

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

**DATED THIS THE 31ST DAY OF MARCH, 2022
BEFORE**

**THE HON'BLE MR.JUSTICE ASHOK S. KINAGI
MFA No.201262/2021 (ECA)**

BETWEEN:

1. ANUSAYABAI
W/O LATE DASHARATH EKAMBE,
AGED ABOUT 40 YEARS,
OCC: HOUSEHOLD,
2. RADHIKA
D/O LATE DASHRATH EKAMBE,
AGED ABOUT 20 YEARS,
OCC: HOUSEHOLD,
3. GOVIND
S/O LATE DASHRATH EKAMBE,
AGED ABOUT 17 YEARS,
OCC: STUDENT,
4. KAVERI
D/O LATE DASHRATH EKAMBE,
AGED ABOUT 16 YEARS,
OCC: STUDENT,
5. AISHWARAYA
D/O LATE DASHRATH EKAMBE,
AGED ABOUT 14 YEARS,
OCC: STUDENT,

6. BANDEPPA
 S/O SAIBANNA EKAMBE,
 AGE: 60 YEARS,
 OCC: COOLIE,

APPELLANTS NO.3, 4 & 5 ARE MINOR,
 R/BY THEIR NATURAL GUARDIAN
 MOTHER APPELLANT NO.1.
 ALL ARE R/O KINNIWADI,
 TQ. BASAVAKALYAN,
 DIST.BIDAR.

... APPELLANTS

(BY SRI SANJEEV KUMAR C. PATIL, ADVOCATE)

AND:

1. TULJAMMA
 W/O CHANDRAPPA KAMALE,
 AGE: MAJOR,
 OCC: BUSINESS AND OWNER OF
 TRACTOR BEARING
 No.KA-39/T-1538 AND
 ITS TROLLEY BEARING
 No. KA-39/T-1539,
 R/O VILLAGE MUDBI,
 TQ. BASAVAKALYAN,
 DIS. BIDAR-584 101.
2. THE DIVISIONAL MANAGER,
 UNITED INDIA INSURANCE
 COMPANY LIMITED,
 DR. JAWALI COMPLEX,
 SUPER MARKET,
 KALABURAGI-585 101.

... RESPONDENTS

**(BY SRI RAHUL R.ASTURE, ADVOCATE FOR R2;
 V/O DTD. 12.01.2022 NOTICE TO R1 IS D/W)**

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 30(1) OF THE EMPLOYEE'S COMPENSATION ACT, PRAYING TO CALL FOR THE RECORD AND MODIFY THE JUDGMENT AND AWARD DATED 16.04.2019 PASSED BY THE SENIOR CIVIL JUDGE AND COMMISSIONER FOR WORKMENS COMPENSATION, BASAVAKALYAN IN ECA NO.16/2016, BY ENHANCING THE COMPENSATION AMOUNT, IN THE INTEREST OF JUSTICE AND EQUITY.

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

JUDGMENT

This appeal is filed by the appellants challenging the judgment and award dated 16.04.2019 passed by the Senior Civil Judge and Commissioner for Workmen's Compensation, Basavakalyan in E.C.A. No.16/2016 under Section 30(1) of Workmen's Compensation Act, 1923 (for short 'the Act').

2. Parties will be referred to as per their ranking before the Commissioner for Workmen's Compensation. Appellants are the petitioners and respondents are the respondents before the Tribunal.

3. Brief facts giving rise to filing of this appeal is that on 17.06.2016 the deceased was proceeding from Mudbi to Hirnagaon through Kinniwadi in the said tractor bearing Reg.No.KA-39/t-1538 and trolley bearing No.KA-39/T-1539 belonging to respondent No.1. When the vehicle came near the land of Rajendra, due to unavoidable circumstances, the driver of the tractor lost his control over the vehicle and dashed against the Neelaagiri tree existed by the side of the road. As a result, the deceased - Dasharath sustained fatal injuries and died on the spot. The petitioners being the legal representatives of the deceased filed the claim petition under Section 10 of the Workmen's Compensation Act, 1923.

