



IN THE HIGH COURT OF KARNATAKA,AT DHARWAD

DATED THIS THE 02ND DAY OF DECEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE S G PANDIT

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO.101194/2022 (MV-D)

C/W

MISCELLANEOUS FIRST APPEAL NO.102229/2020

IN MFA NO.101194/2022

BETWEEN:

1. RENUKA W/O. BASAPPA BAILAPUR
AGE. 33 YEARS, OCC. HOUSEHOLD,
R/O. CHIKKAMYAGERI, TQ. YELBURGA,
NOW AT GANESH NAGAR,
KOPPAL, TQ AND DIST. KOPPAL.
2. ASHWINI D/O. BASAPPA BAILAPUR,
AGE. 13 YEARS, OCC. STUDENT,
3. BASAMMA D/O. BASAPPA BAILAPUR,
AGE. 8 YEARS, OCC. STUDENT, MINOR
4. MAHANTESH S/O. BASAPPA BAILAPUR,
AGE. 7 YEARS, OCC. STUDENT,
5. ANANDA S/O. BASAPPA BAILAKUR,
AGE. 5 YEARS, OCC. NIL,

APPELLANTS NO.2 TO 5 ARE MINOR
CHILDREN HENCE REPRESENTED BY THEIR
NATURAL MOTHER APPELLANT NO.1



**NC: 2025:KHC-D:17064-DB
MFA No. 101194 of 2022
C/W MFA No. 102229 of 2020**

ALL ARE R/O. GANESH NAGAR, KOPPAL,
TQ AND DIST. KOPPAL.

...APPELLANTS

(BY SRI S.H.MITTALKOD, ADVOCATE.)

AND:

1. RAYAPPA T.C. S/O. CHANNIGARAYAPPA SHEETY
AGE. MAJOR, OCC. DRIVER OF CANTER LORRY
BEARING REG. NO.KA-03/AD-1059,
R/O. NEAR GOVERNMENT SCHOOL,
SEGEHALLI VILLAGE, DODDABASAVAPURA,
OLD MARDRASH ROAD, BANGALORE,
NOW AT NO. 90, SOMIPURAM,
KODIAH COMPOUND, CHAMARAJPET,
BANGALORE.
2. UMAMAHESHWAR N. S/O. LATE NARAYANSWAMY
AGE. MAJOR, OCC. OWNER OF CANTER LORRY
BEARING REG. NO. KA-03/AD-1059,
R/O. NARAYANSWAMY BUILDING,
RAMASWAMY PALYA, MARUTI SEVA NAGAR,
BANGALORE.
3. THE LEGAL MANAGER
RELIANCE GENERAL INSURANCE
COMPANY LIMITED, NATIONAL HIGHWAY 218,
V. A. KALBURGI, SQUARE,
DESAI CROSS, DESHPANDE NAGAR, HUBBALLI.

...RESPONDENTS

(BY SRI G.N. RAICHUR, ADVOCATE FOR R3;
R1 AND R2 NOTICE DISPENSED WITH.)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO
CALL FOR RECORDS, ALLOW THE APPEAL AND MODIFY THE
JUDGMENT AND AWARD DATED 02.07.2020 PASSED IN MVC
NO.329/2017, ON THE FILE OF THE CIVIL JUDGE (SENIOR
DIVISION) AND ADDITIONAL MOTOR ACCIDENT CLAIMS



TRIBUNAL, KOPPAL, INsofar AS QUANTUM OF COMPENSATION IS CONCERNED AND ENHANCE THE COMPENSATION AS CLAIMED BY THE APPELLANTS, IN THE INTEREST OF JUSTICE AND EQUITY.

IN MFA NO.102229/2020

BETWEEN:

THE LEGAL MANAGER
THE RELIANCE GENERAL INSURANCE CO. LIMITED,
NATIONAL HIGHWAY -218 V.A.,
KALBURGI SQUARE, DESAI CROSS,
DESHPANDE NAGAR, HUBBALLI-580023,
REPTD. BY ITS AUTHORIZED SIGNATORY.

