



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL NO.1607/2021 (MV-D)

C/W

MISCELLANEOUS FIRST APPEAL NO.3621/2020 (MV-D)

IN M.F.A. No.1607/2021:

BETWEEN:

1. SMT. SHASHIKALA VENKATESH
W/O LATE VENKATESH K.R.
AGED ABOUT 51 YEARS.
2. KUMARI. GANAVI K.V.
D/O LATE VENKATESH K.R.
AGED ABOUT 18 YEARS.
3. MASTER VIKYATH K.V.
S/O LATE. VENKATESH K.R.
AGED ABOUT 16 YEARS.

APPELLANT NO.3 IS MINOR
REP. BY NATURAL GUARDIAN HIS
MOTHER SHASHIKALA VENKATESH.

ALL ARE R/AT. NO.892
ABHISHEK NILAYA, 5TH MAIN ROAD
MARATHAHALLI
MARATHAHALLY COLONY
BENGALURU 560037.

...APPELLANTS

(BY SRI. GURUDEV PRASAD K.T. ADV.,)

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



AND:

THE MANAGING DIRECTOR
B.M.T.C. SHANTINAGAR
BENGALURU 560027.

...RESPONDENT

(BY SRI. D. VIJAYA KUMAR, ADV.,)

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THIS MFA IS FILED U/S 173(1) OF MV ACT, PRAYING TO CALL FOR THE RECORDS ON THE FILE OF THE JUDGMENT AND AWARD PASSED BY THE V ADDITIONAL SMALL CAUSES JUDGE AND MEMBER M.A.C.T. XXIV ACMM AT MAYO HALL UNIT, BENGALURU, (SCCH-20) DATED 19.11.2019 PASSED IN MVC NO.2132/2019, PREFERS THIS MEMORANDUM OF MISCELLANEOUS FIRST APPEAL AND ENHANCE THE COMPENSATION WITH COURT COSTS & ETC.

IN M.F.A. NO.3621/2020:

BETWEEN:

THE MANAGING DIRECTOR
BMTC,CENTRAL OFFICE
SHANTHINAGAR
BANGALORE 560 027.

...APPELLANT

(BY SRI. D. VIJAYA KUMAR, ADV.,)

AND:

1. SMT. SHASHIKALA VENKATESH
W/O LATE VENKATESH K.R.
AGED ABOUT 51 YEARS.
2. KUM. GANAVI K.V.
D/O LATE VENKAYESH K.R.
AGED ABOUT 17 YEARS.



3. MASTER VIKYATH K.V.
S/O LATE VENKATESH K.R.
AGED ABOUT 15 YEARS.

RESPONDENT NOS.2 & 3 ARE
MINOR, REP. BY THEIR MOTHER
AND NATURAL GUARDIAN
SMT. SHASHIKALA VENKATESH.

ALL ARE R/AT 892
ABHISHEK NILAYA, 5TH MAIN ROAD
MARATHAHALLI, MARATHAHALLY COLONY
BANGALORE 560037.

...RESPONDENTS

(BY SRI. GURUDEV PRASAD K.T. ADV., FOR R1
R2 & R3 ARE MINORS REP. BY R1)

- - -

THIS MFA IS FILED U/S.173(1) OF MV ACT, PRAYING
TO CALL FOR RECORDS PASSED IN MVC NO.2132/2019 ON
THE FILE OF THE V ADDL. SMALL CAUSES JUDGE & XXIV
ACMM, MEMBER & MACT (SCCH-20), MAYO HALL UNIT,
BANGALORE. SET ASIDE THE JUDGMENT AND AWARD
DATED 19.11.2019 PASSED IN MVC NO.2132/2019 ON THE
FILE OF THE V ADDL. SMALL CAUSES JUDGE & XXIV ACMM,
MEMBER & MACT (SCCH-20), MAYO HALL UNIT,
BANGALORE AND TO PASS SUCH OTHER SUITABLE ORDER
IN THE INTEREST OF JUSTICE AND EQUITY.

