs.1,22,000/- with interest within 8 weeks from today. In the light of the order passed on Misc.Cvl.3265/09 condoning the delay of 582 days in filing the appeal, the enhanced compensation of

Rs.1,22,000/- shall carry interest at 6% p.a. from the date of petition up to the date of the award passed by the tribunal and from 16.02.2009 up to the date of the payment.

Sd/-
JUDGE

Srl.