...APPELLANT

(BY SRI G.N. RAICHUR, ADVOCATE.)

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AND:

1. RENUKA W/O. BASAPPA BAILAPUR,
AGE: 33 YEARS, OCC: HOUSEHOLD WORK,
R/O: CHIKKAMYAGERI, TQ: YELBURGA,
NOW AT GANESH NAGAR, KOPPAL,
TQ. AND DIST.: KOPPAL.
2. ASHWINI D/O. BASAPPA BAILAPUR,
AGE: 13 YEARS,
R/O: CHIKKAMYAGERI, TQ: YELBURGA,
NOW AT GANESH NAGAR,
KOPPAL, TQ. AND DIST.: KOPPAL.
3. BASAMMA D/O. BASAPPA BAILAPUR,
AGE: 8 YEARS,
R/O: CHIKKAMYAGERI, TQ: YELBURGA,
NOW AT GANESH NAGAR,
KOPPAL, TQ. AND DIST.: KOPPAL
4. MAHANTESH S/O. BASAPPA BAILAPUR,
AGE: 7 YEARS,



NC: 2025:KHC-D:17064-DB
MFA No. 101194 of 2022
C/W MFA No. 102229 of 2020

R/O: CHIKKAMYAGERI, TQ: YELBURGA,
NOW AT GANESH NAGAR,
KOPPAL, TQ. AND DIST.: KOPPAL

5. ANANDA S/O. BASAPPA BAILAPUR,
AGE: 5 YEARS,
R/O: CHIKKAMYAGERI, TQ: YELBURGA,
NOW AT GANESH NAGAR, KOPPAL,
TQ. AND DIST.: KOPPAL-583231.

RESPONDENT NOS. 2 TO 5 ARE MINOR
CHILDREN AND THEY ARE UNDER GUARDIANSHIP OF
THEIR NATURAL MOTHER RESPONDENT NO.1
SMT. RENUKA BASAPPA BAILAPUR.

6. RAYAPPA T.C. S/O. CHANNIGARAYAPPA SHEETY
AGE: MAJOR, OCC: DRIVER OF CANTER LORRY
BEARING REG. NO. KA-03/AD-1059,
R/O: NEAR GOVERNMENT SAGEHALLI VILLAGE,
DODDABASAVAPURA OLD MADRASH ROAD,
BENGALURU,
NOW AT 90 SOMIPURAM KODIAH COMPOUND,
CHAMRAJPET, BENGALURU-560034.

7. UMAMAHESHWAR N. S/O. LATE NARAYANASWAMY,
AGE: MAJOR, OCC: OWNER OF CANTER LORRY
BEARING REG. NO. KA-03/AD-1059,
R/O: # NARAYANASWAMY BUILDING
RAMASWAMY PALYA, MARUTI SEVA NAGAR,
BENGALURU - 560034.

...RESPONDENTS

(BY SRI S.H.MITTALKOD, ADVOCATE FOR R1 TO R5.)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO
CALL FOR THE RECORDS AND HEAR THE PARTIES AND MODIFY
THE JUDGMENT AND AWARD DATED 02.07.2020 PASSED IN
MVC NO.329/2017, ON THE FILE OF THE CIVIL JUDGE (SR.DN.)
AND ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL,
KOPPAL, BY EXONERATING THE APPELLANT INSURANCE



COMPANY FROM LIABILITY AND REDUCE THE COMPENSATION AWARDED BY ACCEPTING THE GROUNDS MADE OUT IN THE GROUNDS OF APPEAL BY ALLOWING THIS APPEAL WITH COST IN THE ENDS OF JUSTICE AND EQUITY.

