

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 30TH DAY OF NOVEMBER, 2022

PRESENT

THE HON'BLE Dr. JUSTICE H.B.PRABHAKARA SASTRY

AND

THE HON'BLE MR. JUSTICE ANIL B. KATTI

MISCELLANEOUS FIRST APPEAL No.202070/2014 (MV)

BETWEEN:

Branch Manager,
Reliance Gen. Ins. Co. Ltd.,
Branch Office, Asiza Plaza,
Sardar Vallabhai Patel Chowk,
Gulbarga-585 101
Now represented by
The Manager,
Reliance Gen. Ins. Co. Ltd.,
V A Kalaburagi Square, III Floor,
Desai Cross,
Deshpande Nagar,
Hubli-580 023

... APPELLANT

(BY SMT. PREETI PATIL MELKUNDI, ADVOCATE)

AND:

1. Smt. Mayadevi,
W/o. Late Annarao Patil,
Now aged about 47 years,
Occ: Household

2. Sunilkumar,
S/o. Late Annarao Patil,
Now aged about 28 years,
Occ: Student

3. Deepika,
D/o. Late Annarao Patil,
Now aged about 22 years,
Occ: Student

4. Priyanka,
D/o. Late Annarao Patil,
Now aged about 20 years
Occ: Student,

All are R/a Plot No.87,
Bank Colony,
Nehru Gunj,
Gulbarga-585 101

5. Mahadevappa G. Chincholi,
Age: Major,
R/o: Shivanagar, Aland Colony,
Gulbarga-585 101

... RESPONDENTS

(BY SRI SHIVANAND PATIL, ADVOCATE FOR R1 TO R4;
R5-NOTICE HELD SUFFICIENT)

This Miscellaneous First Appeal is filed under Section 173(1) of MV Act against the judgment and award dated: 16.09.2014 passed in MVC No.141/2012 on the file of the Principal Senior Civil Judge & CMJ at Gulbarga, partly allowing the claim petition and awarding compensation of ₹1,74,16,000/- with interest at 6% p.a.

This appeal having been heard through Physical Hearing and reserved for Judgment on 27.09.2022, coming on

for pronouncement of Judgment this day, **Anil B. Katti J.**, delivered the following:

JUDGMENT

1. The appellant/insurer has filed the present appeal being aggrieved by the judgment and award passed by I Addl. Senior Civil Judge and MACT, Gulbarga in MVC No.141/2012 dated 16.09.2014.
2. The parties to the appeal are referred with their ranks as assigned in the Tribunal, for the sake of convenience.
3. The factual matrix leading to the case of claimants can be stated in nutshell to the effect that on 02.05.2011 at about 11.15 p.m., the deceased Annarao Patil was returning in the car bearing No.KA-32/M-8971 from Hyderabad to Gulbarga along with his friends Dr. Jagadeesh Wali, Shivarudrappa Melkundi. The said car was being driven by Dr. Jagadeesh Wali and after crossing Kamalapur, due to

rash and negligent driving dashed against roadside milestone, as a result the car fell in ditch. On account of the accident in question Nagendrappa sustained grievous injuries and Annarao Patil succumbed to the injuries and died on the spot. The deceased Annarao Patil was doing Saraf business and also partner in Patil Saradgi Pulses, so also having agricultural income. On account of untimely death of Annarao Patil, the claimants who were dependent on the income of Annarao Patil have been subjected to greater hardship due to loss of bread earner in the family. Therefore, prayed for grant of compensation.

4. In response to the notice, respondent Nos.1 and 2 have appeared through their counsel and filed written statement. The respondent No.1 is the owner of the offending vehicle bearing No.KA-32/M-8971 and the respondent No.2 is the Insurer of the said vehicle. They have specifically denied that the accident in question has occurred due to rash and negligent

driving of the vehicle and as a result Nagendrappa sustained grievous injuries and Annarao Patil succumbed to the injuries on the spot. The age, occupation and income of deceased Annarao Patil is also denied. The driver of the car was not holding valid and effective Driving License as on the date of accident. On these grounds prayed for dismissal of the petition.

