



**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 02ND DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MRS. JUSTICE LALITHA KANNEGANTI

MISCL. FIRST APPEAL NO. 200461 OF 2018 (MV-D)

BETWEEN:

1. GAMPABAI W/O LATE VENU @ DAMALU RATHOD,
AGE: 44 YEARS, OCC: HOUSEHOLD,
2. RAJKUMAR S/O LATE VENU @DAMALU RATHOD
AGE: 29 YEARS, OCC: STUDENT,
3. VIJAYKUMAR S/O LATE VENU @DAMALU RATHOD,
AGE: 27 YEARS, OCC: STUDENT,
4. SANJU KUMAR S/O LATE VENU @ DAMALU RATHOD,
AGE: 25 YEARS, OCC: STUDENT,

ALL R/O. HALHALLI THANDA,
TQ: BIDAR, DIST: BIDAR-585101.

...APPELLANTS

(BY SRI BABU H. METAGUDDA, ADVOCATE)

AND:

1. LAL SINGH S/O THAVARU,
AGE: MAJOR, OCC: AGRICULTURE,
R/O. HALHALLI-K THANDA, TQ: BHALKI,
DIST: BIDAR-585101.
(OWNER OF TRACTOR NO.AP-25/R-1446 AND
TROLLEY NO.KA-38/T1941).
2. THE MANAGER,
SHRIRAM GENERAL INSURANCE CO. LTD.,
E-8 EPIP RIICO INDUSTRIAL AREA SITAPUR,

Digitally signed
by
KHAJAMMEEN L
MALAGHAN
Location: High
Court of
Karnataka



NC: 2024:KHC-K:32
MFA No. 200461 of 2018

JAIPUR RAJASTHAN 302022
THROUGH ITS DIVISIONAL MANAGER,
NO.302, 3RD FLOOR, SBI CORNER BUILDING,
PLOT NO.48, HOSPITAL ROAD, SHIVAJINAGAR,
BANGALORE-01.

...RESPONDENTS
(BY SRI SUBHASH MALLAPUR ADV. FOR R2)

THIS MFA IS FILED U/S. 173(1) OF MV ACT, PRAYING TO
A) CALL FOR THE RECORDS IN MVC NO.212/2014 ON THE FILE
OF ATHE DISTRICT AND SESIIONS JUDGE AT- BIDAR SITTING
AT-BHALKI. B) ALLOW THIS APPEAL AND MODIFY THE
JUDGMENT AND AWARD DATED: 25.11.2017 PASSED IN M.V.C.
NO. 212/2014 BY THE DISTRICT AND SESSIONS JUDGE AT-
BIDAR SITTING AT-BHALKI. AND ENHANCING THE
COMPENSATION FROM RS.7,07,000/- WITH 6% INTEREST OT
RS. 14,99,000/- WITH 12 % INTEREST.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY,
THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Aggrieved by the award passed in MVC.No.212/2014,
dated 25.11.2017, by the District And Sessions Judge,
Bidar, the claimants are before this court seeking
enhancement of the compensation.

2. The claim petition is filed seeking compensation
of an amount of Rs.25,42,000/-. It is the case of the
claimants that the deceased was working as a labourer



under Respondent No.1. As per the instructions of Respondent No.1, the fire wood were brought from the land of Byalhalli-K in the said vehicle for the funeral of late Hasnabai and the deceased Venu being labourer were proceeding in the TT Unit and at about 11.00 a.m., when the vehicle came near land of Devoji Rathod at Halhalli Tanda the driver due to high speed lost control over the vehicle and in the result the vehicle turtled and the accident occurred. The deceased sustained grievous injuries all over the body and died on the spot. According to the claimants the deceased was doing labour work and earning an amount of Rs.12,000/- per month. The court below when it comes to the negligence had held that the accident had happened because of the rash and negligent driving of the driver of the tractor. When it comes to the liability, the court below had observed that the learned counsel for the respondent has produced the memorandum of acts issued by the RTO, Allahabad stating that the driver of the offending vehicle is not holding the driving license to the drive the tractor and trailer on the



alleged date of the accident and the court below held that there is violation of terms and conditions of the policy and the insurance company is not liable to pay the compensation and it is the owner alone who is liable to the pay the compensation. When it comes to the compensation, the court below had considered the income at Rs.6,000/- and deducted 1/3rd and granted an amount of Rs.6,72,000/- under the head of loss of dependency. Then under the head of loss of love and affection an amount of Rs.10,000/- was granted, towards transportation of dead body an amount of Rs.15,000/- was awarded, towards loss of consortium an amount of Rs.10,000/-. Altogether a compensation of an amount of Rs.7,07,000/- was awarded by the Tribunal.

