



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO. 2599 OF 2020 (MV-D)

BETWEEN:

1. SUDHEER BELCHADA
S/O SUNDARA BELCHADA
AGE 38 YEARS
2. HANSIKA SALIAN
D/O SUDHEER BELCHADA
AGE ABOUT 7 YEARS

APPELLANT NO.2 IS THE MINOR CHILD
OF LATE NISHA, REPRESENTED BY
HER NATURAL GUARDIAN, NEXT FRIEND
FATHER SUDHEER BELCHADA - APPELLANT NO.1

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by
SHARADAVANI
B
Location: High
Court of
Karnataka

BOTH ARE RESIDING AT
D NO 2-144 Z-13 A, MURUKATTE
VIDYANAGARA, KUMPALA
KOTEKAR, MANGALURU TALUK
D.K. DISTRICT- 575 007.

...APPELLANTS

(BY SRI. RAVISHANKAR SHASTRY G, ADVOCATE)

AND:

1. MR MOHAMMED
S/O U.K. BAVA
MAJOR



R/AT AMINA MANZIL
KUNJATHURU, MANJESHWARA
KASARAGOD, KERALA - 671 323.

2. BRANCH MANAGER
NATIONAL INSURANCE CO. LTD.,
3RD FLOOR, HIGH LANE PLAZA
M.G. ROAD, KASARAGOD
KERALA STATE - 671 121.

...RESPONDENTS

(BY SRI. JANARDHAN REDDY, ADVOCATE FOR R2)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 23.12.2019 PASSED IN MVC NO.503/2018 ON THE FILE OF THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, MEMBER, MACT-IV, D.K.MANGALURU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

CORAM: HON'BLE MR. JUSTICE UMESH M ADIGA

ORAL JUDGMENT

This appeal is filed by the claimants being aggrieved by the judgment and award dated 23rd December 2019, passed by the III Additional District and Sessions Judge, Member, MACT-IV, D.K.Mangaluru (for short `Tribunal'), in MVC No.503/2018, seeking enhancement of compensation as well as fastening of



the entire responsibility on the owner and insurer of the offending vehicle.

Though this appeal is slated for admission, with the consent of both the sides it is taken up for final disposal.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The brief facts of the case are that, on 18.11.2017 at about 09.00 a.m., the wife of claimant No.1 and mother of claimant No.2, by name Nisha, while crossing the road at Kumpala Bypass on Someshwara to Mangaluru road, met with an accident due to rash and negligent driving of offending vehicle bearing registration No.KL-14-F-5840. As a result, she sustained grievous injuries and succumbed to the injuries. The claimants being the legal representatives of the deceased, filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, for awarding the compensation.

4. Respondent No.1-owner was remained *ex parte* before the Tribunal. Respondent No.2-insurer of the offending vehicle appeared and denied the petition averments and denied



its liability to pay the compensation and prayed to dismiss the claim petition.

5. From the rival contentions of the parties, the Tribunal framed necessary issues, for its determination.

6. The claimants to prove their case examined three witnesses as PW-1 to PW-3 and marked 17 documents, as per Exs.P-1 to P-17. Respondents have not led any oral and documentary evidence.

7. The Tribunal after hearing both parties and appreciating the evidence on record, held that the accident occurred due to contributory negligence of deceased, as well as driver of the offending vehicle and apportioned the negligence equally between both and accordingly awarded the compensation to the claimants. The Tribunal has taken income of the deceased as Rs.12,000/- per month, applied the multiplier as '17', deducted 1/4th of the income towards personal expenses and awarded total compensation of Rs.9,53,000/-.



8. The fact of the accident and death of Smt. Nisha in the said accident are not in dispute. Her age and the multiplier applied are also not in dispute.

9. Learned counsel for the appellants vehemently contends that the Tribunal erred in holding that the accident occurred due to the contributory negligence of both the deceased and the driver of the offending vehicle, which requires reconsideration. He further contends that going through the materials on record it reveals that the accident occurred near the road dividers/median and there was a lot of space available to the driver of the car to avoid the accident. A suggestion was put to PW.2 that the deceased had suddenly tried to cross the road at the time of the accident. However, PW.2 denied this suggestion. The respondents did not examine the driver of the car, who was a competent witness and could have spoken about any contributory negligence on the part of the deceased. In the absence of such evidence, there is no rebuttal evidence. PW.2 remains the sole eyewitness to the incident. Under these circumstances, the Tribunal grievously erred in apportioning the negligence between the deceased as well as the driver of the



offending vehicle instead of holding that driver of the offending vehicle was negligent in driving his vehicle.

10. It is further submitted by learned counsel for the appellants that charge sheet was filed against the driver of the offending vehicle and there is no reference regarding any negligence of the deceased. In these circumstances, the finding on issue No.1 by the Tribunal holding that deceased had contributed for the accident is erroneous.

11. Learned counsel for the insurer vehemently contends that the Tribunal after appreciating the materials on record, rightly came to the conclusion that the deceased contributed for accident in question. The said finding does not call for any interference by this Court. It was a national highway and the place wherein she was crossing was not demarcated as a place of crossing. In such circumstances, crossing a busy road without due care indicates that the entire negligence was of the deceased. Hence, prayed to hold that entire negligence was of the deceased.