5. The Tribunal has clubbed MVC Nos.142/2012 and 141/2012 arising out of the same accident and a common judgment has been passed. The present appeal arises out of MVC No.141/2012.
6. The claimants in both cases in order to prove their case relied on the oral evidence of PWs. 1 to 3 and documents at Exs.P1 to P37. The respondents have not led any oral evidence nor got marked any documents on their behalf. The Tribunal after having heard the arguments on both sides and on perusal of oral and documentary evidence placed before it, has

partly allowed MVC No.141/2012 and has awarded compensation of ₹1,74,15,592/- under the following heads.

1	Loss of dependency	1,73,75,592/-
2	Towards loss of love and affection	15,000/-
3	Towards loss of estate	10,000/-
4	Towards transportation of dead body, funeral and obsequies charges	15,000/-
	Total	1,74,15,592/-
	Total amount rounded off	1,74,16,000/-

7. The appellant/respondent No.2-Insurance Company has questioned the correctness and legality of the impugned judgment under this appeal. It is contended that the business of deceased Annarao Patil has devolved on the claimants subsequent to his death and the same is continued by respondent Nos.1 to 4. Therefore, taking net income of the deceased from the business for calculating the loss of dependency is erroneous. The claimant Nos.1 and 2 are in fact not dependent on the income of deceased

Annarao Patil, since they have their own independent income from the business. The claimants have inherited the Saraf business and income from the partnership firm. There is no evidence on record to show that that income from the said business had been reduced on the death of Annarao Patil and as such the income from both avocations cannot be taken for calculating compensation on the head loss of dependency. The remuneration received by deceased Annarao Patil from partnership firm would have been only taken into consideration while calculating the compensation on the head loss of dependency. Therefore, on these grounds prayed for modification of the impugned judgment and award, passed by the Tribunal.

8. In response to the notice of appeal, respondent No.2 has appeared through counsel.
9. The trial Court records have been secured.

10. Heard the arguments of both sides.
11. On the basis of above narrated facts, the following point arises for determination:
 - 1) *Whether the appellant has made out grounds to interfere with the compensation amount determined by the Tribunal?*
 - 2) *What order?*

REASONS

12. **Point No.1:-** On 02.05.2011 at about 11.15 p.m., the deceased Annarao Patil was returning in the car bearing No.KA-32/M-8971 from Hyderabad to Gulbarga along with his friends Dr. Jagadeesh Wali Shivarudrappa Melkundi. The said car was being driven by Dr. Jagadeesh Wali. The factum of accident and the accident in question had occurred due to rash and negligent driving of the car by Dr. Wali and dashed against roadside milestone, as a result the car fell in ditch. On account of the accident in question, Nagendrappa sustained grievous injuries

and Annarao Patil succumbed to the injuries and died on the spot. The Tribunal by placing reliance on the oral evidence of PWs.1 and 2, coupled with the documents as per Ex.P1-FIR, Ex.P2-Charge-sheet, Ex.P3-MV Report, Ex.P4-Spot Mahazar, Ex.P5-Sketch map of the place of accident has recorded a finding that the accident in question has occurred due to rash and negligent driving of the car bearing No.KA-32/M-8971 and on account of the accidental injuries Annarao Patil succumbed to the injuries. The said finding recorded by the Tribunal is based on material evidence on record. We find no any justifiable grounds to interfere with the said finding recorded by the Tribunal.

13. The insurer has challenged the award by questioning the quantum of compensation fixed by the Tribunal. It is contended that there is no evidence to prove the income from business and also from the partnership firm is reduced or in any way affected the earnings of

the deceased Annarao Patil. The income from the house property as found in Ex.P34 would continue to the benefit of respondent Nos.1 to 4. The income tax returns filed by deceased Annarao Patil would reflect the income derived from partnership firm as well. Therefore, taking the income of deceased Annarao Patil individually and that of partnership firm is impermissible in law. The partnership firm is continued with the induction of claimants as other partners. The only amount that could be taken is remuneration that was received by the partner while he was working in the partnership firm. The Tribunal has committed serious error in taking into consideration the income from individual business and partnership firm in fixing the quantum of compensation.

