



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCELLANEOUS FIRST APPEAL NO. 6685 OF 2017 (MV-D)

C/W

MFA CROSS OBJECTION NO. 130 OF 2018 (MV-D)

IN MFA No. 6685/2017

BETWEEN:

1. SMT. MARLI POOJARTHY
W/O LATE MANJU POOJARY,
AGED ABOUT 56 YEARS
2. SMT. NAGARATHNA
W/O GANAPATHI,
AGED ABOUT 35 YEARS
3. SMT. SUJATHA
D/O LATE MANJU POOJARY,
AGED ABOUT 33 YEARS
4. SMT. SUSHEELA
D/O LATE MANJU POOJARY,
AGED ABOUT 31 YEARS
5. SRI. ANANDA
S/O LATE MANJU POOJARY,
AGED ABOUT 29 YEARS

ALL ARE RESIDING AT BIRUMANE,
BIJOORU VILLAGE, KUNDAPURA TALUK,

Digitally signed
by
SHARADAVANI
B
Location: High
Court of
Karnataka



UDUPI DISTRICT - 576 201.

...APPELLANTS

(BY SRI. NAGARAJA HEGDE, ADVOCATE)

AND:

1. SMT. SUDHA S. BHAT
W/O SADASHIVA BHAT,
AGED ABOUT 47 YEARS
R/O VINAYAKA ICE-CREAM PARLOR,
UPPUNDA VILLAGE,
KUNDAPURA TALUK - 576 201.
2. THE UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, 1ST FLOOR,
SRI LAKSHMI NARASIMHA COMPLEX,
OPP KSRTC DEPOT,
KUNDAPURA - 576 201,
REP. BY ITS BRANCH MANAGER.

...RESPONDENTS

(BY SRI. RAVISH BENNI, ADVOCATE FOR R2;
R1 - SERVED AND UNREPRESENTED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 17.01.2017 PASSED IN MVC NO.412/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE AND MEMBER MACT, KUNDAPURA. PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA.CROB NO. 130/2018

BETWEEN:

THE UNITED INDIA INSURANCE COMPANY LTD.,
BRANCH OFFICE, 1ST FLOOR,
SRI LAKSHMI NARASIMHA COMPLEX,
OPP:KSRTC DEPOT, KUNDAPURA,
REPLY ITS BRANCH MANAGER,



NOW BY ITS DIVISIONAL MANAGER, PIN-576 201.

...CROSS OBJECTOR

(BY SRI. RAVISH BENNI, ADVOCATE)

AND:

1. SMT. MARLI POOJARTHY
AGED ABOUT 57 YEARS,
W/O LATE MANJU POOJARY
2. NAGARATHNA
W/O GANAPATHI,
AGED ABOUT 36 YEARS,
3. SUJATHA
D/O LATE MANJU POOJARI,
AGED ABOUT 34 YEARS,
4. SUSHEELA
AGE 32 YEARS
D/O LATE MANJU POOJARI,
5. ANANDA
AGE 30 YEARS
S/O LATE MANJU POOJARI,

ALL ARE RESIDING AT BIRU MANE,
BIJOORU VILLAGE,
KUNDAPURA TALUK - 576 201.

6. SUDHA S. BHAT
AGE 48 YEARS
W/O SADASHIVA BHAT,
UPPUNDA VILLAGE,
KUNDAPURA TALUK - 576 201.

...RESPONDENTS

(BY SRI. NAGARAJA HEGDE, ADVOCATE FOR R1 TO R5;



VIDE ORDER DATED 20.07.2022, NOTICE TO R6
DISPENSED WITH)

THIS MFA CROB IN MFA NO.6685/2017 PASSED U/O.41
RULE 22 OF CPC, AGAINST THE JUDGMENT AND AWARD
DT.17.01.2017 PASSED ON MVC NO.412/2014 ON THE FILE
OF THE SENIOR CIVIL JUDGE MEMBER, MACT, KUNDAPURA,
AWARDING COMPENSATION OF RS.5,42,690/- WITH
INTEREST AT 6 PERCENT P.A. FROM THE DATE OF PETITION
TILL THE DATE OF DEPOSIT WITH THE TRIBUNAL.

THIS MFA AND MFA.CROB, COMING ON FOR ADMISSION,
THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE C M JOSHI

ORAL JUDGMENT

Heard learned counsel appearing for both the parties.