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

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL)

MFA No.1607/2017 is filed by the claimants and MFA No.3621/2020 is filed by the Managing Director, BMTC, Bengaluru, challenging the judgment and award dated 19.11.2019 passed in M.V.C.No.2132/2019 by the Motor Accident Claims Tribunal and the V Additional Judge (CCH-20), Mayo Hall Unit, Bengaluru (for short, 'the Tribunal').

2. Though these appeals are listed for admission, with the consent of the learned counsel for the parties, the appeals are taken up for final disposal.

3. The brief facts leading to the filing of these appeals are that the claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.90,00,000/- for the death of Sri.K.R.Venkatesh in a road traffic accident that occurred on 07.03.2019. It is averred that on 07.03.2019, the deceased was proceeding on his motorcycle bearing



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registration No.KA-01 HS-1459 on Varthur Main Road. At the time, the driver of the BMTC bus bearing registration No.KA-57 F-2998, drove the bus on the right side, in a negligent manner, dashed against the motorcycle of the deceased from the hind side, due to which the deceased lost his balance, fell down, sustained grievous injuries and was shifted to the Sakra Hospital where he succumbed to the injuries.

4. It is further averred that the deceased was aged about 53 years at the time of accident, he was running a restaurant in the name and style of 'Tandoori Junction' and used to earn Rs.10,00,000/- p.a. Due to his untimely death, the claimants lost a family member, his earning and emotional support. Hence, the claimants sought to allow the claim petition.

5. The Insurance Company entered appearance before the Tribunal, denied the averments made in the claim petition by contending that the deceased was



proceeding behind the bus, tried to overtake the bus in a narrow space by violating the traffic rules and dashed to the hind side of the bus which resulted in the accident. It is averred that the deceased was negligent and responsible for causing the accident. It is further averred that the deceased was not having a driving licence to drive the motorcycle. Hence, they sought to dismiss the claim petition.

6. The Tribunal formulated the points for consideration and recorded the evidence. The claimant No.1 examined herself as PW-1, got marked Exs.P1 to P18. The respondent-Corporation examined RW-1 but did not produce any documentary evidence. The Tribunal, on appreciation of the evidence on record, has recorded the finding that the accident is caused due to the actionable negligence of the driver of the BMTC bus and proceeded to award compensation of Rs.12,62,000/- with interest at the rate of 9% p.a. from the date of petition till its realisation.



7. Sri.K.T.Gurudev Prasad, learned counsel appearing for the appellants-claimants submits that the Tribunal has committed a grave error in assessing the income of the deceased notionally at Rs.12,000/- p.m. by ignoring the income tax returns at Exs.P14 to P16 and the said returns should be the basis for assessment of the compensation. It is submitted that the award of compensation by the Tribunal under the head of loss of consortium and other conventional heads are required to be enhanced appropriately by following the decision of the Hon'ble Supreme Court in the case of ***NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI AND OTHERS¹***. It is further submitted that the appeal filed by the BMTC challenging the aspect of negligence has no merit as the Tribunal has considered all the aspects and recorded its finding with regard to the negligence which does not call for any interference. Hence, he seeks to

¹ AIR 2017 SC 5157



allow the appeal of the claimants by rejecting the appeal of the Corporation.

8. Sri.D.Vijaya Kumar, learned counsel appearing for the appellant-Corporation submits that the Tribunal has committed a grave error in recording the finding with regard to the negligence. It is submitted that the rider of the motorcycle was behind the bus and the bus, after alighting the passengers started moving slowly. At that time, the deceased tried to overtake the bus and dashed the hind right side of the bus due to which the deceased fell down and sustained injuries. It is further submitted that the deceased was neither having a driving licence nor was wearing a headgear. Hence, the deceased has also contributed to the accident to an extent of 50% and the liability to the aforesaid extent is required to be altered. It is also submitted that the Corporation has examined the driver of the bus as RW-1 who has clearly stated that the deceased rider was negligent and caused the accident. It



is contended that the width of the road was 30 feet as per the sketch and if the rider would have rode the vehicle in a slow manner, he would have overtook the bus properly but he tried to overtake the bus in a hurry which resulted in dashing the bus from the hind side, causing the accident and he succumbed to the injuries suffered in the said accident. It is further contended that the income tax returns does not indicate the correct income. Hence, the said document cannot be considered to determine the actual income of the deceased and the Tribunal, by assigning proper reasons, has assessed the income at Rs.12,000/- p.m. and awarded just compensation which does not call for any interference. Hence, he seeks to allow the appeal of the Corporation by dismissing the appeal of the claimants.

