



MFA No. 101890 of 2017

**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH
DATED THIS THE 31ST DAY OF MARCH, 2022
BEFORE
THE HON'BLE MR JUSTICE N.S.SANJAY GOWDA
MISC. FIRST APPEAL NO. 101890 OF 2017 (MV-)**

BETWEEN:

1. IRAPPA VEERAPPA S/O NINGAPPA ARRESEMI
DECEASED BY LRS
- 1A. NEELAVVA W/O IRAPPA ARRESEMI,
AGE:41 YEARS, OCC:COOLIE
R/O. YALAGACH, TQ:HAVERI-581110.
- 1B. SUDHA D/O. IRAPPA ARRESEMI
AGE:19 YEARS, OCC:COOLIE
R/O. YALAGACH, TQ:HAVERI-581110.
- 1C. BASAVARAJ S/O IRAPPA ARRESEMI,
AGE:13 YEARS, OCC: STUDENT
R/O. YALAGACH, TQ:HAVERI-581110.
(SINCE APPELLANT NO.1 (C) IS MINOR,
HIS MOTHER GUARDIAN NATURAL MOTHER
PETITIONER NO. 1(A)
NEELAVVA W/O.IRAPPA ARRESEMI)

...APPELLANTS

(BY SRI B.M. PATIL, ADVOCATE)

AND:

1. SEETARAMSHETTY S/O MAHABALASHETTY
KANNUKAR THEKKAT, TQ:KUNDAPUR,





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DIST:UDAPI-576213.
(OWNER OF THE TRUCK LORRY NO. MEZ/7755)

2. THE MANAGER UNITED INDIA
INSURANCE COMPANY LTD.,
(BRANCH OFFICE P.O NO. 18,
KANCHANA TOWERS,
NH-17, KUNDAPUR-576219.

...RESPONDENTS

(BY SMT. PREETI SHASHANK, ADV. FOR RESPONDENT NO.2)
(NOTICE TO RESPONDENT NO.1-SERVED AND
UNREPRESENTED)

THIS M.F.A. IS FILED UNDER SECTION 173(1) OF MOTOR
VEHICLES ACT, PRAYING TO SET ASIDE THE JUDGMENT AND
AWARD PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AND
AMACT, HAVERI IN MVC.NO.149/2004 DATED 30.01.2016 BY
ALLOWING THIS APPEAL IN THE INTEREST OF JUSTICE AND
EQUITY.

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

JUDGMENT

An accident occurred on 19.03.2004 when the
claimant-Irappa was walking on the road and was
hit by a Truck. The Truck also collided with three
other people.

2. As a result of the collision, as per Ex.P.84
the Wound Certificate, Irappa lost loss of
movement in both lower limbs. As per Ex.P.86, it is



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clear that Irappa was admitted in the Government Hospital at Kundapur from 19.03.2004 to 24.03.2004 and thereafter was admitted in the Government Wenlock District Hospital at Mangaluru from 25.03.2004 to 21.05.2004. The discharge summary of Wenlock Hospital records the final diagnosis as follows :

“Comminuted left tibia, fibula with post traumatic paraplegia.”

3. Thus, in respect of an accident which occurred on 19.03.2004, as of 21.05.2004, Irappa was unable to move both his legs. In otherwords the medical evidence on record indicates that the Irappa had lost his mobility completely.

4. Dr.Mahantesh Hanchinal an Orthopedic Surgeon has given a certificate as per Ex.P.85, which reads as follows :

“This is to certify that Shri Irappa S/o.Ningappa Arresemi aged 51 years of



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Yalagach now residing at Dharwar was under my treatment from 30.6.04 to 25.3.05 an indoor as well as outdoor patient for traumatic paraplegia (spine fracture) a comminuted fracture of (L) tibia (L) fibula.

He had met with RTA on 19.3.04 and was treated at Govt. Hospital, Kundapur from 19.3.04 to 24.3.04 an indoor patient. Then he was admitted in Wenlock Hospital-Mangalore from 25.3.04 to 21.5.04. After that he was in the house.

He came to me on 30.6.04 with paraplegia with caltieterizah-pop cart-bedsore and septic treatment. I treated him as indoor patient from 30.6.04 to 15.7.04 and gave him physiotherapy-bedsore bedridden dressing done -antibiotic given. He was discharged on 15.7.04 with advice of bedsore care-dressing bladder care and medicine. After that he used to come too OPD treatment once in 10 days.

Again he was admitted under my care from 12.12.04 to 27.12.04 with urinary infection and infected bedsore. Treatment was given and again discharged on 27.12.04 with advice of bladder irrigation -bedsore care and high protein diet etc., After that he



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used to come an outdoor patient for treatment once in 15 days, but his general condition and immune status was decreasing due to paraplegia-infection, bedsore etc.,

Again he was admitted under my care from 28.2.05 to 25.3.05 with all treatment of septicemia-anemia with hypoproteinaemia-reral failure etc., I treated him with all medicine and discharged on 25.3.05 with advise to take him home as there was less hope of recovery due to worsening of the above said injuries. At the time of discharge he was having permanent physical disability of 95% to the whole body."

5. As could be seen from the Ex.P.85, as a result of the accident, Irappa had suffered paraplegia and was bedridden resulting in him suffering from bedsores and from septic infection. Dr.Mahantesh Hanchinal infact has stated that from 30.06.2004 till 15.07.2004 he had given him physiotherapy and had also treated his bedsore. The said Doctor also stated that thereafter he once again admitted him on 12.12.2004 to 27.12.2004



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with a urinary tract infection and also with infected bedsores. He has also stated that he had treated Irappa as an outdoor patient once in 15 days, but his general condition and immune status was decreasing due to paraplegia infection, bedsore, etc., The Doctor states that he was finally admitted from 28.02.2005 to 25.03.2005 with all features of septicemia anemia with hypo hypoproteinaemia renal failure and he treated him and discharged him on 25.03.2005 with an advise to his family members to take him home due to low hopes of recovery which was the result of worsening of the injuries.

