

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 31ST DAY OF OCTOBER 2015

PRESENT

THE HON'BLE MR. JUSTICE A.S.BOPANNA

AND

THE HON'BLE MR. JUSTICE G.NARENDAR

M.F.A. No.30302/2011 (MV)

BETWEEN:

1. SMT. SUMITRA
W/O BHIMAPPA PUJARI,
AGED ABOUT: 28 YEARS,
OCC: HH WORK,

2. KUMARI POOJA
D/O BHIMAPPA PUJARI,
AGED ABOUT: 6 YEARS,

3 KUMAR AAKASH
S/O BHIMAPPA PUJARI
AGED ABOUT 3 YEARS

(APPELLANTS NO.2 AND 3 ARE MINORS
REP. BY THEIR NATURAL GUARDIAN
APPELLANT NO.1)

4 SMT. MUTTAWWA
W/O KENCHAPPA PUJARI
AGED ABOUT 58 YEARS,
OCC: H.H.WORK,

ALL ARE R/O SUTUGUNDI VILLAGE,
TQ AND DIST: BIJAPUR.

...APPELLANTS

(BY SMT. SHAILAJA C.D., ADVOCATE FOR
M/S SHIVAYOGIMATH ASSOCIATES)

AND:

1. ASHOK
S/O PANDAPPA KONAPPANAWAR
AGED ABOUT: 43 YEARS,
OCC: AGRICULTURE,
R/O BIDARI TALUKA JAMAKHANDI,
DIST. BAGALKOT.
2. THE MANAGER
THE NEW INDIA ASSURANCE CO.LTD.,
S.S. FRONT ROAD,
BIJAPUR.

...RESPONDENTS

(BY SMT. PREETI PATIL MELKUNDI, ADVOCATE FOR R2,
NOTICE TO R1 D/W)

THIS M.F.A IS FILED UNDER SECTION 173 (1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED 3.11.2010
PASSED IN MVC NO.1039/2008 ON THE FILE OF THE MOTOR
ACCIDENT CLAIMS TRIBUNAL NO.VII BIJAPUR, AT BIJAPUR,
PARTLY ALLOWING THE CLAIM PETITION AND SEEKING
ENHANCEMENT OF COMPENSATION.

THIS M.F.A COMING ON FOR HEARING, THIS DAY,
A.S. BOPANNA J., DELIVERED THE FOLLOWING:

JUDGMENT

The appellants herein are the claimants in MVC No.1039/2008. They are before this Court seeking enhancement of the compensation as against the sum awarded by the Tribunal.

2. The facts relating to the accident having occurred and the husband of the first appellant died in the said accident is not in dispute. The only question which arises for consideration in this appeal is to determine the quantum of the compensation. In that regard, the contention put forth on behalf of the appellants is that the Tribunal had committed an error insofar as reckoning the age of the deceased and arrived at the compensation by taking the income of the deceased at Rs.3000/- per month.

3. Learned counsel for the respondents would however seek to sustain the judgment and award

passed by the Tribunal by contending that the materials available on record has been reckoned by the Tribunal and as such, the same does not call for interference.

4. In the light of the above, on the aspect with regard to the age of the deceased to be reckoned, it is seen that the Tribunal though had taken note of the Postmortem report which was available on record and the age of the deceased which was indicated as 30 years, has ultimately taken the age as 32 years since P.W.1 viz., the first claimant i.e., the wife of the deceased had stated that the younger brother of the deceased was 30 years and in that light, the Tribunal has assumed that the age of the deceased was 32 years. Such conclusion reached by the Tribunal is not justified when P.W.1 in fact had stated that the age of her husband is 30 years and the same age has been mentioned in all the documents which were available

on record. Hence, we find it appropriate to reckon the age of the deceased as 30 years and take into consideration the multiplier applicable for the said age at '17'.

5. Insofar as the income, the Tribunal though had taken note of the documents which were available on record at Exhs.P8 and P9 viz., RTCs with regard to the properties owned, had however arrived at the conclusion that the income as claimed cannot be taken into consideration based only the same since there is no other documents to indicate the actual income derived from the said property. It is in that circumstance, the Tribunal has reckoned the notional income of Rs.3000/- per month. The said amount of Rs.3000/- would be reckoned by this Court even in respect of a coolie.

6. In the instant case, the claimants had contended that the deceased was an agriculturist and was growing sugarcane. If that be the position, even in the absence of the other documents, we find it appropriate to reckon the income at Rs.4,000/- per month. Having arrived at the above conclusion, if the deduction of 1/4th for personal expenses as made by the Tribunal is accepted and the remaining 2/3rd is taken into consideration and the multiplier of '17' is adopted, the appellants would be entitled to the amount of Rs.6,12,000/- towards the 'loss of dependency'. Further, we find that the amount awarded under the 'conventional heads' is on the lower side. We therefore deem it appropriate to award a further sum of Rs.60,000/- towards the 'conventional heads'.

7. Thus in all, the appellants would be entitled to the compensation of Rs.6,72,000/- with interest at

the same rate as awarded by the Tribunal in substitution of the amount awarded by the Tribunal. The difference of the amount shall be deposited by the second respondent-insurance company within six weeks from the date of receipt of a copy of this judgment. On deposit, the entire enhanced amount be disbursed to the claimants by apportioning the amount in the same manner as had been done by the Tribunal at the first instance.

In terms of the above, the appeal is allowed in part.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

hrp
ct-rj