



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF OCTOBER 2023

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE K.V.ARAVIND

MISCELLANEOUS FIRST APPEAL No.1471/2019 (MV-D)

BETWEEN:

1. SHRI NARASIMHAPPA @
CHIKKA NARASIMHAPPA @
CHIKKA NARASIMHAIAH
S/O. LATE DASARI MUNIYAPPA
AGED ABOUT 65 YEARS
2. SMT. VENKATAMMA
W/O. NARASIMHAPPA @
CHIKKA NARASIMHAIAH
AGED ABOUT 60 YEARS

BOTH ARE R/AT MADINAYAKANAHALLI
VILLAGE, HIRENAGAVALLI POST,
CHIKKABALLAPURA TALUK &
DISTRICT- 563 112

...APPELLANTS

(BY SRI LAKSHMIKANTH K, ADVOCATE)

AND:

1. THE BRANCH MANAGER
THE NEW INDIA INSURANCE CO. LTD.,
CITY DO II (670 200)
CITY DIVISIONAL OFFICE-II
BRIGADE PLAZA NO.202
SC ROAD, ANANDA RAO CIRCLE
BENGALURU-560 009
2. M/S. AILSINGANI BULK CARRIERS
NO.207, 3RD FLOOR
ELEGANCE ROYALLE COMPLEX
2ND "A" CROSS, SINDHI COLONY



J.C. ROAD, BENGALURU-560 002

...RESPONDENTS

(BY SRI E.I.SANMATHI, ADVOCATE FOR R1;
SRI SATEESH S.KUDTARKAR, ADVOCATE FOR R2)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S 173(1) OF MV ACT PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 01.08.2018 PASSED BY THE III ADDITIONAL JUDGE & MEMBER, MACT, COURT OF SMALL CAUSES, BENGALURU [SCCH-18] IN MVC NO.4158/2017 SEEKING ENHANCEMENT OF THE COMPENSATION.

THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR ADMISSION, THIS DAY, **K.S.MUDAGAL.J.**, DELIVERED THE FOLLOWING:

JUDGMENT

Though the matter is listed for admission, with consent of both side the matter is taken up for final disposal.

2. "Whether the compensation awarded to the appellants/claimants under the impugned award in M.V.C.No.4158/2017 on the file of III Additional Small Causes Judge and XXIX Additional Chief Metropolitan Magistrate, MACT, Bangalore is just?" is the question involved in this case.

3. The appellants were the claimants and the respondents were the respondents before the Tribunal. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the Tribunal.

4. The claimants are the father and mother of the deceased Ramachandra. On 31.05.2017 at about 1.20 p.m.



when Ramachandra was riding his motorcycle bearing Registration No.KA-01-V-7869 along with pillion rider his elder sister Venkatalakshamma near CSN Petrol Bunk, NH-7, Chikkaballapura, the tipper lorry bearing No.KA-01-AE-1766 hit the said motorcycle and caused the accident. In the accident, both of them suffered grievous injuries. They were shifted to District Hospital, Chikkaballapura. Ramachandra succumbed to the injuries and was declared brought dead.

5. Regarding the incident, one Pilla Anjinappa filed the complaint against the driver of tipper lorry alleging that accident and consequential death to the victim in the accident occurred due to actionable negligence on the part of the driver of tipper lorry. Based on such complaint, Chikkaballapura Traffic police registered first information report as per Ex.P1 in Crime No.44/2017 of their police station against the driver of tipper lorry bearing No.KA-01-AE-1766. On investigation, the police filed charge sheet as per Ex.P3 against the driver of the tipper lorry for the offences punishable under Sections 279, 304A of IPC and Section 187 of the Indian Motor Vehicles Act, 1988 (for short 'MV Act'). During the relevant time, respondent Nos.1 and 2



were the Insurer and registered owner of the lorry bearing No.KA-01-AE-1766.

6. The claimants filed M.V.C.No.4158/2017 against the respondents alleging that they were depending on the income of the deceased and he was working as driver and earning Rs.15,000/- per month. They further contended that due to his untimely death, they have suffered emotionally and financially. They claim compensation of Rs.50,00,000/- from the respondents.

7. Respondent Nos.1 and 2 contested the petition denying actionable negligence on the part of the driver of the lorry, age, occupation, income of the deceased and their liability to pay compensation.

8. To substantiate the claim of the claimants, claimant No.1 was examined as PW.1 and Exs.P1 to P28 were marked. The alleged employer of the deceased was examined as PW.2 and through him Exs.P29 to P33 were marked. The respondents did not lead any evidence.

9. The Tribunal on hearing the parties and relying on Exs.P1 to P33 and other evidence on record held that the accident occurred due to actionable negligence on the part of the driver of tipper Lorry. The Tribunal based on Ex.P19 the



SSLC Marks card of the victim considered his date of birth as 02.08.1987 and age as 29 years at the time of the accident. The Tribunal based on Ex.P23 the bank statement, assessed his income at Rs.10,000/- per month.

10. As the deceased was a bachelor, the Tribunal applying the judgment of the Hon'ble Supreme Court in ***Sarla Verma v. Delhi Transport Corporation***¹ deducted 50% of his income towards his personal expenses and applied 17 multiplier. The Tribunal relying on the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi***² added 40% of the income of the deceased by way of future prospects and awarded compensation of Rs.14,28,000/- on the head of loss of dependency.