9. We have heard the learned counsel for the claimants, learned counsel for the Insurance Company,



meticulously perused the material available on record including the Tribunal records.

10. The point that arises for consideration in these appeals is:

"Whether the impugned judgment and award passed by the Tribunal calls for any interference?"

11. The above point is answered in the affirmative for the following reasons:

(a) The claim petition was filed seeking compensation for the death of Sri.K.R.Venkatesh in a road traffic accident dated 07.03.2019 on Varthur Main Road, Bengaluru. The case of the claimants is that the deceased was proceeding on his motor cycle on Varthur Main Road and when he reached near M.G.Hospital, Marathahalli, the driver of the BMTC bus drove the bus in a rash and negligent manner, dashed the motor cycle from hind side which resulted in the accident and the rider sustained



grievous injuries. He was shifted to Sakra Hospital and later he succumbed to the injuries. The appellant-Insurance Company is contending that the deceased-rider of the motor cycle was behind the BMTC bus, the passengers were alighted from the bus and then the bus was moving slowly. At that time, the rider tried to overtake the bus which resulted in dashing the hind side of the bus by the rider and he lost balance, fell down, sustained injuries and succumbed to the injuries and there is substantial negligence on the part of the rider of the motor cycle and hence, the rider has contributed to the accident and the liability is required to be apportioned accordingly. To substantiate the said contention, the appellant-Corporation has examined the driver of the bus as RW-1 who has deposed the aforesaid facts in his evidence. The claimant No.1 examined herself as PW-1 and got marked Exs.P1 to P9 which are the investigation material. The aforesaid exhibits clearly indicate that immediately after the accident, the first information report



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was registered as Crime No.15/2019 by the Airport Traffic Police against the driver of the bus for his negligent act and on completion of the investigation, the charge sheet is also filed against the driver of the bus.

(b) It is to be noticed that one Sri.Vairamudi who is the eyewitness to the accident, has given a statement before the police that the accident is caused due to the actionable negligence on the part of the driver of the BMTC bus. The statement of the said witness and other charge sheet material clearly indicate that the driver of the bus hit the deceased motor cycle from the hind side which resulted in the deceased falling down and sustaining injuries. Ex.P3-police intimation, Ex.P4-spot mahazar and Ex.P5-sketch corroborates with the statement of eyewitness. It is to be noticed that the IMV report indicates that the front side of the bus is damaged and similarly, the hind side of the motor cycle is also damaged. The said exhibit makes it clear that the deceased rider was on the front side of the bus and the bus has proceeded



and dashed the motor cycle of the deceased which resulted in the accident. Hence, the contrary contentions urged by the appellant that the deceased tried to overtake the bus from the hind side and he hit the bus towards the hind side, has no merit. The oral evidence of RW-1 is not trustworthy to be relied. Firstly, RW-1 is an interested witness, secondly, his version is contrary to the version of the eyewitness as well as the charge sheet material and there is no material on record to show that the driver of the bus had made an attempt to lodge a complaint with the police explaining his version. Hence, in the absence of corroborative evidence to support the version of RW-1, his evidence cannot be accepted as it is.

(c) The Tribunal, considering the oral and documentary evidence has recorded its finding with regard to the negligence. We do not find any error or perversity in the finding recorded by the Tribunal with regard to negligence and fastening of the entire liability on the appellant-Corporation.



(d) Insofar as the compensation is concerned, the Tribunal recorded the reasons that the income tax returns on record cannot be relied on and proceeded to assess the income of the deceased notionally at Rs.12,000/- p.m.

