

IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH

DATED THIS THE 30<sup>TH</sup> DAY OF JUNE, 2017

BEFORE

**THE HON'BLE MR.JUSTICE B. A. PATIL**

MFA No.32639/2013 (MV)

C/W

MFA No.32624/2013

**IN MFA No.32639/2013**

**Between:**

1. Vivekanand S/o Mahantesh  
@ Mahantappa Hundekar,  
Age: 36 Years, Occ: Advocate,  
Sales and Income Tax Practitioner,  
R/o Indi Road, Bijapur-586101.
2. Arvind  
S/o Mahantesh @ Mahantappa Hundekar,  
Age: 33 Years, Occ: Business,  
R/o Indi Road,  
Bijapur-586101.

... Appellants

(By Sri. Bapugouda Siddappa, Advocate)

**And:**

1. Shri. Anup S/o Shivaji Bansode,  
Age: about 36 Years,  
Occ: Transport Business,  
R/o Saswad, Tq. Purandhar,  
Dist. Pune-400793.  
(Maharashtra State)

2. The Manager Legal,  
Reliance General Insurance Co. Ltd.,  
3<sup>rd</sup> Floor, Asian Plaza,  
Timmappuri Circle,  
Main Road,  
Gulbarga-585102.
3. Sri. Kesu S/o Sakharam Pawar,  
Age: about 41 Years,  
Occ: Business,  
R/o Horti L.T. No.1, Tq. Indi,  
Dist. Bijapur-586102.  
(Owner of TATA Sumo No.KA-28/M-9947)
4. The Manager Legal,  
Universal Somopo General Insurance Co. Ltd.,  
No.201-208, Crystal Plaza,  
2<sup>nd</sup> Floor, New Link Road,  
Opp: Infinity Mail Link Road,  
Andheri West,  
Mumbai-400053.  
(Maharashtra State)

... Respondents

(By Sri. Rahul R. Asture, Advocate for R-2)

( Notice to R-1 to 3 dispensed with V/O dtd. 3.1.2014

This Miscellaneous First Appeal is filed under Section 173(1) of M.V. Act, praying to modify the judgment and award dated 11.09.2013 passed in MVC No.17/2012 on the file of the MACT No.V, Bijapur at Bijapur and allow this appeal by enhancing the compensation amount by Rs.14,99,990/- only as claimed by the Appellants before this Court.

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Age: 36 Years, Occ: Advocate,

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This Miscellaneous First Appeal is filed under Section 173(1) of M.V. Act, praying to modify the judgment and award dated 11.09.2013 passed in MVC No.15/2012 on the file of the MACT No.V, Bijapur at Bijapur and allow this appeal by enhancing the compensation amount by Rs.14,99,990/- only as claimed by the Appellants before this Court.

These appeals are coming on for admission this day, the Court delivered the following:-

### **JUDGMENT**

These two appeals have been filed by the claimant-appellants, seeking enhancement of compensation awarded by the MACT No.V, Bijapur through its Judgment and Award dated 11.09.2013 in MVC No.15/2012 and MVC No.17/2012.

2. Appeals are admitted. With the consent of the learned counsel appearing for both the parties, the appeals are heard finally and disposed of by this Judgment.

3. The brief facts of the case as per the claim petition are that; on 5.11.2011 Sri. Mahantesh @ Mahantappa, his wife Smt. Meenakshi and others were

proceeding in a Tata Sumo bearing Reg.No.28/M.9947 towards Shiradi. When they were so proceeding, near Karmala-Temburni road near Adinath factory, Shelgaon at about 11:30 p.m., at that time, a Tempo bearing Reg. No.MH.12/FZ-4729 came from opposite direction with rashly and negligently and dashed to the said Tata sumo vehicle in which the said parents of the claimants were proceeding. Due to the said impact of accident, some persons have sustained injuries and the parents of the claimants died because of the injuries sustained by them in the accident. As such, claim petitions were came to be filed, claiming compensation.

4. The main contention of the learned counsel for the appellants are that; the compensation awarded by the Tribunal on the conventional head is on the lower side and the Tribunal has not considered the expenses which has been incurred for the purpose of funeral and obsequies functions. On these grounds, he

prayed for enhancing compensation by allowing the appeals.

5. The learned counsel for the respondent Nos.2 and 4 vehemently argued and contended by supporting the Judgment and Award passed by the Tribunal. He would further contend that the Tribunal after considering all the material facts has rightly awarded just compensation and there is no question of interference by this Court and to enhance the compensation. On these grounds, he prayed for dismissal of the appeals.

6. The accident in question is not in dispute. So also, the involvement of the offending vehicle insured with respondent No.2-Insurance Company is also not in dispute. As could be seen from the Judgment and Award of the Tribunal in MVC No.15/2012 the deceased was aged about 75 years and he was working as an Advocate by profession and he was also running an

establishment of sale tax and income tax practice and was earning Rs.2,65,135/- p.a., and it is also his case that, he was also owning 20 acres of irrigated land and growing commercial crop. After considering the evidence on record and taking into consideration the Exs.P-14 to 16, as the deceased was the income tax assessee and as per Ex.P-16 the income tax assessment for the year 2010-11, the income of the deceased was taken at Rs.2,20,000/- p.a. after deducting 50% towards his personal expenses and after applying multiplier of 5, the Tribunal has awarded Rs.5,50,000/- towards loss of dependency. The said amount appears to be just and proper. However, as could be seen from the Judgment and Award the Tribunal has only awarded Rs.10,000/- towards transportation charges, funeral expenses and has not awarded any amount on other conventional heads. Though the deceased was aged about 75 Years, then under the such circumstances he is also entitled for sum conventional

expenses, as such globally, a sum of Rs.75,000/- is awarded towards the conventional heads. The said amount also carry interest at the rate of 6% p.a. from the date of petition till realization.

7. As could be seen from the Judgment and Award of the Tribunal in MVC No.17/2012, the deceased was aged about 70 years and it is contended that, by taking into consideration the Ex.P-20, income tax assessment for the year 2010-11, the income of the deceased is taken at Rs.2,80,000/-p.a and after deducting 50% towards her personal expenses and after applying multiplier of 5, the Tribunal has awarded an amount of Rs.7,00,000/- towards loss of dependency. The said amount appears to be just and proper and same is confirmed. As could be seen from the said heads, the Tribunal has awarded Rs.10,000/- towards transportation charges and funeral expenses, but that appears to be on the lower side. By taking into



consideration the age of the deceased and the other conventional heads, a global compensation of Rs.75,000/- has been awarded on other conventional heads with interest at the rate of 6% p.a. from the date of petition till realization.

8. Accordingly, appeals are allowed in part and the Judgment and award passed by the Tribunal is modified to the extent as indicated above.

9. The Insurance Company shall deposit the additional amount of compensation awarded by this Court within six weeks from the date of receipt of the copy of this judgment.

10. Since the additional compensation awarded by this Court being meager, the same may be released in favour of the appellants after deposit by the Insurance Company.

Draw up the award accordingly.

No order as to costs.

**Sd/-  
JUDGE**

BL\*