



IN THE HIGH COURT OF KARNATAKA,AT DHARWAD

DATED THIS THE 11TH 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. 101848 OF 2023 (MV-D)

C/W

MISCELLANEOUS FIRST APPEAL NO. 104310 OF 2022

IN MFA NO.101848/2023

BETWEEN:

THE DIVISIONAL MANAGER
ORIENTAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE, ENKAY COMPLEX,
KESHWAPUR, HUBBALLI-580023,
(POLICY BEARING NO.472290/31/2014/3353)
VALID FROM 24-01-2014 TO 23-01-2015
R/BY AUTHORIZED SIGNATORY.

...APPELLANT

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

AND:

1. SMT. SHANTAMMA W/O. SAKARAPPA KURI
AGE. 45 YEARS, OCC. HOUSEHOLD,
R/O. H.NO.152, INDRAPRASTHA NAGAR,
ANAND NAGAR, OLD HUBBALLI,
HUBBALLI-580024.
2. MAHALAXMI D/O. SAKARAPPA KURI
AGE. 22 YEARS, OCC. STUDENT,



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R/O. H.NO.152, INDRAPRASTHA NAGAR,
ANAND NAGAR, OLD HUBBALLI,
HUBBALLI-580024.

3. SUMAN D/O. SAKARAPPA KURI
AGE. 20 YEARS, OCC. STUDENT,
R/O. H.NO.152, INDRAPRASTHA NAGAR,
ANAND NAGAR, OLD HUBBALLI,
HUBBALLI-580024.
4. PRATAP S/O. SAKARAPPA KURI
AGE. 19 YEARS, OCC. STUDENT,
R/O. H.NO.152, INDRAPRASTHA NAGAR,
ANAND NAGAR, OLD HUBBALLI,
HUBBALLI-580024.
5. SHIVAVVA W/O. MYALARAPPA CHALAVADI
AGE. MAJOR, OCC. BUSINESS,
R/O. KALASAPUR,
TQ. AND DIST. GADAG-582102.

...RESPONDENTS

(BY SRI ANJANEYA M., ADVOCATE FOR R1 TO R4;
NOTICE SERVED TO R5)

THIS MFA IS FILED U/S.173(1) OF MOTOR VEHICLES ACT,
PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED
24.08.2022 PASSED IN MVC NO.218/2016 ON THE FILE OF THE
II ADDITIONAL SENIOR CIVIL JUDGE AND ADDITIONAL MOTOR
ACCIDENT CLAIMS TRIBUNAL, HUBBALLI, BY EXONERATING THE
APPELLANT INSURANCE COMPANY FROM THE LIABILITY AND
REDUCING COMPENSATION BY ALLOWING THIS APPEAL WITH
COST IN THE ENDS OF JUSTICE AND EQUITY.

IN MFA NO.104310/2022
BETWEEN:

1. SMT. SHANTAMMA W/O. SAKARAPPA KURI
AGE. 44 YEARS, OCC. HOUSEHOLD,
R/O. H.NO. 152, INDRAPRASTHA NAGAR,
ANAND NAGR, OLD HUBBALLI,
HUBBALLI, DIST. DHARWAD-580024.



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2. MAHALAXMI D/O. SAKARAPPA KURI
AGE. 21 YEARS, OCC. STUDENT,
R/O. H.NO.152, INDRAPRASTHA NAGAR,
ANAND NAGR, OLD HUBBALLI,
HUBBALLI, DIST. DHARWAD-580024.
3. SUMAN D/O SAKARAPPA KURI
AGE. 18 YEARS, OCC. STUDENT,
R/O. H.NO. 152, INDRAPRASTHA NAGAR,
ANAND NAGR, OLD HUBBALLI,
HUBBALLI, DIST. DHARWAD-580024.
4. PRATAP S/O. SAKARAPPA KURI
AGE. 18 YEARS, OCC. STUDENT,
R/O. H.NO.152, INDRAPRASTHA NAGAR,
ANAND NAGR, OLD HUBBALLI,
HUBBALLI-580024.