11. The Tribunal in all awarded compensation of Rs.14,58,000/- with interest at 9% per annum on different heads as per the table below:

Sl. No.	Particulars	Compensation Amount in Rs.
1.	Towards Loss of dependency	14,28,000/-
2.	Towards Loss of estate	15,000/-
3.	Towards transportation of dead body, funeral and obsequies ceremony expenses	15,000/-
	Total	14,58,000/-

¹ AIR 2009 SC 3104

² AIR 2017 SC 5157



12. The respondents have not challenged the findings of the Tribunal regarding actionable negligence or liability of the Insurer.

13. The claimants have challenged the award on the ground that the income considered by the Tribunal is contrary to the evidence of PW.2 the employer. The Tribunal committed error in not awarding compensation on the head of consortium to the claimants. It is further contended that the compensation awarded on other heads is also on the lower side.

14. Per contra, Sri E.I.Sanmathi, learned Counsel for respondent No.1 and Sri Sateesh S.Kudtarkar, learned Counsel for respondent No.2 submit that the evidence of PW.2 was not reliable regarding employment of the deceased with him or wages paid to him. Therefore, the Tribunal was justified in assessing the income at Rs.10,000/- per month and that was based on the claimants' own document Ex.P23. They justify the compensation awarded on other heads also.

15. The question is whether the income considered by the Tribunal is proper. At the time of the accident, the deceased was aged 29 years. Ex.P24 shows that he was



holding driving license. Therefore, his avocation is also not in dispute. The claimants' own document, Ex.P23 shows that credit of Rs.10,000/- were prior to the date of the accident. Last such credit of Rs.10,000/- was on 13.02.2017. The accident took place on 31.05.2017. Considering prevailing wage rates of drivers and cost of living during the relevant time, the Tribunal should have considered the income of the deceased at Rs.11,000/- per month.

16. As the deceased was a bachelor, in view of the judgment of the Hon'ble Supreme Court in **Sarla Verma's** case referred to *supra*, 50% of the income has to be deducted for his personal expenses. Therefore his income comes to Rs.5,500/- (Rs.11,000 x 50%). As per the judgment of the Hon'ble Supreme Court in **Pranay Sethi's** case referred to *supra*, having regard to the employment and age of the deceased, 40% of the income has to be superadded by way of future prospects, which comes to Rs.5,500 x 40% = 2,200/-. Therefore the monthly contribution of the deceased to his family comes to Rs.7,700/- (Rs.5,500/- + Rs.2,200).

17. As per the judgment of the Hon'ble Supreme Court in **Sarla Verma's** case referred to *supra*, the applicable



multiplier for his age is 17. Therefore, the compensation payable on the head of loss of dependency comes to Rs.15,70,800/- (Rs.7,700/- x 12 x 17).

18. The claimants being aged parents of the deceased were entitled to compensation on the head of loss of parental consortium. As per the judgment of the Hon'ble Supreme Court in **Pranay Sethi's** case referred to *supra* and **Magma General Insurance Company Ltd. v. Nanu Ram**³ case, they are entitled to compensation of Rs.40,000/- each with escalation of 10% which comes to Rs.88,000/- on the head of consortium.

19. As per the aforesaid judgments, the claimants are entitled to compensation of Rs.15,000/- on the head of loss of estate and Rs.15,000/- for funeral expenses and transportation with escalation at 10%. The compensation payable on the said heads comes to Rs.33,000/-. Therefore just compensation payable to the claimants in this case is as follows:

Sl. No.	Particulars	Compensation Amount in Rs.
1.	Loss of dependency	15,70,800/-
2.	Loss of consortium	88,000/-
3.	Loss of estate & funeral expenses	33,000/-
	Total	16,91,800/-

³ 2018 (18) SCC 130



20. The Tribunal without assigning any reasons has awarded interest at 9% per annum on the compensation amount. As per Section 150(1) of the MV Act, the interest payable on the award amount shall be as per the law relating to the interest. The law with regard to interest applicable is the Interest Act, 1978 and Section 34 of CPC. The question of payment of interest as per the Interest Act arises only in case of contractual liabilities between the parties. In the present case, the liability did not arise out of a contract. Therefore, Section 34 of CPC applies and the interest payable is at 6% per annum.

21. For the aforesaid reasons, the appeal deserves to be allowed in part. Hence, the following:

ORDER

The appeal is partly allowed.

The award in M.V.C.No.4158/2017 on the file of III Additional Small Causes Judge and XXIX Additional Chief Metropolitan Magistrate, MACT, Bangalore is modified as follows:

(i) The claimants are entitled to compensation of Rs.16,91,800/- with interest thereon at 6% p.a. from the date of petition till the date of its realization.



(ii) Respondent Nos.1 and 2 are jointly and severally liable to pay the said compensation. However, respondent No.1 shall deposit the compensation before the Tribunal on adjusting the compensation already deposited, if any, within four weeks from the date of receipt of copy of this order.

(iv) The award of the Tribunal with regard to apportionment and investment is maintained.

(v) Registry shall transmit the records to the Tribunal forthwith.

**Sd/-
JUDGE**

**Sd/-
JUDGE**