14. The grant of compensation by the Tribunal on the head loss of dependency based on the income tax returns in individual capacity as per Exs.P32 to P34

and the income tax return filed with respect to partnership as per Exs.P35 to P37 has been challenged by the insurer. The learned counsel for the appellant-insurer has contended that the income of deceased Annarao Patil individually and that of the partnership firm is impermissible. The income from the house property filed in the returns as per Ex.P34 would accrue to the benefit of claimants Nos.1 to 4 and there is no evidence to show that income from the business and partnership firm is affected in any manner on the death of deceased Annarao Patil. On the other hand the learned counsel for the claimants - respondent Nos.1 to 4 has contended that the Tribunal after careful appreciation of evidence on record has rightly determined the compensation on the head loss of dependency which does not call for any interference by this Court.

15. The learned counsel for the appellant-insurer in support of her contention relied on the decision

reported **(2012)3 SCC Page 613 - New India Assurance Co., Ltd., Vs. Yogeshdevi and Others**

wherein it has been observed and held that the Tribunal is required to make a just and reasonable award determining the compensation to be paid to the dependents of the victim of a fatal motor vehicle accident. The expression 'just' denotes equitability, fairness and reasonableness, and non arbitrary. If it is not shown it cannot be just. At the same time it should not be bonanza or source of profit for victim. The Tribunals and Courts in determining the compensation must have judicious approach and rational basis. The compensation cannot be outcome of whims, wild, guesses and arbitrariness. There cannot be any dispute with regard to the proposition of law laid down in the said decision.

16. The learned counsel for the appellant-insurer has also relied on another Division Bench decision of this Court reported in **ILR 2001 KAR 1443 B. Parimala**

and Others vs. Riyaz Ahmed and Others,

wherein, it has been observed and held that there is also a difference between the nature of income from a partnership. The first is a share in the profits. The second is interest on the capital invested in the firm or advances made to the firm either by way of loan or deposit. The third is the salary or remuneration received by a partner from the firm. The Hon'ble High Court in Para - 23 of its judgment has recorded finding regarding the manner in which the income from partnership firm is to be accepted for calculating the compensation on the head loss of dependency and given illustrations.

17. On the other hand the learned counsel for the claimants-respondents has relied on the decision reported in **AIR - 2020 Supreme Court Page 434 - National Insurance Co., Ltd., Vs. Birender and Others** wherein it has been observed and held that in terms of Section 166(1)(c) of Motor Vehicles Act,

even major married and earning sons of deceased would be covered by expression legal representatives of deceased. The Tribunal has bounden duty to consider their application irrespective of fact that whether they are fully dependent on the deceased and not to limit their claim towards conventional heads only. The loss of dependency and living expenses of such dependents has to be considered.

18. The learned counsel for the claimants-respondents in support of his contention about placing reliance on income tax returns has relied on the decision reported in **(2015)9 SCC Page 150 - Shashikala and Others vs. Gangalakshamma and Another**, wherein it has been observed and held that income tax returns for the relevant year as on the date of the accident has to be accepted instead of aggregate income taken by the High Court. In the said case, before the Hon'ble Supreme Court, the date of accident is 14.12.2006 and the income tax return

filed for the assessment year 2006-07 has been taken into consideration by negating the finding of the Tribunal that it was a zerox copy and the claimants have not examined income tax authorities to prove the same.

19. The learned counsel for claimants-respondents also relies on the latest decision of Apex Court reported in ***(2020)4 SCC Page 228 - Malarvizhi and Others vs. United India Insurance Company Limited and Another***, wherein it has been observed and held that income tax return is a statutory documents on which, the reliance may be placed to determine the annual income of the deceased. In the said case before the Hon'ble Supreme Court, the date of accident 25.05.2001, the least of income tax return for the assessment year 1997-1998 has been taken into consideration out of the three years income tax returns filed in the said case. Keeping in mind the principles enunciated in the aforesaid decisions, the

compensation on the head loss of dependency has to be decided.

