

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 31ST DAY OF AUGUST, 2021

BEFORE

THE HON'BLE MR.JUSTICE NATARAJ RANGASWAMY

MFA No.201812/2018

C/W

MFA No.201813/2018 (MV)

IN MFA No.201812/2018:

BETWEEN

The Branch Manager
New India Assurance Co. Ltd.,
Gurukul Road, Hanamashetty Building
Vijayapura, through its Divisional Manager
Sangameshwar Colony, Gulbarga-585103
Presently represented by Sr. Divisional Manager

...Appellant

(By Sri Uday P. Honguntikar, Advocate)

AND

1. Ramakrishna S/o Shankar Gayakwad
Age: 33 years, Occ: Agriculture
R/o: Baba Nagar, Vijayapura
Tq: & Dist: Vijayapura-586114
2. Swapna W/o Ramakrishna Gayakwad
Age: 28 years, Occ: Household Work
R/o: Baba Nagar, Vijayapura
Tq: & Dist: Vijayapura-586114

3. Amol S/o Balakrishna Sangaonkar
Age: 48 years, Occ: Business
R/o: Deena Bandhu Housing Society
Jaisingapur, Dist: Kolhapur,
Maharashtra-416101

...Respondents

(By Sri Biradar Veerangouda, Advocate for R1 & R2;
Notice to R3 served)

This Miscellaneous First Appeal is filed under Section 173(1) of MV Act, praying to set aside the judgment and award dated 07.04.2018 in MVC No.767/2015 passed by the II Addl. Senior Civil Judge & MACT-VII at Vijayapura by allowing the appeal.

IN MFA No.201813/2018:

BETWEEN:

The Branch Manager
New India Assurance Co. Ltd.,
Gurukul Road, Hanamashetty Building
Vijayapura, Through its Divisional Manager
Sangameshwar Colony, Gulbarga-585103
Presently represented by Sr. Divisional Manager

...Appellant

(By Sri Uday P.Honguntikar, Advocate)

AND

1. Ramakrishna S/o Shankar Gayakwad
Age: 33 years, Occ: Agriculture
R/o: Baba Nagar, Vijayapura
Tq: & Dist: Vijayapura-586114
2. Swapna W/o Ramakrishna Gayakwad
Age: 28 years, Occ: Household Work

R/o: Baba Nagar, Vijayapura
Tq: & Dist: Vijayapura-586114

3. Amol S/o Balakrishna Sangaonkar
Age: 48 years, Occ: Business
R/o: Deena Bandhu Housing Society
Jaisingapur, Dist: Kolhapur,
Maharashtra-416101

...Respondents

(By Sri Biradar Veerangouda, Advocate for R1 & R2;
Notice to R3 served)

This Miscellaneous First Appeal is filed under Section 173(1) of MV Act, praying to set aside the judgment and award dated 07.04.2018 in MVC No.768/2015 passed by the II Addl. Senior Civil Judge & MACT-VII at Vijayapura by allowing the appeal.

These appeals coming on for orders this day the court delivered the following:

JUDGMENT

These two appeals are filed by the insurer challenging the quantum of compensation awarded by the II Addl. Senior Civil Judge & MACT-VII at Vijayapura (for short, 'Tribunal') in MVC Nos.767/2015 and MVC No.768/2015.

2. The claimants in these appeals are the legal representatives of deceased Sanjaya and Sujay @ Srujan in MVC Nos.767/2015 and 768/2015. It is stated that on

03.04.2015 the deceased were traveling in a Car bearing Reg.No.GA.02/J.6809 towards Vijayapura from Tikota side. At about 4.00 p.m., Car bearing Reg.No.MH-04/ET.3754 (henceforth referred as offending vehicle) driven by its driver from the opposite direction in a rash and negligent manner, dashed against the Car in which the deceased were traveling. As a result, both Sanjaya and Sujay @ Srujan suffered injuries and died at the spot. The claimants being the legal representatives of the deceased have filed claim petitions claiming compensation from the owner and insurer of the offending vehicle.

3. The insurer of the offending vehicle as usual contended that it was the driver of the Car in which the deceased were traveling, who was negligent and responsible for the accident.

4. Based on the rival contention, the Tribunal set down the cases for trial. The claimants were examined and they marked documents.

5. Based on the oral and documentary evidence, the Tribunal applied the law declared by the Hon'ble Apex Court in the case of ***Kishan Gopal and Another vs. Lala and Others*** reported in **(2014) 1 SCC 244** and held that each of the claimants are entitled to a total compensation of sum of ₹5,90,000/- along with interest at the rate of 9% from the date of petition till the date of realization.

6. Being aggrieved by the aforesaid judgment and award, the insurer has filed the present appeals.

7. Learned counsel for the appellant contended that the Apex Court in the case of ***Kisan Gopal supra*** had directed payment of sum of ₹5,00,000/- as global compensation to the legal representatives of the deceased and the Tribunal committed an error in considering the notional income of the deceased at ₹ 30,000/- per annum and in applying the maximum multiplier and awarding a sum of ₹5,40,000/- and ₹50,000/- under the conventional heads. Further he contended that the tribunal had erred in

awarding 9% interest instead of 6% and same requires interference by this court.

8. *Per contra*, learned counsel for the claimants contended that the accident in ***Kisan Gopal supra*** occurred in the year 1992 while in the present case the accident occurred in the year 2015 and therefore the Tribunal was right in awarding a sum of ₹5,90,000/- as compensation.

9. As rightly contended by the learned counsel for the claimants, the Apex Court in the case of ***Kisan Gopal supra*** had held that a sum of ₹30,000/- per annum could be taken as the notional income of the deceased minor and in the present case the age of the mother was taken, the maximum multiplier was applied. Having regard to the rate of inflation, the compensation awarded by the Tribunal cannot be termed excessive and hence no interference is warranted at the hands of this court. However, the Tribunal erred in awarding interest at the rate of 9% p.a. instead of 6%. Thus, to this extent the judgment and award

of the Tribunal deserves modification. Accordingly, the claimants are entitled for interest @ 6% p.a. instead of 9%.

Hence, the appeals are allowed in part. The judgment and award of the Tribunal in MVC No.767/2015 and 768/2015 are confirmed but the rate of interest awarded by the Tribunal is reduced from 9% per annum to 6% per annum from the date of claim petitions till realization.

In view of disposal of main appeals, I.A.Nos.3/2018 in both the appeals does not survive for consideration, accordingly they are rejected.

The amount in deposit shall be transferred to the Tribunal for passing necessary orders.

**Sd/-
JUDGE**

BL