



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JULY, 2026

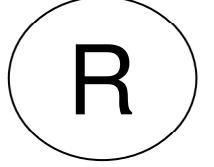
PRESENT

HON'BLE MR. JUSTICE JAYANT BANERJI

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO.8635 OF 2019
(MV-D)



BETWEEN:

1. BHASKAR N SHETTY
S/O NARAYANA SHETTY,
NOW AGED ABOUT 49 YEARS
2. MASTER BHANUSH B. SHETTY
S/O BHASKAR N SHETTY,
NOW AGED ABOUT 17 YEARS
3. MASTER SHUBRATH B SHETTY
D/O BHASKAR N SHETTY,
NOW AGED ABOUT 17 YEARS

SINCE APPELLANT NOS.2 & 3 ARE MINORS
REP BY THEIR FATHER AND N/G i.e.,
APPELLANT NO.1,
ALL ARE R/A NO.225, 3RD CROSS,
2ND BLOCK, 3RD STAGE,
BASAVESWARANAGARA,
BANGALORE – 560 079

...APPELLANTS

(BY SRI. RAGHU R., ADVOCATE)

Digitally signed by
SUMATHY KANNAN
Location: HIGH
COURT OF
KARNATAKA



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

AND:

THE MANAGER
B.M.T.C., SHANTHI NAGARA,
DOUBLE ROAD,
BENGLAURU – 560 079

...RESPONDENT

(BY SRI. F.S.DABALI., ADVOCATE)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT PRAYING TO a) PERUSE AND MODIFY THE JUDGMENT AND AWARD DATED 28.12.2018, PASSED IN MVC NO.4306/2017, ON THE FILE OF THE COURT OF SMALL CAUSES AND MACT (SCCH-16), BENGALURU AND ALLOW THE APPEAL AND ENHANCE THE COMPENSATION AMOUNT; b) ALLOW THIS APPEAL WITH COSTS THROUGHOUT.

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

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL JUDGMENT

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

1. The present appeal seeks to challenge the judgment and award dated 28.12.2018, in MVC No.4306/2017, passed by the Small Causes and Motor Accident Claims Tribunal, Bengaluru (hereinafter referred to as the



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

'Impugned Award'). By the Impugned Award, the learned Tribunal has awarded compensation to the appellants/claimants in a sum of Rs.13,30,000/-, along with interest at 9% per annum from the date of the petition till its realisation.

2. The challenge in the present appeal is by the appellants/claimants.

3. The brief relevant facts are that an accident took place on 01.07.2017, at around 02.30 p.m., which involved the deceased, who was riding as a pillion rider on a Motorcycle bearing Reg.No.KA-02-ER-5017, being ridden by her brother. The said motorcycle was hit by a BMTC bus bearing Reg.No.KA-01-F-9013. It is stated that the offending bus was being driven in a rash and negligent manner. In view of the accident, the deceased fell down and sustained fatal injuries. Although she was shifted to Panacia Hospital, she succumbed to her injuries in the hospital despite treatment.



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

4. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'MV Act') was filed before the learned Tribunal, by the husband and two children of the deceased. It was stated therein that the deceased was running a Tutorial and earning a sum of Rs.1,00,000 /- per month.

5. The claim petition was contested by the respondent/BMTC. It was stated that the driver of the bus was not negligent, but the negligence was on the rider of the motorcycle. Thus, it was contended that the claim petition be dismissed.

6. Based on the pleadings set out by the parties, the following issues were framed by the learned Tribunal:

"1. Whether the petitioners prove that deceased Smt.Shakila B. Shetty succumbed to the injuries sustained in vehicular accident alleged to have occurred on 01.07.2017 due to the rash and negligent driving of the driver of the BMTC Bus bearing No.KA-01-F-9013?

2. Whether the petitioners are entitled to compensation? If so, what is the quantum and from whom?

3. What order or Award?"



CNR: KAHC010473222019

7. In order to prove their case, the appellant No.1/claimant No.1, husband of the deceased, was examined as PW-1 and twelve documents were marked as Exhibits P1 to P12, which included the FIR (Exhibit-P1), Mahazar (Exhibit-P3), Sketch (Exhibit-P4), IMV Report (Exhibit-P5), Inquest Mazhar (Exhibit-P9) and the charge-sheet (Exhibit-P10). The Income Tax Returns (hereinafter referred to as 'ITR') for four assessment years from 2012-13 to 2016-17 were produced as Exhibit-P11 (collectively). The respondent/BMTC also examined the Driver of the offending bus as RW-1. However, no documents were produced on the behalf of the respondent/BMTC.