THESE APPEALS COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE S G PANDIT
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE S G PANDIT)

Both the claimants and insurer are in appeal against the judgment and award dated 02.07.2020, in MVC No.329/2017, on the file of Senior Civil Judge and Additional MACT, Koppal.

2. The claimants are in appeal claiming enhancement of compensation not being satisfied with the compensation awarded by the Tribunal, whereas the insurer is in appeal against the non consideration of contributory negligence as well as on the ground of quantum of compensation.



3. The claimants-wife and children of deceased Basappa filed claim petition under section 166 of the M.V.Act, 1988, claiming compensation for the accidental death of said Basappa Bailakur, in a road traffic accident that took place on 09.09.2016, involving motorcycle bearing registration No.CKW-5376 and Canter lorry bearing registration No.KA-03/AD-1059.

4. It is stated that the deceased was working as Driver cum Conductor in Bengaluru Metropolitan Transport Corporation (BMTC) and was earning a salary of Rs.20,011/- as on the date of accident. Further, it is stated that the deceased was aged about 32 years.

5. On issuance of notice, respondents No.1 and 2 did not appear before the Tribunal, respondent No.3 appeared and filed its written statement.

6. Respondent No.3 in its statement denied the claim petition averments and contended that the accident



occurred solely due to the negligent riding of the motorcycle by the deceased. It is also contended that the driver of the lorry had no valid and effective driving licence as on the date of accident. As there is violation of conditions of policy, it is prayed for dismissal of the claim petition against the insurer.

7. In support of the claim, the claimants examined PW.1 and PW.2 apart from marking Ex.P.1 to P.21, whereas, respondent insurance company examined RW.1 and got marked Ex.R.1 and R.2 documents.

8. The Tribunal on assessing the material on record, awarded compensation of Rs.41,52,000/- with interest at the rate of 7% p.a. from the date of petition till its realization. While awarding compensation, the Tribunal assessed the income of the deceased at Rs.20,011/- and added 40% of the assessed income towards loss of future prospects and deducted 1/4th of the income towards



personal expenses of the deceased and adopted the multiplier of 16.

9. Heard learned counsel Sri S.H.Mittalkod, for the appellants/claimants and learned counsel Sri G.N.Raichur, for the respondent insurer and perused the entire appeal papers including the Tribunal records.

10. Learned counsel Sri.G.N.Raichur for insurer would contend that the Tribunal failed to consider the contributory negligence of the rider of the motorcycle. Further, learned counsel by inviting attention of this Court to Ex.P5 – spot sketch and Ex.P7-MVI report would submit that the sketch would indicate that the motorcycle had come and hit the Canter Lorry from behind. However, it is the case of the claimants that the Canter Lorry had hit the motorcycle from hind side. Therefore, he submits that the version of the claimants is different from the actual spot sketch. Further, learned counsel also submits that Ex.P7–MVI report would indicate that the headlight of the



motorcycle is damaged, which would indicate that the motorcycle had hit the Canter Lorry from behind. Therefore, he submits that the accident had taken place solely due to the negligent riding of the motorcycle by the deceased.

11. Further, learned counsel Sri.G.N.Raichur with regard to quantum of compensation would submit that the Tribunal failed to properly assess the income of the deceased in terms of Ex.P16 to Ex.P18. He submits that Ex.P16 to Ex.P18 are pay slips and from the gross salary of the deceased, certain items are to be excluded, i.e. overtime allowance, night halt allowance and washing allowance. Further, learned counsel would also submit that the Tribunal also failed to deduct professional tax of Rs.200/- while determining the income of the deceased. Thus, he prays for reassessing the income of the deceased.

12. Further, learned counsel Sri.G.N.Raichur would submit that mere marking of documents is not sufficient and the claimants ought to have examined the author of



Ex.P16 to Ex.P18. If the author of the document Ex.P16 to Ex.P18 were to be examined, the insurer would have cross-examined with regard to the allowances, which the deceased was getting. Further, learned counsel would submit that the Tribunal committed an error in granting 7% interest, whereas it ought to have been restricted to 6%. Thus, on the above contentions, learned counsel prays for allowing the appeal and to modify the judgment and award.

