



CNR: KAHC010541982026

NC: 2026:KHC:45795
MFA No. 5672 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

MISCELLANEOUS FIRST APPEAL NO. 5672 OF 2026

(MV-D)

BETWEEN:

1. OMKARAMMA
W/O LATE JAYANTHA
AGED ABOUT 50 YEARS.
2. SUNIL K.J.
S/O LATE JAYANTHA
AGED ABOUT 25 YEARS.

BOTH APPELLANTS ARE
R/AT KUMBARAGOLLI
CHIKKAMATTURU
AAVINAHALLI POST
SAGARA TALUK
SHIVAMOGGA DISTRICT – 577 417.

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

...APPELLANTS

(BY SRI ASHWATH C.M, ADVOCATE)

AND:

1. MOHAMMED TOUFIQ
S/O KHALID
AGED ABOUT 32 YEARS
R/AT NEAR DURGAMBA STREET
No.80, AAVINAHALLI AND POST
SAGARA TALUK, SHIVAMOGGA DISTRICT.



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MOBILE No.8762171942
OWNER AND DRIVER OF TATA ACE VEHICLE
BEARING REG. No. KA 04 D 9494.

2. DIVISIONAL MANAGER
UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICE,
COURT ROAD, SAGARA
POLICY No.2404033121P105455570
VALID FROM 06.09.2021 TO 05.09.2022.

...RESPONDENTS

(BY SMT. H C LOKESHWARI, ADVOCATE FOR
SRI A RAVISHANKAR, ADVOCATE FOR R2
V/O DTD. 10.08.2026. NOTICE TO R1 IS D/W)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED:18.03.2025
PASSED IN MVC No.458/2023 ON THE FILE OF THE PRINCIPAL
SENIOR CIVIL JUDGE AND JMFC, MACT, SAGAR, 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 SHIVASHANKAR AMARANNAVAR

ORAL JUDGMENT

This appeal is filed by the appellants/claimants
challenging the judgment and award dated 18.03.2025
passed in MVC No.458/2023 by the Prl.Senior Civil Judge
and MACT, Sagar.



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2. Even though the appeal is listed today for admission, it is taken up for disposal with the consent of learned counsel for appellants and learned counsel for respondent No.2/insurer.

3. The appellants/claimants made a claim petition praying to award compensation for the death of Jayantha (husband of claimant No.1 and father of claimant No.2) in a road traffic accident occurred on 21.04.2022 contending that accident occurred due to rash and negligent driving of the driver of Tata Ace bearing Regn.No.KA-04-D-9494. The Tribunal after recording the evidence of the parties, appreciating the evidence assessed the compensation and awarded compensation under various heads as under:

Sl.No.	Heads	Amount in (Rs.)
01.	Loss of dependency	12,61,000/-
02.	Loss of love and affection	20,000/-
03.	Loss of consortium	80,000/-
04.	Medical expenses	Nil
05.	Funeral expenses	10,000/-
06.	Loss of estate	10,000/-
	Total	13,81,000/-



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4. The Tribunal held that deceased has also contributed to the accident and assessed the same at 25% and awarded only Rs.10,36,000/- (75% of Rs.13,81,000.00) with interest @ 6% p.a. from the date of petition till realization and directed respondent No.2/insurer to deposit the award amount with interest. The claimants have filed the present appeal challenging the contributory negligence attributed to the deceased and also sought enhancement of compensation awarded by the Tribunal.

5. Heard learned counsel for the appellants and learned counsel for respondent No.2/insurer.

6. Learned counsel for appellants would contend that there is nothing on record to indicate that deceased was not wearing helmet at the time of accident and inspite of that the Tribunal has held that deceased was not wearing helmet at the time of accident and contributed to the accident and fixed the same at 25%. There is no pleading



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of insurer with regard to deceased not wearing helmet. There is no issue in that regard. Therefore, the Tribunal has erred in holding that deceased has contributed to the accident. The sole negligence is on the part of the driver of the insured vehicle. He further submits that the notional income fixed for the year 2022 is Rs.15,500/- p.m. and that is to be taken as against the income taken by the Tribunal based on minimum wages. The Tribunal has rightly applied multiplier '11', added 10% towards future prospects and deducted 1/3rd towards personal expenses of deceased. The Tribunal has not considered 10% escalation on conventional heads and compensation awarded for funeral expenses and loss of estate are on lower side. With this he prayed to allow the appeal.

7. Learned counsel for respondent No.2/insurer would contend that in the seizure mahazar there is no mention of seizing of helmet of deceased and that itself indicate that he was not wearing helmet and the deceased succumbed to the injuries sustained to his head.



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Considering the said aspect the Tribunal has rightly held that deceased has contributed to the accident to the extent of 25%. The compensation awarded by the Tribunal on all heads is just and proper and there are no grounds for enhancement. With this he prayed to dismiss the appeal.

