

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF APRIL, 2015

:PRESENT:

THE HON'BLE MR. JUSTICE N.K. PATIL

AND

THE HON'BLE MRS. JUSTICE RATHNAKALA

MFA NO.6555/2014 (MV)

BETWEEN:

1.SMT. SUNEETHA
W/O LATE BASAPPA,
AGED 30 YEARS,

2.HEMANTHKUMAR
S/O LATE BASAPPA,
AGED 10 YEARS,

3.SUMANTH
S/O LATE BASAPPA,
AGED 8 YEARS,

4.MAHADEVAMMA
W/O LATE MADAPPA @ MOTAPPA,
AGED 57 YEARS,

THE APPELLANT NOS.

1 TO 4 ARE

R/O URMARAKASALAGERE
VILLAGE, KOTHATHI HOBLI,
MANDYA TALUK,
NOW RESIDING AT GANJAM,
SRIRANGAPATNA TALUK,
MANDYA DISTRICT-571408.

THE 2ND AND 3RD APPELLANTS
BEING MINORS REPRESENTED BY
THEIR NATURAL GUARDIAN MOTHER
I.E 1ST APPELLANT IN THIS APPEAL.

... APPELLANTS

(BY SRI. PRAMOD R, ADVOCATE)

AND

1.PRAKASHA
S/O SIDDEGOWDA,
R.O NO.120/1,
SANTHEKASALAGERE VILLAGE,
KOTHATHI HOBLI,
MANDYA TALUK-571401.

2.THE DIVISIONAL MANAGER
NATIONAL INSURANCE COMPANY LTD.
DO-2, RAMASWAMY CIRCLE,
MYSORE-571408.

... RESPONDENTS

(BY SRI O MAHESH, ADVOCATE FOR R2
R1 SERVED AND UNREPRESENTED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:26.12.2013 PASSED IN MVC NO.1215/2012 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE, MACT, SRIRANGAPATTANA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MFA COMING ON FOR FURTHER ORDERS THIS DAY, **N.K. PATIL, J.**, DELIVERED THE FOLLOWING:

:JUDGMENT:

This is claimants' appeal filed against the impugned judgment and award dated 26th December 2013 passed in MVC No.1215/2012 on the file of the Principal Senior Civil Judge and MACT at Srirangapattana, (hereinafter referred to as 'Tribunal' for short), for enhancement of compensation.

2. The Tribunal by its judgment and award has awarded a sum of Rs.9,59,000/- under different heads with interest at 6% per annum from the date of petition till the date of deposit, as against the claim of the claimants for a sum of Rs.30,00,000/-, on account

of the death of the deceased late Sri Basappa in the road traffic accident.

3. In brief, the facts of the case are:

The 1st appellant is the wife, 2nd and 3rd appellants are minor children of the deceased and 4th appellant is the mother of the deceased and they have filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation of Rs.30,00,000/- on account of the death of the deceased in the road traffic accident, contending that, on 4.07.2012 at 5.30 a.m the deceased Basappa S/o Late Madappa @ Motappa was going in his Motor bike bearing registration No.KA-11-A-7133 along with pillion rider by name Ravi S/o Late Madegowda from his village Uramarakasalagere towards Mandya near Kallahally on Mysore-Bangalore main road, Mandya town. Near Kallahally circle driver of the TATA 407 goods vehicle bearing Resigration No. KA-51-A-417 drove the same with rash and negligent manner and high speed so as to endanger human life, from Mandya side and dashed against

the motorbike bearing No.KA-11-A-7133 , in the result, Basappa and pillion rider Ravi fell down and sustained injury. The deceased Basappa was shifted to District Hospital, Mandya and Nimhans Hospitla at Bengaluru for treatment. Then he died due to the injuries on 7.7.2012 at 7.50 a.m at Government Hospital, Mandya. Appellants have spent Rs,5,000/- for shifting his dead body and spent Rs.10,000/- for his cremation and Rs. 50,000/- for his 11 day ceremony. It is the further case of the appellants that, the deceased was aged about 35 years at the time of accident, hale and healthy and was a mason and also agriculturist growing vegetables in his land and selling the market and was earning Rs.15,000/- p.m. and looking after the welfare of the family and due to his untimely death, they suffered socially and economically. Due to the death of Basappa they have lost love and affection. They were dependent on his income and he was the only earning member of the family. After his death, they are put to lot of problems and difficulties. The said claim petition had come up for consideration before the

Tribunal. The Tribunal after appreciating the oral and documentary evidence and other material available on record, has allowed the claim petition in part and awarded the compensation of Rs.9,59,000/- under different heads with interest at 6% p.a., from the date of petition till the date of deposit. Not being satisfied with the compensation awarded by the Tribunal the appellants have presented this appeal, for enhancement of compensation.