20. The Tribunal by relying on the income tax returns as per Exs.P32 to P34 individually by deceased Annarao Patil and the income tax returns of M/s. Patil Saradagi Pulses Partnership firm as per Exs.P35 to P37 has calculated the income separately on taking income tax return as per Ex.P33 for the year 2010-2011 and Ex.P36 for the year 2010-2011 has deducted 1/3rd as living expenses by applying multiplier of 13 has arrived to a conclusion that claimants are entitle for total compensation of ₹1,73,75,592/- on the head loss of dependency. The correctness and legality of such determination of compensation has to be now appreciated.
21. The income tax return filed individually and income shown therein is as follows:

Exhibits	Year of assessment	Gross income	Tax payable
Ex.P32	2009-2010	₹10,66,049/-	₹2,04,113/-
Ex.P33	2010-2011	₹11,49,265/-	₹2,29,199/-
Ex.P34	2011-2012	₹13,22,176/-	₹2,75,665/-

22. The income tax return filed of partnership firm of M/s. Patil Saradagi Pulses is as follows:

Exhibits	Year of assessment	Gross income	Tax payable
Ex.P35	2009-2010	₹15,00,180/-	₹4,77,514/-
Ex.P36	2010-2011	₹21,43,688/-	₹6,81,401/-
Ex.P37	2011-2012	₹26,91,915/-	₹8,61,484/-

23. The Tribunal has relied on Exs.P33 and P36 being the income tax return for the relevant period as on the date of accident. The Hon'ble Supreme Court in ***Shashikala and Others'*** case referred above has accepted the income tax returns for calculating the income and declined to accept the aggregate income taken by the High Court. Therefore, we find no fault with the Tribunal in taking into consideration the

income tax returns for the year 2010-2011 related to the date of accident.

24. The income tax returns as per Ex.P33 the gross income is shown as ₹11,49,265/- out of which, tax paid ₹2,29,199/- has to be deducted. The net income would be ₹9,20,066/- per annum from the individual business income of deceased Annarao Patil.
25. The Tribunal in Para 15 of its judgment by relying on the income tax returns as per Exs.P35 to P37 for the year 2009-2010, 2010-2011, 2011-2012 taking into consideration the assessment as per Ex.P36 being relevant assessment year as on the date of accident has taken the income of ₹27,12,088/- out of the income from partnership firm being 40% of the share held by deceased Annarao Patil. This amount to the extent of 40% share amounting to ₹10,84,835/- was taken into consideration and by deducting 1/3 living expenses applied the multiplier of 13, thereby

determined the compensation of ₹94,01,808/-. Whether this calculation of the Tribunal in determining the compensation on the head loss of dependency can be legally sustained or not has to be decided.

26. The evidence of PW2 would go to show that PW1 was also one of the partner of M/s. Patil Saradagi Pulses along with her husband. The said partnership business is now closed. PW2 placed her ignorance as to whether the closure of partnership firm has been informed to income tax department. PW2 admittedly has not produced any documents to show that the partnership firm is closed. PW2 has denied the suggestion that even after the death of her husband, the claimants are running business and also denies that her son is now continued with the business.
27. It is the duty of the claimants to adduce evidence with the continuation of the partnership firm or it has been dissolved on the death of Annarao Patil.

