IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 30TH DAY OF AUGUST 2013

BEFORE

THE HON'BLE MR.JUSTICE K.L.MANJUNATH

Miscellaneous First Appeal No.20586/2010 (MV)

BETWEEN

1.   SHAINAJ ABDULGAFAR SHAIKH
      AGE 29 YEARS, OCC:HOUSEHOLD
      R/O 6TH CROSS, SHIVAJI NAGAR,
      NIPANI DIST:BELGAUM

2.   KUMAR MUSTAQ ABDULGAFAR SHAIKH
      AGE 11 YEARS, OCC:STUDENT
      R/O 6TH CROSS SHIVAJI NAGAR, NIPANI
      DIST:BELGAUM

3.   KUMAR ABDUL LATIF ABDULGAFAR
      AGE 7 YEARS, OCC:STUDENT
      R/O 6TH CROSS SHIVAJI NAGAR, NIPANI
      DIST:BELGAUM
      (SINCE APPELLANT 2 & 3 BEING MINORS
      R/BY THEIR NEXT FRIEND NATURAL
      MOTHER APPELLANT NO-1)

4.   MOHAMMADGOUS NABISAB SHAIKH
      AGE 62 YEARS, OCC:NIL
      R/O 6TH CROSS SHIVAJI NAGAR, NIPANI
      DIST:BELGAUM

5. SMT. BEGAUM MOHAMMADGOUS SHAIKH
    AGE 56 YEARS, OCC:HOUSEHOLD WORK
    R/O 6TH CROSS SHIVAJI NAGAR, NIPANI
    DIST:BELGAUM

                              ..... APPELLANTS

(BY SRI JAGADISH PATIL, ADV.)

AND

1. BASAVRAJ YALLAPPA SANGOLLI
    AGE MAJOR OCC:TRANSPORT BUSINES
    R/O HIREULLIGERI, TQ:SAVADATTI
    DIST:BEGLAUM

2. THE DIVISIONAL MANAGER
    NATIONAL INSURANCE CO LTD
    DIVISIONAL OFFICE, RAMDEV GALLI
    BELGAUM

                              ..... RESPONDENTS

(BY SRI H M DHARIGOND, ADV. FOR R1
SRI RAVINDRA R MANE, ADV. FOR R-2)

     MFA FILED U/SEC.173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED:16-10-2009 PASSED IN MVC.NO.1164/2007 ON THE FILE OF THE MEMBER, MACT-II, BELGAUM, AND IN THE COURT OF THE I-ADDL. DISTRICT JUDGE, BELGAUM, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

JUDGMENT

Being not satisfied with the compensation awarded by the MACT, Belgaum in MVC No.1164/2007 dated 16.10.2009 the present appeal is filed by the claimants for enhancement of compensation.

2.   Since the insurance company has already satisfied the award of the Tribunal, there is no necessity for this Court to transverse the pleadings, evidence on record on the question of negligence and liability.

3.   The claimants are the wife, two minor children and aged parents of one Abdulgafar Shaikh, who died in the road traffic accident occurred on 08.03.2007 at about 12.30 noon near Ghataprabha River Bridge within the local limits of Katabali village at NH No.4. He was aged about 30 years. According to the claimants the deceased was a mason and is also an electrician. The claimants did not place any

material before the Tribunal in regard to the nature of avocation and income. In the absence of the same, the Tribunal has considered the income of deceased at Rs.3,000/- per month. Accordingly, compensation has been awarded. Being not satisfied with the same, the present appeal is filed for enhancement of compensation.

4. On considering the entire evidence on record, the nature of avocation of the deceased and considering that he was maintaining his wife, two minor children and aged parents, the income of said person could not be less than Rs.4,000/- p.m. on the date of accident even if he is considered as coolie. Since he was maintaining 5 persons, out of Rs.4,000/-, 1/4th to be deducted towards his personal expenses. Then the loss of dependency has to be assessed at Rs.3,000/- per month and Rs.36,000/- per annum. Considering the age of the deceased, the Tribunal has applied the multiplier of

17. If that is so, the loss of dependency has to be assessed at Rs.6,12,000/-. In addition to that, the claimants are entitled for a sum of Rs.50,000/- under the conventional heads. That is in all a sum of Rs.6,62,000/- with interest at 6% p.a.

5. Accordingly, the appeal is allowed in part. The claimants are entitled for an enhanced compensation of Rs.1,58,000/-. Out of which, a sum of Rs.40,000/- with interest accrued thereon shall be invested in the name of claimant No.1, a sum of Rs.40,000/- each shall be invested in the names of claimants No.2 & 3 till their attainment of age of 21 years and the claimant No.1 is entitled to withdraw the periodical interest. Rest of the amount is ordered to be equally apportioned to the claimants No.1, 4 & 5.

Sd/-
JUDGE

Naa