4. Respondent No.1 filed the written statement admitting the jural relationship, incident, age, occupation and registration of crime etc., and

also denied the monthly income at Rs.10,000/- per month as a salary. It is contended that the deceased was paid Rs.5,000/- as monthly salary and Rs.100/- per day on working days only and prayed to dismiss the claim petition.

5. Respondent No.2 denied the entire averments made in the claim petition and admitted that respondent No.1 is the owner of the tractor and trolley in question and the same is insured with respondent No.2. Respondent No.1 - driver of the tractor was not having a valid licence. Respondent No.1 violated the terms and conditions of the policy and prayed to dismiss the claim petition.

6. The Tribunal on the basis of the pleadings of the parties framed the issues:

7. The petitioners in support of their claim petition, examined petitioner No.1 as PW.1 and got

marked the documents as Exs.P-1 to P-12. The respondents have not lead either oral or documentary evidence.

8. The Tribunal, after recording the evidence and considering the material on record, allowed the claim petition in part and awarded compensation of Rs.8,38,765/- along with interest at the rate of 12% per annum from the expiry of one month from the date of death till the date of receipt of compensation amount by respondent No.2. He further submits that respondents are jointly and severally liable to pay the compensation to the petitioners.

9. Being dissatisfied with the compensation awarded by the Commissioner, the claimants/appellants have filed this appeal seeking enhancement of compensation.

10. Heard the learned counsel for the petitioners and also the learned counsel for respondent No.2.

11. The learned counsel for the petitioners submits that the deceased was getting Rs.10,000/- per month as wages and Rs.200/- per day as bhatta from respondent No.1 and there exists jural relationship between the employer and employee between the deceased and respondent No.1. Further he submits that the accident was occurred during the course of the employment and compensation awarded by the Tribunal is on the lower side. Hence, on these grounds, he prayed to dismiss the claim petition.

12. *Per contra*, learned counsel for the respondent submits that the petitioners have not produced any records to prove the income proof.

Therefore, the Tribunal has taken the wages as per the Minimum Wages Act, 1948. The Tribunal has taken the wages of the deceased as Rs.9,000/- per month and he submits that the Commissioner was justified in awarding the compensation amount of Rs.8,28,765/-, which is just and proper. Hence, on these grounds, he prayed to dismiss the appeal.

13. Heard and perused the records and considered the submissions made by the learned counsel for the parties.

14. It is the case of the petitioners that the deceased - Dasharath was a workman and he died on account of the injuries sustained in the accident, which occurred during the course of his employment under respondent No.1 and further contended that the deceased was earning Rs.10,000/- per month as wages and Rs.200/- per day as bhatta. In order to

prove the relationship between the employer and employee, respondent No.1 has filed written statement admitting the jural relationship as a employer and employee between the deceased and respondent No.1. In view of the admitted fact the Trial Court was justified in answering issue No.1 in the affirmative and further the petitioners have produced the records to show that the accident was occurred due to rash and negligent driving of the driver of the vehicle. In order to substantiate the said contention, the petitioners have produced the copy of charge sheet marked as Ex.P-7. Ex.P-7 discloses that the accident was occurred due to rash and negligent driving of the driver of the offending vehicle.

15. Insofar as quantum is concerned, the Tribunal has taken the income of the deceased at

Rs.9,000/- per month as per the Minimum Wages Act, 1948 as wages and deducted 50% on a monthly wages, applied multiplier of '184.17' and awarded compensation of Rs.8,28,765/-. The Commissioner was justified in taking the monthly income of the deceased as Rs.9,000/- and deducted 50% and awarded applying proper factor to the age of 40 of the deceased as 184.17 and awarded the compensation. Hence, the compensation awarded by the Commissioner is just and proper.

I do not find any ground to interfere with the impugned order passed by the Commissioner.

Accordingly, the appeal is dismissed.

**Sd/-
JUDGE**

ssb