6. Thus, the medical evidence clearly indicates that Irappa had become bedridden as a result of the accident and he was suffering the resultant consequences of being completely bedridden. Ultimately, Irappa passed away on 16.04.2005.



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7. Irappa had during his lifetime filed a claim petition claiming compensation for the injuries suffered by him on 18.08.2004. On his death, his legal representatives i.e., his wife and his children come on record and continued the proceedings.

8. The Tribunal in the first instance had dismissed the petition on the ground that the claim petition did not survive on the death of Irappa. The legal heirs thereafter preferred an appeal in MFA.No.21017/2008 and this Court allowed the appeal and remanded the matter to the Tribunal for fresh consideration. The Tribunal, thereafter by the impugned order has dismissed the claim petition on the ground that the death of Irappa had no nexus with the accident suffered by him. It is as against this dismissal, the present appeal has been preferred.

9. As noticed above, Irappa admittedly suffered an accident, as a result of which, he



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become completely immobile. For this permanent disability, the entitlement of Irappa became damages cannot be denied.

10. Admittedly, Irappa preferred a claim petition for the personal injuries suffered by him. The reasoning of the Tribunal that on the death of Irappa, the cause of action does not survive cannot be accepted, since the death occurred only as a direct result of the accident. To put it differently had Irappa remained alive, he would be entitled to receive the compensation by himself. However, by virtue of his death, which was as a result of the accident, his legal representatives become entitled to claim compensation. It is to be stated here that if the claimants' petition had been decided during lifetime of Irappa, he would be entitled to receive the compensation and the saem could not have been denied. Merely because the claim petition was not decided during his lifetime



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that would not disentitle the legal representatives of Irappa to receive the compensation. In fact Section 306 of the Indian Succession Act states that the cause of action would survive if death occurs as a result of personal injuries.

11. In any view of the matter, since Irappa died as a result of cascading effect of his injuries, his legal representatives would become entitle to claim compensation not only for the injuries suffered by him but also for the consequential death.

12. As could be seen from the medical evidence on record, right from the date of accident Irappa become completely bedridden and he also suffered from the consequential infections which arise out of being bedridden. Since Irappa was completely bedridden, it will have to be assumed that he had suffered 100% disability. Since there is no documentary evidence to establish his



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income, the income determined by the Karnataka State Legal Services Authority for the accident of the relevant year, which would be Rs.3,500/- per month will have to be adopted. To the said sum of Rs.3,500/-, 10% would have to be added as future prospects, which would result in the income to be at Rs.3,850/-. As Irappa was aged 50 years, multiplier of 13 would have to be adopted. Consequently, the claimants would be entitled to compensation of $(Rs.3,850/- \times 12 \times 13 =)$ Rs.6,00,600/- towards loss of dependency.

13. Learned counsel for the Insurer however contended that since it was being alleged that Irappa died as a result of the accident, if it was to be treated as death claim, the personal expenses of Irappa would have to be deducted. This argument cannot be accepted since Irappa himself filed claim petition claiming 100% disability. The legal representatives of Irappa have merely



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continued this claim petition and have also claimed compensation for his death. By virtue of Irappa's death having occurred subsequent to the filing of the petition, and Irappa would have been entitled to receive the compensation had he been alive, the question of deducting any sum towards personal expenses would not arise. The reliance of the learned counsel relies upon the Judgment of this Court rendered in the case of ***Uttam Kumar v. Madhav***, reported in **2002 ACJ 1828** cannot be accepted since the same has been overruled by the decision of the Hon'ble Apex Court in the case of ***Oriental Insurance Co. Ltd., v. Kahlon***, reported in **2021 ACJ 2576**. Consequently, argument regarding deduction to be made is rejected.

14. The claimants by virtue of the death of Irappa would also be entitled to loss of consortium at the rate of Rs.44,000/- each, which would in turn amount to Rs.1,32,000/-. They also entitled



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to Rs.33,000/- under the conventional heads. The evidence on record indicates that Irappa was bedridden right from the date of accident and he was actually inpatient for more than 3 months and even after his discharge he continued to be bedridden. In my view, in the interest of justice and equity it would be subserve the sum of Rs.1,50,000/- is awarded towards medical expenses incurred for treating Irappa while he was alive. Consequently, the claimants would be entitled to following sums.

Loss of dependency	Rs.6,00,600/-
Loss of consortium	Rs.1,32,000/-
Under the conventional heads	Rs.33,000/-
For medical expenses including attendant charges	Rs.1,50,000/-
Total	Rs.9,15,600/-



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15. In view of the above, I pass the following:

ORDER

- (i) The appeal is allowed in part.
- (ii) The Judgment and Award dated 30.01.2016 passed in MVC No.149/2004 on the file of the Principal Senior Civil Judge and AMACT, Haveri is hereby set aside. The claimants are entitled to a total compensation of Rs.9,15,600/- with interest @ 9% p.a. from the date of claim petition till the date of deposit.
- (iii) The Insurance Company/respondent is directed to deposit the compensation with interest before the Tribunal within a period of six weeks from the date of receipt of certified copy of this judgment.
- (iv) The wife of Irappa would be entitled to withdraw 50% of the award amount and remaining amount of 50% of the award amount shall be deposited in the names of daughter and son of Irappa



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for a period of 05 years from today in any Nationalize Bank. The wife of Irappa would be entitled to withdraw the interest that accrues on the fixed deposit amount.

**Sd/-
JUDGE**

CKK