



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

MISCELLANEOUS FIRST APPEAL NO.3707 OF 2022(MV-D)

BETWEEN:

1. SMT. LALITHAMMA
W/O LATE BOMMALINGAIAH @ KRISHNAPPA
AGED ABOUT 44 YEARS,
2. SUJENDRA K.,
S/O LATE BOMMALINGAIAH @ KRISHNAPPA
AGED ABOUT 26 YEARS,
3. AJAY K.,
S/O LATE BOMMALINGAIAH @ KRISHNAPPA
AGED ABOUT 23 YEARS,
4. VIJAY K.,
S/O LATE BOMMALINGAIAH @ KRISHNAPPA
AGED ABOUT 23 YEARS,
5. PUTTALINGAMMA
W/O LATE MARIGOWDA,
AGED ABOUT 63 YEARS,

APPELLANTS ARE
R/AT DUNDANAHALLI VILLAGE,
ATHAGUR HOBLI,
MADDUR TALUK,
MANDYA TALUK AND
DISTRICT - 571401

...APPELLANTS

(BY SRI. RAJA L, ADVOCATE)



AND:

1. SRI. SANTHOSH KUMAR K. G.,
S/O GOPAL K. R. MAJOR,
R/O NO 3A/1, F. BLOCK,
T NARASIPURA ROAD,
GIRIDARSHINI LAYOUT,
ALANAHALLI, MYSORE.
2. THE BRANCH MANAGER
THE NEW INDIA ASSURANCE CO. LTD.,
2ND CROSS, ASHOKA NAGARA,
MANDYA, MANDYA TALUK AND
DISTRICT - 571401

...RESPONDENTS

(BY SMT. HARINI SHIVANANDA., ADVOCATE FOR R2 (VC);
R1- SERVED, UNREPRESENTED)

THIS MFA FILED U/S.173(1) OF MV ACT, AGAINST THE
JUDGMENT AND AWARD DATED 03.01.2022 PASSED IN
MVC NO.443/2019 ON THE FILE OF THE SENIOR CIVIL JUDGE,
MACT, MADDUR, PARTLY ALLOWING THE CLAIM PETITION FOR
COMPENSATION AND SEEKING ENHANCEMENT OF
COMPENSATION.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA



ORAL JUDGMENT

Heard Sri.Raja.L learned counsel for the appellants who appears physically before this Court. Also heard Smt.Harini Shivananda, learned counsel for respondent No.2 who appears through video conference.

2. The wife, three sons and the mother of the deceased Bommalingaiah @ Krishnappa who died in a road traffic accident that occurred on 14.02.2019 filed a petition claiming compensation of Rs.60,00,000/- in total. The Motor Accidents Claims Tribunal, Maddur which dealt with the same as MVC No.443/2019 passed orders on 03.01.2022 holding that they are entitled to a sum of Rs.17,21,200/- as compensation. Dissatisfied with the same, the claimants are before this Court seeking enhancement.

3. Sri.Raja.L, learned counsel for the appellants contends that as per Ex.P8-Post mortem report, the deceased was aged about 44 years by the date of accident. However, the Tribunal took the age of the



deceased Bommalingaiah @ Krishnappa (herein after referred to as the 'deceased' for brevity) as 52 years which is erroneous. Learned counsel also contends that the dependents are five in number. Therefore, as per the decision of the Hon'ble Apex Court in the case of *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another* reported in *AIR 2009 SC 3104*, 1/4th of the earnings are required to be deducted towards the personal and living expenses which the deceased would have incurred for himself had he been alive. However, the Tribunal deducted 1/3rd of the earnings. Learned counsel thereby seeks to recalculate and to award the amount claimed.

4. Per contra, the submission that is made by Smt. Harini Shivananda, learned counsel for respondent No.2 is that the sons of the deceased attained the age of majority by the date of accident. Therefore, they cannot be considered to be the dependents of the deceased. Thus



the Tribunal has rightly deducted $1/3^{\text{rd}}$ of the earnings towards personal and living expenses.

