



CNR: KAHC010304402026

NC: 2026:KHC:45018
MFA No. 3199 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

MISCELLANEOUS FIRST APPEAL NO. 3199 OF 2026
(MV-D)

BETWEEN:

SMT. SHANTHA GOPALA
W/O LATE GOPALA,
AGED ABOUT 66 YEARS,
RESIDING AT S.N.T. 24/1,
SHIVA NAGARA, KODAKKAL,
ALAPE VILLAGE, PADIL,
MANGALURU, D.K. DISTRICT.

...APPELLANT

(BY SMT. POOJA PARVATHI, ADVOCATE FOR
SRI. G. RAVISHANKAR SHASTRY, ADVOCATE)

AND:

1. KHATHIJAMMA
W/O. KANEMAR MOHAMMED
AGED ABOUT 73 YEARS,
R/AT D.NO.2-404,
HABEED MAHAL, MADAKA,
THUMBE, FARANGIPETE,
BANTAL,
D.K. DISTRICT - 574 133.
2. MR. MUHAMMED MUSTHAF
S/O. B.K. MUHAMMED,
ADULT,
R/AT D.NO.2-180,
MADAKA GOLTHAMAJAL, BANTWAL,
D.K. DISTRICT - 574 222.

Digitally signed by
LAKSHMINARAYANA
MURTHY RAJASHRI
Location: HIGH
COURT OF
KARNATAKA



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3. THE DIVISIONAL MANAGER
BHARATHI AXA GENERAL INSURANCE CO. LTD.,
NO.203-207, 2ND FLOOR, INLAND AVENUE,
M.G. ROAD,
MANGALURU, D.K. DISTRICT - 575 003.

...RESPONDENTS

(BY SRI. MALLIKARJUNA REDDY N.A., ADVOCATE FOR
SRI. B. PRADEEP, ADVOCATE FOR R3;
VIDE ORDER DATED 02.07.2026, NOTICE TO R1 AND R2 IS
DISPENSED WITH)

THIS MFA IS FILED U/S.173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 04.08.2025 PASSED IN MVC
NO.388/2021 ON THE FILE OF THE II ADDITIONAL DISTRICT
JUDGE AND III ADDITIONAL MOTOR ACCIDENT CLAIMS
TRIBUNAL, 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 SHIVASHANKAR AMARANNAVAR

ORAL JUDGMENT

This appeal is filed by the appellant/claimant No.1
seeking enhancement of compensation awarded in the
Judgment and Award dated 04.08.2025 passed in
MVC No.388/2021 by the II Additional District
Judge and Additional MACT-III, D.K.Mangaluru. The



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appellant/claimant No.1 is challenging the contributory negligence attributed to the deceased at 25% and also seeking enhancement of compensation.

2. Even though the matter is listed today for admission, with the consent of both the learned counsel for appellant and learned counsel for respondent No.3/insurer, the matter is taken up for disposal.

3. The appellant/claimant made a claim petition seeking for award of compensation for the death of Gopala (husband of claimant No.1 and father of claimant Nos.2 and 3) in a road traffic accident occurred on 23.01.2021 contending that the accident occurred due to rash and negligent driving by the driver of Maruthi Omni Car bearing registration No.KA-05-MC-9607.

4. The Tribunal recorded the evidence adduced by the parties and upon appreciating the evidence on record, assessed the compensation and awarded the compensation under various heads as under:



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Sl. No.	Particulars	Amount
1.	Loss of dependency	Rs. 6,30,000/-
2.	Love and affection and filial consortium to claimant	Rs. 48,400/-
3.	Loss of estate	Rs. 18,150/-
4.	Transportation of dead body and funeral expenses	Rs. 18,150/-
	Total	Rs. 7,14,700/-

5. The Tribunal has also awarded the interest at the rate of 6% per annum from the date of petition till realisation. The Tribunal has held that the deceased has also contributed to the accident to the extent of 25% and only awarded Rs.5,36,025/- (75% of Rs.7,14,700/-) with interest and directed respondent No.3/insurer to pay the compensation awarded with interest. The claimant No.1 has filed the present appeal challenging the contributory negligence attributed to the deceased and also seeking enhancement of compensation.