8. The learned Tribunal after reviewing the evidence placed it found that the Driver of the respondent/BMTC bus (RW-1) had stated in his evidence that he was waiting at a traffic signal and the rider of the motorcycle came at a high speed and tried to take a right turn. Thus, it was stated that the motorcyclist was negligent. However, in his cross-examination, RW-1, who is the driver of the offending bus,



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

admitted that the bus bearing Reg.No.KA-01-F-3892 had stopped in front of the offending vehicle, but denied the accident had taken place in the manner described.

9. The learned Tribunal examined the spot mahazar and sketch, as well as other documents and found that the sketch clearly shows that the offending bus came from the rear side and hit the motorcycle, as well as hit another BMTC Bus, which was parked. Thus, it was held by the learned Tribunal that based on the Police documents as well as the documents filed by the appellants/claimants, the version of the respondent was not believable, and that the accident happened as a result of negligence of the offending bus driver.

10. On the quantum awarded, the learned Tribunal found that although the appellants/claimants stated that the deceased was working as a Teacher, and produced ITRs, neither any documents for having studied B.Tech or TCH were produced, nor was the license produced to show that



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

the deceased was running a Tutorial. The relevant extract of the Impugned Order is set out below:

*"12. For the determination of the quantum of compensation, the Tribunal has to take into account the age, income and occupation of the deceased. Firstly, I wish to see what the avocation and income of deceased was. According to petitioners, deceased was working as teacher and running a tutorial classes and earning Rs.1,00,000/- per month. To substantiate this aspect, **they have produced income tax returns for the assessment year from 2012-13 to 2016-2017 as per Ex.P11. For having studied B.Ed or TCH, no document is produced. Likewise no license is produced to show that the deceased was running tutorials.** Moreover, no PAN card is produced to show that the deceased was an income tax assessee. On the other hand, a close scrutiny of income tax returns show that there is variation in the signatures found on Ex.P11. For all these reasons, I am of the opinion that the income tax returns which are at Ex.P11 cannot be relied upon since it appears to be created for the sake of this case. **So, in the absence of documentary proof, notional income has to be taken. Since the accident took place in the year 2017, a sum of Rs.9,000/- is taken as notional income.**"*

[Emphasis Supplied]

10.1 Thus, the learned Tribunal took the notional income as Rs.9,000/- per month and since the deceased was 41 years of age, future prospects was considered at 25% and 1/3rd of the income was deducted towards personal expenses. Thus, the loss of dependency was calculated as follows:

$(Rs.9,000 + 25\%) = 11,250 - 1/3 \times 12 \times 14 = Rs.12,60,000/-$



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

11. In addition, the learned Tribunal also awarded amounts towards loss of consortium, loss of estate, funeral expenses in the following manner:

Sl.No.	Particulars	Amount (Rs.)
1	Loss of Dependency	12,60,000/-
2	Loss of Consortium	40,000/-
3	Loss of Estate	15,000/-
4	Funeral Expenses	15,000/-
	Total	13,30,000/-

11.1 Thus, it was held that the appellants/claimants were entitled to a sum of Rs.13,30,000/- along with 9% interest per annum, from the date of petition till the date of realization.

12. The learned counsel for the appellants/claimants made two submissions. Firstly, he submits that the ITRs of the deceased produced were completely ignored by the learned Tribunal, given the fact that there was no license for the Tutorial classes. Secondly, that the compensation awarded under the non-pecuniary heads is also not in accordance with the settled law.



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

12.1 Reliance is placed by the learned counsel for the appellants/claimants on the judgment of the Supreme Court in the case of ***Smt.Anjali And Others vs. Lokendra Rathod And Others***¹ and ***Rashmirekha Tripathy and Another vs. Branch Manager (Legal Claims), Sriram General Insurance Company Limited and Others***².

