

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 13TH DAY OF APRIL 2009

PRESENT

THE HON'BLE MR.JUISTICE JAWAD RAHIM

AND

THE HON'BLE MR.JUSTICE S. N. SATYANARAYANA

MFA NO.7016/2005 (MV)

BETWEEN:

M/S NATIONAL INSURANCE CO LTD

SUJATHA COMPLEX,

P.B.ROAD, HUBLI,

REPRESENTED BY ITS MANAGER... APPELLANT

(By Sri. C.M.MONNAPPA, SRI. C.M.POONACHA & M.
MAHADEVIAH, ADVS.)

AND

1. SUBRAO GOVIND NAIK,
AGED 66 YEARS,
2. SMT. ANUSUYA SHBRAO NAIK,
AGED 56 YEARS,
3. MISS BHARATI SUBRAO NAIK,
AGED 29 YEARS



ALL R/O GIDDA ROAD
KARWAR TALUK
UK DIST.

4. RAVINDRA B NAYAK,
R/O SHETAGIRI, ANKOLA TALUK,
ANKOLA,
DIST UTTARA KANNADA ... RESPONDENTS

(By Smt : V.P.KULKARNI, ADV/ FOR R1-R3,
R-4 SERVED)

THIS MFA IS FILED U/S 173(1) OF M.V. ACT
PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT
AND AWARD DATED 26.4.2005 PASSED IN
mvc.53/2004 by the court of I ADDL. MACT, KARWAR,
AND ETC.

THE MFA COMING ON FOR HEARING THIS DAY,
JAWAD RAHINM J., DELIVERED THE FOLLOWING:

JUDGMENT

The insurer is in appeal against the judgment and
award in MVC.53/2004 dated 26.4.2005 on the file of
the MACT, Karwar.

2. The contextual facts manifest from the case
papers, show on 13.1.2000 deceased Sunil Kumar.
while riding his motor cycle bearing No.KA.30/K.4241



from Ankola to Kumata side became victim of road traffic accident. While he was crossing Kangil Cross, a lorry bearing No.KA.30/3311 proceeding in opposite direction hit against him. Alleging total culpable negligence in the driving of the lorry driver claim was lodged by parents.

3. The claimants who are parents and sister sought compensation of Rs.11,50,000/- on the premise that deceased was employed at the Vijayanand Printers Ltd., and was drawing a salary of Rs.5,807/-. He was in permanent employment. Due to his untimely demise the claimants are rendered destitutes. The Tribunal accepted the evidence of the claimants and found they have established negligence in the driving of lorry. Consequently, it held that the driver of the offending vehicle responsible for the accident and vicariously held owner also liable for the accident.



4. While determining compensation, the Tribunal noticed the bright prospects the youngster had at the time of death. Therefore, the Tribunal fixed the income at Rs.6000/- instead of Rs.5,807/- p.m.. Thereafter, the Tribunal has straightaway proceeded to award Rs.5.76,000/- towards loss of dependency and Rs.40,000/- towards other heads like loss of expectancy of life, funeral expenses, loss of love and affection, but has not awarded any amount towards loss to estate. The insurer is aggrieved on the ground that the Tribunal has not indicated the method adopted for awarding Rs.5,76,000/- towards loss of dependancy. In this regard, learned Counsel would contend that the income as claimed by the claimant was only Rs.5,807/- and without any supportive evidence the Tribunal has taken it as Rs.6000/-. Secondly, it was submitted that between the appellants, mother's age is 55 years and father's age is 65 years. If we take the age of the younger appellant, multiplier would be 11. Deduction



permissible is 50% of the income towards personal expenditure as he was bachelor and hence this award is sought to be reduced.

5. Per contra, learned Counsel for the claimants in negation of what is asserted by the appellants, would contend that the Tribunal has rightly held claimants' are entitled for Rs.5,76,000/- noticing that the deceased had left behind apart from his parents, his sister also. He submits that no case is made out to interfere with the award in question.

6. Keeping in view what is urged before us, we have examined the material evidence. It is not in dispute that the deceased had salary of Rs.5,807/- per month. The Tribunal has taken it as Rs.6000/-. It is perhaps on the basis of including future prospects to the salary or income which the deceased drawn at the time of death. Career progression and prospects in future of better earning are necessarily to be taken into consideration. Thus, that is the reason why the



Tribunal took the income at Rs.6000/-. We do not find any fault in such approach. Therefore, we confirm the Tribunal's finding of Rs.6000/- as income of the deceased. Further, it is noticed that the deceased was a bachelor and therefore, unless it is shown that he has left behind large number of dependents or that he was used to spend less on him, future life of re-marriage by him and consequent reduction in his contribution to the family compel us to take the normal deducing at 50% of income towards his personal expenditure. This gives us contribution to the family at Rs.3000/- per month and Rs.36000/- p.a. The multiplicand of 36000 has to be the multiplier relating to the age of younger one, viz., mother who is aged 55 years. It will be 11. Thus loss of dependancy to the family has to be Rs.3,96,000/- and not Rs.5,76,000/- as found by the Tribunal. Accordingly, the said award is modified.

7. As regards the award under conventional heads is concerned, we would re-assess by awarding



Rs.20,000/- towards loss to estate, Rs.10,000/- to the parent towards loss of love, affection and care and Rs.5000/- to the sister towards loss of love, affection and care, and Rs.5000/- towards funeral expenses, in all Rs.40,000/- is awarded. Thus claimants are entitled to Rs.4,36,000/- as against Rs.6,16,000/- awarded by the Tribunal.

8. Accordingly, the award is modified. The appeal is allowed in-part. If the Insurance Company has deposited the amount in excess of the modified award, it is entitled to withdraw the same. If the amount has not been deposited, the Insurance Company is directed to deposit the amount determined within a period of six weeks from today.

Sd/-
JUDGE

Sd/-
JUDGE

*sub/