

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5TH DAY OF MARCH, 2014

PRESENT

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

AND

THE HON'BLE MR.JUSTICE PRADEEP D. WAINGANKAR

MFA NO.10715 of 2011 (MVC)

BETWEEN:

1. SMT. RATHNAMMA
W/O LATE PRAKASH
AGED ABOUT 41 YEARS
R/O NAVULE
SHIVAMOGGA CITY-57720.
2. SHRUTHI
D/O LATE PRAKASH
AGED ABOUT 19 YEARS.
3. KUMAR RAJA
S/O LATE PRAKASH
AGED ABOUT MINOR.

APPELLANT NO.3 IS MINOR
REPRESENTED BY HIS MOTHER AND
NATURAL GUARDIAN THE 1ST APPELLANT
APPELLANTS 2 AND 3 ARE RESIDING WITH
THE 1ST APPELLANT.

... APPELLANTS

(BY SRI. VIJAYKUMAR S JATLA, ADVOCATE)

AND:

1. THAMMAYANNA
S/O BHIMLA NAYAKA

AGED ABOUT 33 YEARS
 CLEANER OF LORRY
 BEARING REGISTRATION NO. MEC.4801
 R/O BHAVIKERE, TARIKERE TALUK
 CHIKKAMAGALUR DISTRICT.

2. T. UMESH
 S/O THIMLA NAYAKA
 AGED ABOUT 34 YEARS.
 DRIVER OF LORRY
 BEARING REGISTRATION NO.MEC.4801
 R/O KULLUKOPPA, THIRTHAHALLI TALUK
 SHIMOGA DISTRICT-57720.
3. PRASHANTHKUMAR
 S/O LAKSMAN
 MAJOR, OWNER OF LORRY
 BEARING REG. NO.MEC.4801
 R/O HONNAPURA VILLAGE, GAJANUR
 SHIMOGA TALUK,
 SHIMOGA DISTRICT-57720.
4. UNITED INDIA INSURANCE CO. LIMITED
 P.B.NO.88, DIVISIONAL OFFICE
 B.H. ROAD, SHIMOGA-577201.
 POLICY NO.7365/871188/821/87365/1993
 VALID FROM 17.10.1998 TO 16.10.1999.

... RESPONDENTS

(NOTICE TO R1 DISPENSED WITH VIDE
 ORDER DATED 24/2/2014;
 R2 SERVED, UNREPRESENTED;
 SRI. P.N. HARISH, ADVOCATE FOR R-3;
 SRI. A.M. VENKATESH, ADVOCATE FOR R-4)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST
 THE JUDGMENT AND AWARD DATED 03.01.2011 PASSED
 IN MVC NO.44/2010 (OLD MVC.NO.116/2000) ON THE
 FILE OF THE SENIOR CIVIL JUDGE & JMFC, ADDITIONAL
 MACT, SAGAR, 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:

JUDGMENT

This appeal by the claimants is directed against the impugned judgment and award dated 03.01.2011 passed in MVC No.44/2010 (Old MVC No.116/2000) on the file of the Senior Civil Judge and JMFC and Additional Motor Accidents Claims Tribunal at Sagar (hereinafter referred to as 'Tribunal' for short) seeking to enhance the compensation.

2. The Tribunal by its judgment and award has awarded a sum of Rs.4,00,000/- under different heads with interest at 6% per annum from the date of petition till the realisation, as against the claim of the appellants on account of the death of the deceased in the road traffic accident.

3. In brief, the facts of the case are:

The 1st appellant is the wife, 2nd appellant is the daughter and 3rd appellant is the minor son of the

deceased-Prakash and they have filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation of Rs.21,50,000/- against the respondents, on account of the untimely death of the deceased-Prakash in the road traffic accident, which occurred on 27.04.1999 at about 4.15 p.m. when the deceased was going to attend his job at Maruthi Chitra Mandir, Shiralkoppa. When he came near auto stand of Bus Stand Circle, a lorry bearing Registration No. MEC 4801 driven by its driver came in a rash and negligent manner and dashed against the deceased from his behind. The deceased sustained grievous injuries to his left leg since the lorry ran over his left leg. He had sustained crush injuries as well as multiple grievous injuries. Immediately, he had been shifted to P.H.C., Shiralkoppa and later to C.G. Hospital and later on shifted to Mc. Gann. Hospital for better treatment. Thereafter, again he had been shifted to C.G. Hospital, Davanagere and undergone

treatment for more than four months. In spite of making several efforts, the deceased-Prakash succumbed to the injuries on 31.12.1999. Further, it is the case of the appellants that the deceased was aged about 36 years at the time of the accident and he was working as gate keeper. He was the only earning member in the family. Due to his untimely death, the wife has lost her life partner and the children have lost love and affection, guidance, inspiration and security in life and it has also affected social, moral and economic condition of the family. Therefore, they were constrained to file a claim petition against the respondents claiming compensation of Rs.21,50,000/-. The said claim petition had come up for consideration before the Tribunal. The Tribunal after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petition in part and awarded the compensation of Rs.4,00,000/-

under different heads with interest at 6% p.a., from the date of petition till the date of realisation. Not being satisfied with the impugned judgment and award passed by the Tribunal, the appellants have presented this appeal, for modification of the same.

