

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5<sup>TH</sup> DAY OF MARCH, 2014

PRESENT

THE HON'BLE MR.JUSTICE N.K.PATIL

AND

THE HON'BLE MR.JUSTICE PRADEEP D.WAINGANKAR

MISCELLANEOUS FIRST APPEAL NO.8316 OF 2012 (MV)

**BETWEEN:-**

1. SMT. BASAMMA  
W/O LATE MAHADEVAPPA  
AGED ABOUT 32 YEARS  
RESIDING AT C/O N M RAMACHANDRA  
RAMAMANDIRA BEEDI, VAKALAGERI  
NANJANAGUDU TOWN
2. MADHU  
S/O LATE MAHADEVAPPA  
AGED ABOUT 18 YEARS  
RESIDING AT C/O N M RAMACHANDRA  
RAMAMANDIRA BEEDI, VAKALAGERI  
NANJANAGUDU TOWN
3. VASANTHA  
S/O LATE MAHADEVAPPA  
AGED ABOUT 16 YEARS  
BEING MINOR REPRESENTED  
BY NATURAL GUARDIAN MOTHER  
1ST APPELLANT  
RESIDING AT C/O N M RAMACHANDRA  
RAMAMANDIRA BEEDI, VAKALAGERI  
NANJANAGUDU TOWN

4. BASAMMA  
W/O LATE MADAPPA  
AGED ABOUT 67 YEARS  
RESIDING AT C/O N M RAMACHANDRA  
RAMAMANDIRA BEEDI, VAKALAGERI  
NANJANAGUDU TOWN

... APPELLANTS

(By Sri: Y D HARSHA, ADV., )

AND

1. BINNI SABASTAIN  
S/O K T SABASTAIN  
AGED ABOUT 36 YEARS  
KUNNAM PURATH (H)  
VALLITHODU, VAJAYIL  
KILIYANTHRA POST  
AYYAMKUNNA VILLAGE  
KANNUR DISTRICT
2. ABDUL REHAMAN  
S/O KUNJALIKUNNUMURATH  
AGED ABOUT 47 YEARS  
R/AT SABIRAMUNCHIL  
VALLITHODU POST  
KILIYANTHRA DISTRICT  
KANNUR, KERALA
3. UNITED INDIA INSURANCE COMPANY LTD  
VETTUKATTIL TOWN  
M G ROAD  
YERANAKULLAM  
KOCHI-682016

... RESPONDENTS

(By Sri: RAVISH BENNI, ADV., FOR R3  
R1 & R2 SERVED AND UNREPRESENTED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:15.04.2011 PASSED IN MVC NO.85/2010 ON THE FILE OF THE SENIOR CIVIL JUDGE, NANJANGUDU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MFA COMING ON FOR ADMISSION, THIS DAY **N.K. PATIL, J.**, DELIVERED THE FOLLOWING:-

**J U D G M E N T**

This appeal by the claimants is directed against the impugned judgment and award dated 15.4.2011 passed in MVC No.85/2010 on the file of the Senior Civil Judge, Nanjanagudu (for short, 'Tribunal'). The Tribunal by the impugned judgment and award, awarded compensation of ₹9,65,100/- with interest at 6% p.a. from the date of petition till the date of realisation, on account of death of Late Mahadevappa in a road traffic accident. The claimants have presented this appeal on the ground that the quantum of compensation awarded by the Tribunal is inadequate and requires enhancement.

2. The brief facts of the case on hand are that appellant No.1-wife, appellant Nos.2 and 3-minor children as on the date of incident and appellant No.4 being the mother of deceased Mahadevappa, had filed claim petition under Section 166 of M.V. Act claiming compensation on account of untimely death of deceased Mahadevappa on 23.8.2009, wherein deceased sustained fatal injuries and succumbed to the injuries thereafter. It is further case of the claimants that deceased was aged 40 years and was an agriculturist and a Grama Panchayath member; he was the only earning member in the family and he used to spend whatever income derived from agriculture and as member of grama panchayath towards the welfare of the family. The deceased being the only bread earner of the family, on account of his untimely death, the wife has lost her husband, life partner at a young age, children have lost love and affection of their father and appellant No.4 suffered mental pain and agony and deprived of seeing his bright future. Taking all these factors, the

claimants filed claim petition under Section 166 of M.V. Act claiming compensation against the respondents. The said matter had come up for consideration before the Tribunal. The Tribunal after due consideration of the oral and documentary evidence and other material on record allowed the claim petition, awarding a sum of ₹9,65,100/- under different heads with 5% interest per annum, from the date of petition till the date of realization. Being dis-satisfied with the compensation awarded by the Tribunal, the appellants have presented this appeal seeking enhancement of compensation.

3. We have gone through the grounds urged by the appellants in the instant appeal and heard the counsel appearing for the insurer.