(e) It would be useful to the relevant paragraphs of the recent decision of the Hon'ble Supreme Court in the case of ***RASHMIREKHA TRIPATHY AND ANOTHER Vs. BRANCH MANAGER (LEGAL CLAIMS), SRIRAM GENERAL INSURANCE COMPANY LIMITED AND OTHERS²***

"15. At the outset, we must reiterate that it is settled law that the objective behind the claim process in the Motor Vehicles Act, 1988 is to grant 'just and fair compensation'. Recently, a two-judge Bench of this Court in V. Pathmavathi v. Bharthi Axa General Insurance Co. Ltd. and² had succinctly summarised this position and observed:

"12. We ought to remind ourselves, at the outset, that when an individual dies as a result of a fatal road accident and his distressed dependents apply for compensation either from the owner of the vehicle responsible for the

² 2026 SCC Online SC 1256



death or the insurance company with whom such vehicle is insured, no amount of money can truly compensate for the loss. Compensation is nothing but a rough estimate, being a token attempt to ease the financial burden on the dependents. Take consortium, for example. It is impossible to put a price on the loss of a loved one's companionship. Spousal, filial or parental compensation are all about acknowledging the emotional void but the payout can never be more than a rough approximation. It is like trying to measure the immeasurable. Considering the income of the deceased, the needs of his dependents and the emotional toll of the loss, the best that can be ensured is that the compensation is fair and reasonable, without being either arbitrary or niggardly. This would be in accord with the foundational principle governing the determination of "just compensation" under Section 168 of the Act.

13. *In Reshma Kumari v. Madan Mohan [(2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826], a three-Judge Bench of this Court held that the purpose of award of compensation under section 166 read with section 168 of the Act is to place the distressed dependents of the victim of a fatal road accident, if the victim had been the sole bread earner, in almost the same position financially if he lived his natural span of life. It is obviously not intended to put such distressed dependents in a better financial position in which they would otherwise have been if the accident had not occurred. At the same time, the determination of compensation is not an exact science and the exercise involves an assessment based on estimation and conjectures, here and there, as many imponderable factors and unpredictable contingences have to be taken into consideration. Obviously, award of damages in each case would depend on the particular facts and circumstances of the case but the element*



of fairness in the amount of compensation so determined is the ultimate guiding factor.”
(emphasis supplied)

16. Similarly, another two-judge Bench of this Court in *Anant v. Pratap*⁸, had expounded that ‘the purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.’

17. In the considered view of this Court, there can be no hard and fast formula for computing the annual income of a deceased person/claimant. ITRs being a statutory document are an important reference point when it comes to assessing one's income, for the purposes of compensation under the Motor Vehicle Act.

18. We find force in the submission put forth by Mr. J.R Midha, learned senior counsel. There must be a bifurcation made between salaried individuals and self-employed individuals when it comes to assessment of annual income. In our view, for salaried individuals, only the ITR of the previous year will be sufficient for showcasing the annual income from salary. The reason for considering only the preceding year is that the financial impact of promotions is significant and may be reflected in the ITR for only that year. A situation may also arise



whereby the deceased/claimant might not have completed a year in the promoted position before the accident or might not have filed ITR for such period. In such cases the Court concerned shall take reference to the promotion letter and other corroboratory financial statements.

19. *When it comes to self-employed/individuals carrying out their own business, in our view, the average of the income specified in the ITRs of up to the previous three years is to be taken as a reference point for assessment of annual income from their business. There may also be a scenario where only one or two ITRs have been filed. Given such scenarios and the fluctuation of income in these professions, surrounding circumstances are also to be taken into consideration. These would include:*

- a) The nature of the business (including geographic location, category etc.);*
- b) Growth pattern of the business and impact of death on the business;*
- c) Potential growth of business (for instance certain businesses are capital intensive at the outset and are profitable at scale/in the future);*



- d) Negative income (certain businesses may require losses in the initial years, which may not reflect the true financial standing); and*
- e) Any other relevant factor relating to the business.*

20. *The date when the ITRs are filed would also become a relevant consideration, as there may be scenarios where inflated income is showcased after death/injury. In these circumstances, the surrounding factors of the business would become more relevant. However, if sufficiently supported by financial statements, such ITRs may also be taken into consideration."*

