



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 29TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL

MISCELLANEOUS FIRST APPEAL NO. 103883 OF 2023 (MV-D)

BETWEEN:

1. SMT. SAVAKKA W/O. SURESH RAJAPUT @ LAMANI,
AGE: 35 YEARS, OCC: HOUSE HOLD WORK,
2. KUMARI NETRAVATI D/O. SURESH RAJAPUT @ LAMANI,
AGE: 18 YEARS, OCC: STUDENT,
3. KUMAR KRISHNA S/O. SURESH RAJAPUT @ LAMANI,
AGE: 15 YEARS, OCC: STUDENT,
4. KUMAR SAMPAT S/O. SURESH RAJAPUT @ LAMANI,
AGE: 15 YEARS, OCC: STUDENT,
(APPELLANT NOS.3 AND 4 ARE MINORS
HENCE THEY ARE REPRESENTED BY
THEIR NATURAL GUARDIAN/MOTHER
SMT. SAVAKKA SURESH RAJAPUT @ LAMANI).
5. SMT. SALAVVA W/O. SHANKAR LAMANI @ RAJAPUT,
AGE: 66 YEARS, OCC: HOUSEHOLD WORK,
6. SRI. SHANKAR S/O. NAMAPPA LAMANI @ RAJAPUT,
AGE: 72 YEARS, OCC: NIL,
ALL ARE R/O. BANNUR TANDA,
TQ: RAMDURG, DIST: BELAGAVI-591130.

...APPELLANTS

(BY SRI. CHANDRASHEKHAR M. HOSAMANI, ADVOCATE)

AND:

1. SRI. PRUTHVIRAJ S/O. PRAKASH UPADHYE,
AGE: 67 YEARS, OCC: BUSINESS,
R/O. H.NO. 464, 2ND CROSS,
BHAGYA NAGAR, BELAGAVI-590001,
DIST. BELAGAVI.
2. UNITED INDIA INSURANCE CO. LTD,
THROUGH ITS DIVISIONAL MANAGER,

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signed by
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HADIMANI
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Date:
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DIVISIONAL OFFICE, MARUTI GALLI,
BELAGAVI-590001, DIST: BELAGAVI.

...RESPONDENTS

(BY SRI. S. S. JOSHI, ADV. FOR RESPONDENT NO.2)
(NOTICE TO RESPONDENT NO.1 IS DISPENSED WITH)

THIS MFA IS FILED U/S.173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO ALLOW THIS APPEAL BY ENHANCING COMPENSATION BY MODIFYING THE JUDGEMENT AND AWARD OF SENIOR CIVIL JUDGE AND AMACT, RAMDURG, DATED 21-12-2022 IN MVC NO.1029/2021 IN THE INTEREST OF JUSTICE AND EQUITY.

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

JUDGMENT

Though this appeal is listed for orders, with the consent of learned counsel for the parties, it is taken up for final disposal.

2. This appeal by the claimants seeking enhancement of compensation awarded under judgment & award dated 21.12.2022 passed in MVC No.1029/2021 by the Senior Civil Judge & Addl. MACT, Ramdurg (for short, 'Tribunal').

3. Brief facts leading to filing of this appeal are that on 12.11.2020, one Sri.Suresh Rajaput, as a cleaner cum hamal in Tata Ace Goods Vehicle bearing registration No.KA-22/B-8462 was proceeding from Belagavi to Sagar. The driver of the said vehicle drove the same in a rash and negligent manner, lost



control, due to which, the vehicle toppled down. As a result, Suresh struck into the vehicle, sustained fatal injuries and succumbed to the same at the spot. It is averred that the deceased Suresh was aged about 37 years, working as Cleaner-cum-Hamali in the said vehicle and earning Rs.25,000/- per month and daily batta of Rs.150/-.

4. Before the Tribunal, Respondent No.2/Insurance Company contested the proceedings by filing statement of objections and denied the averments made in the claim petition. It is further contended that the driver of the offending vehicle was not in possession of valid and effective driving license as on the date of the accident. Hence, sought for dismissal of the claim petition.