...APPELLANTS

(BY SRI ANJANEYA M., ADVOCATE)

AND:

1. SMT. SHIVAVVA W/O. MYLARAPPA CHALAVADI
AGE. MAJOR, OCC. BUSINESS,
R/O. KALASAPUR,
TQ. AND DIST. GADAG-582103.
2. THE DIVISIONAL MANAGER,
ORIENTAL INSURANCE CO. LTD,
DIVISIONAL OFFICE, ENKAY COMPLEX,
KESHWAPUR, HUBBALLI-580029.

...RESPONDENTS

(BY SRI G.N. RAICHUR, ADVOCATE FOR R2;
NOTICE SERVED TO R1)

THIS MFA IS FILED UNDER SECTION 173 (1) OF MOTOR VEHICLES ACT, PRAYING TO MODIFIED THE ENHANCED THE COMPENSATION IN THE JUDGMENT AND AWARD DATED 24.08.2022 PASSED IN MVC NO.218/2016 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL HUBBALLI, BY ALLOWING THIS APPEAL WITH COST IN THE ENDS OF JUSTICE AND EQUITY.



**NC: 2025:KHC-D:18021-DB
MFA No. 101848 of 2023
C/W MFA No. 104310 of 2022**

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)

The above two appeals are directed against the judgment and award dated 24.08.2022 in MVC No.218/2016 passed by the II Addl. Senior Civil Judge and Additional MACT., Hubballi. Claimants are in appeal not being satisfied with the quantum of compensation and the insurer is in appeal questioning the pay and recovery ordered by the Tribunal and also questioning the quantum of compensation.

2. Heard learned counsel Sri.G.N.Raichur for appellant-insurer and learned counsel Sri.Anjaneya M. for respondent Nos.1 to 4 for claimants and perused the entire appeal papers including the trial Court records.



3. Claimants are wife and minor children of the deceased Sakarappa Kuri who died in a motor accident that took place on 29.05.2014 involving motorcycle bearing No.KA-25/EL-9850 and Tata Magic vehicle bearing No.KA-26/A-1230. The claimants filed the present claim petition under Section 166 of the Motor Vehicles Act, claiming compensation for the accidental death of Sakarappa Kuri, the husband of the 1st claimant. It is stated that the deceased was working as Police Constable, drawing salary of Rs.25,000/- per month and was also earning Rs.5,000/- from agriculture and was aged 42 years as on the date of accident.

4. On issuance of notice, respondent-insurer appeared and filed their statement of objection denying the claim petition averments. Insurer also contented that driver of the offending vehicle had no valid and effective driving license and that there is violation of policy conditions.



5. In support of their claim, claimant No.1 examined herself as PW1 apart from marking Exs.P.1 to P.9. The 2nd respondent was examined as RW1 and Exs.R.1 to R.4 were marked.

6. The Tribunal considering the material on record awarded total compensation of Rs.39,24,796/- with interest at the rate of 6% per annum. While awarding the above compensation, the income of the deceased was assessed at Rs.25,337/-. It added 30% towards future prospects and deducted ¼ towards personal expenses of the deceased. It applied multiplier of 14.

7. Learned counsel Sri.Anjaneya for claimants would submit that the income assessed by the Tribunal is on the lower side and further submits that the Tribunal committed an error in deducting income tax while determining the income of the deceased. He submits that the income of the deceased was within the income tax slab prescribed for the financial year 2014-2015. Thus, he prays



for proper assessment of the income of the deceased in terms of Exhibit P9-salary certificate.

8. Learned counsel would also submit that the claimants would be entitled for escalation on compensation awarded on the conventional heads.

9. Per contra, learned counsel Sri.G.N.Raichur for insurer would submit that as the driver of the offending vehicle had no valid driving license, which is a fundamental breach and as there is violation of conditions of policy, the Tribunal ought to have saddled the liability on the owner and it ought not to have ordered for pay and recovery. Learned counsel would also submit that while assessing the income, the Tribunal has not deducted professional tax from the salary of the deceased. Thus, he would also pray for re-determining the income of the deceased and for passing appropriate judgment.



10. Having heard the learned counsel for the parties and on perusal of the entire appeal papers, the following points would arise for consideration:-

- 1) Whether the income of the deceased assessed by the Tribunal needs reassessment?
- 2) Whether the Tribunal is justified in ordering pay and recovery?

