



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 31<sup>ST</sup> DAY OF MARCH, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE N S SANJAY GOWDA**

**MISCELLANEOUS FIRST APPEAL NO. 9900 OF 2018**

**(MV-D)**

**BETWEEN:**

1. SMT. NAGARATHNAMMA  
W/O. LATE LINGEGOWDA @ THAMMAYANNA,  
AGED ABOUT 57 YEARS,
2. MR. MANJUNATH  
S/O. LATE LINGEGOWDA @ THAMMAYANNA,  
AGED ABOUT 42 YEARS,

BOTH ARE R/AT ARALALU VILLAGE,  
KASABA HOBLI, KANAKAPURA TALUK,  
RAMANAGARA DISTRICT-562 117.

...APPELLANTS

(BY MS. NIGHYA FOR SRI. PRAKASH M H., ADVOCATE)

**AND:**

1. NEW INDIA ASSURANCE CO. LTD.,  
REGIONAL OFFICE AT NO.9,  
2<sup>ND</sup> FLOOR,  
MAHALAKSHMI CHAMBERS,  
BENGALURU-560 001,  
REP BY ITS MANAGER.
2. NARAYANA SHETTY  
S/O. CHIKKANNA SHETTY, MAJOR,  
R/AT NO.112, 3RD DIVISION,  
KANAKAPURA TOWN,  
GODOWN BEEDI,  
H. M. DODDI,

Digitally  
signed by  
PANKAJA S  
Location:  
HIGH  
COURT OF  
KARNATAKA



KANAKAPURA TALUK,  
RAMANAGARA DISTRICT-562 117.

...RESPONDENTS

(BY SRI. SRIKANTA M P., ADVOCATE FOR R-1;  
VIDE ORDER DATED:13.02.2023, NOTICE TO R-2  
IS DISPENSED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:10.09.2018 PASSED IN MVC NO.712/2016 ON THE FILE OF THE 1<sup>ST</sup> ADDITIONAL SMALL CAUSES JUDGE, MACT, BENGALURU (SCCH-11), PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

**JUDGMENT**

1. In respect of an accident which is not in dispute, which resulted in the death of Lingegowda, a 60 year old, the Tribunal has awarded the following sums:

Sl. No.	Nature of Heads	Compensation As awarded by the Tribunal (In Rs.)
1.	Loss of estate	15,000/-
2.	Loss of consortium	40,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Dependency	4,05,000/-
	<b>Total :</b>	<b>4,75,000/-</b>



2. The present appeal is filed seeking enhancement of compensation.

3. It is not in dispute that as a result of the motor vehicle accident which occurred on 14.03.2015 at about 09.15. p.m., Lingegowda, a 60 year old died.

4. The Tribunal, on assessment of the evidence adduced before it, has come to the conclusion that the driver of the offending vehicle was responsible for the accident which has resulted in the death of Lingegowda.

5. The Tribunal, on noticing the fact that the driver of the offending vehicle did not possess a valid and effective driving licence as on the date of the accident, saddled the entire liability to pay the compensation on the owner of the offending vehicle and thereby exonerated the insurance company.

6. It is contended by the claimants that having regard to the settled law, as held by the Apex Court in the case of **Pappu and others vs. Vinod Kumar Lamba and Another, (2018) 3 SCC 208**, that for breach of policy condition viz., driver of



the offending vehicle not possessing a driving licence, the Tribunal ought to have passed an order for pay and recovery.

7. It is no doubt true that the driver of the offending vehicle did not possess a valid driving licence at the relevant time. In view of the settled preposition of law, the insurer would be liable to pay the compensation at the first instance and thereafter, proceed to recover the same from the owner of the offending vehicle.

8. As far as the compensation is concerned, the Tribunal in order to arrive at the *loss of dependency*, has determined the monthly income of the deceased notionally at **Rs.7,500/-**.

9. In cases where there is no evidence to determine the actual income, it is appropriate to adopt the notional income as assessed by the Karnataka State Legal Services Authority, which for the year **2015** would be **Rs.9,000/-**.

10. As per the decision of the Apex Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and Others - (2017) 16 SCC 680***, as the deceased was aged about 60 years, **10%** of the same (*Rs.900/-*) is required to be



added to the said income as future prospects and the resultant income would be Rs.9,900/-.

11. Out of the said sum, **1/3<sup>rd</sup>** of the same (Rs.3,300/-) would have to be deducted towards personal expenses of the deceased, as he was survived by his wife and a son. The net income will be Rs.6,600/-.

12. As the deceased was aged **60** years, as per the decision rendered by the Hon'ble Supreme Court in the case of ***Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, a multiplier of '9' would have to be applied.

13. Consequently, the claimants would be entitled to a sum of **Rs.7,12,800/-** (Rs.6,600/- x 12 x '9') towards "loss of dependency".

14. The claimants being the wife and son of the deceased, each of them would be entitled to a sum of Rs.44,000/- towards "loss of consortium" i.e., in all **Rs.88,000/-** and they would also be entitled to a sum of **Rs.33,000/-** under the "conventional heads".



15. Thus, the claimants, in modification of the impugned award, would be entitled to the following sums :

<b>Sl. No.</b>	<b>Nature of Heads</b>	<b>Compensation As awarded by this Court (In Rs.)</b>
1.	Loss of Dependency	7,12,800/-
2.	Loss of love and affection	88,000/-
3.	Conventional heads	33,000/-
	<b>Total :</b>	<b>8,33,800/-</b>

16. Thus, the claimants would be entitled for compensation of **Rs.8,33,800/-** as against Rs.4,75,000/- awarded by the Tribunal, along with interest at the rate of six per cent per annum from the date of petition till its realization.

17. The disbursement of the compensation amount shall be made as per the award of the Tribunal.

18. The Insurance Company is directed to deposit the amount of compensation awarded along with interest within a period of eight weeks from the date of receipt of a certified copy of this judgment and thereafter proceed to recover the same from the owner of the offending vehicle.



The appeal is accordingly ***allowed in part.***

**Sd/-  
JUDGE**

RK  
List No.: 2 SI No.: 25