

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2015

PRESENT

THE HON'BLE MR JUSTICE N.K. PATIL

AND

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

M.F.A. NO. 7231/2013 (MV)

BETWEEN:

- 1 Smt. Vidya Anand Rai
W/o Late Ananda Rai,
Aged about 34 years,
R/at Inland Eminence, Flat No.G3,
Kadri Temple New Road,
Bejai Post, Bejai,
Mangalore – 575 003.
2. Master Preeth
S/o Late Ananda Rai,
Aged about 6 years,
Minor, represented by his
Natural guardian/mother
Smt. Vidya Ananda Rai,
R/at Inland Eminence,

Flat No.G3, Kadri Temple
New Road, Bejai Post, Bejai,
Mangalore – 575 003.

... APPELLANTS

(By Sri. S. Vishwajith Shetty, Adv.)

AND:

1. Sri. T.C. Basavaraju
S/o P.B. Channabasavanna,
Age : Major,
M/s. Basaveshwara Road Lines,
I Main, New Mandi Pete,
Tumkur – 572 201.
2. The Branch Manager,
The Oriental Insurance Co. Ltd.,
Branch Office: Tumkur,
TGMA Building, J.C. Road,
Tumkur – 572 201.
3. Sundara Rai
Since deceased by his LRs
a) Mrs. Vedavathi S. Rai
W/o Sundara Rai,
Aged about 69 years,
R/at Chandini House,
Bejai Church Road,
Mangalore – 575 003.
4. Mrs. Vedavathi S. Rai
W/o Sundara Rai,

Aged about 69 years,
R/at Chandini House,
Bejai Church Road,
Mangalore – 575 003. RESPONDENTS

(By Sri. R. Gunashekhar, Adv. For R-2,
Sri. N. Jagadish Baliga, Adv. for R-3(a) and R-4,
R-1 – served and unrepresented)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, 1988, AGAINST THE JUDGMENT AND AWARD DATED 31.10.2012 PASSED IN M.V.C. NO.993/2009 ON THE FILE OF 1ST ADDITIONAL SENIOR CIVIL JUDGE AND MEMBER, M.A.C.T., MANGALORE, ALLOWING THE CLAIM PETITION IN PART AND SEEKING ENHANCEMENT OF COMPENSATION BY ALLOWING THIS APPEAL.

THIS M.F.A. COMING ON FOR FURTHER ORDERS THIS DAY, N.K.PATIL. J., DELIVERED THE FOLLOWING:

JUDGMENT

Though this appeal is posted for Orders, with the consent of the learned Counsel appearing for both the parties, the same is taken up for final disposal.

2. This appeal is by the claimants directed against the impugned judgment and award dated 31st October 2012 passed in M.V.C. No.993/2009 on the file of the 1st Additional Senior Civil Judge and Member, M.A.C.T., Mangalore (hereinafter referred to as "Tribunal" for short). The Tribunal by its impugned Judgment and Award, awarded a sum of Rs.9,90,000/- with interest at the rate of 6% p.a. from the date of petition till the date of realisation on account of the death of the deceased late Sri. Ananda Rai in the road traffic accident with a direction to the Insurer to indemnify the award amount. The claimants have filed this appeal on the ground that the quantum of compensation awarded by the Tribunal is inadequate and requires enhancement.

3. The brief facts of the case on hand are that, the appellant No.1 is the wife and appellant No.2 is the minor son of the deceased. They have filed a claim petition under Section 166 of

the Motor Vehicles Act, claiming compensation of Rs.25,00,000/- against the respondents on account of untimely death of the deceased in the road traffic accident contending that, the deceased met with a road traffic accident that occurred on 12.11.2008 at about 8.00 a.m. on N.H. 48, B.M. Road, near Rajapura Vaddarahatti Cross of Channarayapatna Taluk, Hassan District, due to the rash and negligent driving of the Lorry bearing Regn. No. AP-03/U-6925 by its driver and sustained fatal injuries and succumbed to the same on the spot.

4. It is the case of the appellants that, the deceased was aged about 36 years, a businessman, and earning Rs.1,50,000/- p.a., only earning member of the family and the entire family was depending upon the income of the deceased. He was hale and healthy prior to the accident. On account of untimely death of the deceased, the wife has lost her companion and minor son has lost love and affection, inspiration, guidance. The deceased was

running fast food and real estate business and earning Rs.1,50,000/- per year. It is further stated that father and mother of the deceased were impleaded as respondents in the claim petition. Further, it emerges that during the pendency of the claim petition, father also died and the dependents are appellant Nos.1 and 2 and respondent No.4 – mother of the deceased. They filed claim petition under Section 166 of the M.V. Act before the Tribunal, claiming compensation against the respondents.

5. The said matter had come up for consideration before the Tribunal. The Tribunal in turn after due appreciation of the oral and documentary evidence and other material available on record assigning the reasons at paragraph 17 of the Judgment has assessed the income of the deceased at Rs.8,000/- per month. Out of which if 1/3rd is deducted towards personal expenses, the net income would be Rs.6,667/- p.m. Applying the multiplier of

‘15’, the Tribunal awarded Rs.9,60,000/- towards loss of dependency, Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of love and affection and Rs.10,000/- towards transportation and funeral expenses. In all the Tribunal awarded a sum of Rs.9,90,000/- with interest at 6% p.a. from the date of petition till realisation. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellants herein have presented this appeal seeking enhancement of compensation.

