

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 6TH DAY OF SEPTEMBER 2011

BEFORE

THE HON'BLE MR.JUSTICE SUBHASH B ADI

MISCELLANEOUS FIRST APPEAL NO.9536 OF 2010 (MV)

BETWEEN:

1. BHAVYASHREE @ BHAVYA
W/O LATE B.L.RANGASWAMY
AGE: 23 YEARS
2. B.R.DEEPTHI
D/O LATE B.L.RANGASWAMY
AGE: 3 YEARS
3. JAYAMMA
W/O LAKKEGOWDA
AGE: 56 YEARS
4. LAKKEGOWDA
S/O RANGEGOWDA
AGE: 61 YEARS
5. B.R.MANJUNATHASWAMY
S/O LATE B.L.RANGASWAMY
AGE: 1 YEARS

A2 AND A5 ARE MINORS, REP
BY THEIR NATURAL GUARDIAN
MOTHER A1
ALL ARE R/O BELAGULI VILLAGE
KUNDUR POST, DANDIGANAHALLI
HOBLI, CHANNARAYAPATNA
TALUK, HASSAN DISTRICT

... APPELLANTS

(BY SMT.KAVITHA H.C., ADV.)

AND:

1. THE BRANCH MANAGER
THE NEW INDIA ASSURANCE CO. LD.
HARSHA MAHAL ROAD
HASSAN – 573 201
2. H.N.SURESH RAO
S/O LATE H.M.NARAYANA RAO
NO.4478, 3RD CROSS
VALLABAI ROAD, HASSAN ...RESPONDENTS

(SRI.R.RAJAGOPALAN, ADV. FOR R1
NOTICE TO R2 D/W)

This MFA is filed under section 173(1) of Motor Vehicles Act against the judgment and award dated 7.5.2010 passed in MVC No.1686/2009 on the file of the Presiding Officer, Fast Track Court, MACT, Channarayapatna partly allowing the claim petition and seeking enhancement of compensation.

This appeal coming on for orders this day, the Court delivered the following:-

JUDGMENT

Memo is filed for dispensation of notice to respondent No.2 as the liability of respondent No.1 is not in dispute. Hence, notice to respondent No.2 is dispensed with.

2. There is a delay of 56 days in filing the appeal.
Cause shown is accepted. Delay of 56 days in filing the



appeal is condoned. Accordingly,
Misc.Cvl.No.19772/2010 is allowed.

3. This is claimants' appeal against the judgment and award dated 7.5.2010 in MVC No.1685/2009 on the file of the MACT, Channarayapatna seeking enhancement of compensation.

4. On appreciation of the evidence on record, the Tribunal has awarded compensation of ₹.2,82,000/- with interest. Unsatisfied with the same, claimants are before this Court.

5. Claimants are wife, two minor children and parents of the deceased. The deceased died in a road accident that occurred on 21.8.2009. He was moving as a pillion rider on a motorcycle bearing No.KA-11 J-6395. At that time, a lorry bearing No.KA-05 7549 came from opposite direction and dashed against the motorcycle, as a result of which, deceased sustained injuries and succumbed to the same. The Tribunal has



held that it was head on collusion and as such, both drivers have contributed 50% negligence as against the accident.

6. No doubt, accident is head on collusion. However, the accident has occurred almost in the middle of the road. Since the motorcycle being a small vehicle, of course there was a possibility to avoid the accident. However, the driver of the lorry could have taken reasonable care to avoid the accident. It is not in dispute that the width of the road is 24 feet and there was no other vehicle. If that is so, the driver of the lorry could have taken care and avoided the accident. In my opinion, negligence could be fixed at 30% to the driver of the motorcycle and 70% to the driver of the lorry. As far as the compensation is concerned, there is no error.

Accordingly, appeal is allowed in part. Negligence of the rider of the motorcycle is reduced to ⁴20%.

S. M.

Insurer is liable to indemnify 70% of the compensation,
which comes to ₹ ^{4,95,600/-} 3,94,800/- with interest.

Corrected x/o
dt. 26.6.12

Sd/-
JUDGE

RV