

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2019

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

M.F.A.NO.1884 OF 2017(MV-D)

BETWEEN

1. SRI. K.L. RANGAPPA S/O LAKKAPPA
AGE 36 YEARS
OCC: AGRICULTURIST AND BUSINESS.
2. SMT.H.MANJULA W/O K.L.RANGAPPA
AGE 30 YEARS

BOTH ARE RESIDING AT KODIHALLI VILLAGE
HOSADURGA TALUK, CHITRADURGA DISTRICT.
NOW RESIDING AT CHIKKAJAJUR VILLAGE
B.DURGA HOBLI, HOLALKERE TALUK – 577 518.

...APPELLANTS

(BY SRI. S.C.MANJUNATH, ADVOCATE)

AND

1. M.CHANDRASHEKHARA
S/O MYLARAPPA
AGE MAJOR
NOW R/AT MYLARPURA VILLAGE
KURUBARAHALLI POST, HOSADURGA TALUK
CHITRADURGA DISTRICT – 577 527.
2. DIVISIONAL MANAGER
NEW INDIA ASSURANCE CO.LTD.,
A.M.ARCADE, NEAR VIDYARTHI BAVAN
C.G.HOSPITAL ROAD
DAVANAGERE – 577 002.

...RESPONDENTS

(BY SRI. S.V.HEGDE MULKHAND, ADVOCATE FOR R-2
NOTICE NOT ORDERED IN R/O R-1)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 22.12.2016, PASSED IN MVC NO. 560/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE & MACT, HOLALKERE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION AND ETC.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal has been filed by the claimants being aggrieved by the impugned judgment and award dated 22.12.2016 passed by the learned Senior Civil Judge & MACT, Holalkere (for short 'the Tribunal') in M.V.C.No.560/2016.

2. The claim petition has been filed by the parents of the deceased child Guru, who was aged about 5 years as on the date of the accident, which resulted in his death.

3. Though the matter is listed for admission, with the consent of learned counsel for the parties, the same is taken up for final disposal.

4. Both the counsels submit that the occurrence of accident as well as the coverage of the policy of the offending vehicle by the Insurance company are not in dispute and this appeal is restricted to quantum of compensation awarded by the Tribunal.

5. The learned counsel for the appellants submit that the Tribunal committed an error in awarding compensation of Rs.2,25,000/- and coming to the conclusion that since the deceased child was only five years old as on the date of the accident, the notional income should be taken as Rs.15,000/- p.a. as per the Second Schedule to the Motor Vehicles Act, 1988, since the child was admittedly a non earning person. In this context, the learned counsel has placed reliance on the judgment of the Apex Court in the case of ***Kishan Gopal & another vs. Lala & Others (2014) 1 SCC 244***, to contend that since the Second Schedule to the Act, 1988 having been incorporated in the year 1994, the notional income of the deceased minor child to be taken as Rs.30,000/- p.a. in the light of the increase in cost of living as well as the galloping

rate of inflation which would require taking of the notional income as Rs.30,000/- p.a. instead of Rs.15,000/- p.a. It is therefore contended that on this ground, the appellants-claimants would be entitled to additional enhanced compensation under the head 'loss of dependency'.

6. Per contra, learned counsel for the respondent No.2- Insurance company would support the impugned judgment and award passed by the Tribunal.

7. I have given my anxious consideration to the rival submissions and perused the material on record.

8. As rightly contended by the learned counsel for the appellants, in view of the undisputed fact that the accident occurred in the year 2016 coupled with the fact that a sum of Rs.15,000/- p.a. was incorporated in the Second Schedule to the Act 1988 in the year 1994, there has been substantial increase in the cost of living and having regard to the galloping rate of inflation, it would be just and proper to take the notional

income of the deceased child as Rs.30,000/- p.a. as held by the Apex Court in ***Kishan Gopal's*** case (supra).

9. Thus, taking the notional income of the deceased child as Rs.30,000/- p.a., the appellants-claimants would be entitled to a sum of Rs.4,50,000/- under the head 'loss of dependency'. Since the Tribunal has not awarded any amount under conventional heads, the appellants would be entitled to a sum of Rs.50,000/- under conventional heads. Thus, the appellants would be entitled to a total compensation of Rs.5 lakhs. Since the Tribunal has already awarded a sum of Rs.2,25,000/-, the appellants-claimants would be entitled to an additional enhanced compensation of Rs.2,75,000/- with interest at 6% p.a. from the date of petition till the date of realization.

10. In view of the aforesaid discussion, I pass the following order:-

(i) The appeal is partly allowed.

(ii) The impugned judgment and award passed by the Tribunal is hereby modified.

(iii) The appellants-claimants are entitled to additional enhanced compensation of Rs.2,75,000/- which shall carry interest at 6% p.a. from the date of petition till the date of deposit.

(iv) The apportionment and disbursement to be done as per the impugned judgment and award passed by the Tribunal.

**Sd/-
JUDGE**

Srl.