(f) Considering the enunciation of law laid down by the Hon'ble Supreme Court, we are of the view that the income tax returns placed by the claimants cannot be rejected. A perusal of Exs.P14 to P16 indicate that they are the acknowledgements and statements of income tax of the deceased for the years 2016-17, 2017-18 and 2018-19. The income tax returns for the year 2016-17 which is marked as Ex.P14 indicates that the gross income of the deceased is shown as Rs.2,97,592/- and net tax



paid was Rs.2,900/-. The said income tax returns is also accompanied with the statement of income certified by a Chartered Accountant. The income tax returns for the year 2017-18 which is marked as Ex.P15 indicates the income of the deceased as Rs.5,58,291/- and the income tax paid for the said year is Rs.26,188/-. The said exhibit is enclosed with the statement of income which also depicts the said aspect. The income tax returns for the year 2018-19 marked as Ex.P16 indicates the income of the deceased as Rs.5,95,738/- and the income tax paid for the said year is Rs.15,950/-. The said exhibit is also enclosed with the statement of income which also depicts the said aspect. It is required to be noticed that the certified statements of income enclosed with the income tax acknowledgements for the respective years indicate that the deceased was having income from his business, agriculture, interest component and income from house property.



(g) Considering the aforesaid exhibits and the statements of income, the average income for the preceding 3 years from the date of accident would be approximately Rs.4,60,000/-. However, the said income also includes the agricultural income, income from the house property, some interest received which can be seen from the certified statement of income enclosed along with the income tax returns acknowledgment produced and marked before the Tribunal. There is no evidence on record to indicate that there is reduction of income from agricultural activity, income from house property and interest components after the death of the deceased. Furthermore, it is also required to be noticed that after the death of the deceased, there would be a certain reduction of income even from the agriculture as well as income from other sources. Hence, considering the oral and documentary evidence as well as taking note of Ex.P18, the registration certificate issued by the Competent Authority, Government of Karnataka, Department of



Labour, which indicates that the deceased was running a restaurant in the name and style of 'Tandoori Junction'. We are of the view that it would be just and appropriate to consider the income of the deceased at Rs.25,000/- p.m. The claimants are further entitled to addition of 10% of the assessed income towards the loss of future prospects of the deceased. The deceased was aged about 53 years as on the date of accident, hence, the appropriate multiplier applicable is 11 and considering the number of dependants, the deduction towards the personal and living expenses of the deceased would be 1/3rd.

(h) The claimants would be entitled to consortium at the rate of Rs.48,000/- each, Rs.18,000/- towards loss of estate and Rs.18,000/- towards transportation of dead body and funeral expenses. The aforesaid amounts include 20% escalation. The Tribunal, considering the various aspects has awarded interest at the rate of 9%



p.a. which is retained and the same rate of interest is awarded for the enhanced compensation as well.

12. Thus, the compensation is re-assessed as under:

HEADS	AMOUNT (in Rs.)
Loss of dependency [(25,000 + 10%) x 12 x 11] - 1/3	24,20,000
Loss of consortium	1,44,000
Transportation of dead body and funeral expenses	18,000
Loss of estate	18,000
TOTAL	26,00,000

Thus, the claimants shall be entitled to a total compensation of **Rs.26,00,000/-** as against Rs.12,62,000/- awarded by the Tribunal.

13. In the result, this Court proceeds to pass the following:

ORDER

- a) MFA No.1607/2021 is ***allowed-in-part***. MFA No.3621/2020 is ***dismissed***.



- b) The impugned judgment and award dated 19.11.2019 passed by the Tribunal in M.V.C.No.2132/2019 is modified to an extent that the claimants would be entitled to total compensation of **Rs.26,00,000/-** as against Rs.12,62,000/- awarded by the Tribunal.
- c) The enhanced compensation shall carry interest at the rate of 9% p.a. from the date of petition till realisation.
- d) The Insurance Company shall deposit the enhanced compensation amount with accrued interest before the Tribunal within a period of six weeks from the date of receipt of the certified copy of this judgment.
- e) The rest of the judgment and award of the Tribunal with respect to apportionment, deposit and release shall remain unaltered.



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f) Registry shall transmit the records to the
Tribunal forthwith.

Draw the modified award accordingly.

Sd/-
(JAYANT BANERJI)
JUDGE

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

BSR
List No.: 1 Sl No.: 14