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.8195/2016 (MV)

BETWEEN :

1. SAMEERA BANU
   W/O NISAR AHAMMAD
   AGED 42 YEARS.

2. NISAR AHAMMAD
   S/O NAZEER AHAMMAD
   AGED ABOUT 47 YEARS

3. KATHIB AHAMMAD
   S/O NISAR AHAMMAD
   AGED ABOUT 22 YEARS

ALL ARE R/AT MIRZA MOHALLA
HASSAN-573201. ...APPELLANTS

(BY SRI BYRAREDDY.G.S., ADV. FOR SMT KAVITHA.H.C. ADV.)

AND :

1. H.B.THIMMAPPA
   S/O BILIGIRI RANGASHETTY
   R/AT PARSHWANATHA COMPOUND
   TANNERUHALLA, B.M. ROAD
   HASSAN-573201.

2. THE MANAGER
   NATIONAL INSURANCE CO. LTD.,
   MANJUNATHA COMPLEX

OLD BUS STAND ROAD
HASSAN-573201. ...RESPONDENTS

(BY SMT NIRMALA, ADV. FOR R-2;
VP. DATED 21.12.2020, NOTICE TO R-1 IS DISPENSED WITH.)

THIS M.F.A. IS FILED UNDER SECTION 173(1) OF M.V.ACT AGAINST THE JUDGMENT AND AWARD DATED 01.09.2016 PASSED IN MVC No.1064/2014 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE & MACT, HASSAN, 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 01.09.2016 passed in MVC No.1064/2012 on the file of the II Additional Senior Civil Judge & M.A.C.T., at Hassan ['Tribunal' for short].

2. The claimants being the parents and brother of the deceased instituted the petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation for the death of Thahib Ahammad in the road traffic accident which occurred on 27.03.2014 at about 8.30 p.m.

3. It was averred in the claim petition that on the ill-fated day i.e., 27.03.2014, when Thahib Ahammad was proceeding in a motorbike bearing registration No.KA-13-EA-147, a Omni car bearing No.KA-05-MD-505 [offending vehicle] driven by its driver in a rash and negligent manner crashed to his motorbike from the opposite direction near Kattaya, Arkalgud road. As a result, the rider Thahib Ahmmad sustained grievous injuries and died on the way to the hospital.

4. It was contended that the deceased was aged about 22 years and he was working as a driver of the lorry and earning Rs.25,000/- p.m., The claimants were depending on his income. Owing to the sudden and untimely death of the deceased, the claimants are put to mental agony besides loss of dependency etc. On these grounds, they have sought for compensation.

5. On service of notice, the respondent No.1 – owner of the vehicle has failed to appear before the Tribunal and hence, he was placed exparte. Respondent No.2 – insurer has appeared and filed written statement denying the petition averments, admitting the coverage of the offending vehicle, sought for dismissal of the petition.

6. On the basis of the pleadings and material on records, issues were framed and answered as per the reasons recorded in the impugned judgment partly allowing the petition awarding compensation of Rs.7,23,000/- with interest at 8% p.a., from the date of petition till realization.

7. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimants are in appeal.

8. Learned counsel for the appellants submitted that the Tribunal has grossly erred in

awarding inadequate compensation ignoring the material evidence on record. The compensation awarded under the different heads is meager. The monthly income determined by the Tribunal at Rs.6,000/- is not in consonance with the evidence on record. Accordingly sought for enhancement of compensation.

9. Learned counsel for the insurer made an endeavor to justify the impugned judgment and award. It was contended that the Tribunal after extensively analyzing the material evidence on record, has awarded just and proper compensation which requires to be confirmed.

10. Having heard the learned counsel for the parties and perusing the material on record the moot point that arises for our consideration is, -

> *"In the facts and circumstances, whether the Tribunal was justified in awarding the compensation of Rs.7,23,000/-*

with interest at 8% p.a., from the date of petition till realization?"

11. It is discernable that the claimant was aged about 24 years at the time of the accident as per Ex.P13 – driving licence. He was working as a driver at the time of the accident. The Tribunal has determined the income of the deceased notionally at Rs.6,000/- p.m., in the absence of cogent evidence on record.

12. Having regard to the facts and circumstances, the chart prepared by the Karnataka State Legal Services Authority would be a safe guide to determine the monthly income in the absence of the concrete evidence to establish the same. Accordingly, we re-determine the loss of dependency by assessing the monthly income of the deceased at Rs.8,500/-. In terms of ***National Insurance Company Limited Vs. Pranay Sethi and others [(2017)16 SCC 680]***, 40% requires to be added towards the future prospects. Applying the multiplier of 18,

deducting 50% towards living and personal expenses of the deceased, loss of dependency would work out to Rs.12,85,200/- [11,900 x 12 x 18 x ½].

13. In terms of ***Pranay Sethi*** supra and ***New India Assurance Company Limited Vs. Somwati and Others*** **[*2020 SCC ONLINE SC 720*]**, the claimants are entitled to compensation of Rs.1,10,000/- under the conventional heads.

14. 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	12,85,200/-
2.	Loss of filial consortium [Rs.40,000/- each to the parent]	80,000/-
3.	Loss of Estate	15,000/-
4.	Towards Funeral expenses	15,000/-
Total		**13,95,200/-**

Thus, the claimants are entitled to total compensation of Rs.13,95,200/- with interest @ 6% p.a.

on the enhanced compensation from the date of petition till the date of realization.

15. 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.13,95,200/- (Rupees Thirteen Lakhs Ninety Five Thousand Two Hundred only) as against Rs.7,23,000/- 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.