13. The learned counsel for the respondent, on the other hand, has contended that the award has been passed in accordance with law. He further contends that the appellants/claimants had failed to produce any documents reflecting the education of the deceased and her capabilities for taking tuition. Thus, the learned Tribunal had rightly disregarded the ITRs and awarded notional income.

14. Based on the averments of the parties, the issues that arise before this Court are:

- (i) Whether the learned Tribunal was right in disregarding the ITRs filed by the

¹ Civil Appeal No.009014 of 2022, dtd. 06.12.2022

² 2026 SCC Online SC 1256



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

appellants/claimants, given the settled position of law? and

(ii) To what additional amounts, if any, are the appellants/claimants entitled to?

15. The facts in contention are not disputed by the parties are the way the accident took place or the negligence. The only question in dispute is regarding the quantum of compensation awarded.

15.1 The learned Tribunal has examined the records and has found that since no educational certificates or other documents have been filed to state that the deceased was a Teacher, the ITR cannot be considered. This Court is unable to agree with this finding, for the reason that once the ITR in respect of the income of an individual are filed, these are to be examined for the purposes of calculating compensation. It is a settled law that the ITRs cannot be ignored or disregarded by the learned Tribunal.



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

16. The Supreme Court in ***Smt. Anjali*** case, while relying on its judgment in ***Malarvizhi & Ors. Vs. United India Insurance Co. Ltd. & Ors.***³ has held that the ITRs filed by the appellants/claimants to prove the income of the deceased cannot be disregarded. It is a statutory document on which reliance shall be placed. The relevant extract of the judgment is set out below:

"8. Assailing the High Court's impugned order dated 16th August, 2018, the learned Counsel appearing on behalf of the Appellants has contended:

*a. **The High Court and the Tribunal failed to consider the deceased's Income Tax Return filed on 28.05.2010 for the year 2009-2010, the HC rejected the ITR on the ground that earlier returns were not filed while the Income Tax Inspector was examined.***

b. The High Court and Tribunal failed to observe that since the number of dependents exceeded 6 members, the deduction made towards personal expenses ought to be one-fifth (1/5th). In the present case there are 7 dependents of the deceased.

c. The Tribunal failed to award any amount under the Conventional Heads and the High Court awarded a sum of Rs.70,000/- in lumpsum under the Conventional Heads, whereas the same ought to have been Rs.1,20,000/- as per the Supreme Court's judgment in Malarvizhi & Ors. Vs. United India Insurance CO. Ltd. & Ors.

³ (2020) 4 SCC 228



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

d. Both the Tribunal and High Court awarded interest at the rate of 6% per annum from the date of application while it ought to have been 9% as held in Malarvizhi & Ors. Vs. United India Insurance Co. Ltd. & Ors.(Supra).

9. The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009- 2010) of the deceased, which reflects the deceased's annual income to be Rs.1,18,261/-, approx. Rs.9,855/- per month. This Court in Malarvizhi & Ors. (Supra) has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income. In Malarvizhi (Supra), this Court has laid as under:

*"10. ...We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. **The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased.**" Hence, this Court is of the opinion that the deceased's annual income be fixed at Rs.1,18,261/-, approx. Rs.9,855/- per month keeping in mind the deceased's Income Tax Return for the year 2009-2010."*

[Emphasis Supplied]

16.1 Recently as well, the Supreme Court in the case of ***Rashmirekha Tripathy*** case, has held that where the ITRs has been filed, the latest among those ITRs requires to be taken into consideration where an employee is salaried. However, where the individual is self-employed or carrying on his own business, the average income of the previous



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

three years' ITRs shall be taken into consideration. If only 1 or 2 years' returns have been filed, the fluctuation of income must be seen along with the surrounding circumstances of the business must be seen in the following terms:

"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;



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

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."*

[Emphasis Supplied]

17. The Learned Tribunal has examined the records and found that since no educational certificates or other documents have been placed on record that the deceased was a teacher, the income tax returns cannot be considered. This Court is unable to agree. Once Income Tax Returns in respect of the income of the individual is filed, these have to be examined for the purposes of calculating income. Given that the deceased was self-employed, average income based on the last 3 years, as per the ITR



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

has to be taken into consideration, less tax, to calculate the monthly income.