12. On reconsideration of the materials available on record, especially the charge sheet and its enclosures and map of the spot of accident, the contention of the appellants is acceptable. The offending car was coming from northern side to southern side, from Thokkottu towards Talapady. The spot of the accident, as shown in Ex.P.5, is on the western side of the one-way road near the median, and there was sufficient space on the eastern side for cars to pass. The driver of the vehicle was the proper and competent person to explain why he could not avoid the accident. The suggestions made by the insurer are based merely on presumptions and assumptions. A suggestion put to PW-2, an eyewitness, was denied by him. In such circumstances, the Tribunal grossly erred in holding that the deceased had also contributed for the accident in question. Therefore, the said finding is required to be set aside. On the basis of materials available on record, it is held that the accident occurred due to negligence of driver of the car.

13. Learned counsel for the appellants contends that as per the materials on record, the deceased was earning wages of Rs.12,500/- per month and to prove the same, PW.3 was



examined. However, the Tribunal has taken income as Rs.12,000/- per month, which is on the lower side. He further contends that she was aged about 30 years at the time of accident. The Tribunal has not added future prospects as held in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Others*¹**. Therefore, prayed to add the future prospects and recalculate the compensation under the head loss of dependency. He further submits that compensation awarded under the head loss of consortium is also on the lower side; and Tribunal has not awarded compensation as per the law laid down in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram and Others*²**. With these reasons, prayed to enhance the compensation.

14. Learned counsel for the insurer submits that the compensation awarded by the Tribunal is just and proper. He further contends that the deceased left behind only two dependants. The Tribunal ought to have deducted 1/3rd of income towards personal expenses instead of 1/4th. Therefore, prayed for recalculation of the compensation.

¹ AIR 2017 SC 5157

² (2018) 18 SCC 130



15. Learned counsel for the appellants in response contends that the insurer has not filed any appeal challenging the said amount. Therefore, the said contention cannot be considered.

16. The Tribunal discussed in this regard in paragraph Nos.25 and 26 and rightly came to the conclusion, on the basis of the materials available on record, that income of the deceased was Rs.12,000/- per month. There is no dispute that the Tribunal has not added future prospects. In view of the judgment of the Hon'ble Apex Court in the case of **Pranay Sethi** (referred supra), 40% of her income has to be added towards future prospects. In paragraph No.27 the Tribunal deducted 1/4th of her income towards personal expenses by assigning the reasons. Though respondents dispute the said deduction, but they have not filed any appeal against the same. The said finding of the Tribunal in paragraph No.27 may not be illegal. Therefore, there is no need to interfere in the said findings. Undisputedly, the multiplier applicable in this case is '17'. On the basis of the said factors, compensation under the head loss of dependency is recalculated.



17. The Tribunal has awarded the consortium Rs.40,000/- instead of Rs.80,000/- as per the law laid down in the case of ***Magma General Insurance Co. Ltd.,***(supra). Accordingly, the claimants are entitled to the following amount of compensation:

Particulars	Amount in Rs.
Loss of dependency (12,000+40% $\times$ 12 $\times$ 17 $\times$ 3/4)	25,70,400/-
Loss of consortium	80,000/-
Loss of estate	15,000/-
Funeral expenses	15,000/-
Total	26,80,400/-
<i>Amount awarded by the Tribunal</i>	9,53,000/-
<i>Enhancement-</i>	17,27,400/-
<i>Rounded off-</i>	17,28,000/-

18. The claimants are entitled to interest on the said amount at the rate of 6% per annum from the date of claim petition till its realisation. Undisputedly, respondents are liable to pay the same.

19. In the result, I proceed to pass the following:



ORDER

i) The Appeal is ***allowed in part.***

ii) The judgment and award dated 23rd December 2019, passed in MVC.No.503/2018, by the III Additional District and Sessions Judge, Member, MACT-IV, D.K.Mangaluru, stands modified;

iii) The claimants are entitled to enhanced compensation of Rs.17,28,000/-, with interest at the rate of 6% p.a. from the date of petition till its realization.

iv) The compensation shall be apportioned in the ratio of 50:50. Claimant No.2 is a minor. Therefore, the entire amount of compensation awarded in her name shall be deposited in a fixed deposit till she attains the age of majority. Claimant No.1 being the father is permitted to withdraw the accrued interest on the fixed deposit of respondent No.2 from time to time for her maintenance.

v) Out of the 50% of the compensation apportioned in the name of claimant No.1, 75% shall be released in his favour and 25% shall be kept in the fixed deposit for a period of 2 years in any of the nationalized banks of his choice.

vi) Draw award accordingly.



NC: 2025:KHC:48088
MFA No. 2599 of 2020

Registry is directed to send back the records along with a copy of this judgment to the concerned Tribunal.

Sd/-
(UMESH M ADIGA)
JUDGE

AMA
List No.: 1 SI No.: 23
CT: BHK