



**NC: 2023:KHC-D:8853**  
**MFA No. 25426 of 2012**  
**C/W MFA.CROB No. 100105 of 2015**

**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 11<sup>TH</sup> DAY OF AUGUST, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR**

**MISCELLANEOUS FIRST APPEAL NO.25426/2012(MV)**

**C/W**

**MFA CROSS OBJ NO.100105/2015**

**IN MFA.NO.25426/2012:**

**BETWEEN:**

THE NEW INDIA ASSURANCE COMPANY LIMITED,  
ASIAN BUILDING II (112000) R.K.MARG, 3 FLOOR,  
BOMBAY-400 001, REPRESENTED BY ITS ASSISTANT,  
MANAGER REGIONAL, OFFICE, TP-HUB-II FLOOR,  
SRINATH COMPLEX, NEW COTTON MARKET, HUBLI-  
580029.

...APPELLANT

(BY SRI G. N. RAICHUR, ADVOCATE)

**AND:**

1. SMT FAKIRAVVA KOM RAMANNA BIRANNAVAR,  
AGE: 33 YEARS, OCC: HOUSE WIFE,  
R/O: KATARKI, TQ AND DIST: KOPPAL.
2. BASAMMA D/O RAMANNA, AGE: 16 YEAR.
3. HANUMAVVA D/O RAMANNA, AGE: 15 YEAR.
4. SARASWATI D/O RAMANNAM, AGE: 13 YEAR.
5. SUNIL S/O RAMANNA, AGE: 9 YEAR,
6. KAVERI D/O RAMANNA, AGE: 7 YEAR.

SINCE THE RESPONDENT NO.2 AND 6 ARE THE MINORS  
REPERESNTED BY THEIR NATURAL MOTHER RESPONDENT  
NO.1 ALL ARE R/O: KATRAKI, TQ AND DIST: KOPPAL.





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7. SRI RAKESH TAGNAYA S/O. PREMSINGH TAGNYA,  
AGE: MAJOR, OCC: DRIVER OF THE CAR BEARING  
NO.MH-02/NA-4454,  
R/O: R.NO.251-3:6 BHARAT NAGAR, CHL HANUMAN  
NAGAR AKRALLI ROAD,KANDIVILI (E) MUMBAI.
8. OWNER OF CAR NO.MH-02/NA-4454  
AXIS ELECTRICAL COMPONENTS (INDIA) PVT LTD., PLOT  
NO.104-C AXIS HOUSE GOVT. INDUSATRIAL ESTATE  
CHARKOP KANDAVILI,(WEST) MUMBAI, DIST: GREATER  
MUMBAI.
9. RUDRAGOUDA G. S/O KETTE BASAPPA OWNER,  
MOTOR CYCLE NO.KA-34/J-7808,  
R/O: KARURU POST, TQ: SHIRGUPPA,  
DIST: BELLARY.

...RESPONDENTS

(BY SRI GURURAJ R. TURMARI, ADVOCATE FOR R1;  
R2 TO R6 ARE MINORS REPRESENTED BY R1;  
R7, R8 AND R9 ARE SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MOTOR  
VEHICLE ACT, 1988, PRAYING TO CALL FOR THE RECORDS HEAR  
THE PARTIES AND SET ASIDE THE JUDGMENT AND AWARD DATED  
31.08.2012 IN MVC NO.296/2011 PASSED BY THE FIRST  
ADDITIONAL FAST TRACK COUT KOPPAL, BY ALLOWING THIS  
APPEAL WITH COST IN THE ENDS OF JUSTICE AND EQUITY.

**IN MFA.CROB.NO.100105/2015:**

**BETWEEN:**

1. SMT FAKIRAVVA W/O RAMANNA BYRANNAVAR,  
AGE: 36 YEARS, OCC: HOUSE HOLD WORK,  
R/O: KATARAKI, TQ AND DIST: KOPPAL.
2. BASAMMA D/O RAMANNA,  
AGE: 19 YEARS, OCC: NIL,  
R/O: KAARAKI, TQ AND DIST: KOPPAL.
3. SARASWATI D/O. RAMANNAM, AGE: 16 YEARS.
4. SUNIL S/O. RAMANNA, AGE: 12 YEARS.
5. KAVERI D/O. RAMANNA, AGE: 10 YEARS.



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R3 TO R5 R/O: KATARAKI, TQ AND DIST: KOPPAL AND  
ARE MINORS REPRESENTED BY THEIR NATURAL  
GUARDIAN, I.E. THEIR MOTHER, APPELLANT NO.1.

