

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT GULBARGA

DATED THIS THE 16th DAY OF APRIL 2009

BEFORE

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

M.F.A. NO. 11412/2007 [MV]

BETWEEN:

1. LIMBAJI
S/O. SHANKAR
AGED 30 YEARS
OCC: LABOUR
2. RAVI
S/O. LIMBAJI
AGE 6 YEARS
3. SHOBHA
D/O. LIMBAJI
AGE 4 YEARS
4. RASHMA
D/O LIMBAJI
AGE 2 YEARS

APPELLANTS 2-4 ARE MINORS UNDER THE GUARDIAN
SHIP OF N/FATHER LIMBAJI
ALL ARE R/O JHALKOTA TALUK TULJAPUR
DIST OSMANABAD.

... APPELLANTS

(BY SRI HULEPPA HERGOR, ADVOCATE)

AND

1. THE DIVISIONAL MANAGER
NEW INDIA ASSURANCE CO. LTD.,
SANGAMESHWAR NAGAR,
GULBARGA

... RESPONDENT

(BY SRI SHIVANAND PATIL, ADVOCATE)

MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 16.7.2007 PASSED IN MVC NO. 453/2006 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT-III AND MACT, GULBARGA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

The claimants are the appellants. They had filed claim petition under Section 166 of the Motor Vehicles Act, claiming compensation on account of death of one Rukmabai in a motor vehicle accident involving vehicle bearing No.CNP-3391 on 20.3.2006. The said Rukmabai having sustained fatal injuries had succumbed. The claim petition was contested by the Insurance company. Considering the pleadings, issues having

been raised, the first petitioner has deposed as PW-1 and Exts.P-1 to P-3 were marked, and on behalf of the respondents, there was no oral evidence produced and the insurance policy was marked as Ext.R-1.

2. Considering the record, the tribunal has held that, the claimants have proved that on 20.3.2006 while deceased Rukmabai was carrying water from the hand pump, the lorry bearing No.CNP-3391 which was driven rashly and negligently by its driver has caused the accident resulting in grievous injuries to her, and ultimate death, and that the second respondent has proved that the driver of the vehicle was holding a valid driving licence. Considering the fact that, the claimants are the husband and children of the deceased, and are dependant, it has awarded Rs.2,19,000/- under the heads loss of dependency, loss of consortium, loss of love and affection and expenses towards funeral and obsequies ceremonies. The finding of the tribunal with regard to the actionable negligence on the part of the driver of the vehicle, resulting in death of Smt.Rukmabai is not under challenge. The grievance of the



claimants/appellants is only with regard to the amount of compensation determined and awarded by the tribunal.

3. I have heard the learned counsel on both sides and perused the record.

4. Learned counsel for the appellants contended that, the tribunal is not justified in taking the income of the deceased at Rs.50/- per day and in effecting deduction out of it at 1/3rd towards personal expenses of the deceased and quantifying the loss of dependency at Rs.2,04,000/-. Learned counsel also contended that the amount awarded under the head loss of love and affection is meagre taking into consideration the claimants/appellants-2 to 4 are minors. Learned counsel further contended that no amount has been awarded towards transportation of dead body and the amount awarded under the head funeral expenses is meagre. According to the learned counsel, there is no just and reasonable compensation determined and awarded by the tribunal and hence interference is called for.



5. Per contra, Sri. Shivanand Patil, learned counsel for the respondent-Insurance Company contended that, the deceased was a house wife and no evidence has been produced to show earning capacity and in the absence of any proof of income of the deceased, the amount determined and awarded by the tribunal is just and reasonable and no interference is called for.

6. In view of the rival contentions, the point that arise for consideration is, whether the tribunal has passed a just and reasonable award?

7. PW-1, husband of the deceased, has stated that he was a daily wager under a contractor and his wife Rukmabai, the deceased, was also doing coolie work and she was earning Rs.100/- per day and was contributing towards maintenance of the family. The tribunal has doubted the testimony of PW-1 on the ground that, no independent witness or document has been produced and hence it has taken that the minimum wages of a female worker by accepting the fact that the deceased was doing



coolie work. Accordingly, it has quantified the loss of dependency.

8. A Division Bench of this court in MFA No. 10037/2006 disposed of on 21.7.2008 [Sri. Babu vs. Sri. Chandrashekar and another] has held that even if the deceased were to be a house wife or agricultural labourer, her services as a house wife can be estimated in terms of a daily wage as an agricultural labourer and can be taken at Rs.100/- per day. This court also took notice of the decision in 2005 ACJ 89, wherein the income of the house wife was taken at Rs.3000/- per month. In the instant case, the deceased has been held to be an agricultural coolie by the tribunal, but her services as a house wife has not been recognised. The Hon'ble Supreme Court in the case of Lata Wadhwa vs. State of Bihar [AIR 2001 SC 3218] has held that loss of services of a house wife can be estimated at Rs.36,000/- per annum. Applying the said principle, in my view, the tribunal has erred in taking the income of the deceased at Rs.50/- per day. It ought to have taken the income of the deceased at Rs.100/- per day and after deducting 1/3rd for personal expenses of the deceased, it should



have applied the multiplier of 17, considering the age of the deceased being 25 years, which is not in dispute. The amount thus reckoned, would work out to Rs.4,08,000/- as against Rs.2,04,000/- determined and awarded by the tribunal. Learned counsel is also justified in contending that the amount awarded under the head loss of love and affection for 3 minor children at Rs.5000/- is meagre. The tribunal ought to have awarded Rs.5000/- to each of the claimants-2 to 4. Hence, the appellants are entitled to an additional sum of Rs.15,000/- under this head. Though the tribunal has awarded Rs.5000/- under the head funeral expenses, in my view, the appellants are entitled to an additional sum of Rs.1,000/- keeping in view of the fact that, the dead body had to be shifted to the hospital for post-mortem and after post-mortem was sent to Maharashtra and in the course of transportation, the appellants have incurred expenses. Hence, an additional sum of Rs.1,000/- is awarded under the said head.

In the result, the appeal is allowed in part. A sum of Rs.2,20,000/- is awarded, in addition to the compensation of Rs.2,19,000/- awarded by the tribunal.



The enhanced compensation amount of Rs.2,20,000/- shall carry interest at 6% p.a., from the date of filing of the claim petition till the date of deposit.

The apportionment and deposit, ordered by the tribunal shall remain undisturbed.

Registry is directed to draw modified award.

The respondent-Insurance Company shall deposit enhanced compensation amount along with interest in the tribunal within a period of ten weeks from today.

The appeal stands disposed of accordingly.

**Sd/-
JUDGE**

Pr.