

IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH

DATED THIS THE 16<sup>TH</sup> DAY OF AUGUST 2018

BEFORE

THE HON'BLE MR. JUSTICE L.NARAYANA SWAMY

**MISCELLANEOUS FIRST APPEAL NO.201849/2014 (MV)**  
**C/W**  
**MISCELLANEOUS FIRST APPEAL NO.201850/2014 (MV)**

In MFA No.201849/2014

BETWEEN:

1. Mohd. Younus Ahmed @ Ubeid  
S/o Abdul Sattar,  
Aged 32 years, Occ. Business,
2. Saheraj  
S/o Mohd. Younus Ahmed @ Ubeid,  
Aged 04 years, minor,
3. Sohail S/o Mohd. Younus Ahmed,  
Aged 02 years, Minor,

Appellants No.2 and 3 are minors,  
U/G of natural father appellant No.1.  
R/o H.No.60469,  
Mominpura-A, Gulbarga – 585 101.

... Appellants

(By Sri B.Ali Mohammad, Advocate)

**AND:**

1. Sri Sampath Raj Jain S/o Babulal Jain,  
Aged 50 years,  
Occ. Owner of lorry No.GA-01-W-7002,  
R/o near Old Vegetable Market,  
Shahapur, Dist. Yadgir – 585 223.
2. The Divisional Manager,  
United India Insurance Co.Ltd.,  
Dr. Jawali Complex, Super Market,  
Gulbarga – 585 102.
3. Mohammed Arshad Ahmed  
S/o Mohd. Sattar,  
Aged 35 years, Occ. Owner of Tavera Vehicle  
No.MH-05-AJ-7040,  
R/o H.No.6-209, Khari Bowli,  
Mominpura, Gulbarga – 585 102.
4. Reliance General Insurance Co.Ltd.,  
Asian Plaza Complex, S.V.Patel Chowk,  
Gulbarga – 585 102.

... Respondents

(By Sri Sudarshan M. Advocate for R2;  
Sri C.S.Kalburgi Advocate for R4  
Notice to R1 and R3 dispensed with vide order dated  
05.01.2018.)

This Miscellaneous First Appeal is filed under Section 173(1) of M.V.Act, 1988 praying to call the records in MVC No.691/2012 on the file of I Additional Senior Civil Judge and MACT, at Gulbarga and the impugned judgment and award dated 20.01.2014 passed in MVC No.691/2012 on the file of I Additional Senior Civil Judge & MACT, at Gulbarga may be modified by granting compensation as

claimed in the claim petition and this miscellaneous first appeal may be allowed as prayed with costs.

In MFA No.201850/2014

BETWEEN:

Sameena Parveen  
D/o Late Abdul Rasheed,  
Age 24 years,  
Occ. Household and Embroidery  
R/o H.No.6-469/1, Kharibowli,  
Mominpura, Gulbarga – 585 102.

... Appellant

(By Sri B.Ali Mohammad, Advocate)

**AND:**

1. Sri Sampath Raj Jain S/o Babulal Jain,  
Aged 50 years,  
Occ. Owner of lorry No.GA-01-W-7002,  
R/o near Old Vegetable Market,  
Shahapur, Dist. Yadgir – 585 223.
2. The Divisional Manager,  
United India Insurance Co.Ltd.,  
Dr. Jawali Complex, Super Market,  
Gulbarga – 585 102.
3. Mohammed Arshad Ahmed  
S/o Mohd. Sattar,  
Aged 35 years, Occ. Owner of Tavera Vehicle  
No.MH-05-AJ-7040,  
R/o H.No.6-209, Khari Bowli,  
Mominpura, Gulbarga – 585 102.

4. Reliance General Insurance Co.Ltd.,  
Asian Plaza Complex, S.V.Patel Chowk,  
Gulbarga – 585 102.

... Respondents

(By Sri Sudarshan M. Advocate for R2;  
Sri C.S.Kalburgi Advocate for R4  
Notice to R1 and R3 dispensed with vide order dated  
26.07.2018.)

This Miscellaneous First Appeal is filed under Section 173(1) of M.V.Act, 1988 praying to call the records in MVC No.692/2012 on the file of I Additional Senior Civil Judge and MACT, at Gulbarga and the impugned judgment and award dated 20.01.2014 caused in MVC No.692/2012 on the file of I Additional Senior Civil Judge & MACT, at Gulbarga may be modified by granting compensation as claimed in the claim petition and this miscellaneous first appeal may be allowed as prayed with costs.

These appeals coming on for admission this day, the Court delivered the following:

**JUDGMENT**

MFA No.201849/2014 is by the husband and children of the deceased Nousheen Begum who succumbed to the motor vehicle accident injury on 23.04.2012.

2. The deceased was doing embroidery work and earning Rs.8,000/- per month. The appellants i.e., husband and children were depending on her income. Considering the case of the respective parties, the Tribunal has awarded a total compensation of Rs.4,72,000/- by assessing the income of the deceased at the rate of Rs.3,000/- per month.

3. Learned counsel for the appellants/claimants submits that the deceased was earning about Rs.8,000/- per month.

4. Learned counsel for the respondent-insurance submits to dismiss the above appeals.

5. Heard the learned counsel for the parties. I have gone through the materials available on record. It is

seen that the claimants have not produced any iota of document to prove the income of the deceased. Be that as it may referring to the age of the deceased and year of the accident and also size of the family, the income is to assessed. With reference to the year of the accident 2012, Rs.6,500/- is consistently assessed by this Court. Accordingly, in this case also the same is to be taken.

6. Though the husband is also the claimant but for the purpose of calculation and in the absence of any cogent evidence, he cannot be considered as dependent of the deceased wife. Hence, minor children are ought to be taken for the purpose of dependency. Hence, the calculation is  $6500 \times 1/3 \times 12 \times 18 = 9,36,144/-$  and the same is awarded under the head loss of dependency as against RS.4,32,000/- awarded by the Tribunal under the head loss of dependency. Rs.70,000/- is awarded under the conventional heads all put together. In all the appellants/claimants are entitled for total compensation of Rs.10,06,144/-.

7. Insofar as apportionment and releasing of the money and the liability is concerned, the same shall be as per the award of the Tribunal.

8. Appeal in MFA No.201849/2014 is allowed in part. Order of the Tribunal is modified.

9. In MFA No.201850/2014 the appellant is the claimant who suffered severe injuries for which the Tribunal awarded Rs.2,60,000/-. The grounds taken for enhancement is in respect of injury of fracture of left femur and hospitalization. Considering the nature of injury what has been awarded by the Tribunal is on the lower side. The submission is examined and it is found to meet the ends of justice, it would suffice if globally Rs.25,000/- is awarded. Accordingly, it is awarded.

Appeal is allowed in part.

**Sd/-  
JUDGE**

sn