...CROSS OBJECTORS

(BY SRI GURURAJ R. TURAMARI, ADVOCATE)

**AND:**

1. THE NEW INDIA ASSURANCE COMPANY LIMITED,  
ASIAN BUILDING II(112000)17, R.K. MARG,  
3<sup>RD</sup> FLOOR, BALLARD ESTATE, MUMBAI-400 001,  
REPRESENTED BY ITS ASSISTANT MANAGER.
3. RAKESH TAGNA  
S/O. PREMSINGH TAGNA,  
AGE: DRIVER, CAR NO.MH-02/NA-4424,  
R/O: R.NO.251-3:6, BHARATH NAGAR,  
CHL HANUMAN NAGAR, AKRALLI ROAD,  
KANDIWALI(E), MUMBAI.
4. OWNER OF CAR NO.MH-02/NA-4454  
AXIS ELECTRICAL COMPONENTS (INDIA) PVT. LTD., P  
LOT NO.104-C AXIS HOUSE GOVT. INDUSATRIAL ESTATE  
CHARKOP KANDAVILI,(WEST) MUMBAI,  
DIST: GREATER MUMBAI.
5. RUDRAGOUDA G.  
S/O KETTE BASAPPA OWNER,  
MOTOR CYCLE NO.KA-34/J-7808,  
R/O: KARURU POST, TQ: SHIRGUPPA,  
DIST: BELLARY.

...RESPONDENTS

(BY SRI G.N. RAICHUR, ADVOCATE FOR R1)

THIS MFA CROB IS FILED UNDER ORDER 41 RULE 22 OF CPC,  
PRAYING TO CALL THE RECORDS AND MODIFY THE JUDGMENT AND  
AWARD DATED 31.08.2012, PASSED BY THE LEARNED JUDGE FAST  
TRACK-1, IN MVC NO.296/2011, IN THE INTEREST OF JUSTICE AND  
EQUITY.

THESE MFA CROB AND APPEAL, COMING ON FOR ADMISSION,  
THIS DAY, THE COURT DELIVERED THE FOLLOWING:



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### **JUDGMENT**

MFA.No.25426/2012 is filed by the appellant-Insurance Company challenging the judgment and award dated 31.08.2012 in MVC.No.296/2011 passed by learned Judge Fast Track-I, Koppal, being aggrieved by attributing 80% of contributory negligence on the part of driver of the car and also modification on the quantum of compensation.

2. MFA.Crob.100105/2015 in MFA.No.25426/2012 is filed by the claimants challenging the aforesaid judgment and award for seeking enhancement of compensation.

3. The factum of accident is not in dispute.

4. Heard the arguments from both sides and perused the records.

5. In the present case, the deceased was riding his motorcycle from Honnapura in order to go to Shiggaon. When the deceased was riding his motorcycle bearing



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No.KA-34/J-7808 near divider, at the same time, car which was moving from Hubballi to Shiggaon on NH-4 without noticing that there is a signal of divider road drove the car with high speed and dashed the motorcycle. In this way, the accident was caused resulting into death of rider of the motorcycle. The police Investigating Officer has filed the charge sheet against both the deceased and driver of the car. It is the submission of learned counsel for the appellant-Insurance Company that the deceased is also equally responsible for the accident because he has not slowed down the motorcycle while crossing the divider as he has entered half of the national highway and therefore, submitted that both are equally responsible for the accident.

6. Upon considering this scenario of accident as stated in the police records including the charge sheet, just because, both the deceased and driver of the car are charge sheeted for the offence of commission of crime of road traffic accident as above stated that is always not to



hold that both are equally responsible for the accident. Even there is some degree of negligence on the part of one vehicle, quite naturally, the Investigating Officer files charge sheet against both the drivers, but in the claim proceedings, the degree of rash and negligence attributed by considering all the evidence on record, more particularly, the police records, the deceased was riding the motorcycle from Honnapura in order to go to Shiggaon by crossing the divider. At the same time, the driver of the car was also coming from Hubballi to Shiggaon. He was at the National Highway. There is a sign board of giving signal that there is a road divider. Without slowing down the car dashed the motorcycle.

7. Therefore, In this regard, both are responsible for the accident, but the fact is considered who is more rash and negligent. The driver of the car was coming from Hubballi to Shiggaon admittedly he is on National Highway No.4 and there was a sign board of giving signal as there was road divider and at that movement it is the duty of



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the driver of the car, upon seeing the road divider would have to slowdown the car but did not slowdown the car. Also at the same time, the deceased while crossing the divider would have to slowdown his motorcycle but he did not slowdown the motorcycle. Therefore, the responsibility is more on the driver of the car as he was driving the heavy vehicle that too on National Highway and upon seeing the road divider, it is required for him to slowdown or control the car, but without doing it, dashed the motorcycle. Therefore, upon comparing the duty and responsibility on part of both drivers, the driver of the car is having more responsibility in driving the car and slowing down the car or to have control over speed, as he is driving bigger vehicle. Therefore, in this regard, it can be held that the driver of the car has contributed 80% to the accident, the deceased motorcycle has contributed 20% of rash and negligent and caused accident and it is held by the Tribunal correctly which needs no interference and therefore, the appeal on this point is liable to be dismissed.



