



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL NO.600/2020 (MV-D)

BETWEEN:

1. SMT. MANJULA N.B.
W/O NAGARAJ S.B.
AGE 47 YEARS
OCC : HOUSEWIFE.
2. KUM. ASHA N.B.
D/O NAGARAJ S.B.
AGE 25 YEARS.

BOTH ARE RESIDENTS OF
SHIDDALINGESHWARA NILAYA
DURAGAMMA STREET, VIDYANAGARA
SHIVAMOGGA CITY-577201.

...APPELLANTS

(BY SRI. CHETHAN C, ADV., FOR
SRI. PRASAD B.S. ADV.,)

AND:

1. MAHARAJA
S/O DURGAPPA
AGE 41 YEARS
R/O 60 FT. ROAD
VINOBANAGARA
SHIVAMOGGA CITY-577201.

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



2. THE BRANCH MANAGER
BAJAJ ALLIANZ GENERAL INSURANCE
COMPANY LTD.,
GE PLAZA, AIRPORT ROAD, YERWADA
PUNE-411006.

...RESPONDENTS

(BY SRI. K.G. GOPAL, ADV., FOR R1
SRI. JANARDHAN REDDY, ADV., FOR R2)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 23.07.2019 PASSED IN MVC NO.839/2017 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND AMACT-8, SHIVAMOGGA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL, COMING ON FOR ORDERS, 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)

This appeal is filed by the claimants seeking enhancement of compensation being aggrieved by the judgment and award dated 23.07.2019 passed in MVC No.839/2017 by the II Additional Senior Civil Judge & Additional MACT-8, Shivamogga, (for short, 'Tribunal').



2. Though this appeal is listed for admission with the consent of learned counsel for the parties, it is taken up for final disposal.

3. Brief facts leading to filing of this appeal are that one Sri.Nagaraj S.B., met with a road accident on 06.06.2017, sustained grievous injuries and succumbed to those injuries. The wife and daughter of the deceased filed a claim petition seeking compensation. It was averred that the deceased was aged about 54 years at the time of accident and was earning Rs.18,000/- per month. Due to his untimely death, the claimants lost their dependency and financial support. It was further averred that the accident occurred due to the actionable negligence of the driver of the crane and therefore, respondent No.2, being the insurer of the offending vehicle was liable to pay the compensation. The respondents filed objections to the claim petition. The respondent No.2-Insurance Company denied its liability on the ground that the seating capacity of the crane was only one person and that the deceased



was sitting in the crane beyond the seating capacity. Hence, sought for dismissal of the claim petition. Upon consideration of the pleadings and evidence on record, the Tribunal partly allowed the claim petition and awarded compensation of Rs.4,53,000/- with 6% interest per annum, directing respondent No.1 to pay the said compensation.

4. Sri.Chethan C., learned counsel for the appellants submits that the Tribunal has committed a grave error in directing respondent No.1 to pay the compensation without applying the principle of pay and recovery. It is submitted that the Tribunal ought to have directed respondent No.2-Insurance Company to pay the compensation by granting liberty to it to recover the same from respondent No.1, the owner of the vehicle. It is further submitted that the Tribunal assessed the income of the deceased on the lower side. It is also submitted that the appellants would be entitled to an appropriate



escalation of 10% on the compensation awarded under the conventional heads. Hence, he seeks to allow the appeal.

5. *Per contra*, Sri.Janardhan Reddy, learned counsel for respondent No.2 and Sri.K.G.Gopal, learned counsel for respondent No.1 support the impugned judgment and award of the Tribunal. It is submitted by the learned counsel for respondent No.2 that the deceased was traveling in the crane as a gratuitous passenger and as per the permit and the insurance policy the seating capacity of the crane was only one person and the deceased, traveling in the vehicle as a gratuitous passenger had violated the terms and conditions of the policy. Therefore, the owner of the vehicle is liable to pay the compensation. It is further submitted that the Tribunal has rightly awarded just compensation. Hence, they seek to dismiss the appeal.

