

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2019

BEFORE

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

MFA NO. 6694 OF 2016 (MV)

BETWEEN

1. HEMAVATHI. S
W/O LATE MANJUNATHA REDDY
AGED ABOUT 27 YEARS
2. MASTER DURGA PRASAD REDDY .H.M.
S/O LATE MANJUNATHA REDDY
AGED ABOUT 6 YEARS
3. H. A. NARAYANA REDDY
S/O APPAIAH REDDY
AGED ABOUT 72 YEARS
4. SHANKARAMMA
W/O H.A. NARAYANA REDDY
AGED ABOUT 67 YEARS

ALL ARE RESIDING AT
NO. 147, B. HOSAHALLI
HANDENAHALLI
ANEKAL TALUK
BANGALORE – 562 125.

SINCE THE 2ND APPELLANT IS MINOR
REPRESENTED BY HIS MOTHER
1ST APPELLANT AS
NATURAL GUARDIAN.

... APPELLANTS

(BY SRI. A. SREENIVASAIAH - ADVOCATE)

AND

1. K. RAVI
S/O KUNJU PILLAI
NO.8/115 A, PAYANAM
UNNAMALI KADAI POST
KANNIYAKUMARI
TAMIL NADU – 629179.
2. THE MANAGER
UNITED INDIA INSURANCE CO. LTD.,
R.O. NO. 18, 5TH FLOOR
KRUSHI BHAVAN
HUDSON CIRCLE
BANGALORE – 560 001.

... RESPONDENTS

(BY SRI. C. R. RAVISHANKAR – ADV., FOR
SRI P. B. RAJU – ADV., FOR R-2
NOTICE TO R-1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 26.5.2016 PASSED IN MVC NO. 603/14 ON THE FILE OF THE SENIOR CIVIL JUDGE, ADDITIONAL MACT, ANEKAL, 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

Though this appeal is listed for admission, with the consent of learned counsel on both sides, the matter is taken up for final disposal.

2. This appeal is preferred by the appellants/claimants against the judgment and award rendered by the MACT in MVC No.603/2014 seeking enhancement of compensation.

3. The factual matrix of the appeal is as under:

It is stated in the claim petition that on 24.10.2014 at about 9.00 p.m., deceased Manjunatha Reddy was proceeding in a motor cycle bearing No.KA-51-L-1863 and when he came near Yamare Bus Stand, Attibele Sarjapura Road, at that point of time and place a lorry bearing No.TN-41-R-4600 being driven by its driver in a rash and negligent manner endangering to human life came in opposite direction with high speed and due to excessive speed, the driver of the above said lorry lost his control over the vehicle and dashed against the motor cycle ridden by Manjunatha Reddy and caused accident. The said Manjunatha Reddy sustained grievous injuries and died at the spot itself. The deceased was aged about 33 years and he was the only bread earner of his family and was earning

Rs.20,000/- per month by doing carpenter work and agricultural work. Due to the untimely death of Manjunatha Reddy, the petitioners being the dependants filed claim petition seeking compensation.

4. On issuance of notice, respondents 1 and 2 appeared through their counsel but did not file any statement to resist the claim of the petitioner and the statement on behalf of the respondents was taken as nil. During the course of trial, petitioner no.1 herself examined as PW.1 and 11 documents were got marked as per Exs.P1 to 11. After hearing the arguments, the Tribunal framed the issues and on perusal of oral and documentary evidence, passed the impugned judgment, awarding compensation of Rs.10,14,000/- with interest @ 6% p.a. from the date of petition till realisation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners have filed this appeal seeking enhancement of compensation by urging various grounds.

5. Learned counsel for the appellants contends that having regard to the avocation of the deceased who was working as Carpenter, the income assessed by the Tribunal is on lower side and the same needs enhancement. Further, he contends that the Tribunal ought to have considered future prospects as the deceased being carpenter and was aged 33 years. Further, the compensation awarded under the conventional heads is also on lower side and the same needs to be enhanced. On all these grounds, the compensation awarded by the Tribunal being inadequate, seeks for enhancement of compensation by allowing the appeal.

6. Per contra, the learned counsel appearing for the insurer submitted that the Tribunal, on appreciation of the evidence and material on record has rightly assessed the income of the deceased and awarded just and fair compensation, which does not call for interference and prays that the appeal being devoid of merits, be dismissed.