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**REGARDING QUANTUM OF COMPUTATION:**

**MFA.NO.25426/2012**

8. The Tribunal has awarded compensation as follows:

1.	Loss of dependency	Rs.4,80,000/-
2.	Towards transportation of dead body	Rs.5,000/-
3.	Towards funeral charges	Rs.5,000/-
4.	Loss of consortium	Rs.10,000/-
	<b>Total</b>	<b>Rs.5,00,000/-</b>

9. In the present case, the deceased was aged 40 years and was a agriculturist and coolie died in the accident caused on 04.03.2011. The Tribunal has taken the income as Rs.4,000/- which is on lower side. Therefore, as per the chart of notional income recognized by the Karnataka State Legal Services Authority, a sum of Rs.6,000/- per month to be taken as notional monthly income of the deceased. The Tribunal has not added income towards loss of future prospects in life. According





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to the age of the deceased, 40% of the income is to be added towards 'Loss of Future Prospects' as per the judgment of the Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi**<sup>1</sup>, i.e., Rs.2,400/- (Rs.6,000 x 40%). Therefore, the monthly income of the deceased is taken at Rs.8,400/-. There were totally 5 dependants, hence, 1/4<sup>th</sup> of his income is deducted towards his 'Personal and living expenses'. The appropriate multiplier applicable as per the judgment of the Hon'ble Supreme Court, in the case of **Smt. Sarla Verma & Others. Vs. Delhi Transport Corpn And Another**<sup>2</sup> is 15. Therefore, the compensation under the head of '**Loss of dependency along with loss of future prospects in life**' is recalculated and quantified as follows:

Rs.6,000 + Rs.2,400 (40% of Rs.6,000) x  $\frac{3}{4}$  x 15 x 12 =  
**Rs.11,34,000/-.**

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<sup>1</sup> (2017) 16 SCC 680

<sup>2</sup> AIR 2009 SC 3104



10. The Tribunal has awarded a sum of Rs.10,000/- towards 'loss of consortium', which is on lesser side. There are totally five dependants of the deceased, hence, as per the judgment of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Limited v. nanu Ram & Others***<sup>3</sup> and National Insurance Co. Ltd. Vs. Pranay Sethi,<sup>4</sup> the claimants are entitled to Rs.40,000/- each under the head of '**Loss of Consortium**'. Accordingly, **Rs.2,00,000/-** (Rs.40,000 x 5) is awarded under the head of 'Loss of love and affection'.

11. Further, Tribunal has awarded compensation of Rs.5,000/- towards 'Transportation of dead body and funeral expenses', which is on lesser side. Hence, **Rs.15,000/-** compensation awarded under the head of '**Transportation of dead body and funeral expenses**'.

12. Further the Tribunal has not awarded compensation towards 'loss of estate'. Hence,

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<sup>3</sup> 2018 ACJ 2782

<sup>4</sup> (2017) 16 SCC 680



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**Rs.15,000/-** compensation is awarded towards the '**loss of estate**'.

13. Hence, the claimants are entitled for a total enhanced compensation, under various heads as follows:

1.	Loss of dependency along with loss of future prospects in life $\text{Rs.6,000} + \text{Rs.2,400 (40\% of Rs.6,000)} \times \frac{3}{4} \times 15 \times 12$	Rs.11,34,000/-
2.	Loss of consortium (Rs.40,000 x 5)	Rs.2,00,000/-
3.	Transportation of dead body and funeral expenses	Rs.15,000/-
4.	Loss of estate	Rs.15,000/-
	<b>Total</b>	<b>Rs.13,64,000/-</b>

14. Therefore, the claimants are entitled for 80% compensation of Rs.13,64,000/- along with interest at 6% per annum from the date of filing of the petition till deposit.

15. Accordingly, I proceed to pass the following:



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ORDER

- i) MFA No.25426/2012 filed by the insurance company is ***dismissed***.
- ii) MFA.CROB.No.100105/2015 filed by the claimants is ***allowed in part***.
- iii) The judgment and award dated 31.08.2012, passed in M.V.C. No.296/2011, on the file of the learned Judge Fast Track-I, Koppal, stands modified to the aforesaid extent.
- iv) The claimants are entitled for 80% compensation of Rs.13,64,000/- along with interest at 6% per annum from the date of filing of the petition till deposit.
- v) The claimants are not entitled for interest for the delayed period of 205 days in filing the appeal.



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- vi) The insurance company shall deposit the compensation within eight weeks from the date of receipt of a copy of this judgment.
- vii) No order as to costs.
- viii) Draw award accordingly.

**SD/-**  
**JUDGE**

PB: Para 1 to 6  
SSP: Para 7 up to end  
List No.: 2 Sl No.: 25  
CT-ASC