

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 22nd DAY OF OCTOBER, 2007

PRESENT

**THE HON'BLE MR JUSTICE V.G.SABHANIT
AND**

THE HON'BLE MR JUSTICE JAWAD RAHIM

MFA 6337/2001

BETWEEN:

**1. DEVAIAH S.KATTERA
AGED 19 YEARS,
S/O K.A.SURESH.**

**2. K.A.SURESH,
AGED 53 YEARS
S/O K.D.APPANNA**

**BOTH ARE R/A NO.92,
4TH MAIN, AMARJYOTHI LAYOUT
CHOLA NAGAR, BANGALORE.**

.. APPELLANTS

(BY K.CHANDRANATHA ARIGA, ADV.)

AND:

**1. MUNNAVAR HUSSAIN,
AGED 46 YEARS,
S/O LATE SYED HUSSAIN,
NO.449, OPP. KRISHNA TEMPLE,
GANGAMMA SQUARE, BANGALORE.**

**2. K.MUNIRAMAIAH,
S/O LATE KARIYANNA
NO.252, RAMACHANDRA PURA,
JALAHALLI, BANGALORE.**

3. ORIENTAL INSURANCE CO. LTD.,
2ND FLOOR ESSAR MANSION,
R.V.ROAD, BASAVANAGUDI,
BANGALORE 560 004.

4. MRS. NANDINERAVANDA
A. GOWRAMMA,
W/O N.M.APPANNA
AGED 64 YEARS,
IRNIVALAVADI VILLAGE,
POST BOIKERI, MADIKERI TALUK,
KODAGU DISTRICT.

.. RESPONDENTS

(BY SRI A.N.KRISHNASWAMY, ADV. FOR R-3. NOTICE TO
R1, 2 AND 4 DISPENSED WITH.)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV
ACT AGAINST THE JUDGMENT AND AWARD DATED
27/07/2001 PASSED IN MVC NO.135/98 ON THE FILE OF
THE MEMBER, MACT, XVIII ADDL. SMALL CAUSES
JUDGE, BANGALORE, PARTLY ALLOWING THE CLAIM
PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

THIS MISCELLANEOUS FIRST APPEAL COMING ON
FOR HEARING THIS DAY, SABHAHIT J., DELIVERED THE
FOLLOWING:

JUDGMENT

This appeal by the claimants being the son and the
husband of Smt K.Tara(deceased) has been filed seeking for
enhancement of compensation. The claimants-appellants
herein filed a claim petition before the Motor Accident Claims
Tribunal, Bangalore, SCCH-4, seeking compensation of

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Rs.10,10,000/- towards the death of Smt K.Tara in a motor accident that occurred on 27/10/1997.

2. The deceased was working as a teacher and was drawing salary of Rs.4,169/- per month. It is averred that the accident ~~has been~~^{be} occurred due to the rash and negligent driving by the tempo driver bearing registration No.KA 05-7367 ^{as he is} and dashed against the TVS Moped which was being driven by Smt. K.Tara from the hind side and she sustained fatal injuries and died at the spot. The driver, owner and insurer of the Vehicle bearing registration no. KA 05-7367 were arrayed as respondents in the claim petition. The Tribunal after enquiry held that the accident occurred due to rash and negligent driving of the vehicle bearing registration no. KA 05-7367 and held that Smt. K.Tara had died due to the injuries sustained in the accident and claimants are the legal representatives of the deceased and awarded compensation of Rs.4,96,704/- rounded of to Rs.4,97,000/- with interest at 9% p.a. from the date of petition to the date of payment by its Judgment and award dated 27/07/2001. The finding of the Tribunal that the accident occurred due to the rash and negligent driving by

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the driver of the tempo and that Smt. K.Tara died due to the injuries sustained in the accident has become final, as the said finding has not been challenged by the respondents and this appeal is by the claimants seeking for enhancement of compensation.

3. We have heard the learned counsel appearing for the appellants and the learned counsel appearing for respondent No.3.

4. Having regard to the contentions urged, the point that arises for determination in this appeal is:

Whether the quantum of compensation awarded by the Tribunal is on a lower side and calls for enhancement in this appeal?

and we answer the above point by holding that the compensation awarded by the Tribunal is on the lower side and the same is liable to be enhanced by Rs.20,000/- with interest at 6% p.a. on the enhanced compensation from the date of petition to the date of payment for the following reasons:

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5. On behalf of the claimants, Pw-1-claimant NO.2-husband of the deceased was examined and he got marked the documents Ex.P-1 to P-10. On behalf of the respondents, no oral evidence was adduced and what was got marked was the policy. The finding of the Tribunal regarding the accident occurred and the injuries sustained by the deceased and entitlement of the claimants to compensation have become final. The Tribunal has awarded compensation under the following heads:

	Rs.
1. Loss of dependency	4,66,704/-
2. Loss of expectancy	10,000/-
3. Loss of consortium	10,000/-
4. Funeral expenses	10,000/-

	4,96,704/-

rounded of to Rs.4,97,000/-. The Tribunal has taken the income of the deceased at Rs.4,169/- per month as per the salary certificate Ex.P-2 and deducted 1/3rd towards personal and living expenses and adopted multiplier of 14. Having regard to the age of the claimants and other material on record, the said amount of compensation of Rs.4,66,704/- awarded towards loss of dependency cannot

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be said to be inadequate as to call for enhancement in this appeal. However the compensation awarded to the appellant-claimants at Rs.10,000/- towards loss of expectancy is on a lower side and it would be appropriate to enhance the compensation awarded towards the said head from Rs.10,000/- to Rs.20,000/-. Claimant No.2 being the husband of the deceased, has been awarded consortium of Rs.10,000/- and having regard to the age of the claimant and the deceased, the compensation awarded under the said head is also on a lower side and it would be just and reasonable to enhance the compensation awarded towards loss of consortium to Rs.20,000/- and funeral expenses of Rs.10,000/- awarded by the Tribunal is just and reasonable and cannot be said to be on the lower side as to call for enhancement. Accordingly, we hold that the claimants are entitled to enhanced compensation of Rs.20,000/-. Accordingly, we pass the following order:

6. The Miscellaneous First Appeal is allowed in part. The compensation awarded to appellants 1 to 3 is enhanced to Rs.10,000/- and compensation awarded to appellant NO.2 towards loss of consortium is enhanced to

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Rs.10,000/- and accordingly in modification of the total compensation awarded to the appellants is enhanced from Rs.4,97,000/- to Rs.5,17,000/- with interest at 6% p.a. on the enhanced compensation of Rs.20,000/- from the date of petition to the date of award. The order of the Tribunal in all other respects remain unaltered.

kmr

Sd/-
Judge

Sd/-
Judge