

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2018

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

M.F.A. NO. 2793 OF 2014 (MV)

C/W

M.F.A. CROB. 148 OF 2014 (MV)

IN M.F.A. NO. 2793 OF 2014:

BETWEEN:

1. SMT. HEMAVATHI
W/O LATE N.MUNIRATHNAM,
AGED ABOUT 48 YEARS,
2. N.M.MALATHI
D/O LATE N.MUNIRATHNAM,
AGED ABOUT 29 YEARS,
3. N.M.SUNIL KUMAR
S/O LATE N.MUNIRATHNAM,
AGED ABOUT 27 YEARS,
ALL ARE RESIDING AT
OLD TILES FACTORY ROAD,
BANGARPET CIRCLE,
KOLAR TOWN – 563101.

... APPELLANTS

(BY SRI. N GOPAL KRISHNA, ADVOCATE)

AND:

1. SRI S N PARTHASARATHI
S/O P.N. NARASIMHAN,
MAJOR IN AGE,
RESIDING AT NO.25,
ADIKESHA PERUMAL

KOVIL STREET,
WEST MAMBALAM,
CHENNAI-600033.

2. M/S BAJAJ ALLIANZ GENERAL
INSURANCE COMPANY LTD.,
NO.31, T.B.R. TOWERS,
1ST CROSS, NEW MISSION ROAD,
NEXT TO BANGALORE STOCK EXCHANGE,
J.C.ROAD,
BENGALURU - 560 002,
REP:BY ITS MANAGER.

... RESPONDENTS

(BY SRI. B PRADEEP, ADVOCATE FOR R2
NOTICE TO R1 IS DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED
UNDER SECTION 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 11.10.2013 PASSED IN
MVC NO.213/2010 ON THE FILE OF THE I ADDITIONAL
DISTRICT JUDGE AND MACT, KOLAR, PARTLY
ALLOWING THE CLAIM PETITION FOR COMPENSATION
AND SEEKING ENHANCEMENT OF COMPENSATION.

IN M.F.A CROB NO. 148 OF 2014:

BETWEEN:

THE MANAGER
BAJAJ ALLIANZ GIC LTD
NO.31, T B R TOWER
1ST CROSS, NEW MISSION ROAD
NEXT TO BANGALORE STOCK EXCHANGE
J C ROAD, BENGALURU - 560006

... CROSS OBJECTOR

(BY SRI. PRADEEP B, ADVOCATE)

AND:

1. HEMAVATHI
W/O LATE MUNIRATHNAM
AGED ABOUT 49 YEARS

2. N M MALATHI
D/O LATE N MUNIRATHNAM
AGED ABOUT 29 YEARS
3. N M SUNIL KUMAR
S/O LATE N MUNIRATHNAM
AGED ABOUT 27 YEARS
ALL ARE R/A OLD TILES FACTORY ROAD
BANGARPET CIRCLE
KOLAR TOWN-563114
4. S N PARTHASARATHI
S/O P N NARASIMHAN
AGE:MAJOR
NO.25
ADIKESHA PERUMAL
KOVIL STREET, WEST MAMBALAM
CHENNAI-600033

... RESPONDENTS

THIS MFA CROB IN MFA NO.2793/2014 FILED UNDER ORDER 41 RULE 22 OF CPC, AGAINST THE JUDGMENT AND AWARD DATED 11.10.2013 PASSED ON MVC NO.213/2010 ON THE FILE OF THE I ADDITIONAL DISTRICT JUDGE AND MEMBER, MACT, KOLAR, AWARDED COMPENSATION OF RS.9,29,500/-WITH INTEREST @ 6% P.A FROM THE DATE OF PETITION TILL THE REALIZATION.

THIS APPEAL CONNECTED WITH MFA CROB. COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

J U D G M E N T

The appeal by the claimants in MFA No. 2793/2014 and appeal by the insurer in MFA Crob. No. 148/2014 challenge the judgment and award dated

11.10.2013 made by the MACT, Kolar allowing MVC No.213/2010 whereby a compensation of Rs.9,29,500/- with 6% annual interest has been awarded. The appeal by the claimant is on the ground of inadequacy of compensation and the appeal by the insurer is on the ground of higher compensation.