11. The answer to both the points would be in the **affirmative** for the following reasons:-

The accident that occurred on 29.05.2014 involving motorcycle bearing No.KA-25/EL-9850 and Tata Magic vehicle No.KA-26/A-1230 and the accidental death of Sakarappa Kuri, the husband of 1st claimant is not in dispute in the present appeal.

12. The claimants are in appeal praying for enhancement of compensation, whereas the insurer is in appeal questioning the liability as well as the quantum of compensation.



13. The Tribunal determined the income of the deceased at Rs.25,337/- in terms of Exhibit P.9 and deducted 10% towards income tax. The Tribunal is not justified in deducting 10% towards income tax from the determined income of the deceased. Out of the total annual income of the deceased, if standard deduction is allowed, the income of the deceased would come within the exempted income from the income tax. Therefore, out of the total income of Rs.25,337/-(Ex.P.9), a sum of Rs.200/- towards professional tax and Rs.100/- towards uniform allowance are liable to be deducted and if those amounts are deducted the income of the deceased would be Rs.25,037/-.

14. The Tribunal is justified in adding 30% of the assessed income towards future prospects and deducting $\frac{1}{4}$ towards personal expenses of the deceased and in adopting 14 multiplier. The claimants would be entitled for 10% escalation on the compensation awarded on conventional heads including consortium.



15. The Tribunal having come to the conclusion that the driver of the offending vehicle had no valid and effective driving license, rightly held that it is a case of pay and recovery and directed insurance company to pay the compensation at the first instance and to recover the same from the owner of the offending vehicle that is from respondent No.1. The contention of the learned counsel for the insurer that driving without driving license is a fundamental breach, the Tribunal could not have directed the insurance company to pay at the first instance and to recover it from the owner of the offending vehicle, cannot be accepted in view of the decision of the full bench of this Court in the case of ***New India Assurance Co. Ltd. Vs. Yallavva & Another***¹.

16. In view of the fact that income of the deceased is reassessed at Rs.25,037/-, the claimants would be entitled for the following modified compensation.

¹ 2020 (2) KCCR 1405



Rs.25,037/-+30%X12X14X³/₄ = **41,01,060.60.**

17. Further, the Tribunal failed to award 10% escalation on the compensation amount awarded under the conventional heads. Hence, in terms of decisions of the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Others*²** and ***Magma General Insurance Company Ltd., Vs. Nanu Ram and Others*³**, the claimants would be entitled to **Rs.16,500/-** towards loss of estate and **Rs.16,500/-** towards transportation of dead body and funeral expenses and **Rs.44,000/-** towards loss of consortium with 10% escalation. Thus, the claimants would be entitled to modified compensation on the following heads:

Sl. No.	Particulars	Amount Rs.
1.	Loss of dependency	41,01,060.60
2.	Loss of estate & Funeral expenses	33,000.00
3.	Loss of consortium (Rs.44,000/- each)	1,76,000.00
	Total	Rs.43,10,060.60

² (2017) 16 SCC 680

³ 2018 ACJ 2782



18. Accordingly, the claimants would be entitled to total compensation of **Rs.43,10,060.60/-** as against Rs.39,24,976/- awarded by the Tribunal.

19. For the reasons recorded above, the following:

ORDER

- i) Both the appeals are ***allowed in part.***
- ii) The impugned judgment and award of the Tribunal is modified to an extent that the claimants are entitled to total compensation of **Rs.43,10,060.60/-** as against Rs.39,24,796/- awarded by the Tribunal.
- iii) The aforesaid amount shall carry interest at the rate of 6% per annum from the date of claim petition till date of realization.
- iv) The respondent/insurer is directed to pay compensation to the claimants at the first instance and thereafter recover the same from the owner of the offending motorcycle i.e., the first respondent herein.



- v) 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.
- vi) Apportionment, deposit & disbursement shall be made as per the award of the Tribunal.
- vii) The amount in deposit, if any, before this Court be transmitted to the concerned Tribunal forthwith along with TCR.
- viii) Draw modified award accordingly.
- ix) No order as to costs.

Sd/-
(S G PANDIT)
JUDGE

Sd/-
(GEETHA K.B.)
JUDGE