

IN THE HIGH COURT OF KARNATAKA CIRCUIT BENCH AT
DHARWAD.

DATED THIS THE 15TH DAY OF FEBRUARY 2011

PRESENT

THE HON'BLE MR.JUSTICE N.K.PATIL

AND

THE HON'BLE MR. JUSTICE A.N. VENUGOPALA GOWDA

MFA No.21442 of 2009 (MV)

BETWEEN:

1. Smt. Khursheed,
W/o Abdul Sattar Khan,
Age 43 years,
Occ: Household,
 2. Sri.Ashimkhan,
S/o Abdul Sattar Khan,
Age 24 years, Occ: Student,
- Both are r/o H.N.2707/1-b,
"Aseen Manzil" Azad Nagar,
Kajubag, KARWAR-581 301.

... Appellants

(By Sri.N.P.Vivek Mehta, Adv.)

AND:

1. Smt. Devaki,
W/o Dayanand Bhat,



Age: Major, Owner of Truck bearing
No.KA-30/6169, R/o Aversa,
Tq. Ankola-580 314.

2. The United India Insurance Co. Ltd.,
Radha-Govind Complex,
1st Floor, Kaikini Road,
Karwar-581 301.

... Respondents

(By Sri. Sharanappa S. Koliwad for
Sri. B.C.Seetharama Rao, Adv. for R-2;
R-1 served)

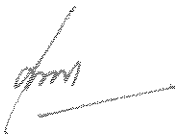
This Miscellaneous First Appeal is filed under Section 173(1) of M.V.Act against the judgment and award dated 30.12.2008 passed in MVC No.59/2006 on the file of the Member, II Addl. MACT, Karwar, partly allowing the claim petition for compensation and seeking enhancement of compensation.

This appeal coming on for admission this day, N.K.Patil. J., delivered the following:

JUDGMENT

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

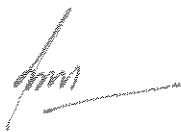
2. This Appeal by the claimants arises out of the impugned judgment and award dated 03.12.2008 passed in MVC No.



59/2006 on the file of the Member, II Addl. MACT, Karwar ('Tribunal' for short).

3. The Tribunal by its impugned judgment and award, awarded a sum of ₹5,63,000/- with interest at 6% per annum fixing contributory negligence on the part of the deceased at 25% and 75% on the owner and Insurer of the tipper lorry on account of death of deceased Abdul Sattar. The appellants claiming that the quantum of compensation awarded is inadequate, insufficient and requires enhancement and also to set aside the liability of 25% fastened on the deceased, have presented this appeal.

4. Appellant No.1 being the wife and Appellant No.2 being the major son of the deceased, filed claim petition under Section 166 of the M.V.Act claiming compensation of ₹1,00,00,000/-on account of death of deceased Abdul Sattar on 15.03.2005 at about 1.00 p.m. on National Highway road near Chendiya, Karwar Taluk, due to negligent driving by the driver of the tipper lorry bearing Registration No. KA-



30/6169. They contended that the deceased was the sole bread earner of the family and on account of his untimely death, they have lost the economic and social security. First appellant has lost her husband at an young age and second appellant lost father, love and affection, guidance for support. Taking all these aspects into consideration, appellants claimed compensation against the Respondents contending that deceased was aged about 54 years, doing transport business and getting monthly income of more than ₹40,000/- per month. The said claim petition came up before the Tribunal and the Tribunal in turn, after assessing the oral and documentary evidence on record, assessed the income of the deceased at ₹6,000/- per month and deducting 1/3rd towards his personal expenses, awarded ₹5,28,000/- towards loss of dependency, ₹15,000/- towards loss of consortium, ₹5,000/- towards funeral expenses, ₹15,000/- towards loss of expectancy and in all awarded a sum of ₹5,63,000/-. Not being satisfied with the quantum of compensation awarded



and fixing contributory negligence at 25% on the deceased, appellants have presented this Appeal.

5. Learned counsel appearing for the appellants at the outset submitted that the Tribunal has erred in not assessing the oral evidence of P.Ws.1 and 2-eye witnesses who stated that due to rash and negligent driving by the driver of the tipper lorry, the accident has occurred. He submitted that the Tribunal also erred in assessing the income of the deceased at ₹6,000/- per month. It is on the lower side and the income ought to have been assessed at more than ₹10,000/- per month. Therefore, assessing the income of the deceased at ₹10,000/- per month, loss of dependency may be re-determined by modifying the impugned judgment and award.

6. As against this, learned counsel appearing Sri. Sharanappa S. Koliwad, appearing on behalf of Sri. B.C.Seetharama Rao for Respondent No.2 at the outset



submitted that the Tribunal is justified in awarding reasonable compensation and interference is uncalled for.

7. After careful perusal of the judgment and award passed by the Tribunal and after considering the submissions of learned counsel for both parties, the only point that arise for our consideration is:

“Whether the quantum of compensation awarded by the Tribunal is just and reasonable?”

8. The Tribunal after appreciation of the oral and documentary evidence and other material on file and in the light of the admissions in cross-examination of P.W.1, has rightly fixed contributory negligence at 25% on the deceased and 75% on the part of the driver of the tipper lorry. The same is just and proper and interference is uncalled for.

9. It is the specific case of the appellants that the deceased was running a transport business earning more than



₹40,000/- per month. But, nothing is elicited by the Respondent-Insurer in the cross examination of P.W.1 regarding the same. It is stated that he was owning two lorries paying more than ₹6,000/- as monthly installment to the finance. This aspect has not been considered by the Tribunal. Taking this aspect into consideration, we re-assess the monthly income of the deceased at ₹9,000/- to meet the ends of justice. Since son is major 50% towards his personal expenses has to be deducted. After deducting 50% towards his personal expenses, remaining amount comes to ₹4,500/-. Deceased was aged about 54 years and therefore, the appropriate multiplier would be 11. Thus we re-determine the loss of dependency at ₹5,94,000/- ($₹4,500 \times 12 \times 11$). Accordingly it is awarded.

10. Having regard to the facts and circumstances of the case, we award ₹40,000/- towards conventional heads i.e., loss of love and affection, loss of consortium, loss of estate,

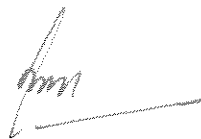


funeral expenses etc., as against the compensation awarded by Tribunal under the said heads.

11. Thus, in all, we award ₹6,34,000/- as against ₹5,63,000/- awarded by the Tribunal. After deducting 25% (Rs.1,58,500/-) towards contributory negligence, the appellants would be entitled to Rs.4,75,500/-. Out of it, if Rs.4,22,250/- awarded by Tribunal is deducted. There will be enhancement of Rs.53,250/- with interest at 6% p.a. from the date of petition till the date of realization

For the foregoing reasons, Appeal is allowed in part modifying the judgment and award dated 30.12.2008 passed by the Tribunal in MVC No.59/2006. Appellants are entitled to ₹53,250/- with 6% interest per annum in addition to the compensation awarded by the Tribunal, from the date of petition till realization.

Respondent No.2/Insurance Company is directed to deposit the enhanced compensation with interest within a



period of three weeks from the date of receipt of copy of the judgment and award.

The enhanced compensation with interest shall be released in favour of appellant no.1, immediately after the deposit made by the Insurer.

Draw the award accordingly.

Sd/-
JUDGE

Sd/-
JUDGE

mkc