17.1 An examination of the record before this Court shows that the document exhibited as Exhibit-P11 are four ITRs of the deceased. The gross taxable income for the last three assessment years 2014-2015, 2015-2016 and 2016-2017, is Rs.3,13,389/-, Rs.3,50,840 and Rs.3,35,851/- respectively. Thus, the average gross annual income of the deceased as per the ITRs filed for the past three years is Rs.3,33,360/- per annum and Rs.27,780/- per month. Thus, the monthly income of the deceased can be taken at Rs.27,780/-. Since the deceased was 41 years of age the appropriate multiplier applicable would be '14' and future prospects was considered at 25%. Further, the deceased had three dependants including husband, and minor children and hence, 1/3rd of the income was deducted towards personal expenses. Accordingly, the loss of dependency shall be calculated as follows:



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

$$(Rs.27,780 + 25\%) = (34,725 - 1/3^{rd}) \times 12 \times 14 = Rs.38,89,200/-$$

18. Further, in view of the law laid down by the Supreme Court in the ***Pranay Sethi*** case, loss of consortium is payable at Rs.40,000/- to three claimants, amounting to **Rs.1,20,000/-**. The respondents/claimants are also entitled to compensation under the conventional heads. Accordingly, **loss of estate** and **funeral expenses** are awarded at Rs.15,000/- each.

19. Since the accident was of the year 2017 and although the judgment of the learned Tribunal was passed in the year 2018, no escalation has been awarded on the 'conventional heads'. The Supreme Court in its judgment in the case of ***Pranay Sethi*** has upheld the aforesaid principle of law. The relevant paragraph is set out below:

"59.8. Reasonable figures *on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.*"

[Emphasis Supplied]



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

19.1 Accordingly, escalation at the rate of 10% is also awarded on the conventional heads.

20. In view of the foregoing discussions, the compensation awarded by the learned Tribunal requires to be recalculated in the following terms:

Sl.No.	Particulars	Amount (Rs.)
1	Loss of Dependency (Rs.27,780 + 25%) = (34,725 - 1/3 rd) x 12 x 14	38,89,200/-
2	Loss of Consortium (Rs.40,000 x 3 + 10%)	1,32,000/-
3	Loss of Estate (Rs.15,000 + 10%)	16,500/-
4	Funeral Expenses (Rs.15,000 + 10%)	16,500/-
	Total	40,54,200/-
	Less : Awarded by the Tribunal	13,30,000/-
	Enhanced Compensation	27,24,200/-

21. Hence, the appellants/claimants are entitled to a total compensation of **Rs.40,54,200/-** along with interest at 9% per annum from the date of petition till its realization. However, the appellants/claimants shall not be entitled to interest for the delayed period of 217 days in filing the appeal.



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

22. Accordingly, this Court proceeds to pass the following:

ORDER

- (i) The appeal is ***allowed in part;***
- (ii) The Judgment and Award dated 28.12.2018, in MVC No.4306/2017, passed by the Small Causes and Motor Accident Claims Tribunal, Bengaluru is modified by awarding a total compensation of **Rs.40,54,200/-** along with interest at the rate of 9% per annum from the date of petition till realization.
- (iii) The interest awarded shall be recalculated from the date of the petition till the date of realisation as set out under Section 171 of the MV Act, the appellants/claimants shall not be entitled to interest for the delayed period of 217 days in filing the appeal.
- (iv) The remaining portion of the Impugned Award of the Tribunal remains undisturbed.
- (v) The appellant/Insurance company is directed to pay the enhanced compensation with interest as awarded by the Tribunal within eight weeks from today.



CNR: KAHC010473222019

NC: 2026:KHC:37402-DB
MFA No. 8635 of 2019

(vi) On such deposit of compensation, the same shall be released in favour of the appellants/claimants, on filing of an appropriate application for withdrawal of the enhanced amount.

(vii) The Registry is directed to draw the modified Award accordingly.

(viii) The Registry is directed transmit the amount in deposit along with a copy of this judgment to the concerned Tribunal, along with its records for disbursal.

(ix) No order as to costs. All pending application(s) stand closed.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

JJ

List No.: 1 Sl No.: 33