



**MFA No. 101885 of 2015**  
**C/W MFA No. 101546 of 2015**

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 26<sup>TH</sup> DAY OF AUGUST, 2022

BEFORE

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

M.F.A.NO.101885/2015 (MV-D)

C/W

M.F.A.NO.101546/2015

**IN M.F.A.NO.101885/2015:**

**BETWEEN:**

1. SHRI SAHADEV,  
S/O SHIVARAM MIRASHI,  
AGE: 57 YEARS, OCC: AGRICULTURE,  
R/O: ANAGADI, P.O HALASAL,  
TQ: KHANAPUR, DIST: BELAGAVI.
2. SMT. NIRMALA,  
W/O SAHADEV MIRASHI,  
AGE: 50 YEARS, OCC: HOUSEHOLD,  
R/O: ANAGADI, P.O.HALASAL,  
TQ: KHANAPUR, DIST: BELAGAVI.

...APPELLANTS

(BY SRI B.M. PATIL, ADVOCATE)

**AND:**

1. SHRI RAJARAM KALLAPPA PATIL,  
AGE: 31 YEARS, OCC: BUSINESS,  
R/O: NANDED FATA JADHAV NAGAR,  
GOSAVI VASATI NANDED,  
TQ: HAVELI, DIST: PUNE-411021.  
(OWNER OF HERO HONDA SPLENDOR  
MOTOR CYCLE MH-12/HS-8417).
2. BHARATI AXA GENERAL INSURANCE CO.LTD.,  
MILLENIUM STAR, OFFICE NO.9,

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by J MAMATHA  
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Dharwad  
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J  
MAMATHA



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NEAR RUBI HALL CLINIC PUNE,  
POLICY NO.FTW/SO422072/81/02/M1811W  
VALIDITY FORM 2-2-2012 TO 1-2-2013,  
(INSURER OF HERO HONDA  
SPLENDOR MOTOR CYCLE, MH-12/HS-8417)

...RESPONDENTS

(BY SRI S.K.KAYAKAMATH, ADVOCATE FOR R-2;  
APPEAL AGAINST R-1 IS DISMISSED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT,  
AGAINST THE JUDGMENT AND AWARD DATED 13.03.2015  
PASSED IN MVC NO.426/2013 ON THE FILE OF THE PRESIDING  
OFFICER FAST TRACK COURT-III AT BELAGAVI, PARTLY  
ALLOWING THE CLAIM PETITION FOR COMPENSATION AND  
SEEKING ENHANCEMENT OF COMPENSATION.

**IN M.F.A.No.101546/2015:**

**BETWEEN:**

BHARATI AXA GENERAL INSURANCE  
COMPANY LTD.,  
MILLENIUM STAR, OFFICE NO.9,  
NEAR RUBI HALL CLINIC PUNE,  
REPRESENTED BY ITS AUTHORIZED  
SIGNATORY, BHARATI AXA GENERAL  
INSURANCE, 1<sup>ST</sup> FLOOR,  
FERNS/SY NO.28, DODDA NEKUNDI,  
BENGALULRU-37.

...APPELLANT

(BY SRI S.K.KAYAKAMATH, ADVOCATE)

**AND:**

1. SHRI SAHADEV,





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- S/O SHIVARAM MIRASHI,  
AGE: 57 YEARS, OCC: AGRICULTURE,  
R/O: ANAGADI, P.O. HALASAL  
TALUK: KHANAOUR, DIST: BELAGAVI.
2. SMT. NIRMALA,  
W/O SAHADEV MIRASHI,  
AGE: 50 YEARS, OCC: HOUSEHOLD,  
R/O: ANAGADI, P.O. HALASAL,  
TALUK: KHANAOUR, DIST: BELAGAVI.
3. SHRI RAJARAM KALLAPPA PATIL,  
AGE: 31 YEARS, OCC: BUSINESS,  
R/O: NANDED FATA JADHAV NAGAR  
GOSAVI VASATI NANDED,  
TALUK: HAVELI, DIST: PUNE-411021,  
(OWNER OF HERO HONDA SPLENDOR  
MOTOR CYCLE MH-12/HAS 8417).

...RESPONDENTS

(BY SRI B.M. PATIL, ADVOCATE FOR R-1 AND R-2;  
R3 - SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, 1988, AGAINST THE JUDGMENT AND AWARD DATED 13.03.2015, PASSED IN MVC.NO.426/2013, ON THE FILE OF THE PRESIDING OFFICER FAST TRACK COURT-III COURT AT BELAGAVI, AWARDING COMPENSATION OF Rs.2,39,000/- ALONG WITH INTEREST AT THE RATE OF 9% P.A. FROM THE DATE OF PETITION TILL ITS REALIZATION.

THESE APPEALS COMING ON FOR ADMISSION THIS DAY THE COURT DELIVERED THE FOLLOWING:



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### **J U D G M E N T**

Both the appeals are filed challenging the judgment and award dated 13.03.2015 passed in MVC No.426/2013 on the file of the Presiding Officer, Fast Tract Court-III, Belagavi.

2. Heard the learned counsel for the appellants/claimants and the learned counsel for the respondent/Insurance Company.

3. The main contention of the claimants before this Court is that the Tribunal has committed an error in deducting 50% of income of the deceased towards personal expenses instead of 1/3<sup>rd</sup> and also committed an error in taking the age of the youngest parent and ought to have considered the age of the deceased and the compensation awarded is very meager.