7. In this context of contentions taken by learned counsel for the appellants as well as learned counsel for the respondent – insurer, it is relevant to state that there is no dispute with regard to death of one Manjunatha Reddy in a road traffic accident that took place on 24.10.2014. On perusal of Ex.P1-FIR, Ex.P2-complaint, Ex.P3-Mahazar, Ex.P4-Charge sheet, Ex.P5-IMV report, Ex.P6-PM report, Ex.P7-panchanama, the Tribunal has rightly held that the accident took place due to the rash and negligent driving of the driver of the offending lorry bearing Reg.No.TN-41-R-4600. The PM report also reveals that the death of deceased was due to the injuries sustained in the said accident.

8. Petitioners are the wife, minor son and parents of deceased Manjunatha Reddy. The Tribunal by relying on the PM report has taken the age of the deceased as 35 years at the time of accident and considering the avocation of the deceased who was working as a Carpenter, has taken Rs.6,000/- per month as the notional income of the deceased in the absence of proof

of income. By deducting 1/4th towards personal expenses and applying multiplier of 16, the Tribunal has awarded Rs.8,64,000/- towards loss of dependency. But having regard to the year of accident and the avocation of the deceased as Carpenter and also keeping in view the guidelines and illustration of Lok Adalath chart, the income of the deceased has to be taken at Rs.8,500/- p.m. as against Rs.6,000/- taken by the Tribunal. Further, as per the law laid down by the Hon'ble Apex Court in National insurance company ltd., vs. Pranay Sethi reported in AIR 2017 SC 5157, future prospects has to be added to the income of the deceased. Accordingly, the compensation under the head - loss of dependency is re-worked out as under:

Income per month	8,500
Add: future prospects @ 40%	<u>3,400</u>
	11,900
Less: 1/4 th personal expenses	<u>2,975</u>
	8,925
Rs.8,925 x 12 x 16 = 17,13,600/-	

9. Further, the Tribunal has awarded Rs.20,000/- towards funeral expenses, Rs.5,000/- towards transporting of dead body, Rs.25,000/- towards loss of

love and affection and Rs.50,000/- towards loss of consortium. In all Rs.1,00,000/- has been awarded under conventional heads. However, keeping in view the ratio of reliance in Pranay Sethi's case as stated supra, the compensation under conventional heads shall not exceed Rs.70,000/-. Accordingly, the compensation under the conventional heads is scaled down to Rs.70,000/-.

10. In so far as loss of care and guidance of minor son who is aged about 4 years represented by mother who is aged 25 years and having lost her husband at very young age, the Tribunal has awarded Rs.50,000/-. But having regard to the ratio of the reliance in the case of **MAGMA GENERAL INSURANCE CO. LTD. vs. NANU RAM (2018 SCC ONLINE SC 1546)**, the Apex Court had awarded Rs.40,000/- towards loss of filial consortium. But in the present case, the Tribunal has awarded Rs.50,000/- towards loss of care and guidance for minor children, which appears to be slightly on the higher side. Hence, in accordance with the said ruling,

the same is scaled down to Rs.40,000/- from Rs.50,000/- awarded by the Tribunal.

In view of the discussion made above and with the altered factors, the compensation is re-worked out as under:-

Compensation awarded under the heads	By MACT	By this Court
Loss of dependency	8,64,000	17,13,600
Towards burial charges	20,000	} 70,000
Transporting dead body	5,000	
Loss of love and affection	25,000	
Loss of consortium	50,000	
Loss of care and guidance for minor children	50,000	40,000
Total	10,14,000	18,23,600

Thus, in all the claimants are entitled to total compensation of Rs.18,23,600/- as against Rs.10,14,000/- awarded by the Tribunal and the enhanced compensation would be Rs.8,09,600/-

In view of the above findings, I proceed to pass the following:

ORDER

The appeal is allowed in part. The impugned judgment and award dated 26.05.2016 passed by the Tribunal in MVC No.603/2014 is hereby modified. The appellants/claimants are entitled for enhanced compensation of Rs.8,09,600/- with interest @ 6% p.a. from the date of petition till realisation.

The Respondent-insurer shall deposit the enhanced compensation with interest before the Tribunal within four weeks from the date of receipt of copy of this judgment and on such deposit, the same shall be released to the claimants, on proper identification. However, the impugned judgment and award, in so far as it relates to the rate of interest, apportionment and deposit is concerned, shall remain unaltered.

Office to draw the decree accordingly.

**SD/-
JUDGE**

DKB