8. Having heard the learned counsels, the Court has perused the judgment, award and documents made available by the learned counsel for appellants.

9. The accident occurred on 21.04.2022. At the time of accident deceased was riding the motor cycle and PW.2 was a pillion rider. Charge sheet has been filed against driver of Tata Ace bearing Regn.No.KA-04-D-9494. Respondent No.1 is driver and owner of insured vehicle. There is no charge sheet filed against the deceased for not wearing helmet. The police records does not indicate that deceased was not wearing helmet at the time of accident. The Tribunal without any basis has held that deceased was



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not wearing helmet at the time of accident. Even though deceased was not wearing helmet at the time of accident that cannot be taken as contributory negligence on the part of the deceased. The Hon'ble Apex Court in the case of **[M.Nithya and others vs. SBI General Insurance Co.Ltd (SLP(C) Nos.833-834/2023 DD 03.01.2025]** has observed as under:

"7. It is pertinent to observe that the Tribunal noted that the Insurance Company in their Counter contend that contributory negligence of the part of the deceased has to be fixed. However, the Tribunal did not frame any specific issue in that regard for determination. The Tribunal clearly finds negligence only on part of the driver of the lorry and therefore, the owner of the lorry and the Insurance Company which insured the said lorry are jointly and severally found liable to pay compensation. Therefore, when the Tribunal did not even frame an issue on contributory negligence, the High Court ought not to have considered that argument in order to reduce the compensation awarded. Even otherwise the Insurance Company did not lead any evidence on this aspect nor insisted for framing an issue. Merely making a bald assertion in their Counter Affidavit cannot derive any advantage. Hence, we are in agreement with the findings of the Tribunal that the accident took place only due to the



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negligence of the driver of the lorry and therefore, the contributory negligence awarded on part of the deceased by the High Court suffers from an error and cannot be sustained."

10. Considering the above aspect, the finding of the Tribunal that deceased has contributed to the accident to the extent of 25% is not proper and it requires to be set-aside. The accident occurred due to the sole negligence on the part of respondent No.1 – Driver and owner of Tata Ace vehicle. Respondent No.2 being the insurer of the said vehicle is liable to pay the entire compensation to claimants.

11. The notional income fixed for the year 2022 is Rs.15,500/- by the Karnataka State Legal Services Authority. The said income is to be taken as against Rs.13,000/- taken by the Tribunal based on minimum wages. The Tribunal has rightly applied multiplier '11', added 10% towards future prospects and deducted 1/3rd towards personal expenses of the deceased. In view of the above, the loss of dependency is calculated as under:



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Rs.15,500 + 1550 (10%) = Rs.17050/-

Rs.17,050x12=2,04,600-1/3=1,36,400x11=15,00,400/-

12. The claimants are wife and son of deceased and therefore, they are entitled to consortium in a sum of Rs.40,000/- each with 10% escalation i.e. Rs.44,000 x 2 = Rs.88,000/-. The claimants are entitled to funeral expenses and transportation of dead body in a sum of Rs.15,000/- with 10% escalation i.e. Rs.16,500/- as against Rs.10,000/- awarded by the Tribunal. The claimants are also entitled to loss of estate in a sum of Rs.15,000/- with 10% escalation i.e. Rs.16,500/- as against Rs.10,000/- awarded by the Tribunal.

13. In view of the above, the claimants are entitled to compensation under various heads as under:

Sl.No.	Heads	Amount in (Rs.)
01.	Loss of dependency	15,00,400/-
02.	Loss of consortium	88,000/-
03.	Loss of estate	16,500/-
04.	Funeral expenses	16,500/-
	Total	16,21,400/-



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14. Considering the above aspects, the claimants are entitled to total compensation of Rs.16,21,400/- as against Rs.10,36,000/- awarded by the Tribunal with interest. Consequently, the claimants are entitled to enhanced compensation of Rs.5,85,400/- with interest @ 6% p.a. from the date of petition till realization. The claimants are not entitled to interest for the delay period of 376 days in filing the appeal as per order dated 25.08.2026 passed on I.A.1/2026. Respondent No.2/insurer is liable to pay the enhanced compensation with interest.

15. In view of the above, the following:

ORDER

- i) The appeal is allowed in part.
- ii) The appellants/claimants are entitled to enhanced compensation of Rs.5,85,400/- with interest @ 6% p.a. from the date of petition till realization.



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- iii) Respondent No.2/insurer shall deposit the enhanced compensation with interest before the Tribunal within a period of six weeks from this day.
- iv) Appellants/claimants are entitled to release of entire enhanced compensation in the ratio of 60:40.
- v) Appellants/claimants are not entitled to interest for delay period of 376 days in filing the appeal.

Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE

DKB
List No.: 1 Sl No.: 12
Ct.sm