



CNR: KAHC010499322019

NC: 2026:KHC:43037  
MFA No. 240 of 2020

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 10<sup>TH</sup> DAY OF AUGUST, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE RAJESH RAI K**

**MISCELLANEOUS FIRST APPEAL NO. 240 OF 2020 (MV-D)**

**BETWEEN:**

N. RAMESHA  
S/O. NALLEGOWDA,  
AGED ABOUT 42 YEARS,  
R/O. NEAR TAMIL SCHOOL,  
HIRIYUR-577 598,  
CHITRADURGA DISTRICT.

APPELLANT

(BY SRI. VIJAYAKUMAR S.C., ADVOCATE)

**AND:**

Digitally signed by  
PANKAJA S  
Location: HIGH  
COURT OF  
KARNATAKA

1. THIPPAKKA,  
W/O. LATE THIPPANNA,  
AGED ABOUT 80 YEARS,
2. SUJATHAMMA @ SAKAMMA,  
W/O. LATE HEMANNA,  
AGED ABOUT 43 YEARS,
3. H. VIJAYMMA  
D/O. LATE HEMANNA,  
AGED ABOUT 21 YEARS,



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4. VEERESH  
S/O. LATE HEMANNA,  
AGED ABOUT 17 YEARS,
5. NINGARAJA,  
S/O. LATE HEMANNA,  
AGED ABOUT 11 YEARS,  
SINCE RESPONDENT 4 AND 5 ARE MINORS,  
REPRESENTED BY THEIR MOTHER  
RESPONDENT NO.2,  
R/O. GOUNAHALLI-577599,  
HIRIYUR TALUK,  
CHITRADURGA DISTRICT.
6. THE MANAGER  
RELIANCE GENERAL INSURANCE CO. LTD.,  
MAGANUR COMPLEX,  
B.D. ROAD, CHITRADURGA-577 501.

...RESPONDENTS

(BY SRI.D.NAGARAJA REDDY, ADVOCATE FOR R-1 TO R-5;  
SRI.H.S.LINGARAJ, ADVOCATE FOR R-6)

THIS MFA IS FILED U/S.173(10 OF MV ACT, AGAINST  
THE JUDGMENT AND AWARD DT.31.08.2019 PASSED ON MVC  
NO.167/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE,  
ADDITIONAL MACT, AND JMFC, MACT, HIRIYUR.

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



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CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

### **ORAL JUDGMENT**

This appeal is filed by the owner of the crane bearing Reg.No.KA-35-B-568 challenging the judgment and award dated 31.08.2019 passed in MVC No.167/2014 by their Senior Civil Judge and MACT, Hiriur, (hereinafter referred to as 'the Tribunal'), whereby the Tribunal partly allowed the claim petition filed by respondent Nos.1 to 5 and awarded a compensation of Rs.11,03,000/- with 6% interest.

2. The factual matrix of the case is that on 25.12.2013 at about 10.30 a.m. the deceased in this case named Hemanna was engaged in coolie work in front of a crane bearing Reg.No.KA-35-B-568 in front of Blue House Hotel, Huliur Road, Hiriur under the appellant. At that time, the driver of the crane moved the vehicle in a rash and negligent manner and dashed to the deceased. As a result, he sustained grievous injuries and later succumbed to the injuries on the spot. As such, the legal representatives of deceased Hemanna, filed the



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claim petition, claiming compensation for the accidental death of deceased-Hemanna.

3. The Tribunal upon assessment of oral and documentary evidence, partly allowed the claim petition and awarded compensation as stated *supra*. Further, the Tribunal directed to the appellant-insured i.e., the owner of the crane to pay the compensation by exonerating the insurance company - respondent No.6. The said judgment is challenged by the appellant, the owner of the crane in this appeal.