6. Heard the learned counsel for appellant/claimant No.1 and learned counsel for respondent No.3/insurer.



7. Learned counsel for the appellant would contend that, the deceased was standing by the side of a road in order to cross the road, at that time, the driver of Maruthi Omni Car drove his car in a rash and negligent manner and dashed to the deceased and the deceased sustained fatal injuries. The accident occurred in a junction. Even though there is no zebra crossing marks, but as it is a junction, the pedestrians will cross the road from one end to the other end. The charge sheet has been filed against the driver of the Omni Car. The evidence of P.W.2 - eye witness to the incident clearly established that the entire rash and negligent driving is on the part of the driver of Omni Car. She further contends that the claimant No.1 before the Tribunal was the wife of the deceased and claimant Nos.2 and 3 are the daughters of the deceased. Claimant Nos.2 and 3 who are daughters of the deceased have died during the pendency of the claim petition before the Tribunal. The deceased was a married man having wife and two children and therefore deductions taken by the



Tribunal at 50% is not proper and deductions is to be taken at 1/3rd. The compensation awarded under other heads are just and proper. The Tribunal has rightly applied multiplier '7'. With these, she prayed to allow the appeal.

8. Learned counsel for respondent No.3/insurer would contend that, the accident occurred at National Highway No.73. The accident occurred when the deceased was crossing the road. There was no any zebra crossing mark at the spot of the accident. Considering the said aspect, the Tribunal has rightly held that the deceased has contributed to the accident and assessed his negligence at 25%. The compensation awarded on all heads are just and proper. With these, he prayed for dismissal of the appeal.

9. Having heard the learned counsel for appellant/claimant No.1 and learned counsel for respondent No.3/insurer, the Court has perused the impugned Judgment, Award and Trial Court records.



10. The accident occurred on 23.01.2021 at about 08:10 p.m. Ex.P7 is the sketch of the spot of the accident. After the spot of the accident at some distance there is a road divider. At the spot, there is no divider that indicates that the vehicles can take u-turn at the spot of the accident. On both sides of the road, there are shops, hotels, showrooms, rice mill etc. Based on Ex.P6 - Spot Mahazar, there is no mention of any brake/tire marks on the spot. If the deceased has suddenly entered the road, the driver of Omni car ought to have applied brake and if applied brake, there will be brake/tire marks on the spot. Considering the said aspect, no negligence can be attributed to the deceased. Therefore, the Tribunal erred in attributing contributory negligence on the deceased. The accident occurred due to sole rash and negligent driving of the driver of Omni Car. Therefore, the appellant/claimant No.1 is entitled to entire compensation assessed by the Tribunal.



11. The deceased was aged sixty five (65) years as on the date of incident. Considering the same, the Tribunal has rightly applied multiplier '7'. The Tribunal has taken notional income at Rs.15,000/- per month. The Tribunal has deducted 50% towards personal expenses of the deceased. The deceased was a married man having wife and two children. Two children who were claimants Nos.2 and 3 have died during pendency of the claim petition before the Tribunal. As the deceased was not a bachelor and as the deceased was a married man having wife and children, the deductions is to be taken at 1/3rd towards personal expenses of the deceased. The Hon'ble Apex Court in the case of **VED KANWAR AND OTHERS vs. BABULAL AND OTHERS** reported in **2026 ACJ 872** has stated that 1/3rd is to be deducted where the deceased was a married person. In view of the same, loss of dependency is calculated as under:

$$\begin{aligned} \text{Rs.15,000/-} - 1/3\text{rd} &= \text{Rs.10,000/} \times 12 \times 7 \\ &= \text{Rs.8,40,000/-} . \end{aligned}$$



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12. The compensation awarded under other conventional heads is just and proper.

13. The appellant/claimant No.1 is entitled to loss of dependency in a sum of Rs.8,40,000/- as against Rs.6,30,000/- awarded by the Tribunal.

14. Consequently, the appellant/claimant No.1 is entitled to the compensation as determined by the Tribunal in a sum of Rs.7,14,700/- and enhanced compensation of Rs.2,10,000/- with interest at the rate of 6% per annum from the date of petition till realisation.

15. Respondent No.3/insurer is liable to pay the said enhanced compensation amount with interest.

16. In view of the above, the following:

ORDER

- i) *Miscellaneous First Appeal is **allowed-in-part.***
- ii) *The appellant/claimant No.1 is entitled to the compensation determined by the Tribunal in a sum of Rs.7,14,700/- and*



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*enhanced compensation of Rs.2,10,000/-
with interest at the rate of 6% per annum
from the date of petition till realisation.*

- iii) The finding of the Tribunal with regard to contributory negligence attributed to the deceased is **set-aside**.*
- iv) Respondent No.3/insurer shall deposit the compensation awarded by the Tribunal and enhanced compensation amount with interest before the Tribunal within a period of six weeks from this day.*
- v) The appellant/claimant No.1 is entitled to release of entire compensation determined by the Tribunal and enhanced compensation with interest.*
- vi) The order of deposit of the compensation passed by the Tribunal remains unaltered.*

**Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE**