

IN THE HIGH COURT OF KARNATAKA CIRCUIT BENCH AT

GULBARGA

DATED THIS THE 26TH DAY OF MARCH 2013

PRESENT

THE HON'BLE MR. JUSTICE K.SREEDHAR RAO

AND

THE HON'BLE DR. JUSTICE JAWAD RAHIM

MFA NO.30745/2012

C/W

MFA NO.30746/2012

IN MFA NO.30745/2012

BETWEEN

1. Chandu Yamanappa Walikar
Aged about 59 years
Occ: Agriculture
2. Renukabei D/o Swami Doler
Aged about 8 years
3. Sagar Swami Doler
S/o Swami Doler
Aged about 6 years

Appellant No.2 and 3
Since minors rep. by its
Natural guardian/
Grandfather Appellant No.1

All R/o Madabhavi, L.T.No.1
Tq. & Dist. Bijapur

... Appellants

(By Smt. Rathna Shivayogimath, Adv.)

AND

1. Shobha W/o Shivanand Anneppanavar
Aged about 45 years
Occ: Transport business
R/o Behind P&T quarters
Mallikarjuna nagar
Ashram Road, Bijapur

2. The Branch Manager
Oriental Insurance co. Ltd.
Bidri Building, Kori Chowk
Bijapur

... Respondents

(Smt. Preeti Patil Melkundi, Adv. for R2)

This MFA is filed under Section 173(1) of MV Act against the Judgment and Award dated 31.12.2011 passed in MVC No.1513/2010 on the file of the Motor Accident Claims Tribunal No.II at Bijapur, partly allowing the claim petition and seeking enhancement of compensation.

IN MFA NO.30746/2012

BETWEEN

1. Chandu Yamanappa Walikar
Aged about 58 years
Occ: Agriculture
2. Parasu S/o Chandu Walikar
Aged about 32 years
3. Babu S/o Chandu Walikar
Aged about 26 years

4. Ravi S/o Chandu Walikar
Aged about 21 yeas
5. Bhimu S/o Chandu Walikar
Aged about 19 years
6. Gundu S/o Chandu Walikar
Aged about 17 years
7. Siru S/o Chandu Walikar
Aged about 11 years
8. Vinod S/o Chandu Walikar
Aged about 10 years

Appellant No.6 to 8 are minors rep. by its
Natural guardian/ petitioner No.1

All R/o Madabhavi, L.T.No.1
Tq. & Dist. Bijapur

... Appellants

(By Smt. Rathna Shivayogimath, Adv.)

AND

1. Shobha
W/o Shivanand Anneppanavar
Aged about 45 years
Occ: Transport business
R/o Behind P&T quarters
Mallikarjuna nagar
Ashram Road, Bijapur-586 101

2. The Branch Manager
Oriental Insurance Co. Ltd.
Bidri Building, Kori Chowk
Bijapur – 586 101

... Respondents

(Smt. Preeti Patil Melkundi, Adv. for R2)

This MFA is filed under Section 173(1) of MV Act against the Judgment and Award dated 30.01.2012 passed in MVC No.1512/2010 on the file of the Motor Accident Claims Tribunal No.II at Bijapur, partly allowing the claim petition and seeking enhancement of compensation.

These appeals coming on for orders, this day, K.SREEDHAR RAO J, delivered the following:-

JUDGEMENT

Notice to R-1 is dispensed with in both the appeals since insurance is admitted.

2. One Kallubai and her daughter who were inmates of auto rickshaw died in a motor vehicle accident. Apart from the deceased, other two inmates are also injured. The maxi-cab dashed against the auto-rickshaw resulting in death of Kallubai and her daughter. The husband and children of Kallubai have filed M.V.C.No.1512/2010. In the case of Sharubai and others, the father and minor have filed MVC No.1513/2010. The occurrence of the accident , negligence of the driver of the offending vehicle and coverage of the insurance are not in dispute. The petitioners have filed these appeals seeking enhancement of the compensation.

MFA NO.30745/2012 (MVC NO.1513/2010)

This case pertains to the death of Sharubai. The deceased was vegetable vendor. In the absence of credible

proof of avocation and income, the notional income is assessed at Rs.39,000 per annum by the Tribunal which appears on the lower scale. The notional income is assessed at Rs.4000 p.m. In view of the decision in the case of **SARLA VARMA & OTHERS vs DELHI TRANSPORT COPORATION & OTHERS**, reported in 2009 ACJ 1298 and in the case of **SANTOSH DEVI VS. NATIONAL INSURANCE COMPANY LTD & OTHERS**, reported in 2012 AIR SCW 2892, the notional increase in prospects of the earning at 30% of the income is to be added which works out to Rs.1350/- (Rs.4000 + Rs.1200). Rs.5200/- will be the notional income of the deceased. 1/3 is to be deducted towards personal expenses Rs.3470/- would enure to the benefit of the dependants. The total loss of dependency would be Rs.7,07,880/- (Rs.3470 (income) x 12 (months) x 17 (multiplier). The petitioners are entitled for Rs.25,000 towards loss of consortium and Rs.10,000 towards funeral expenses. In all the petitioners are entitled for a total compensation of Rs.7, 42,880/- as against Rs. 4,52,000/- awarded by the

Tribunal. . On the enhanced compensation, the petitioners are entitled for interest at 6% p.a. from the date of petition till the date of payment. The entire amount of compensation shall be paid to the minor children of deceased – Sharubai and the amount of compensation shall be kept in FD in the name of minors until they attain majority. The appeal is ***allowed in part.***

MFA.NO.30746/12 (MVC No.1512/2010)

This case pertains to death of Kallubai. The husband and children of Kallubai have filed the petition. The notional income is assessed at Rs.4000 p.m. The notional increase in prospects of the earning at 30% of his income is to be added which works out to Rs.5200/- p.m. The notional income of the deceased would be Rs.5200 p.m. (Rs.4000 + Rs.1200). 1/5 is to be deducted towards personal expenses. Rs.4160 would enure to the benefit of the deceased. The total loss of dependency would be Rs. 5,49,120/- (Rs.4160 (income) x 12 (months) x 11 (multiplier). The petitioners are entitled for Rs.25,000 towards loss of consortium and Rs.10,000

towards funeral expenses. In all the petitioners are entitled for a total compensation of Rs.5,84,120/- as against Rs.3,17,000 awarded by the Tribunal. On the enhanced compensation, the petitioners are entitled for interest at 6% p.a. from the date of petition till the date of payment. The compensation shall be paid equally to the petitioners. The shares of the minors shall be kept in deposit until they attain majority. The compensation to the wife of the deceased shall be payable without provision for deposit. The appeal is ***allowed in part.***

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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