4. Apart from urging several contentions, the learned counsel for the appellant primarily contended that, the Tribunal grossly erred while exonerating the insurance company, principally on the ground that the operator of the crane was not possessing valid driving license. However, he was possessing the heavy motor vehicle license. In such circumstances, he was authorized to operate the crane which is a non-transport vehicle. Accordingly, he prays to allow the appeal by directing the insurance company to pay the compensation.



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5. *Per contra*, the learned counsel for the respondent No.6-Insurance Company contented that Insurance Company has examined RW2, the RTO officer, wherein he has specifically deposed that the license which possessed by the operator of the crane was not specially endorsed to operate the crane. In such circumstances, the Tribunal is justified in exonerating the Insurance Company on the ground that the operator was not possessing valid driving license. Accordingly, he prays to dismiss the appeal.

6. The learned counsel for the respondent-claimants contended that the Tribunal is not justified in awarding just compensation. He contended that though the claimants have not preferred any appeal, by exercising the power under Order XLI Rule 33 of CPC, this Court can enhance the compensation in the appeal filed by the insured. Accordingly, he prays to enhance the compensation awarded by the Tribunal.

7. I have given my anxious consideration both on the submissions and perused the entire materials available on record.



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8. As could be gathered from records, the occurrence of the accident and the death of deceased Hemanna, so also, the coverage of the insurance policy with offending crane are not in dispute. The Tribunal placing the reliance on the evidence of RW2, observed that the operator had a driving license, but he did not have the necessary RTO endorsement to operate the crane. Hence, the Tribunal treated his license as invalid for driving/operating the crane. In such circumstances, the Insurance Company is not liable to pay the compensation. On careful examination of the driving license produced by the Insurance Company at Exs.R4 and R5, the same reveals that the driver/operator of the crane - Shivaswamy, was possessing LMV cab and PSV bus driving license with badge and the said license was valid at the time of accident. Thus it is clear that the driver was possessing license to drive the heavy motor vehicles with unladen weight less than 7,500 Kgs. The Division Bench of this Court in the case of **Sunita and others v. M/s Allcargo Logistics Limited and another** in MFA No.200582/2021 and c/w MFA Nos.200027/2020, 200028/2020



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and 200989/2021, while dealing with similar circumstance, at paragraph No.27 held as under:-

*"27. As could be seen from the provisions of M.V. Act, a light motor vehicle defined under Sub-section (21) of Section 2 in definition clause as "a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or a tractor or road-roller the unladen weight of any of which, does not exceed 7,500 Kgs. In the case on hand, admittedly the Crane was below 7,500 Kgs unladen vehicle. In these circumstances, a person having licence of non-transport/transport vehicle to drive a light motor vehicle, can drive the said vehicle (crane). In view of the judgment passed by the Co-ordinate Bench of this Court in Somavva (supra), we have no hesitation to hold that the driver in the case on hand is possessing valid and effective licence to drive the particular class of vehicle. The Tribunal at paragraph Nos.54 and 55 discussed regarding the vehicle involved in the accident, the Crane and held that in view of third party liability coverage, the insurer is liable to indemnify the insured. So also discussed on the point of licence of the driver at page No.55 and properly appreciated and held that the driver was holding valid and effective driving licence. We see no infirmity either in fastening liability on the appellant / Insurance company or on the licence of the driver. Accordingly, above point Nos.1 and 2 are answered in the Negative and against the appellant / Insurance company".*

9. The finding of the Division Bench in the above case squarely applicable to the facts and circumstances of this case. As such, placing reliance on the judgments of the Division Bench, I am of the considered view that the findings of the Tribunal in respect of exonerating the Insurance Company is liable to be interfered. Accordingly the same is modified and the



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appellant and respondent No.6 - Insurance Company are jointly and severally liable to pay the compensation.