Undisputedly, as per the income tax return for the year 2009-2010 with appendix on form No. 3 C D Part-B reveals the names of partners as Annarao Patil and the first claimant Smt. Mayadevi Patil. They are having 40% and 60% of share respectively in the partnership firm. PW2 though claims that partnership firm is now closed, but no any evidence is produced on record to show that the partnership firm is closed on the death of Annarao Patil. It is also pertinent to note that claimant No.1 i.e. PW2 is having larger share of 60% than deceased Annarao Patil. The partnership firm is admittedly being subjected to audited and income tax returns have been filed. The claimants have not produced any acceptable evidence to show that on account of death of Annarao Patil, no income tax related to the firm is filed on account of closure of partnership firm. Therefore, in the absence of any evidence on record to show 100% loss to the extent of share of deceased Annarao Patil due to the closure of partnership firm,

the Tribunal was not justified in taking ₹10,84,835/- to the extent of 40% of share in the partnership firm of deceased Annarao Patil. Under the circumstances referred above, it will have to be held that partnership firm still continues.

28. The capital investment, the furniture, fixtures and others assets of the partnership firm as reflected in the income tax returns as per Exs.P35 to P37 enure to the benefit of claimants/respondent Nos.1 to 4. It may be only deceased Annarao patil must be active partner in the partnership firm and because of his death, the claimants at the most may engage the services of another person for managing the partnership firm in place of deceased Annarao Patil. In the above referred Division Bench decision in **B. Parimala's** case, at Para No.20 has held as under:

"There is a difference between an income earned by a person by investing his money in Fixed Deposits and an income earned by a person by investing money as capital in a

partnership firm, and on account of his initiative, zeal, exertion and business acumen, earning a profit. The profits earned are not only the result of the investments of capital, but is the result of investment plus the time, skill and effort put in by the partner. There is also difference between the income of a person who is a dormant partner, who does not contribute to the management, and income earned as an active member."

29. In the light of above referred context, the illustration 'C' given in Para 23 of the judgment applies to the facts of the present case.

"Illustration-'C':- The deceased, during his life time, was a partner in a family business of which he and his brother are the partners, each having invested Rs.1,00,000/- to the capital and both participating in the management of the partnership. Each partner was taking a monthly remuneration of Rs.5,000/- and interest at 12% on the capital of Rs.1,00,000/- invested of each of them and 50% share in the profits/losses. (The share in profits being Rs.10,000/- per annum during the relevant year). One of the partners died in a motor accident and his son is taken as a partner in the place of the deceased on the same terms; and thus the family continues to get the

same income. (consisting of remuneration, interest on capital investment and share in profits/losses). In such a situation, the entire income which the deceased use to get from the firm (remuneration + interest on capital + share in profits) will not be the loss to the family for the purpose of calculating the loss of dependency. Only the value of the effort put in by the deceased as partner will be a loss to the family. Thus, the remuneration of Rs.5,000/- per month or Rs.60,000/- per annum will be the loss of income."

30. The above referred decision in **B. Pramila** case is also relied in the latest Division Bench decision of this Court in **MANU/KA/4848/2020 H.K. MANJULA AND OTHERS VS. NAGARAJU H.L. AND OTHERS**, wherein it has been observed and held that normally, but not always, the remuneration is attributable to the efforts and exertion put in by the partner and the share in profits is for the investment made by way of capital. It has been observed and held in Para 24 of the judgment that,

In the light of the aforesaid judgment, three aspects are relevant to determine the

income of a partner from the partnership. The first is the share in the profits, the second is the interest on the capital invested in the form of advances made to the firm either by way of loan or deposit. The third is the salary or remuneration received by a partner from the firm. Where a person is an active partner who participates in the management of business what has to be ascertained is whether the partner is entitled to only a share in the profits or losses and is not entitled to any remuneration, income referable or attributed to the capital contribution and the income referable to the effort or exertion put in by him as a partner to manage the affairs of the firm. A judicious decision will have to be made to determine income attributable to the exertion or effort of the deceased and the income attributable to the investment made.

31. The illustration 'C' as referred in **B. Parimala's** case has been referred to hold that only the value of the effort put in by the deceased as a partner will be a loss to the family. On going through the above recorded findings of the Division Bench of this Court, it is only the remuneration to which deceased

Annarao Patil was getting from the partnership firm has to be considered as loss of income to the dependents. Looking to the relevant income tax return for the year 2010-2011 as per Ex.P36, it would go to show that deceased Annarao Patil was getting remuneration and interest amounting to ₹2,46,459/- per annum. In the light of the principles enunciated in the above referred **Parimala's** case the said amount *i.e.*, ₹2,46,459/- is to be taken as loss to the dependents.