4. The Insurance Company in its appeal contended that the Tribunal has committed an error in fastening the liability on the Insurance Company since P.W.1 though admits in the cross-examination that he is going to produce the driving licence of the deceased, not produced the driving licence. The owner also did not produce the documents before the Tribunal.



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Hence, the Tribunal committed an error in fastening the liability on the Insurance Company and the deceased cannot be treated as a third party. The evidence of R.W.1 against respondent No.1 with regard to non-existence of driving licence remained unchallenged. Hence, it requires interference of this Court.

5. Having heard the respective learned counsel and also on perusal of the material on record, the points that arise for the consideration of this Court are:

- (i) Whether the Tribunal has committed an error in not awarding just and reasonable compensation?
- (ii) Whether the Tribunal has committed an error in fastening the liability on the Insurance Company as contended?
- (iii) What order?

**Point No.(i):**

6. Having heard the respective learned counsel and also on perusal of the material on record, the claimants are the parents of the deceased. In the claim petition, the claimants have mentioned the age of the deceased as 26 years and post



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mortem report at Ex.P.5 discloses the age as 25 years. The admitted fact need not be proved and when there is an admission that he was 26 years as on the date of the accident, the multiplier applicable is '18'. the Tribunal committed an error in taking the multiplier of youngest parent and it is a petition under Section 163A and the question of deducting 50% of the income of the deceased towards the personal expenses does not arise and ought to have deducted  $1/3^{\text{rd}}$ .

7. The claimants in the claim petition have contended that the deceased was earning Rs.3,200/- per month and in the evidence also reiterated that he was earning 3,200/- per month. In the cross-examination of P.W.1, he admitted that he was earning Rs.3,000/- per month and hence the income of Rs.3,000/- per month has to be taken since there is an admission in the cross-examination of P.W.1. When such being the case taking income of Rs.3,000/- per month and deducting  $1/3^{\text{rd}}$  towards personal expenses and applying the relevant multiplier of '18', the loss of dependency comes to Rs.4,32,000/-. The claimants are also entitled for compensation



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of Rs.4,500/- under other heads. Hence, I answer point No.(i) in affirmative in part.

**Point No.(ii):**

8. The other contention of the counsel for the Insurance company contend that the deceased was not having driving licence and no such driving licence is also produced before the Court and apart from that, the counsel would vehemently contend that, P.W.1 in the cross-examination categorically admitted that, he was having driving licence but no such driving licence has been produced and even they have not produced the driving licence and hence, the Court has to draw an adverse inference.

9. The counsel also would vehemently contend that, the Officer of the Insurance company is also examined as R.W.1 and specific defence is taken in the written statement as well in the evidence and in the cross-examination suggestion was made to the R.W.1 that the deceased was having the driving licence and only in order to avoid the payment of compensation he has falsely deposed before the Court and the same is denied.



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10. Having considered the material available on record and also the claim petition is filed under Section 163-A of the M.V.Act, the Apex Court in the Judgment reported in 2018 (1) GLH 1 [United India Insurance Company Ltd., Vs. Sunil Kumar and Anr.] wherein, it is held that in a petition filed under Section 163-A, held that compensation raising of defence of plea of negligence by Insurer in the claim proceedings discussed with regard to its permissibility. The grant of compensation under Section 163-A of the Act on the basis of the structural formula is in the nature of final award and an adjudicate there under is required to be made without any requirement of proof of negligence of the driver, or owner of the vehicle. To permit the defence raised by the Insurer about the negligence in such proceeding would go contrary to the very legislative object of determination of final compensation within a limited since scheme is framed on the basis of the structural formula and hence, in a petition under Section 163-A of the Act, it is not open for the Insurer to raise any defence of negligence on the part of the victim. In the case on hand also, the main contention of the Insurance company is that, the





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victim was not having the driving licence and he was not having a driving licence and hence, the victim when he was not having the driving licence Insured also not placed any material before the court and the claimants also not produced any material before the Court to show that, he was having the driving licence. The Court has to take note of the compensation as sought under Section 163-A of the Act and merely non-production of the document of the driving licence, the Insurance company will not enure the benefit of the same. No doubt P.W.1 has admitted in the cross-examination that they are having driving licence of the deceased victim, but not produced the same and also the Insurance company though examined R.W.1, not summoned any witnesses from the R.T.O, whether he was having driving licence or made any efforts to prove the said fact into consideration whether the deceased was having driving licence or not. No doubt the Insured also not examined before the tribunal and merely because non-production of the driving licence of the victim, the claimants cannot be curtailed in claiming the compensation and the very contention of the Insurance company that the Court has to



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draw an adverse inference cannot be drawn when the Insured failed to summon the R.T.O or to examine the witnesses with regard to the driving licence is concerned and hence, the very argument of the counsel cannot be accepted and hence, I answer point No.2 as negative.

**Point No.3 :**

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

**ORDER**

The appeal filed by the claimant is allowed in part.

The Judgment and award dated 13.03.2015 passed in MVC No.426/2013 by the Fast Track Court III, at Belagavi is modified by granting compensation of Rs.4,36,500/- with 6% interest, as against Rs.2,39,000/- awarded by the tribunal.

The appeal filed by the Insurance company is dismissed.

The amount in deposit is ordered to be transmitted to the tribunal in respect of the appeal filed by the Insurance company.



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Registry to return the TCRs if any, to the trial Court.

**(Sd/-)**  
**JUDGE**

MD/-  
Svh/-