IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF DECEMBER, 2020

PRESENT

THE HON'BLE MRS.JUSTICE S.SUJATHA

AND

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

M.F.A.No.5028/2020 (MV)

BETWEEN :

1 . SMT.ERAMMA
W/O LATE H.VENKATESH
AGED ABOUT 34 YEARS

2 . KUMARI. ANKITHA H.V.,
D/O LATE H.VENKATESH
AGED ABOUT 16 YEARS

3 . MASTER. H.V.DARSHAN
D/O LATE H.VENKATESH
AGED ABOUT 14 YEARS

APPELLANT No.2 & 3 ARE MINORS
REP BY MOTHER-APPELLANT NO.1

ALL ARE R/O DOOR NO.33, B-BLOCK
SRIRAMANAGAR (SOG COLONY)
INDUSTRIAL AREA,
DAVANAGERE-577003

PERMANENT ADDRESS:
NEREBOMMANAHALLY VILLAGE
CHATNALHALLY POST, ARASIERE HOBLI,
HARAPANAHALLY TALUK
DAVANAGERE DISTRICT-583131
NOW BELLARY DISTRICT

4 . SMT.HANUMAMMA @ HAMUMAKKA
W/O H.HANUMANTHAPPA
AGED ABOUT 61 YEARS

5 . SRI HANUMANTHAPPA
@ HULIKATTE HANUMAPPA
S/O LATE HANUMANTHAPPA
AGED ABOUT 66 YEARS

APPELLANT No.4 & 5 ARE
R/O NEREBOMMANAHALLY VILLAGE
CHATNAHALLY POST, ARASIERE HOBLI
HARAPANAHALLY TALUK
DAVANAGERE DISTRICT-583131
NOW BELLARY DISTRICT ...APPELLANTS

(BY SRI V.B.SIDDARAMAIAH, ADV.)

AND :

1 . THE ORIENTAL INSURANCE COMPANY LTD.,
DIVISIONAL OFFICE, C.G. HOSPITAL ROAD,
DAVANAGERE-577 002
REP BY ITS DIVISIONAL MANAGER

2 . SRI KADATHI REVANASIDDAPPA
S/O KADATHI RUDRAPPA
AGED ABOUT 38 YEARS,
R/O CHIRASTHEHALLY, HOSA CAMP,
HARAPANAHALLI TALUK
DAVANAGERE DISTRICT -583 131
NOW BELLARY DISTRICT

3 . SRI SHIVANANDAPPA
S/O LATE MAHADEVAPPA
AGED ABOUT 45 YEARS,
R/O PUNABHAGHATTA VILLAGE
HARAPANAHALLY TALUK
BELLARY DISTRICT-583131 ...RESPONDENTS

(BY SRI P.B.RAJU, ADV. FOR R-1;
VIDE COURT ORDER DATED 11.12.2020 NOTICE TO R-2 & R-3
ARE DISPENSED WITH.)

THIS M.F.A. IS FILED UNDER SECTION 173(1) OF M.V.ACT AGAINST THE JUDGMENT AND AWARD DATED 06.12.2019 PASSED IN MVC No.31/2019 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND MEMBER, MACT-IV, DAVANAGERE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY, ***S. SUJATHA, J.***, DELIVERED THE FOLLOWING:

J U D G M E N T

This appeal is directed against the judgment and award dated 06.12.2019 passed in MVC No.318/2019 on the file of the Principal Senior Civil Judge and MACT-IV at Davanagere ['Tribunal' for short].

2. The appellants instituted the claim petition before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 claiming compensation for the death of Sri.H.Venkatesh in the road traffic accident.

3. It was averred in the claim petition that on 23.10.2018, the deceased H.Venkatesh along with the appellant Nos.1 to 3 was traveling from Nerebommanahally towards Hulige to pay vow to the

Godess Huligemma diety in the tractor and trailer bearing registration No.KA-17/TA-7121 and 7122 near the bridge of Uppalla from itagi, they have stopped their vehicle to attend the nature call. At that time when the deceased was moving towards his tractor, at about 2.15 a.m., the driver of the tractor and trailer bearing registration No.KA-34/T-801 AND KA-34/114 drove the said vehicle in a rash and negligent manner and dashed to the deceased H.Venkatesh. Due to the said impact, he sustained fatal injuries and succumbed to the injuries on the spot.

4. It was contended that the deceased was doing mason work and earning Rs.700/- to 800/-per day. He was maintaining the entire family. Due to the untimely death of the deceased, the appellants-claimants are put to mental agony besides loss of dependency etc., On these pleadings, the appellants have sought for compensation.

5. On issuance of notice, the respondents appeared through their respective counsel. Respondent No.2 filed objection statement denying the allegations made in the petition. It was contended that the compensation was excessive and exorbitant. It was submitted that the driver of the offending vehicle was holding a valid driving licence as on the date of the alleged accident and the vehicle was insured with the respondent No.3 – insurer. Liability if any, has to be paid by the insurer.