The brief facts stated are:

2. The offending Bolero Jeep bearing Registration No. TN-09/BD-0111 driven rashly and negligently dashed to the motorcycle bearing Registration No. KA-07/R-6239 on 04.12.2010 resulting into fatal injury to the rider of the motorcycle N.M.Prem Kumar, who later succumbed to the same. In the claim petition MVC No. 213/2010, the LRs of the deceased had sought for compensation. The same was resisted by the respondent-insurer by filing Written Statement.

2A. To prove the claim, the mother of the deceased, Hemavathi was examined as PW1 and one Mr.Subramanya, the employer of the deceased, was examined as PW2. In their evidence, 16 documents as per

Exhibits P1 to P16 came to be marked. These included educational papers of the deceased, PM Report and RTO records and also the employment documents. From the side of the respondents, none was examined nor any document was got marked. The MACT after looking to the pleadings of the parties and after weighing the evidentiary material on record, has made this impugned judgment and award.

3. Learned counsel for the claimants submits that the award of compensation is too much on the lower side since the MACT has wrongly taken Rs.5,800/- as the income of the deceased when it ought to have taken at least Rs.8,831/- and that the MACT ought to have added at least 50% to the actual salary of the deceased. Per contra, the learned counsel for the insurer submits that what is awarded by the MACT itself is on the higher side and therefore, the compensation should be reduced commensurate with the case that emerges from the evidentiary material.

4. I have heard the learned counsel for the appellant claimants and the respondent-insurer. I have also perused the records from the original LCR.

5. The deceased was graduate having the degree of Bachelor of Business Management, which is evidenced by Ex.p12; he was employed in the company of PW2 and was drawing a salary of Rs.8,831/- per month is proved by the deposition of PW2, the employer coupled with Exs. P13 and 14 which are the order of appointment and the salary certificate, respectively. Nothing has been elicited to discredit the version of PW2 and to disbelieve these two exhibits. Therefore, the learned counsel for the claimant is justified in saying that he income of the deceased from the employment was Rs.8,831/- per month. No reason is assigned by the MACT for taking only Rs.5,800/- per month, i.e., Rs.3,000/- nearly less than the established income.

6. The learned counsel for the claimants is also justified in submitting that in view of the judgments of the Hon'ble Supreme court in Pranay Sethi's Case [(National

Insurance Company vs. Pranay Sethi and others” in AIR 2017 SC 5157)] and Hem Raj Case “[Hemaraj v. The Oriental Insurance Co. Ltd., 2018 ACJ 5], at least 40% has to be added to the established income of the deceased. After that 50% has to be deducted from the income of the deceased for his personal expenses since he was unmarried, as rightly contended by the panel counsel for the insurer. The insurer is also justified in seeking scaling down of the compensation awarded under the conventional heads from Rs.1,40,000/- to Rs.30,000/-.

7. With the aforesaid altered values, the compensation has been reworked out in terms of the joint memo of calculation which is signed by both the sides as under:

1) Loss of Dependency	Rs.13,04,964/-
2) Funeral Expenses	Rs.15,000/-
3) Loss of Estate	Rs.15,000/-

TOTAL	Rs.13,34,964/-
Less awarded	Rs.09,29,480/-

Enhancement	Rs.4,05,484/-

8. In the light of the above, the claimants Appeal and the insurer's Cross Objections are allowed in part; the impugned judgment and award made are modified by enhancing the compensation from Rs.9,29,480/- to Rs.13,34,964/- with interest at 6% p.a.; the respondent insurer shall make good the differential of the enhanced compensation i.e., Rs.4,05,484/- (Four Lakh Five Thousand Four Hundred and Eighty Four Rupees) within eight weeks.

**Sd/-
JUDGE**

Bsv