10. No doubt, the claimants have not filed any appeal before this Court. However, the Division Bench of this Court in MFA No.2369/2016 dated 02.12.2020, held in paragraph No.9 as under:

*"9. It is well settled law that this court has to award just and proper compensation, which can be determined even in the absence of cross objection. It is well settled in law that even though a provision may not apply but spirit governing the provision may apply. Thus, in the exercise of powers under Order XLI Rule 33 of CPC, that the court of appeal is authorized to pass or make such further decree or order as the case may require. This power can be exercise by the court not withstanding that the appeal is as to part only of the decree and in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. (SEE: Mahant Dhangir Vs. Madan Mohan AIR 1988 SC 54, Sanobanu Nazir Bhai Mirza Vs. Ahmedabad Municipal Transport Service 2013 (16) SCC 719 and New India Assurance Company Limited Vs. Smt. Somwati in Civil Appeal No.3093/2020 dated 07.09.2020.) It is also duty of this court under Section 173 of the Act to award compensation which is just and reasonable. (See:PAPPU DEO YADAV VS. NARESH KUMAR AND ORS'. AIR 2020 SC 4424). Therefore, in the instant case though in absence of any appeal from the claimant and in view of the error apparent on the face of the record, we are of the opinion that the quantum of compensation is required to be reassessed."*

11. In the above judgment the Division Bench which has held that in order to award a just and proper compensation, even in the absence of any cross objection or



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appeal by the claimants, power under Order XLI Rule 33 of CPC can be exercised. This Court being the Court of Appeal is authorized to pass and make such further decree or orders as the case may require, even by enhancing the compensation. Placing reliance on the above judgment, I am of the considered view that since the compensation awarded by the Tribunal is not a just compensation by properly considering the income of the deceased and also on the other heads, the compensation is required to be enhanced.

12. As the compensation is concerned, the Tribunal has determined the monthly income of the deceased, notionally at Rs.8,000/-, which is just and proper in view of the guidelines and norms issued by Karnataka State Legal Services Authority.

13. Since the deceased was aged 45 years and was a coolie, 25% requires to be added to his monthly income towards future prospects, which would result in the income to be Rs.10,000/- (Rs.8,000 + 25% = Rs.10,000/-).

14. If  $\frac{1}{4}^{\text{th}}$  is deducted towards personal expenses, his monthly income would be Rs.7,500/- (Rs.10,000 -  $\frac{1}{4}^{\text{th}}$ ). The



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income of the deceased for the purposes of determining the loss of dependency would thus be Rs.7,500/-.

15. As the deceased was aged 45 years, a multiplier of '14' would have to be applied.

16. Consequently, the claimants would be entitled to a sum of **Rs.12,60,000/-** (Rs.7,500 x 12 x 14) towards "*loss of dependency*".

17. The claimants being the dependants of the deceased, they would be entitled to a sum of **Rs.48,400/-** each i.e., **Rs.2,42,200/-** (Rs.48,400 x 5) towards "*loss of consortium*" and they would also be entitled to a sum of **Rs.36,300/-** under the "*conventional heads*".

18. Thus, the claimants, in modification of the impugned award, would be entitled to the following sums:

| Sl. No. | Particulars        | Amount (In Rs.)  |
|---------|--------------------|------------------|
| 1.      | Loss of Dependency | 12,60,000        |
| 2.      | Loss of Consortium | 2,42,200         |
| 3.      | Conventional Heads | 36,300           |
|         | <b>Total</b>       | <b>15,38,300</b> |



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19. Thus, the claimants would be entitled for compensation of **Rs.15,38,300/-** as against Rs.11,03,000/- awarded by the Tribunal, along with interest at the rate of 6% per annum.

20. The appellant and respondent No.6-Insurance Company are jointly and severally entitled to pay the compensation.

21. The Insurance Company is directed to deposit the amount of compensation awarded within a period of six weeks from the date of receipt of a certified copy of this judgment.

22. The apportionment of compensation amount shall be in terms of the award of the Tribunal.

The appeal is accordingly ***allowed in part.***

**SD/-  
(RAJESH RAI K)  
JUDGE**

GPG  
List No.: 1 Sl No.: 1