4. After careful consideration of the grounds urged by the appellants, it is specifically contended by the claimants that the deceased is an agriculturist and also used to supply vegetables from Gundlupet to Kerala State earning Rs.15,000/- per month and was the only

earning member of the family. The income of the deceased at Rs.3,000/- taken by the Tribunal is on the lower side and the same is liable to be re-assessed by deducting 1/4<sup>th</sup> towards personal expenses and applying multiplier of '15' towards "loss of dependency." It is further case of the appellants that the Tribunal has erred in not awarding reasonable compensation under the heads 'loss of consortium', 'loss of love and affection', 'loss of estate' and 'incidental expenses'.

5. Per-contra, learned counsel appearing for the 3<sup>rd</sup> respondent-insurer inter-alia contended and substantiated that, after considering the entire material on record, the Tribunal is justified in taking the income of the deceased at Rs.3,000/- p.m. and awarding reasonable compensation under 'medical expenses', 'loss of dependency' and 'conventional head' and the same does not call for interference.

6. After careful consideration of the submissions made by learned counsel appearing for the parties,

perusal of the impugned judgment passed by the Tribunal, the only point that arises for our consideration is 'Whether the quantum of compensation awarded is just and reasonable'.

7. The undisputed facts on hand are the occurrence of accident and the resultant death of the deceased in the road traffic accident. The claimants are none other than the wife, two minor children and mother of the deceased. Further, it is seen that deceased was 40 years, doing agriculture and a Grama Panchayath member. He was doing vegetable vending business also. He used to sell vegetables from Gundlupet to Kerala State and used to get income at Rs.15,000/- per month, but the claimants have not produced any credible document to show that the deceased was getting Rs.15,000/- income per month, such as back account or any certificate to show that he was supplying vegetables to Kerala State. Having regard to the facts and circumstances of the case, age,

avocation and year of accident, we safely reassess the income of the deceased at Rs.4,500/- per month instead of Rs.3,000/- assessed by the Tribunal and by deducting 1/4<sup>th</sup> towards personal expenses, claimants being four in number- wife, two minor children and mother, the monthly income comes to Rs.3,375/- per month. The deceased was aged 40 years as on the date of incident and the proper multiplier applicable is '15'. Accordingly, we re-determine 'loss of dependency' at Rs.6,07,500/-. Having regard to the facts and circumstances of the case, we deem it fit to award Rs.50,000/- towards 'loss of consortium', Rs.40,000/- towards 'loss of love and affection(Rs.10,000/- to each claimant), Rs.10,000/- towards 'loss of estate' and Rs.10,000/- towards transportation and incidental expenses'. The Tribunal is justified in awarding Rs.5,53,900/- towards medical expenses. Hence, interference by this Court is uncalled for.

8. Having regard to the facts and circumstances of the case as referred above, the appellants-claimants are entitled to the following compensation and the break up is as follows:-

Sl. No.	Heads	Amount in ₹
1	Loss of dependency	6,07,500
2	Loss of consortium	50,000
3	Loss of love and affection	40,000
4	Loss of Estate	10,000
5	Transportation expenses	10,000
6	Medical and incidental expenses	5,53,900
	TOTAL	12,71,400

9. In all, the appellants are entitled to total compensation of ₹12,71,400/- as against ₹9,65,100/- There will be enhancement of **₹3,06,300/-** with 6% interest from the date of petition till the date of realization.

10. Having regard to the facts & circumstances of the case, as referred above, the instant appeal filed by the appellants is **allowed-in-part**. Impugned Judgment and award passed by the Tribunal dated 15<sup>th</sup> April 2011 in MVC No.85/2010 on the file of Senior Civil Judge, Nanjanagud, is hereby modified awarding a sum of ₹3,06,300/- with 6% interest per annum from the date of petition till the date of realisation, in addition to the compensation awarded by the Tribunal.

Respondent No.3 insurer is directed to deposit the enhanced compensation with interest within a period of three weeks from the date of receipt of copy of the Judgment and award excluding delay of 407 days.

Out of the enhanced compensation of ₹3,06,300/- , ₹1.00 lakh with proportionate interest shall be invested in Fixed Deposit in the name of the first appellant in any Nationalised Bank or Schedule Bank for a period of ten years renewable by another 10 years.

Rs.50,000/- each shall be deposited in any Nationalised Bank/Scheduled Bank in the name of appellant Nos.2 and 3 till they attain the age of 35 years and they are entitled to withdraw interest periodically.

Rs.50,000/- with proportionate interest shall be invested in the name of the 4<sup>th</sup> appellant in any Nationalised/Scheduled Bank for a period of five years and she is entitled to withdraw periodical interest.

Remaining ₹56,300/- with proportionate interest shall be released in favour of appellant Nos.1 & 4 in equal proportion immediately on deposit by the third respondent insurer.

Office to draw award, accordingly.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

\*mn/-