

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.507 OF 2017(MV-D)

BETWEEN

1. MANJUNATH
S/O NAGAPPA
AGED ABOUT 34 YEARS
FATHER OF THE DECEASED GOWTHAM.
2. LATHA W/O MANJUNATHA
AGED ABOUT 30 YEARS
MOTHER OF DECEASED GOWTHAM.

BOTH AR ER/O GOWLAGATTI VILLAGE
POTHALAKATTA POST, HARAPANAHALLI TALUK
DAVANAGERE DISTRICT – 583 125.

...APPELLANTS

(BY SRI. SREEHARSHA .A.K, ADVOCATE)

AND

1. NATIONAL INSURANCE CO.LTD.,
REPRESENTED BY ITS MANAGER
DIVISIONAL OFFICE, MELAGIRI PLAZA
DENTAL COLLEGE ROAD, MCC 'B' BLOCK
DAVANAGERE – 577 002.
2. HANUMANTHA.R
S/O CHANDRANAIK.R
AGED ABOUT 32 YEARS
DRIVER OF TRACTOR BEARING
REG NO. AP-21/N-4368
R/O BEHINAHALLI SANNA THANDA
ARASIKERE POST, HARAPANAHALLI TALUK
DAVANAGERE DISTRICT – 583 125.

3. VENKATARAMA MANOHARA REDDY
 S/O K.VENKATARAMIREDDY
 AGED ABOUT 52 YEARS
 OWNER OF TRACTOR BEARING
 REG NO. AP-21/N-4368
 R/O 6-37, DORNIPADU VILLGAGE
 KARNOOL DISTRICT – 518 135.
 ANDHRA PRADESH.

4. CHATRA NAIK
 S/O RAMJI NAIK
 AGED ABOUT 42 YEARS
 INSURANCE POLICY HOLDER OF
 TRACTOR BERING REGO.NO.AP-21/N-4368
 R/O BEVINAHALLI SANNA THANDA
 ARASIKERE POST
 HARAPANAHALLI TALUK
 DAVANAGERE DISTRICT – 583 125.

...RESPONDENTS

(BY SRI.B.A. RAMAKRISHNA, ADVOCATE FOR -1
 NOTICE TO R-2 TO R-4 D/W.)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT
 AGAINST THE JUDGMENT AND AWARD DATED: 29.08.2016,
 PASSED IN MVC NO. 563/2015 ON THE FILE OF SENIOR CIVIL
 JUDGE AND MACT, - IX, HARAPANAHALLI, PARTLY ALLOWING THE
 CLAIM PETITION FOR OCMPENSATION AND SEEKING
 ENHANCEMNET 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

29.08.2016 passed by the learned Senior Civil Judge & MACT, Harapanahalli (for short 'the Tribunal') in M.V.C.No.563/2015.

2. The claim petition has been filed by the parents of the deceased child Gowtham, who was aged about 2 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 coming to the conclusion that since the deceased child was only two 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 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 justify 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.1-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 2015 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, in view of the 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'. The Tribunal has already awarded a sum of Rs.50,000/- under conventional heads. Thus, the appellants would be entitled to total compensation of Rs.5 lakhs. Since the Tribunal has already awarded a sum of Rs.2,75,000/-, the

appellants-claimants would be entitled to an additional enhanced compensation of Rs.2,25,000/- 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.2,25,000/- which shall carry interest at 6% p.a. from the date of petition till the date of realization.
- (iv) The apportionment and disbursement to be done as per the impugned judgment and award passed by the Tribunal.

**Sd/-
JUDGE**

Srl.