2. The present appeal arises out of the judgment
and award in MVC No.412/2014, dated 17.01.2017 by the
Senior Civil Judge And Member Additional M.A.C.T,
Kundapura, whereby an award for a sum of Rs.5,42,690/-
was made in favour of the petitioners. The appellants-
claimants have approached this Court in MFA
No.6685/2017 seeking enhancement and the Insurance
Company has approached this Court in
MFA.Crob.No.130/2018.



3. The factual aspects of the matter is that on 03.09.2008 at about 07.30 a.m., the deceased Manju Poojary was proceeding on his two wheeler from Uppunda Shala Bagilu side towards Ambagilu. A goods auto-rickshaw bearing Reg.No.KA-20-A-8463 owned by respondent No.1 and driven by her driver in a rash and negligent manner, dashed to the back side of the two wheeler of the deceased Manju Poojary resulting in his fall on the side of the road and he was shifted to K.M.C. Hospital, Manipal. While he was inpatient, he succumbed to the injuries. A case was registered against the driver of the auto-rickshaw by the concerned Police and ultimately a charge- sheet was filed against the driver of the auto-rickshaw. The claimants who are the wife and children of the deceased filed a claim petition in MVC No.412/2014 before the Senior Civil Judge and Member Additional M.A.C.T, Kundapura. It is their contention that the deceased Manju Poojary was working as a coolie and was earning Rs.10,000/- per month and they had spent huge



amount towards the medical expenses and as such they may be awarded reasonable and just compensation from the owner and insurer of the goods auto-rickshaw.

4. The petition was resisted by respondent No.2 - Insurance Company contending that though the vehicle was covered by the policy, the terms and conditions of the policy were violated by the driver of the auto-rickshaw and as such, the liability has to be fastened upon respondent No.1. *Inter-alia* it was also contended that the compensation claimed is highly exorbitant, imaginary and untenable and that there was contributory negligence on the part of the deceased also. They also denied the age, income and occupation of the deceased and sought for dismissal of the petition as against them.

5. On the basis of the above contentions, the Tribunal framed appropriate issues and petitioner No.5 was examined as PW1 and one witness was examined as PW2. Exhibits P1 to P6 were marked in evidence. No oral



evidence was adduced on behalf of respondent No.2, however the policy was marked as Exhibit R1. Respondent No.1 did not appear before the Tribunal and as such, she was placed ex-parte. After hearing the arguments, the Tribunal has awarded a total compensation of Rs.5,42,690/- under the following heads:

SL. NO.	PARTICULARS	AMOUNT (IN RS.)
1	Loss of dependency	4,32,000/-
2	Consortium	25,000/-
3	Love and affection	25,000/-
4	Loss of estate	25,000/-
5	Conveyance and funeral expenses	20,000/-
6	Medical expenses	15,690/-
	TOTAL	5,42,690/-

6. While awarding the above compensation, the Tribunal has considered the monthly income of the deceased at Rs.6,000/- per month.



7. Being aggrieved, the petitioners have approached this Court in MFA No.6685/2017 and respondent No.2 -Insurance Company has approached this Court in MFA Crob.No.130/2018.

8. Learned counsel appearing for the appellants-claimants submit that the Tribunal has erred in holding the income of the deceased at Rs.6,000/- per month, but it should have been taken at Rs.10,000/- per month. He also submits that under conventional heads viz., towards loss of love and affection, the Tribunal has not followed the dictum of the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others¹***. Therefore, he seeks reassessment of the compensation amount.

9. *Per contra*, the learned counsel appearing for respondent No.2 - Insurance Company submits that the Tribunal has not considered the age of the deceased in an

¹ 2017 (16) SCC 680



appropriate manner and there is no clinching evidence to show the age of the deceased. He submits that some of the petitioners are married and other sons are major and therefore, they cannot be dependents and as such, they are not entitled for the compensation. He also submits that the income of the deceased assessed by the Tribunal at Rs.6,000/- per month is on the higher side and it should have been less than Rs.5,000/- as is considered by various decisions by this Court. Therefore, he submits that the quantum of the compensation is on the higher side and the same be reassessed.