6. I have heard the arguments of learned counsel for the appellants, learned counsel for the respondents



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

7. The only point that would arise for consideration in this appeal is:

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

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

a. The appellants filed a claim petition under Section 166 of the Motor Vehicle Act, 1988 (for short 'the MV Act') seeking compensation for the death of Sri.Nagaraj S.B. The admitted facts are that the deceased was proceeding in a crane on 06.06.2017 and due to the negligent driving of the crane by its driver, the deceased fell down, sustained grievous injuries and subsequently succumbed to those injuries. The deceased was aged about 54 years at the time of the accident. It was averred that the deceased was earning Rs.18,000/- per month;



however, no evidence was placed to substantiate the same. In the absence of proof of income, the income of the deceased is reassessed notionally at Rs.11,000/- per month, placing reliance on the notional income chart prepared by Karnataka State Legal Services Authority (KSLSA). The appellants 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 54 years as on the date of accident, hence, the appropriate multiplier applicable is 11 and the deduction towards the personal and living expenses of the deceased is $1/3^{\text{rd}}$ which has been rightly considered by the Tribunal, considering the number of dependants. Accordingly, having reassessed the income of the deceased, the appellants/claimants are entitled to compensation under the head of **loss of dependency** as under:

$$11,000 + 10\% \times 12 \times 11 - 1/3 = \textbf{Rs.10,64,800/-}$$

b. The appellants are entitled to compensation under the head of loss of consortium at the rate of



Rs.40,000/- each, with 10% escalation which would be **Rs.44,000/-** each. Similarly, they are entitled to a 10% escalation on the amount of Rs.15,000/- awarded under the head of loss of estate, and Rs.15,000/- under the head of transportation of dead body and funeral expenses. Consequently, the compensation payable under each of the said heads stands enhanced to **Rs.16,500/-**.

9. The contention of the learned counsel for the appellants is that the Tribunal ought to have directed respondent No.2-Insurance Company to pay the compensation and recover the same from respondent No.1-owner of the vehicle by applying the principle of pay and recovery. In our considered view, the contention of the learned counsel for the appellants requires acceptance. It is further contended by the respondent/Insurance Company that there was a violation of the policy conditions, as the deceased was sitting in the crane as a gratuitous passenger, despite the seating capacity of the vehicle being limited to one person. In our considered



view, there is a violation of policy conditions, under such circumstances, the Tribunal has rightly saddled the liability on respondent No.1/owner of the vehicle. However, the Tribunal ought to have ordered respondent No.2 to pay compensation and recover the same from respondent No.1/owner of the vehicle and to the aforesaid extent the judgment and award of the Tribunal is modified. Accordingly, the appellants are entitled to the modified compensation as under:

HEADS	AMOUNT (in Rs.)
Loss of dependency	10,64,800
Loss of consortium (44,000 x 2)	88,000
Transportation of dead body & funeral expenses	16,500
Loss of estate	16,500
Total	11,85,800
less amount Rs.1,98,000 received from respondent No.1 on 25.07.2017 and 30.08.2017	1,98,000
Total	9,87,800

Thus, the appellants-claimants shall be entitled to a total compensation of **Rs.9,87,800/-** as against Rs.4,53,000/- awarded by the Tribunal.



10. For the preceding analysis, we proceed to pass the following:

ORDER

- a) The appeal is ***allowed in part.***
- b) The impugned judgment and award dated 23.07.2019 passed by the Tribunal in M.V.C.No.839/2017 is modified to an extent that the appellants-claimants would be entitled to total compensation of **Rs.9,87,800/-** (11,85,800 - 1,98,000, already paid by respondent No.1.) as against Rs.4,53,000/- awarded by the Tribunal.
- c) The enhanced compensation shall carry interest at the rate of 6% p.a. from the date of petition till realization.
- d) The respondent No.2-Insurance Company shall pay/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 and recover the said amount from respondent No.1.

- e) The rest of the judgment and award of the Tribunal with respect to apportionment, deposit and release shall remain unaltered.
- f) Registry shall transmit the records to the Tribunal forthwith.
- g) Draw the modified award accordingly.

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

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

ABK
List No.: 1 SI No.: 13