13. Per contra, learned counsel Sri.S.H.Mittalkod would submit that the income assessed by the Tribunal placing reliance on Ex.P18 is proper. Further, he would submit that the deceased was in permanent employment and was aged 33 years. Hence, 50% of the assessed income ought to have been added towards loss of future prospects to determine the compensation on the head of loss of dependency.

14. Further, replying to contention of the insurer, learned counsel would submit that in terms of sketch at



Ex.P5, the Canter Lorry had come from behind and hit the motorcycle, which resulted in death of the deceased. Further, he would submit that Panchanama at Ex.P4 would indicate that the Canter Lorry had come from behind and hit the motorcycle, which fortifies the contention of the claimants. Thus, he would pray for allowing the appeal filed by the claimants and to enhance the compensation by rejecting the contentions of the insurer.

15. Having heard the learned counsel appearing for the parties and on the perusal of the entire writ appeal papers including original records, the following points would arise for our consideration:

- a) Whether, as contended by the insurer, the Tribunal failed to consider the contributory negligence of the deceased rider of the motorcycle?
- b) Whether the claimants would be entitled for adding 50% of the assessed income towards future prospects?



- c) Whether income assessed by the Tribunal needs modification?

16. Answer to the above points would be in the negative, affirmative and partly in affirmative respectively, for the following reasons:

The accident that had taken place on 09.09.2016 involving motorcycle bearing No.CKW 5376 and Canter Lorry bearing No.KA-03/AD-1059, the resultant and death of Basappa, husband of the first claimant is not in dispute in the above appeals. The claimants are in appeal seeking enhancement of compensation, whereas, the insurer is in appeal against non-consideration of contributory negligence and against the quantum of compensation awarded.

17. Learned counsel Sri.G.N.Raichur contended that the accident had occurred due to the sole negligence of the deceased rider of the motorcycle. In support of the said contention, he stated that the motorcycle came from behind and hit the Canter Lorry and therefore it is the fault of the



rider of the motorcycle. However, the said contention cannot be accepted in the light of Ex.P5 – spot sketch of the accident. The spot sketch of the accident clearly indicates that the Canter Lorry came from behind and dashed to the motorcycle. Both the Canter Lorry and motorcycle were coming from North to South and after dashing the motorcycle, the Canter Lorry is stationed at 100 feet distance from the accident spot and the motorcycle. The MVI report would indicate that the front left side of the Canter Lorry is damaged. There is no damage to the rear side of the Canter Lorry to accept the contention of the insurer that the motorcycle rider had come from behind and hit the Canter Lorry. Thus, the said contention is rejected.

18. The Tribunal placing reliance on Ex.P18 assessed the income of the deceased at Rs.20,011/- per month. The pay slip is issued by BMTC. The said document – pay slip is not disputed by the insurer. Moreover, the pay slip is issued by a public undertaking of the State Government. The



proceedings in a motor vehicle accident claims is a summary proceedings and strict rules of evidence would not be applicable. The claimants could prove the claim on the preponderance of probabilities as held by the Hon'ble Apex Court in the case of ***Mathew Alexander Vs. Mohammed Shafi and Another***¹. Therefore, the contention that, mere marking of document is not sufficient by the insurer is liable to be rejected. However, on looking to Ex.P18, certain deductions are to be made while assessing the income of the deceased. Learned counsel for the insurer contended that out of the gross salary, overtime allowance, washing allowance, and night halt allowance are to be deducted. However, the said contention cannot be accepted. If the deceased were to continue working in BMTC, he would have worked overtime and he would have been entitled for night halt allowances. Ex.P16, Ex.P17, and Ex.P18 consistently indicate overtime allowance and night halt allowances. Therefore, those allowances are to be included while

¹ 2023 LIVELAW (SC) 531



computing the income of the deceased. However, it is noticed that washing allowance would be personal to the deceased and washing allowance is to be deducted apart from deducting professional tax of Rs.200/- p.m., from the salary of the deceased. Thus, from out of gross salary of Rs.20,011/- p.m., a sum of Rs.35/- towards washing allowance and a sum of Rs.200/- towards professional tax are to be deducted. Thus, the income of the deceased would be assessed at Rs.19,776/- p.m.