10. Perusal of the records would reveal that the petitioners had produced the ration card of the family of the petitioners, which shows the age of the deceased as 55 years and the PM report had recorded the age as 51 years. The Tribunal in paragraph No.16 of the impugned judgment appreciates the evidence in the form of the ration card and the PM report and comes to the conclusion that the age of the deceased has to be taken between 56



to 60 years. It is pertinent to note that the alleged ration card, even though a copy was made available was not marked before the Tribunal. Therefore, what was available was only the testimony of PW-1 i.e., son of the deceased, who stated that his mother was 10 years younger to the father. However, the reasoning of the Tribunal, which had the advantage of seeing the demeanour of the witnesses, cannot be interfered with when it comes to the oral testimony of the witnesses. It is evident that there is no conclusive proof in respect of the age of the deceased. Therefore, this Court does not find any reason to disturb the reasoning given by the Tribunal in this regard. Nowhere the wife of the deceased has stated that she was elder to the deceased. Therefore, the finding of the Tribunal that the age of the deceased was between 56 to 60 years and as such, the multiplier to be applied is '9' cannot be disturbed.

11. Coming to the income of the deceased, it is pertinent to note that in the absence of any material to



establish the income, notional income has to be assessed. The Guidelines issued by the KSLSA for the purpose of settlement of the disputes before the Lok-adalat prescribes a notional income of Rs.4,500/- for the year 2008. Such Guidelines issued by the KSLSA have been held, in umpteen number of decisions by this Court, to be in general conformity with the wages fixed under the Minimum Wages Act. Therefore, the wages of the deceased have to be taken as Rs.4,500/- only.

12. The next contention of the learned counsel appearing for respondent No.2-Insurance Company is that some of the petitioners are not dependents as they were married and aged major. It is necessary to note that it is not only the dependency which has to be considered, but it is the heirship of the parties under the deceased. The Hon'ble Apex Court in the case of ***National Insurance Company Vs. Birender and others***² has held as below:

² (2020) 11 SCC 356



"14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs 1,00,000 and Rs 1,50,000 per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years."

13. In view of the above, the compensation has to be reassessed as below:

14. Since there are 5 petitioners, 1/4th has to be deducted towards the 'personal expenses' of the deceased and also by considering the future prospects of the



deceased at 10%. Hence, the quantum of compensation under the head of 'loss of dependency' is calculated as $\text{Rs.}(4,500 + 450) \times 12 \times \frac{3}{4} \times 9 = \text{Rs.}4,00,950/-$ by adopting future prospects at 10% and personal expenses of deceased at $\frac{1}{4}^{\text{th}}$.

15. The petitioners are also entitled for a sum of Rs.44,000/- each, towards 'loss of love and affection' and therefore, a sum of Rs.2,20,000/- ($\text{Rs.}44,000 \times 5$) is awarded.

16. The petitioners are also entitled for a sum of Rs.33,000/- under the conventional head of 'funeral expenses' and 'loss of estate'.

17. The Tribunal has awarded a sum of Rs.15,690/- towards the 'medical expenses' which is as per the medical bills and cannot be interfered with. Therefore, the petitioners are entitled for a total compensation of Rs.6,69,640/-.



18. The Tribunal has awarded interest of 6% per annum, which is also proper and correct. Hence, the petitioners are entitled for the modified compensation under different heads as below:

PARTICULARS	AMOUNT (IN RS.)
Loss of dependency	4,00,950/-
Loss of love and affection,	2,20,000/-
Conveyance and funeral expenses and loss of estate	33,000/-
Medical expenses	15,690/-
TOTAL	6,69,640/-
Less awarded by Tribunal	5,42,690/-
Enhancement	Rs.1,26,950/-

19. For the aforesaid reasons, the appeal in MFA No.6685/2017 deserves to be allowed-in-part and in MFA Crob.No.130/2018 deserves to be dismissed. Hence, the following:

ORDER

- (i) The appeal in MFA No.6685/2017 is allowed-in-part and in MFA Crob.No.130/2018 is dismissed.



- (ii) The petitioners are entitled for an additional sum of Rs.1,26,950/- along with interest at the rate of 6% per annum from the date of petition till its deposit.
- (iii) Petitioner No.1 is entitled for 60% of the compensation amount and petitioner Nos.2 to 5 are entitled for 10% each of the total compensation.
- (iv) The fixed deposit and release shall be as ordered by the Tribunal.

Sd/-
(C M JOSHI)
JUDGE