

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

M.F.A.NO.1749/2019 (MV)

BETWEEN:

1. RAJAMANI,
W/O LATE BASAVARAJU,
AGED ABOUT 40 YEARS.
2. ANANDA B.B.,
S/O LATE BASAVARAJU,
AGED ABOUT 19 YEARS.
3. ABHILASH,
S/O LATE BASAVARAJU,
AGED ABOUT 17 YEARS.
4. MAHADEVAMMA,
S/O LATE SHIVABASAPPA,
AGED ABOUT 67 YEARS.

SINCE APPELLANT NO.3 IS MINOR
HE IS REPRESENTED BY HIS MOTHER
NATURAL GUARDIAN, MOTHER 1ST APPELLANT.

ALL ARE R/AT C/O SANTHOSH C.,
BANK COLONY ROAD, BOGADHI
MYSURU-570026.

... APPELLANTS

(BY SMT. SUMA KEDILAYA, ADVOCATE)

AND:

1. KANCHANA BAI,
W/O LOKANATH RAO KADAM,

AGED ABOUT 37 YEARS,
M/S. KALIKA POULTRY FARM,
OPP. GAVADAGERE HIGH SCHOOL,
GAVADAGERE POST AND VILLAGE,
HUNSUR TALUK-571610.

2. UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICE, T.P. HUB,
BALLAL CIRCLE, CHAMARAJAPURAM,
MYSURU-570 004. ... RESPONDENTS

(BY SRI A.N. KRISHNA SWAMY, ADVOCATE FOR R-2;
R1- SERVED AND UNREPRESENTED)

THIS M.F.A IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 27.07.2018 PASSED IN MVC.NO.483/2016 ON THE FILE OF THE COURT OF ADDITIONAL SMALL CAUSES AND SENIOR CIVIL JUDGE, MACT, MYSURU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS M.F.A. COMING ON FOR HEARING THROUGH **VIDEO CONFERENCE** THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

This appeal is filed challenging the judgment and award dated 27.07.2018 passed in M.V.C.No.483/2016 on the file of the Court of Additional Small Causes and Senior Civil Judge, MACT, Mysore ('the Tribunal' for short) questioning the quantum of compensation awarded by the Tribunal.

2. The parties are referred to as per their original rankings before the Tribunal to avoid the confusion and for the convenience of the Court.

3. The factual matrix of the case is that Sri Basavaraju, the husband of petitioner No.1, father of petitioner Nos.2 and 3 and son of petitioner No.4 died in a road traffic accident arising out of use of tractor bearing registration No.KA-45-8703 occurred on 14.02.2016 at about 7.15 to 7.30 a.m. due to rash and negligent driving of its driver. The claimants claimed the compensation contending that the deceased was working as a loader and earning Rs.700/- per day and on account of untimely death of the said Basavaraju, the family has lost the earning member of the family. The claim of the claimants was opposed by the Insurance Company by filing the detailed objection statement. The claimants in order to substantiate their claim, have examined two witnesses P.W.1 and P.W.2 and got marked the documents at Exs.P.1 to 10. On the other hand, the respondents have not led any evidence. However, got marked the document Ex.R.1 policy . The Tribunal after considering both oral and documentary evidence placed on record, allowed the

claim petition in part granting compensation of Rs.12,35,000/- with interest at the rate of 9% per annum from the date of petition till its realization.

4. Being aggrieved by the quantum of compensation awarded by the Tribunal, the present appeal is filed by the claimants.

5. The learned counsel for the appellants/claimants would vehemently contend that the Tribunal has committed an error in taking the income of the deceased as Rs.7,500/- per month and the accident is of the year 2016. The Tribunal ought to have taken the notional income in the absence of any documentary proof regarding income. The learned counsel would contend that there are four claimants and the Tribunal has committed an error in deducting $\frac{1}{3}^{\text{rd}}$ of the income instead of $\frac{1}{4}^{\text{th}}$ towards personal expenses. Hence, it requires interference of this Court.

6. The learned counsel for respondent No.2 Insurance Company would contend that in the cross-examination, there is an admission that the mother is staying with the other son.

Hence, the Tribunal has rightly deducted 1/3rd. However, the learned counsel fairly concedes with regard to not taking of notional income is concerned. The learned counsel would also submit that under other conventional heads, the claimants are entitled to an amount of Rs.70,000/- in view of the judgment of the Apex Court in the case of **NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI AND OTHERS** reported in **(2017) 16 SCC 680**.

7. Having heard the arguments of the learned counsel for the appellants and the learned counsel for respondent No.2, the point that arise for the consideration of this Court is:

- (i) Whether the Tribunal has committed an error in not awarding just and reasonable compensation and whether it requires interference of this Court?

8. Having heard the respective learned counsel and also on perusal of the records, in the absence of any documentary proof regarding income, the Tribunal ought to have taken the notional income of Rs.9,500/- per month instead of Rs.7,500/- per month. Hence, it requires to re-visit the calculation under the head 'loss of dependency'. The Tribunal has rightly added

25% towards future prospects as the deceased was aged more than 40 years and has rightly applied the multiplier of '15'.

Now the 'loss of dependency' is calculated as under:

Monthly income	-	Rs.9,500/-
Add: 25% towards Future prospects	-	Rs.2,375/-

	-	Rs.11,875/-
Less: 1/4 th towards Personal expenses	-	Rs.2,969/-

	-	Rs.8,906/-

Loss of dependency (Rs.8,906/- x 12 x 15)	=	Rs.16,03,080/-

9. The claimants are also entitled to an amount of Rs.70,000/- under conventional heads as held by the Apex Court in the case of **PRANAY SETHI** (supra).

In all, the claimants are entitled to a compensation of Rs.16,73,080/- as against Rs.12,35,000/-

10. The learned counsel for respondent No.2 would contend that the Tribunal awarded interest at the rate of 9% per annum and the same should be reduced to 6% per annum and no appeal is filed by the Insurance Company. Hence, the Court

can allow the interest at the rate of 6% per annum in respect of the enhanced compensation.

11. In view of the discussions made above, I pass the following:

ORDER

- (i) The appeal is allowed.
- (ii) The impugned judgment and award of the Tribunal dated 27.07.2018 passed in M.V.C.No.483/2016 is modified granting compensation of Rs.16,73,080/- as against Rs.12,35,000/- with interest at the rate of 6% per annum on the enhanced compensation.
- (iii) The Insurance Company is directed to deposit the compensation amount with interest within six weeks from today.

**Sd/-
JUDGE**

MD