4. The submission of the learned counsel appearing for the appellants at the outset is that, the Tribunal has failed to assess the just and reasonable income of the deceased and the income of Rs.6,000/- per month assessed is on the lower side since the accident has occurred on 4.7.2012 and by profession he was a mason and also doing agriculture by growing vegetables in his land and selling in the market, earning Rs.15,000/- p.m. Therefore, he submitted that the income of the deceased may be re-assessed. Due to his un-timely death, claimants have lost their only breadwinner and facing great mental shock and monetary loss also he submitted

that the rate of interest awarded at 6% per annum is also on the lower side since the accident is of the year 2012 and the same may be enhanced to 9% to 10% per annum. Therefore, the impugned judgment and award passed by the Tribunal is liable to be modified.

5. Per contra, the learned counsel appearing for the Insurer inter alia contended and substantiated that, the impugned judgment and award passed by the Tribunal is just and proper and is passed after considering the oral and documentary evidence and interference by this Court is not called for. However, he submitted that the impugned judgment and award passed by the Tribunal may be modified in accordance with law.

6. After considering the submissions made by the learned counsel appearing for both the parties and on perusal of the material available on record, including the impugned judgment and award passed by the Tribunal, the only point that arise for consideration is:

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

7. It is not in dispute that the deceased died in the road traffic accident. Further it is not in dispute that, the deceased was aged about 35 years at the time of accident, hale and healthy and looking after the welfare of the appellants. The claimants are none other than the wife, minor children and mother of the deceased, who have lost their future security due to his untimely death. Having regard to the age, avocation and year of accident, we can safely re-assess the income of the deceased at Rs.6,500/- per month to meet the ends of justice as against the income assessed by the Tribunal. Out of it, if 1/4th is deducted towards the personal expenses of the deceased, it comes Rs.4,875/-. In the light of the decision in *Sarla Verma's case*, the appropriate multiplier applicable is 16. Accordingly, the appellants are entitled towards loss of dependency at Rs.9,36,000/- (Rs. 4,875x12x16).

8. Considering the facts and circumstances of the case that, the wife has lost her life partner at an young age and the minor children have lost the love and affection, inspiration and guidance in life and mother has lost future security, we deem it fit to award Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards loss of estate, Rs.1,00,000/- towards loss of love and affection at the rate of Rs.25,000/- to each appellant and Rs.25,000/- towards funeral and transportation expenses. In all, the claimants are entitled for Rs.11,86,000/- as against Rs.9,59,000/- awarded by the Tribunal.

9. Having regard to the facts and circumstances of the case as stated above, appeal is allowed in part. The impugned judgment and award passed by the Tribunal dated 26.12.2013 in MVC No.1215/2012 is hereby modified. The total compensation payable comes to Rs.11,86,000/- as against Rs.9,59,000/- awarded by the

Tribunal. There will be an enhancement of Rs.2,27,000/- with 9% interest per annum.

The 2nd respondent-Insurer is directed to deposit the enhanced compensation of Rs.2,27,000/- with interest at 9% p.a., from the date of petition till the date of realisation, within three weeks from the date of receipt of a copy of this judgment.

Out of the enhanced compensation, Rs.1,00,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, in the name of the 1st appellant/wife for a period of fifteen years and renewable for another ten years, with liberty to her to withdraw the interest accrued on it.

Rs.30,000/- each with proportionate interest shall be invested in the name of 2nd and 3rd appellants till they attain the age of 30 years with liberty to the 1st appellant to withdraw the periodical interest accrued on it till they attain the age of 21 years

for their welfare and thereafter they are at liberty to withdraw the interest accrued on it periodically.

Rs.30,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, in the name of the 4th appellant/mother for a period of five years and renewable for another five years, with liberty to her to withdraw the interest accrued on it.

The remaining Rs.37,000/- with proportionate interest shall be released in favour of the 1st and 4th appellants, immediately, on deposit by the 2nd respondent-Insurer in equal proportion.

Draw the award, accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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