6. The respondent No.1 filed the memo and adopted the written statement filed by the respondent No.2.

7. The insurer filed written statement denying the claim petition averments. It was contended that driver of the tractor had no valid and effective driving licence. No R.C, F.C and the permit were possessed

relating to the vehicle in question. It was submitted that the amount of compensation claimed by the appellants is highly exorbitant and fanciful.

8. Respondent Nos.4 and 5 filed the written statement admitting the relationship of petitioner Nos.1 to 3 with the deceased, they contended that they are the parents of the deceased H.Venkatesh. The claimant No.1/appellant No.1 is the wife of the deceased Venkatesh and daughter in law of respondent Nos.4 and 5. Claimants Nos.2 and 3 are the grandchildren of respondent Nos.4 and 5. During the lifetime, their son deceased H.Venkatesh was maintaining them and after his death, they are suffering from loss of dependency. It was contended that they are entitled for compensation. Hence, prayed to award compensation.

9. On the basis of the pleadings, issues were framed by the Tribunal and answered as per the

reasons recorded in the impugned judgment allowing the petition in part awarding compensation of Rs.12,79,600/- with interest at the rate of 8% p.m., from the date of petition till its realization.

10. Being dissatisfied with the quantum of compensation awarded, the claimants have preferred the present appeal.

11. Learned counsel for the appellants submitted that the Tribunal failed to award just and proper compensation. Having regard to the facts and circumstances of the case, the compensation awarded under the different heads is too meager and the same requires to be enhanced substantially.

12. Learned counsel for the insurer justifying the impugned judgment and award submitted that the Tribunal appreciating the oral and documentary evidence has awarded just and proper compensation

and the same does not call for any interference by this Court and sought for dismissal of the appeal.

13. We have heard the learned counsel appearing for the parties and perused the records.

14. The point that arises for our consideration is, -

> *"In the facts and circumstances of the case, whether the compensation awarded by the Tribunal is just and reasonable?"*

15. The factum of accident and death of deceased H.Venkatesh in the accident in question are not in dispute. The Tribunal determined the monthly income of the deceased at Rs.9,000/- notionally. Applying the multiplier of 14, with deduction of 1/5th towards his personal expenses, computed the loss of dependency. In the absence of concrete evidence to establish the factum of income earned by the deceased, we deem it appropriate to consider the income on the

basis of the chart prepared by the Karnataka State Legal Services Authority. Thus, the monthly income is determined at Rs.12,500/-. Adding 25% to the same, since the deceased was aged about 41 years, the total income would work out to Rs.15,625/-. The Tribunal has wrongly deducted 1/5th towards the personal expenses. Since the defendants were 5, 1/4th of the income has to be deducted towards personal and living expenses of the deceased in terms of ***Sarla Verma and Others vs. Delhi Transport Corporation and Another,*** reported in ***[2009] 6 SCC 121***. Applying the same, the loss of dependency would work out to Rs.19,68,750/- [15,625 x 12 x 14 x ¾].

16. In the light of the judgment of the Hon'ble Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others [(2017)16 SCC 680]*** and ***New India Assurance Company Limited Vs. Somwati and Others* [*2020 SCC ONLINE SC 720]***, the claimants

are entitled to compensation of Rs.2,30,000/- towards conventional heads.

17. For the reasons aforesaid, the total compensation awarded by the Tribunal is re-assessed as under:

Sl.No.	**Particulars**	**Amount [in Rs.]**
1.	Loss of dependency	19,68,750/-
2.	Loss of Spousal Consortium	40,000/-
3.	Loss of parental consortium [Rs.40,000/- each to the child]	80,000/-
4.	Loss of filial consortium [Rs.40,000/- each to the parent]	80,000/-
5.	Loss of Estate	15,000/-
6.	Towards Funeral expenses	15,000/-
Total		**21,98,750/-**

Thus, the claimants are entitled to total compensation of Rs.21,98,750/- with interest @ 6% p.a. on the enhanced compensation from the date of petition till the date of realization.

18. Hence, the following:

ORDER

i] The appeal is allowed in part.

ii] The total compensation awarded by the Tribunal is modified and enhanced to Rs.21,98,750/- (Rupees Twenty One Lakhs Ninety Eight Thousand Seven Hundred and Fifty only) as against Rs.12,79,600/- with interest at the rate of 6% per annum on the enhanced compensation from the date of the claim petition till its realization.

iii] The portion of the order of the Tribunal inasmuch as liability, apportionment and disbursement remains intact.

iv] The insurance company shall deposit the amount determined as aforesaid before the Tribunal within 90 days from the date of receipt of the certified copy of the judgment and order.

v] The modified compensation amount shall be apportioned and disbursed in terms of the order of the Tribunal.

vi] Draw modified award accordingly.

vii] The Registry shall transfer the original records to the jurisdictional Tribunal forthwith.

viii] All pending I.As. stand disposed of accordingly.

SD/-
JUDGE

SD/-
JUDGE

NC.