3. Learned counsel appearing for the Appellant-claimant submits that the court below had taken a meagre income of an amount of Rs.6,000/- as income. It is submitted that as per the chart prepared by the KSLSA which is adopted by the court, the income for the year



2013 should have been Rs.7,000/-. It is submitted that the court below has not granted future prospects. Further, when there are four claimants, court below ought to have deducted $1/4^{\text{th}}$, but $1/3^{\text{rd}}$ was deducted. It is also submitted that even under the other conventional heads also the compensation that was awarded was not reasonable. He submits that the Tribunal has wrongly exonerated the insurance company from the liability. He submits that the deceased is a third party to the insurance policy, if there are any violation of terms and conditions of the policy, it is between the insurer and the insured and the insurer has to pay the amount and recover the same from the owner of the vehicle. It is submitted that the Tribunal ought to have applied the principle of the pay and recovery.

4. Learned counsel appearing for the insurance company submits that as there was no evidence on record, the court below had rightly taken income at Rs.6,000/- and under the various other heads also, the compensation



that is granted is reasonable. It is submitted that as far as the liability is concerned, when there is clear violation of terms and conditions of the policy, the insurance company is not liable to pay the compensation. The court below had rightly fixed the liability on the owner of the vehicle. It is submitted that no grounds are made out to interfere with the well considered order passed by the Tribunal.

5. Having heard the learned counsel on either side, perused the entire material on record. First coming to the aspect of compensation. In this case, according to the claimants, he was earning an amount of Rs.12,000/- per month, but there is no evidence on record. The court below had taken an amount of Rs.6,000/- as income. Considering the fact that this is an accident of the year 2013, this court is taking an amount of Rs.7,000/- as income. The deceased was aged 45 years as on the date of the accident, and he is entitled for future prospects at 25%, which comes to an amount of Rs.1,750/-. $\text{Rs.7,000/-} + \text{Rs.1,750/-} = \text{Rs.8,750/-}$. As there are four



claimants, the court ought to have deducted $1/4^{\text{th}}$, it comes to Rs.2,187/-. Then the contribution of the deceased to the family would be Rs.6,563/- . Towards **loss of dependency** an amount of **Rs.11,02,584/-** is granted. (Rs.6,563/- $12 \times 14 =$ Rs.11,02,584/-) Then coming to the loss of consortium, as per the judgment of Hon'ble Apex Court in the case of ***National Insurance Company Ltd. -Vs- Pranay Sethi***¹ and the enhancement of 10% at every three years. As there are four claimants wife and three sons, towards **consortium** Rs.48,000/- $\times 4 =$ **Rs.1,92,000/-**. The towards **funeral expenses** an amount of **Rs.36,000/-**.

6. In the light of the law laid down by the Hon'ble Supreme Court in the case of ***V. MEKALA -vs- M. MALATHI AND ANOTHER***², the claimant is entitled for an amount of **Rs.10,000/-** towards **legal expenses**.

¹ (2017) 16 SCC 680

² (2014) 11 SCC 178



Altogether the claimant is entitled for an amount
Rs.13,40,584/- at 6% interest.

7. The claimant is entitled for compensation under the following heads:

Sl. No.	Description of Items	Compensation Awarded	
1.	Loss of dependency	Rs.	11,02,584/-
2.	Consortium	Rs.	1,92,000/-
3.	Funeral Expenses	Rs.	36,000/-
4.	Legal Expenses	Rs.	10,000/-
	Total	Rs.	13,40,584/-

8. When it comes to liability, even when there is no driving licence in the light of the law laid down by Hon'ble Apex Court, Insurance company is liable to pay and recover the same from the owner of the vehicle. Accordingly, the appeal filed by the claimant is **Allowed-in-part** by enhancing the compensation amount from an amount of **Rs.7,07,000/- to Rs.13,40,584/-**. The



insurance company is liable to pay the compensation and recover the same from the owner of the vehicle.

- (a) The enhanced amount shall carry interest @ 6% per annum from the date of petition, till the date of realization.
- (b) Respondent-Insurance Company shall deposit the said compensation amount with accrued interest before the tribunal within a period of 8 (Eight) weeks. They are at liberty to recover the same from the owner of the vehicle.
- (c) The Registry is directed to return the Trial Court Record to the Tribunal along with the certified copy of the order passed by this court forthwith without any delay.
- (d) No Costs.

Pending miscellaneous petitions, if any, shall stand closed

Sd/-
Judge