19. The deceased was aged 33 years and he was a permanent employee of BMTC. In terms of the decision of the Hon'ble Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi & Others***², if the deceased were to be below 40 years and if he were to be in a permanent employment, the claimants would be entitled for adding 50% of the assessed income towards future prospects. However, the Tribunal committed an error in adding only 40% of the assessed income towards future prospectus.

² AIR 2017 SC 5157



Thus, it is held that the claimants would be entitled for adding 50% of the assessed income towards future prospects. There is no dispute with regard to age of the deceased as 33 years, appropriate multiplier of 16 and deduction of $1/4^{\text{th}}$ towards personal and living expenses of the deceased, as there are five dependents. Thus, the claimants would be entitled for the modified compensation on the head of loss of dependency as under:

$$\text{Rs.}19,776 + 50/100 \times 12 \times 16 \times \frac{3}{4} = \textbf{Rs.42,71,616/-}.$$

20. The Tribunal committed an error in awarding meager compensation on the conventional heads. Hence, in terms of decision of the Hon'ble Apex Court in ***Pranay Sethi's*** case (supra), the claimants would be entitled to ***Rs.16,500/-*** towards loss of estate, ***Rs.16,500/-*** towards funeral expenses and in terms of decision of Hon'ble Apex Court in ***Magma General Insurance Company Limited Vs. Nanu Ram & Others***³, the claimants would be entitled to

³ 2018 ACJ 2782



Rs.44,000/- each towards loss of consortium including 10% escalation.

21. Thus, the claimants would be entitled for the following modified compensation:

Sl. No.	Particulars	Amount
1.	Loss of dependency (19,776+50/100X12X16X3/4) = 42,71,616/-)	Rs. 42,71,616/-
2.	Loss of consortium (Rs.44,000 each)	Rs. 2,20,000/-
3.	Loss of estate	Rs. 16,500/-
4.	Funeral expenses and transportation of body	Rs. 16,500/-
	Total	Rs. 45,24,616/-

22. Learned counsel for the insurer contended that the Tribunal committed an error in granting 7% interest instead of 6%. The interest of 7% granted by the Tribunal is in consonance with the present day bank rate of interest



and in many cases even the Hon'ble Supreme Court has affirmed the judgment where the interest at 9% is granted.

23. Thus, the claimants would be entitled to a total compensation of **Rs.45,24,616/-** as against **Rs.41,52,000/-** awarded by the Tribunal with interest at the rate of 7% per annum from the date of petition till date of realization.

24. In the result, we proceed to pass the following:

ORDER

- a) Both the appeals are ***allowed in part.***
- b) The impugned judgment and award of the Tribunal is modified holding that the claimants would be entitled to total compensation of **Rs.45,24,616/-** as against Rs.41,52,000/- awarded by the Tribunal.
- c) The entire compensation amount shall carry interest at the rate of 7% per annum from the date of petition till date of realization.



- d) The respondent-Insurance Company shall deposit the entire compensation amount with accrued interest before the Tribunal within four weeks from the date of receipt of certified copy of this judgment.
- e) Apportionment, deposit & disbursement shall be made as per the award of the Tribunal.
- f) The amount in deposit, if any, be transmitted to the concerned Tribunal forthwith along with TCR.
- g) Draw modified award accordingly.

Sd/-
(S G PANDIT)
JUDGE

Sd/-
(GEETHA K.B.)
JUDGE