5. Coming to the age of the deceased by the date of accident, the Tribunal placing reliance upon Ex.P20-Aadhaar card, took the age of the deceased as 52 years by the date of accident. As per the contents of the Ex.P20-Aadhaar card, the deceased was born on 01.01.1969. It is not in dispute that the accident occurred on 14.02.2019. Thus the deceased as per Ex.P20-Aadhaar card is aged about 50 years by the date of accident but not 52 years as observed by the Tribunal. Therefore, the age of the deceased for the purpose of calculating compensation is taken as 50 years by the date of accident.

6. Coming to the deduction towards personal and living expenses, as rightly contended by Smt. Harinin Shivananda, the three sons of the deceased i.e., appellant Nos.2 to 4 attained the age of majority by the date of accident. It is mentioned that the age of the 2nd appellant is 23 years and the appellant Nos.3 and 4 as 20 years by



the date of accident. There is no proof that they have started their actual earnings. On consideration the age as mentioned, it can be safely inferred that they might have been pursuing their studies or had just chosen their occupation. Therefore, it cannot be held that they were not depending upon the earnings of the deceased by the date of accident. Therefore, considering the dependents to be five in number, this Court holds that $\frac{1}{4}^{\text{th}}$ of the earnings of the deceased are required to be deducted towards personal and living expenses which the deceased would have incurred for himself had he been alive.

7. The deceased being aged about 50 years by the date of accident, 25% of his earnings are required to be added towards future prospects as per the decision of the Hon'ble Apex Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and Others* reported in (2017) 16 SCC 680. Also the deceased being aged about 50 years by the date of accident, appropriate multiplier to be applied is '13'. The notional income as taken by the



Tribunal i.e., Rs.14,000/- p.m. is proper. Thus the amount which the appellants are entitled to under the head loss of dependency is as under:

Notional monthly income	Rs.14,000/-
Annual income	Rs.1,68,000/-
Add 25% towards future prospects	Rs.2,10,000/-
Deduct 1/4 th towards personal and living expenses	Rs.1,57,500/-
On applying appropriate multiplier 13	Rs.20,47,500/-

8. Thus the compensation which the appellants are entitled to under the head loss of dependency is Rs.20,47,500/-. Together with the said amount, the appellants are entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. The first appellant being the wife of the deceased is entitled to Rs.40,000/- towards loss of spousal consortium. The



appellant Nos.2 to 4 being the sons of the deceased are entitled to Rs.40,000/- under the head loss of parental consortium. The fifth appellant being mother of the deceased is entitled to Rs.40,000/- under the head loss of filial consortium.

9. Thus the total compensation which the appellants are entitled to is as under:

Sl. No	Description	Amount
1	Loss of dependency	Rs.20,47,500
2	Funeral expenses	Rs.15,000
3	Loss of estate	Rs.15,000
4	Loss of spousal consortium	Rs.40,000
5	Loss of parental consortium	Rs.40,000
6	Loss of filial consortium	Rs.40,000
Total		Rs.21,97,500



10. The Tribunal through the impugned order awarded a sum of Rs.17,21,200/- as compensation. However, the justifiable sum which the appellants are entitled to is Rs.21,97,500/-.

11. Therefore, the appeal is disposed of with the following:

ORDER

- (i) The appeal is allowed in part.
- (ii) The compensation that is awarded by the Motor Accidents Claims Tribunal, Maddur through orders in MVC No.443/2019 dated 03.01.2022 is enhanced from Rs.17,21,200/- to Rs.21,97,500/-.
- (iii) The enhanced sum shall carry interest at the rate of 6% p.a. from the date of petition till the date of deposit.
- (iv) Respondent No.2 is directed to deposit the enhanced sum within a period of 8(eight) weeks from the date of receipt of copy of this order.



- (v) On such deposit, the appellants are permitted to withdraw their respective shares.
- (vi) Apportionment made applies to enhanced sum as well.

Sd/-
(DR.CHILLAKUR SUMALATHA)
JUDGE

NS
CT:TSM
List No.: 1 Sl No.: 45