

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

DATED THIS THE 31ST DAY OF OCTOBER, 2012

BEFORE

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

MISCELLANEOUS FIRST APPEAL NO.23801 OF 2009 (MV)

BETWEEN:

1. Sri.Raghunath Rao Joshi,
S/o Annarao Joshi,
Aged about 76 Years,
Occ: Agril, Now Nil.
2. Smt.Sitabai Joshi,
W/o Raghunath Rao Joshi,
Aged about 59 Years,
Occ: Household.
3. Smt.Savita Joshi,
W/o late Gururaj Joshi,
Aged about 26 Years,
Occ: Household.

All are R/o Ginigera,
Tq & Dist: Koppal,

Now residing at Nekar
Street, Gangavati,
Tq: Gangavati,

DIST: KOPPAL.

.. APPELLANTS.

(By Sri.B.Sharanabasawa and
Sri.A.B.Patil, Advs.)

AND:

1. Sri.Prakash,
S/o Mahabaleshwara Revankar,
Age: Major,
Occ: Owner of Lorry bearing
No.KA-25/B-6689,
R/o Balaji Jewellers,
Durgada Bayalu, Hubli,
Tq: Hubli,

DIST: DHARWAD.

2. The Divisional Manager,
The New India Assurance Co., Ltd.,
Divisional Office, 1st Floor,
Arya Ediga Complex,
Court Road, Bellary,
TQ & DIST: BELLARY.

.. RESPONDENTS.

(By Sri.Ravi G.Sabhahit,
Adv. for R-2,

R-1 – Notice
dispensed with)

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This appeal is filed under Section 173(1) of the Motor Vehicles Act, against the Judgment and Award dated 22.05.2009 passed in MVC.No.328/2008 on the file of the Civil Judge (Sr.Dn.) & MACT, Gangavathi, partly allowing the Claim Petition for compensation and seeking enhancement of the same.

This appeal coming on for Admission this day, the Court delivered the following:

JUDGMENT

Claimants in MVC No.328/2008 on the file of MACT, Gangavathi, have come up in this appeal seeking enhancement of compensation awarded therein.

2. The undisputed facts leading to this appeal are that the appellants herein are claimants before the Tribunal and they filed Claim Petition seeking compensation for the death of Gururaj Joshi in a road traffic accident on 22.07.2008 at about 10.00 p.m. It is stated that while Gururaj Joshi was proceeding on his Motor Cycle bearing No.KA-37/J-3399, he was hit by lorry bearing No.KA-25/B-6689. The accident is not in dispute, the death of Gururaj Joshi due to injuries suffered in the said accident is also not in dispute. The Claim Petition is filed by the legal representatives of deceased Gururaj Joshi. The Tribunal while assessing compensation for his death, has taken his income at Rs.4,500/- p.m., and proceeded to apply the multiplier at 15 and awarded compensation in a sum of Rs.5,40,000/- under the head loss of dependency.

3. Being aggrieved by the quantum of compensation, the claimants have come up in this appeal contending that at the time of accident, Gururaj Joshi was gainfully employed on a monthly salary of Rs.9,000/-. In that behalf, salary certificate is produced vide Ex.P-13, which according to them is not taken into consideration by the Tribunal and it has unilaterally decided the income of the deceased at Rs.4,500/-, which is on lesser side. It is also contended that future prospect of the deceased in his employment is also not taken into consideration while awarding compensation. It is also contended that the multiplier taken is incorrect. Hence the present appeal is filed.

4. Heard the counsel for appellant and as well as second respondent. On going through the grounds of appeal with reference to judgment impugned, it is seen that though the claimants have stated that the deceased was gainfully employed as Manager in Excel Transport Company Limited on a monthly income at Rs.15,000/-. Nothing is placed on record, except the salary certificate, which is not

substantiated by any other documentary evidence through P.W.2, who is said to be owner of the Company. In the absence of acceptable evidence regarding employment and also the income, the Tribunal has rightly disbelieved Ex.P-13 and has taken the income of the deceased notionally at Rs.4,500/- which according to this Court is on lesser side. Considering the fact that the accident has taken place in the year 2008, the same should have been taken at Rs.5,000/- p.m. The Tribunal has also not taken into consideration the probable future prospect in his employment and income. If the future prospect in earning capacity is taken at 30%, his monthly income would come to Rs.6,500/-. Out of that, if 1/3rd is deducted towards personal expenses, balance of Rs.4,333/- per month or Rs.51,996/- rounded off to Rs.52,000/- per year as loss of dependency to his family. If the same is multiplied by appropriate multiplier, which is 16, the claimant would be entitled to compensation under the head loss of dependency, in a sum of Rs.8,32,000/-. In addition to that, they are entitled to receive a sum of

Rs.40,000/- under conventional head. In the result, the claimants would be entitled to revised compensation in a sum of Rs.8,72,000/- as against Rs.5,76,000/- awarded by the Tribunal.

5. Accordingly the appeal filed by the appellants are allowed in part. The second respondent – Insurance Company is directed to deposit the enhanced compensation in a sum of Rs.2,96,000/- with interest at 6% p.a., within four weeks from the date of receipt of certified copy of Judgment and Award.

On such deposit, a sum of Rs.50,000/- each with proportionate interest is ordered to be invested in Fixed Deposit in the name of first and second appellants and out of the balance amount, a sum of Rs.1,50,000/- with proportionate interest is ordered to be invested in Fixed Deposit in the name of third appellant. All the deposit shall be initially for a period of five years with right to claimants to receive the interest.

The remaining amount of Rs.46,000/- is required to be released in the ration of 25% each to first and second appellants and 50% to third appellant.

**Sd/-
JUDGE**

AGV.