

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 10TH DAY OF JANUARY, 2006

P R E S E N T

THE HON'BLE MR. JUSTICE CHIDANANDA ULLAL

AND

THE HON'BLE MR. JUSTICE A.N.VENUGOPALA GOWDA

Miscellaneous First Appeal No. 6933 OF 2002 (MV)

Between:

- 1 LAXMAN M KULKARNI
S/O MOHAN RAO, AGED 45 YRS,
OCC INSPECTOR OF INCOME TAX,
R/O RAICHUR.
- 2 RAJESHWARI
W/O LAXMAN KULKARNI,
AGED 37 YRS, R/O H.NO.4.4.223/67,
SATYANATH COLONY, RAICHUR.
- 3 KUM. BHAVANI
D/O LAXMAN M KULKARNI,
AGED 16 YRS, R/O RAICHUR,
- 4 KUM. CHETANA
D/O LAXMAN M KULKARNI,
AGED 9 YRS, R/O RAICHUR,

**APPELLANTS NO.3 AND 4 ARE MINORS
UNDER GUARDIAN NATURAL FATHER
SRI. LAXMAN KULKARNI,
APPELLANT NO.1.**

... APPELLANTS

(BY SRI : SHIVAKUMAR KALLOOR, ADV.)

AND:

- 1 GENERAL MANAGER, KSRTC
CENTRAL OFFICE,
SHANTINAGAR,
BANGALORE.
- 2 J S VENKATACHALAPATHI
S/O SRINIVASAYYA,
OCC DRIVER KSRTC,
BADGE NO.963,
KSRTC BUS DEPOT.,
KOLAR DIST, KOLAR.

... RESPONDENTS

(BY SRI : F S DABALI FOR R1,
R2 NOTICE DISPENSED WITH)

MFA FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED: 6.4.2002
PASSED IN MVC NO. 32/99 ON THE FILE OF THE ADDL.
DIST. JUDGE (MACT), RAICHUR, PARTLY ALLOWING THE
CLAIM PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

This appeal coming on for hearing, this day,
VENUGOPALA GOWDA, J., delivered the following:



JUDGMENT

The appellants are the claimants. They had filed the claim petition, claiming compensation on account of the actionable negligence on the part of the 2nd respondent herein in causing the motor vehicle accident. The finding of the tribunal with regard to actionable negligence and liability, is not in dispute and has attained finality.

2. The appellants were awarded by the tribunal compensation of Rs.80,000/- with interest at 6% p.a., on account of the death of Sri Arun Kulkarni in the accident. Being dissatisfied with the quantum of compensation awarded, this appeal has been preferred.

3. Learned counsel for the appellants, by taking us through the evidence of PW.1, Exs.P1 to P3, would contend that the tribunal is not justified in awarding compensation in all amounting to Rs.80,000/- only. Learned counsel would contend that the deceased was 18 years old, admittedly was doing agriculture and the annual

income of the deceased as well as the dependency has not been correctly computed by the tribunal and hence the award calls for modification by way of enhancement.

4. Per contra, learned counsel for the respondents would support the judgment and award passed by the tribunal and would submit that no enhancement in the facts and circumstances of the case, is called for.

5. Whether the tribunal has awarded the just compensation or whether any enhancement by way of modification of the award is required, is the point for consideration.

6. We have perused the evidence of PW.1. He has stated that the deceased was looking after the agricultural lands. The possessing of agricultural lands by the family, is not in dispute. The cultivation of the lands is established from the entries made in the RTC which have been produced as Exs.P1 to P3. The tribunal has assessed the income in respect of the share of the deceased family at




Rs.25,000/- p.a. However, it has assessed the income of the deceased at Rs.8,000/- p.a. and taking into consideration that he is bachelor, 50% having been deducted, Rs.4,000/- p.a. is shown as the dependency factor and applying the multiplier of '15', the compensation under the head loss of dependency, has been computed. In our view, there is error committed by the tribunal. Even going by the assessment of the annual income of the deceased family share at Rs.25,000/- p.a., the deceased alone having been involved in the agricultural operations, PW.1 being an official and other family members being wife and minor children, the earning of the deceased has to be taken at Rs.25,000/- p.a. and after deducting 50% of the income towards his personal expenses as per the ratio in GULAM KHADER case reported in ILR 2000 KAR 4144, it could be taken that he would have contributed Rs.12,500/- to the family. Multiplier '15' is applicable as per Schedule II to Section 163-A of the M.V.Act. Computing the income accordingly, (i.e. $Rs.12500 \times 15 = 1,87,500/-$) the loss of dependency would be Rs.1,87,500/-. The tribunal has not



made proper award with regard to the conventional heads. There is loss of love and affection, loss to the estate and amount awarded under the head 'funeral expenses' is also on the lower side. Thus under the conventional heads, the appellants are entitled for additional compensation of Rs.30,000/-. Taking the dependency factor and the conventional amount, the enhancement of Rs.1,37,500/- is called for in the facts and circumstances of the case, to hold that the same would be the reasonable compensation i.e., in addition to the compensation awarded by the tribunal (i.e. $\text{Rs.}80,000 + 1,37,500 = 2,17,500/-$).

6. In the result, the appeal is allowed in part. Enhanced compensation of Rs.1,37,500/- is allowed which shall carry interest at 6% p.a. from the date of claim petition, till the date of deposit, by the respondent Corporation. The respondent Corporation shall deposit the amount in the Tribunal, within a period of three months from today, failing which, the respondent is liable to pay interest at 8% p.a. on the enhanced compensation.



Parties to bear their respective costs of the appeal.

Office is directed to draw the modified award, in terms hereof.

Sd/-
Judge

Sd/-
Judge