

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF FEBRUARY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

M.F.A. NO.4565/2016 (MV)

BETWEEN:

1. SUJATHA K R
W/O LATE Y.S. NARAYANASWAMY
AGED ABOUT 53 YEARS.
2. RAJESH Y.N.
S/O LATE Y.S. NARAYANASWAMY
AGED ABOUT 27 YEARS.

BOTH ARE R/AT RAJESH NILAYA
GOWRIPET, 5TH CROSS, KOLAR.

... APPELLANTS

(By Smt. AKSHITA D. JAIN, ADV., FOR
Sri. H. PAVANA CHANDRA SHETTY, ADV.,)

AND:

1. VARUN K R
AGE MAJOR, R/AT NO.1233
SAI SOWRABHA, CORNATION ROAD
BANGARPET, KOLAR DISTRICT-563101.
2. NATIONAL INSURANCE CO. LTD.,
BINDU, NEAR DOOM LIGHT CIRCLE
KOLAR-563101.

... RESPONDENTS

(By Smt. H.R. RENUKA, ADV., FOR R2
V/O DTD 6/2/2020 NOTICE TO R1 IS D/W)

- - -

THIS M.F.A. IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 21.11.2015 PASSED IN MVC NO.51/2013 ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE, MACT, KOLAR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS M.F.A. COMING ON FOR ADMISSION, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act', for short) has been filed by the claimants being aggrieved by the judgment dated 21.11.2015 passed by the Motor Accident Claims Tribunal seeking enhancement of compensation.

2. Facts giving rise to the filing of the appeal briefly stated are that the deceased T.S.Narayanaswamy had gone to Kendatti on his TVS Scooty to distribute the invitation card of his son's marriage. While he was proceeding on N.H.4 road near Narasapura, Maruti Swift Dezire which was being driven by its driver in a rash and

negligent manner, dashed against the TVS Scooty. As a result of the aforesaid accident, the deceased was hospitalized and later he succumbed to the injuries. The claimants filed a petition under Section 166 of the Act on the ground that the deceased was aged about 60 years at the time of accident and was engaged in agricultural, sericulture and doing the business of milk vending. It was further pleaded that he was working in the agricultural department, Kolar and used to earn ₹30,000/- p.m. The claimants claimed compensation along with interest. On service of notice, the respondent No.1 filed written statement in which it was admitted that he is the owner of the vehicle in question and the same was insured with respondent No.2 on the date of accident. The averments in the claim petition were denied. The respondent No.2 filed written statement in which the alleged accident, death as well as the profession and income of the deceased were denied. However, it was admitted that the offending vehicle

namely car in question was insured with respondent No.2. It was further pleaded that the liability of the Insurance Company is strictly subject to the terms and conditions of the policy.

3. On the basis of the pleadings of the parties, the Claims Tribunal framed the issues and thereafter recorded the evidence. The claimant No.1 examined herself as PW-1 and got exhibited documents namely Ex.P1 to Ex.P8. The respondents did not adduce any evidence in support of their case. The Claims Tribunal, by the impugned judgment, *inter alia*, held that the accident took place on account of rash and negligent driving of the offending vehicle by its driver, as a result of which, the deceased sustained injuries and succumbed to the injuries. The Tribunal further held that the claimants are entitled to a compensation of ₹4,80,000/- along with interest at the rate of 6% p.a. Being aggrieved, this appeal has been filed.

4. Learned counsel for the appellants submitted that since the deceased was getting a family pension of ₹10,506/- p.m. and even the married son is entitled to file a petition seeking compensation. Therefore, 1/3rd of the family pension which was payable to the deceased has to be deducted and the amount of compensation ought to have been assessed accordingly. In support of her submission, she has placed reliance on the judgment of the Supreme Court in Civil Appeal Nos.2420243/2020 dated 13.01.2020. On the other hand, learned counsel for the Insurance Company has submitted that the amount of compensation which has been awarded by the Claims Tribunal is just and proper and does not call for interference of this Court in this appeal.

5. We have considered the submissions made by the learned counsel for the parties and have perused the record. It is pertinent to mention here that the appellant No.2 is the married son. The appellant No.1,

in her cross-examination, has admitted that the appellant No.2 is employed. Therefore, the appellant No.2 cannot be considered to be a dependant on the income of the deceased. So far as the aforesaid decision relief upon by the learned counsel for the appellants is concerned, the same is an authority for proposition that the married son, if he is a legal representative, is entitled to move an application for compensation. The question whether or not the married son is dependant on a victim of a motor vehicle accident has to be decided in the facts of the case and the evidence adduced by the parties. In the instant case, the appellant No.1 has admitted that the appellant No.2 is employed. Therefore, the same cannot be disputed. The Tribunal has rightly deducted 1/2 of the amount of pension payable to the deceased.

6. Now, we may advert to the question of quantum of compensation. The Tribunal has taken into account

the loss of dependency at ₹5,000/- p.m. and has applied multiplier of 7 taking into account the age of the deceased and held that the claimants are entitled to a sum of ₹4,20,000/- under the head of loss of dependency. We find that the aforesaid amount is just and proper and does not call for any interference. However, in view of the law laid down by the Supreme Court in the case of '**MAGMA GENERAL INSURANCE CO. LTD. Vs. NANU RAM**' 2018 ACJ 2782, appellant No.1 who is the widow and appellant No.2 who is the son, are entitled to a sum of ₹40,000/- each on account of loss of consortium as well as loss of love and affection. In addition, the appellants are entitled to ₹30,000/- under the head of loss of estate and funeral expenses. Thus, in all, the appellants are entitled to ₹5,30,000/- as compensation. Needless to state that the aforesaid amount of compensation shall carry interest at the rate of 6% p.a. from the date of petition

till payment is made. To the aforesaid extent, the judgment of the Claims Tribunal is modified

Accordingly, the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

RV