32. The Tribunal has disallowed the income from agricultural land standing in the name of deceased Annarao Patil as per Exs.P17 to P19 on the premises that the claimants will succeed to the said properties and for want of evidence, it cannot be said that there is loss of income from agricultural lands. The Hon'ble Supreme Court in **Malarvizhi's** case referred above in the similar circumstances has held that there was no evidence regarding amount of income derived

from the aforementioned properties. The only evidence available in regard to the monthly income of the deceased is the statement of claimant. In the normal course, the claimants are expected to adduce evidence as to what would be the quantum of depletion in the income from the above mentioned asset on account of the above mentioned factors. In the present case also no evidence is adduced by the claimants to assist in the computation of the depletion in the net income which accrues to the deceased. The Hon'ble Supreme Court has declined to grant compensation on the head of income from agricultural lands. In the present case also in our opinion no tangible evidence is produced by the claimants to prove the income from agricultural land arising out of the documents produced at Exs.P17 to P19. Therefore, the Tribunal was justified in declining to consider the income from the agricultural lands.

33. The net income from the business as per the income tax return at Ex.P33 to ₹9,20,066/- + remuneration of ₹2,46,459/- which deceased Annarao Patil was getting from the partnership firm as per the income tax return as per Ex.P36 will have to be accepted as loss of income to the dependents. The total of which works out to (9,20,066/- + 2,46,459/-) ₹11,66,525/-. The Tribunal has deduced 1/3 as living expenses, since the son/claimant No.2 is a major son and not dependent on the income of deceased Annarao Patil. The claimants have not produced any evidence on record to show that the claimant No.2 is still student and pursuing his studies. Therefore, in the absence of any such evidence on record, the Tribunal was justified in holding that claimant Nos.1, 3 and 4 are only the dependents on the income of deceased Annarao Patil and justified in deducting 1/3 as living expenses. If the 1/3 amount is worked out from the total income referred above, then it comes to ₹3,88,842/-. The said amount of living expenses will

have to be deducted as living expenses, then if the same is calculated it works out to (₹11,66,525 - ₹3,88,842) ₹7,77,683/-. In view of decision in **(2009)6 SCC Page 121 - (Sarala Verma (SMT) and Others Vs. Delhi Transport Corporation and Another)** the appropriate multiplier applicable to the age of deceased Annarao Patil as per Ex.P28 is '13'. If the same is calculated, then it comes to $(7,77,683/- \times 13) = ₹1,01,09,879/-$, to which amount in our opinion, the claimants/respondents Nos.1, 3 and 4 are entitled as compensation on the head loss of dependency. The grant of total compensation on the other heads as awarded by the Tribunal does not call for any interference. Thus, the claimants 1, 3 and 4 are entitled for total compensation as follows:

1	Loss of dependency	1,01,49,879/-
2	Loss of love and affection	15,000/-
3	Loss of estate	10,000/-
4	Transportation, funeral and obsequies	15,000/-
	TOTAL	1,01,89,879/-

34. The above compensation shall carry interest at the rate of 6% per annum from the date of petition till realization of entire amount and accordingly the award of compensation is modified. Consequently, point No.1 for determination is answered in affirmative.
35. **Point No.2 :-** In view of the reasons assigned while dealing with point No.1 as above, we proceed to pass the following:

ORDER

The appeal filed by the appellant/respondent No.2 is hereby partly allowed.

The award of compensation ordered by the Tribunal in MVC No.141/2012 dated 16.09.2014 is hereby modified as under:

The claimants/respondent Nos.1, 3 and 4 are entitle for total compensation

of ₹1,01,89,879/- with interest at the rate of 6% per annum from the date of petition till realization of entire amount.

The apportionment of the amount and the deposit as ordered by the Tribunal remains unaltered.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Sbs*