

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT GULBARGA**

Dated this the 21st day of September, 2012

PRESENT:

THE HON'BLE MR JUSTICE D V SHYLENDRA KUMAR

AND

THE HON'BLE MR JUSTICE A.S.PACHHAPURE

M.F.A.NO. 31615/2010 (MV)

BETWEEN:

1. SHRI IRAYYA S/O SIDDAYYA
JAMBAGI @ SWAMI,
AGE: 48 YEARS,
OCC: PUROHIT.
 2. SMT NEELGANGA
W/O IRAYYA JAMBAGI @ SWAMI
AGE: 43 YEARS, OCC:HOUSEHOLD
C/O M.J.STAVARMATH,
VENKATESH NAGAR,
PLOT NO. 10,
IBRAHIMPUR,
BIJAPUR.
- ... APPELLANTS

[By Sri. BABU H. METAGUDDA, ADVOCATE]

AND:

1. SRI JOGENDRA S/O HARIPRASAD
SHRIVASTAV, AGE: MAJOR,
OCC: BUSINESS & OWNER OF
HGV (TATA) VEHICLE
BEARING NO.MH-05/K-8434,
R/O MAIN MARKET ROAD,
PATEL HOUSE BADALPUR
TQ:DIST: THANE, MAHARASHTRA.
2. THE DIVISIONAL MANAGER,
NATIONAL INSURANCE CO.LTD.,
INSURANCE DUMPER

NO. MH-05/K-8434,
 POLICY ISSUING OFFICE
 JAI COMMERCIAL COMPLEX,
 I FLOOR, OPP. PUNJANI
 INDUSTRIAL ESTATE,
 POKHARAN ROAD,
 NO.1, THANE (W) – 400 601,
 POLICY NO. 760900/31/6700008051
 SUMMONS TO BE SERVED THROUGH
 THE BRANCH MANAGER
 NATIONAL INSURANCE CO.LTD.,
 S.S.CROSS ROAD, BIJAPUR.

... RESPONDENTS

(BY SRI SANDEEP PATIL, ADVOCATE FOR
 SRI SHIVANAND PATIL, ADVOCATE FOR
 RESPONDENT NO.2)

THIS MFS IS FILED U/S 173(1) OF MV ACT AGAINST THE
 JUDGEMENT AND AWARD DATED 05.05.2010 IN MVC NO. 1193/2007
 ON THE FILE OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL NO.VII
 AT BIJAPUR, PARTLY ALLOWING THE CLAIM PETITION AND
 SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR FURTHER ORDERS, THIS
 DAY, **D V SHYLENDRA KUMAR J.**, DELIVERED THE FOLLOWING:

JUDGMENT

Regarding I.A.No.1/2012, for issue of notice to the
 Respondent No.1 - owner of the vehicle - is dispensed with,
 as second respondent – Insurance Company is served and
 represented by counsel and is contesting the appeal.

2. The appeal is by the parents of deceased
 Gourishankar, who met with a tragical death in a motor
 accident that occurred on 29.07.2007 at about 11.00 a.m.

at Birla gate, Ullas Nagar while he was on motorcycle as pillion was hit by a Dumper bearing registration No. MH-05/K-8414 resulting in severe injuries, and he succumbed to the injuries sustained in the accident, complaining that the quantum of compensation as awarded by the Motor Accident Claims Tribunal No. VII, Bijapur, in MVC No. 1193/2007 as per the judgement and award dated 05.05.2010 awarding a sum of ₹2,44,000/- in all, is on the lower side.

3. Appeal is for seeking enhancement of compensation, particularly on the ground that the Claims Tribunal had taken the income of the deceased person at a lower sum; that he was young and has a good potential and therefore his income should have taken not less than ₹8,000/- per month etc.

4. Appeal has been admitted. 2nd Respondent – Insurance Company is served and represented by counsel. Sri Shivanand Patil, learned counsel has filed power for the Insurance Company.

5. On the understanding of the counsel, the matter has been listed for disposal and we have heard Sri Babu H. Metagudda, learned counsel appearing for the appellants and Sri Sandeep Patil, learned counsel for respondent-insurance company.

6. Sri Babu H. Metagudda, learned counsel appearing for the appellants reiterated the submission regarding lower income attributed to the deceased person and also submits that the quantification under conventional heads requires suitable enhancement. He further submitted that the multiplier taken by the Tribunal with reference to the age of the father of deceased, at 13 which is not correct, but it should have been with reference to the age of the younger parent's age i.e., mother, which is 40 years, and therefore, the multiplier should have been 15.

7. The learned counsel appearing for the Insurance Company has supported the judgement and award of the Tribunal.

8. We do not find any scope for enhancement under conventional heads. We also do find that the income attributed to the deceased at ₹3,000/- is on the lower side, in view of the fact that the accident occurred in the year 2007, even a daily wage earner can earn a sum of ₹4,000/- per month and even much more than that. It is therefore, we opine that taking the income at ₹4,000/- per month and applying the correct multiplier of 15, loss of dependency is to be worked out and if so it quantifies a sum of ₹3,60,000/-. Compensation under other heads awarded by the Tribunal is retained.

9. In the result, the appeal is allowed to the extent of enhancing the compensation as awarded, by a sum of Rs.1,16,000/-. Registry is directed to draw up award accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

*MK