5. The claimant No.1, wife of the deceased Suresh, examined herself as PW1 and got marked the documents as Ex.P1 to P10. The respondents did not examine any witness nor marked any document.

6. The Tribunal on scrutiny of entire material available on record, allowed the claim petition in part awarding total compensation of Rs.20,22,000/- with interest at 6% per annum



from the date of petition till realization. The claimants being aggrieved by quantum of compensation, are before this Court in this appeal.

7. Learned counsel for the appellants Sri.Chandrashekhar M Hosamani urged twofold contentions. Firstly, the Tribunal committed an error in not awarding any compensation under the head of loss of future prospects, which the claimants would be entitled to 40% in terms of decision of Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs.Pranay Sethi & Others*¹**. Nextlty, in terms of ***Pranay Sethi's*** case referred supra, the claimants would be entitled to 10% escalation on the compensation awarded under the head of loss of consortium. Thus, he prays for allowing the appeal.

8. Per contra, learned counsel Sri.S.S. Joshi, for respondent/Insurance Company supporting the impugned judgment and award of the Tribunal would submit that award of compensation by the Tribunal on all heads is just and proper,

¹ 2017(16) SCC 680



requires no interference. Thus, prays for dismissal of the appeal.

9. Having heard the learned counsel for the parties and on perusal of the appeal papers, the only point that would arise of consideration in this appeal is *whether the appellants would be entitled for enhanced compensation?*

10. Answer to the above point would be in the affirmative for the following reasons:

11. The parties to the proceedings do not dispute the occurrence of the accident on 12.11.2020 resulting in death of Sri.Suresh, wife of appellant No.1, children of appellants No.2 to 4 and parents of appellants No.5 and 6. The contention of learned counsel for the appellants is that the Tribunal committed an error in not awarding compensation under the head of loss of future prospects. In terms of decision of Hon'ble Apex Court in the case of **Pranay Sethi** referred supra, wherever the deceased was aged below 40 years, the claimants would be entitled for addition of 40% of the assessed income towards future prospects. In the instant case, the deceased was aged 37 years as on the date of the accident, hence, the



claimants would be entitled for addition of 40% of the assessed income towards future prospects. There is no dispute with regard to notional income of the deceased at Rs.13,750/- per month assessed by the Tribunal, deduction of 1/4th towards personal and living expenses of the deceased and applicable multiplier of 15. Thus, the claimants would be entitled for modified compensation on the head of loss of dependency at **Rs.25,98,750/-** (Rs.13,750 + 40% x 12 x 15 x 3/4).

12. Further, the award of compensation by the Tribunal at **Rs.16,500/-** each under the head of loss of estate and funeral expenses is just and proper, which is not disturbed. The Tribunal awarded a sum of Rs.40,000/- each on the head of loss of consortium. However, the said sum shall carry 10% escalation for three years.

13. Thus, the claimants would be entitled to modified compensation on the following heads:

Particulars	Amount (in Rs.)
Loss of dependency	25,98,750/-
Loss of estate	16,500/-
Funeral expenses	16,500/-
Loss of consortium (Rs.44,000x6)	2,64,000/-
Total	28,95,750/-



Thus, the claimants shall be entitled to total compensation of **Rs.28,95,750/-** as against Rs.20,22,000/- awarded by the Tribunal.

14. In the result, I pass the following:

ORDER

- a) Appeal stands ***allowed in part.***
- b) The impugned judgment and award of the Tribunal is modified to an extent that the claimants would be entitled to total compensation of **Rs.28,95,750/-** as against Rs.20,22,000/- awarded by the Tribunal.
- c) The enhanced compensation amount shall carry interest at the rate of 6% per annum from the date of petition till the date of payment.
- d) The Insurer shall deposit the enhanced compensation amount with accrued interest before the Tribunal within a period of six weeks from the date of receipt of certified copy of this judgment.
- e) The apportionment, deposit and disbursement of enhanced compensation shall be made as per award of the Tribunal.
- f) Draw modified award accordingly.

**Sd/-
JUDGE**