6. We have heard the learned Counsel appearing for the appellants and the learned Counsel appearing for the respondents.

7. The learned Counsel appearing for the appellants at the outset submitted that, the Tribunal has erred in not assessing the reasonable income of the deceased and also erred in not awarding reasonable compensation towards loss of dependency and conventional heads. Therefore, the impugned judgment and

award is liable to be modified by allowing this appeal. Further, he has taken us through Exs. P13 and P14 – Income tax returns (Saral Form) for the relevant year 2008-09 and assessed gross income of the deceased as Rs.1,49,099/- p.a., per month it comes to Rs.12,000/- and therefore, he submits that the income of the deceased may be re-assessed and reasonable compensation may be awarded towards loss of dependency. The Tribunal also erred in not awarding reasonable compensation towards loss of consortium, loss of love and affection and transportation and funeral expenses. Therefore, he submits that the impugned Judgment and Award is liable to be modified by awarding reasonable compensation.

8. Per contra, the learned Counsel appearing for the 2nd respondent – insurer inter-alia contended and sought to substantiate stating that the impugned Judgment and award passed by the Tribunal is after due consideration of oral and

documentary evidence available on record and interference by this Court is not called for.

9. Learned Counsel appearing for the mother of the deceased – respondent No.3(a), inter-alia contended and submitted that he adopts the submission made by the learned Counsel appearing for the claimants that the Tribunal has erred in not awarding reasonable compensation towards loss of dependency and the same may be awarded reasonably by taking the age, avocation of the deceased and modify the impugned Judgment and Award passed by the Tribunal.

10. After careful consideration of the submission of the learned Counsel appearing for both the parties and after perusal of the impugned judgment and award passed by the Tribunal, the only point that arises for consideration is:

“Whether the quantum of compensation awarded by the Tribunal is just and reasonable” ?

11. The occurrence of the accident and the resultant death of the deceased are not in dispute. It is also not in dispute that the deceased was aged about 36 years, a businessman, running fast food and also real estate business and he has declared his income tax as per Exs.P13 and P14 and the gross income shown as Rs.1,49,099/- per annum. Therefore, taking into consideration Exs.P13 and P14 and other material available on record and dependents are three in number i.e. wife, minor son and mother of the deceased, we can safely re-assess the income of the deceased at Rs.10,000/- per month, to meet the ends of justice. Further, 1/3rd is deducted towards personal expenses i.e. a sum of Rs.3,333/- the remaining net amount contributed to the family by the deceased is Rs.6,667/- per month. Accordingly, we re-

determine the compensation towards loss of dependency at Rs.12,00,060/- (Rs.6,667/- x 12 x 15) and accordingly, awarded.

12. Further, the wife has lost her companion at her young age, minor son has lost love and affection, inspiration and guidance and mother is put to mental pain and agony. Therefore, having regard to the facts and circumstances of the case stated supra and in the light of the judgments of Apex Court and this Court in host of judgments, we deem fit to award Rs.50,000/- towards loss of consortium, Rs.50,000/- towards loss of love and affection, Rs.25,000/- towards loss of estate and Rs.25,000/- towards transportation and funeral expenses. In all, the appellants/claimants are entitled to a total compensation of Rs.13,50,060/- as against Rs.9,90,000/- awarded by the Tribunal. There would be enhancement of Rs.3,60,060/- with interest at the rate of 6% p.a. from the date of petition till realization.

13. Having regard to the facts and circumstances of the case stated supra, the instant appeal filed by the appellants is allowed in part. The impugned Judgment and Award passed by the Tribunal dated 31st October 2012 passed in M.V.C. No.993/2009 on the file of the 1st Additional Senior Civil Judge and Member, M.A.C.T., Mangalore is hereby modified awarding Rs.3,60,060/- with interest at 6% p.a. from the date of petition till payment in addition to the compensation awarded by the Tribunal.

The 2nd respondent – The Oriental Insurance Co. Ltd., herein is directed to deposit the enhanced compensation amount with interest at 6% p.a. from the date of petition till realisation, within a period of three weeks from the date of receipt of copy of this judgment and award.

Out of the enhanced compensation of Rs.3,60,060/-, Rs.1,50,000/- with proportionate interest shall be invested in

Fixed Deposit in the name of the appellant No.1 – wife of the deceased Mrs. Vidya Anand Rai in any Nationalized or Scheduled Bank or Grameena Bank, for a period of 15 years and renewable for another 10 years and she is entitled to withdraw the periodical interest accrued on it.

A sum of Rs.1,00,000/- with proportionate interest shall be invested in Fixed Deposit in the name of the appellant No.2 – minor son of the deceased in any Nationalized or Scheduled Bank or Grameena Bank, for a period of 30 years and appellant No.1 – mother of the appellant No.2 is entitled to withdraw the periodical interest accrued on it for his welfare till he attains the age of 21 years. From 22 to 30 years, the appellant No.2 is entitled to withdraw the periodical interest accrued on it.

A sum of Rs.50,000/- with proportionate interest shall be invested in Fixed Deposit in the name of the appellant No.4 - mother of the deceased Mrs. Vedavathi S. Rai in any Nationalized

or Scheduled Bank or Grameena Bank, for a period of 5 years and renewable for another 5 years and she is entitled to withdraw the periodical interest accrued.

Remaining amount of Rs.60,060/- with proportionate interest shall be released in favour of the appellant No.1, immediately on deposit by the 2nd respondent – Insurer.

Draw the award, accordingly..

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Rbw