4. The submission of Sri. Vijayakumar S Jatla, learned counsel appearing for the appellants at the outset is that, the Tribunal has erred in assessing income of the deceased at Rs.3,000/- per month, which is on the lower side since, by profession the deceased was a gate keeper and the entire family was dependent on the income of the deceased. Therefore, he submits to re-assess the income and award reasonable compensation towards loss of dependency, conventional heads and also towards medical expenses and conveyance, nourishing food and attendant charges. Further, he submits that the Tribunal has erred in awarding Rs.14,000/- towards medical expenses which is on the lower side.

Therefore, he submits to modify the impugned judgment and award passed by the Tribunal.

5. Per contra, the learned counsel appearing for respondent No.4, inter alia, contended and substantiated that, the impugned judgment and award passed by the Tribunal is just and proper. It is passed after due appreciation of the oral and documentary evidence available on record. Therefore, interference by this Court is not called for.

6. After considering the submissions made by the learned counsel appearing for both the parties and on perusal of the material available on record, including the impugned judgment and award passed by the Tribunal, the only point that arises for consideration is:

“Whether the quantum of compensation awarded by the Tribunal is just and reasonable?”

7. It is not in dispute that the deceased died in the road traffic accident. Claimants are none other than the wife and two children of the deceased. Further, it is not in dispute that, the deceased was aged about 36 years at the time of accident, hale and healthy and by profession he being a gate keeper in Maruthi Chitra Mandir looking after the welfare of the appellants. The entire family was dependent on the income of the deceased. In spite of best efforts by the doctors, the deceased could not be saved and he succumbed to the injuries on 31.12.1999. Having regard to the age, avocation and year of accident, we can safely re-assess the income of the deceased at Rs.3,500/- per month to meet the ends of justice. Out of that, if 1/3rd is deducted towards personal expenses, it comes Rs.2,334/-. The deceased was aged about 36 years at the time of the accident and the proper multiplier is '15'. Accordingly, the appellants are entitled to compensation towards loss

of dependency at Rs.4,20,120/- (Rs.2,334/- x 12 x 15).

8. Having regard to the facts and circumstances of the case, we deem it fit to award Rs.50,000/- towards loss of consortium and Rs.30,000/- towards loss of love and affection at the rate of Rs.10,000/- to each appellant. Rs.10,000/- towards loss of estate, Rs.10,000/- towards transportation and funeral expenses. The deceased was treated as inpatient at three hospitals and they would have spent some amount towards medical expenses. Taking into consideration these factors, Rs.50,000/- is awarded towards medical expenses and conveyance, nourishing food and attendant charges. In all, the appellants are entitled for Rs.5,70,120/- with 6% interest per annum from the date of petition till realisation as against Rs.4,00,000/- awarded by the Tribunal and the break-up is as follows:

Towards loss of dependency	Rs. 4,20,120/-
Towards loss of consortium	Rs. 50,000/-
Towards loss of love and affection	Rs. 30,000/-
Towards loss of estate	Rs. 10,000/-
Towards transportation and funeral expenses	Rs. 10,000/-
Towards medical expenses	Rs. 50,000/-
Total	Rs. 5,70,120/-

There will be an enhancement of Rs.1,70,120/- with 6% interest.

9. In the light of the facts and circumstances of the case as stated above, appeal is allowed in part. The impugned judgment and award dated 03.01.2011 passed in MVC No.44/2010 (Old MVC No.116/2000) on the file of the Senior Civil Judge and JMFC and Additional Motor Accidents Claims Tribunal at Sagar is hereby modified.

The respondent No.4-Insurance Company is directed to deposit the enhanced compensation with interest at 6% p.a., from the date of petition till the date of realisation, within three weeks from the date of receipt of a copy of this judgment.

Out of the enhanced compensation of Rs.1,70,120/-, Rs.50,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, in the name of the 1st appellant for a period of ten years and renewable for another ten years, with liberty to her to withdraw the periodical interest accrued on it.

A sum of Rs.50,000/- with proportionate interest shall be invested in the name of the appellant No.2 in Fixed deposit in any Nationalized or Scheduled Bank till she attains the age of 35 years with liberty reserved to her to withdraw the interest periodically.

A sum of Rs.50,000/- with proportionate interest shall be invested in the name of appellant No.3 in Fixed Deposit in any Nationalized or Scheduled Bank till he attains the age of 35 years with liberty reserved to the appellant No.1 to withdraw the periodical interest accrued on it for his welfare till he attains the age of 21

years and thereafter from 22 to 35 years appellant No.3 is entitled to withdraw the interest periodically.

The remaining Rs.20,120/- with proportionate interest shall be released in favour of the 1st appellant, immediately, on deposit by the respondent No.4-Insurer.

Draw the award, accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

PMR