



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

MISCELLANEOUS FIRST APPEAL No. 7732 OF 2025 (MV-D)

BETWEEN:

1. THE MANAGER,
NATIONAL INSURANCE CO. LTD.,
R.O.No.144, II FLOOR,
M G ROAD, BENGALURU - 560 001.
REPRESENTED BY MANGALAMMA
ASSISTANT MANAGER.

...APPELLANT

(BY SMT. GEETHA RAJ, ADVOCATE)

AND:

1. MR. DEVARAJ CHINNUSAMY,
S/O CHINNUSAMY,
AGED ABOUT 58 YEARS,
2. MASTER K. LAKSAN AATHISH
S/O KARTHIK,
AGED ABOUT 09 YEARS,
3. MASTER K. ABHINAV,
S/O KARTHIK,
AGED ABOUT 07 YEARS,

ALL ARE RESIDING AT:
NO.302, SVR DELUXE,



9TH CROSS, ANANDHANAGAR,
PHASE 2, ELECTRONIC CITY,
BENGALURU - 560 100.

SINCE THE 2ND AND 3RD RESPONDENTS ARE
MINORS REPRESENTED BY THEIR
GRANDFATHER 1ST RESPONDENT
AS NATURAL GUARDIAN,

NATIVE PLACE:
No.7/750, SELLAPPA COLONY,
VETTAMPADI, NAMAKKAL,
TAMIL NADU - 637 405.

4. MR. KARTHIK D.,
S/O DEVARAJ,
No.7/750, SELLAPPA COLONY,
VETTAMPADI, NAMAKKAL,
TAMIL NADU - 637 405.

...RESPONDENTS

(BY SRI A. SREENIVASAIAH, ADVOCATE FOR C/R1 TO R3)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT,
AGAINST THE JUDGMENT AND AWARD DATED 09.05.2025
PASSED IN MVC No.1190/2022 ON THE FILE OF THE III
ADDITIONAL JUDGE AND MEMBER, MACT, COURT OF SMALL
CAUSES, BENGALURU (SCCH-18), AWARDING COMPENSATION
OF RS.89,70,214/- WITH INTEREST AT 6 PERCENT P.A. FROM
THE DATE OF PETITIONS TILL THE DATE OF DEPOSIT.

THIS APPEAL, COMING ON FOR ADMISSION THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE MR. JUSTICE K. V. ARAVIND



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE K. V. ARAVIND)

Heard Smt. Geetha Raj, learned counsel for the appellant and Sri A. Sreenivasaiah, learned counsel for caveator respondent Nos.1 to 3.

2. This appeal by the Insurer calls in question the judgment and award dated 09.05.2025 passed in MVC No.1190/2022 and by the Court of the III Addl. Judge and Motor Accident Claims Tribunal, Bengaluru (SCCH-18) (for short "the Tribunal"), insofar as it relates to the quantum of compensation.

3. The petitioners filed a claim petition seeking compensation for the accidental death of one Divya Ettikan on 12.02.2022, involving a car bearing No.TN-32-AC-0666. It is stated that the accident occurred due to the rash and negligent driving of the said car by its driver. As on the date of the accident, the deceased was aged 29 years and was working as a Senior Project Engineer at WIPRO Ltd., earning a monthly salary of Rs.50,000/-. The petitioners are the father-in-law and two minor children of the deceased.



3.1 Though notice was served, respondent No.1 therein (husband of the deceased) remained absent and was placed *ex parte*. The Insurer appeared and filed its written statement.

3.2 Respondent No.2–Insurer has not disputed the occurrence of the accident or the involvement of the vehicle; however, it has denied actionable negligence on the part of the driver of the car. The Tribunal recorded common evidence in respect of two claim petitions arising out of the same accident—one pertaining to the death of Divya Ettikan and the other relating to the injuries sustained by Master K. Abhinav. The Tribunal recorded the evidence of six witnesses on behalf of the petitioners and marked Exs.P1 to P51. The evidence of RW.1 was recorded on behalf of the respondents, and no documents were marked.

3.3 The Tribunal, while computing the monthly income, considered a sum of Rs.46,667/- as the income per month based on Ex.P.35—pay slip. The age of the deceased was taken as 30 years; a multiplier of 17 was applied; 1/3rd was deducted towards personal expenses; and 40% was added towards future prospects. The Tribunal also awarded compensation



under conventional heads. In total, the Tribunal has awarded a compensation of Rs.89,70,214/-.

4. Smt. Geetha Raj, learned counsel appearing for the appellant-Insurer submits that the Tribunal has committed an error in taking the entire income as reflected in Ex.P.35. It is contended that, out of the income shown in Ex.P.35, the amounts towards bonus and GRPALLW, namely Rs.3,500/- and Rs.10,039/- respectively, are liable to be deducted, as the same do not form part of the salary. Learned counsel further submits that the Tribunal has erred in not deducting Income Tax and Professional Tax. However, learned counsel does not dispute the age of the deceased, the applied multiplier, the deductions made, or the percentage of future prospects.

5. Sri A. Sreenivasaiah, learned counsel appearing for the caveator/respondent Nos.1 to 3 submits that the income has been rightly considered on the basis of the proved document, namely Ex.P.35—pay slip. It is contended that the amounts towards bonus and GRPALLW form part of the salary package, are paid consistently, and are permanent in nature. It is further submitted that, while computing compensation, the income of



the deceased is to be taken into consideration. However, learned counsel is unable to dispute that Income Tax and Professional Tax are liable to be deducted.

6. Having considered the submissions made by learned counsel for the parties and upon perusal of the appeal papers, this Court partly accepts the submissions advanced by learned counsel for the appellant–Insurer.

7. The total payment as reflected in Ex.P.35—pay slip, a certified copy of which is placed before this Court by the learned counsel for the appellant, indicates the total pay as Rs.46,677/-. The Tribunal has considered the entire payment as the monthly income without deducting Income Tax and Professional Tax. It is a settled position of law that where the income is liable to Income Tax and Professional Tax, the same are required to be deducted from the monthly income for the purpose of computing compensation. Accordingly, a sum of Rs.2,044/- and Rs.200/- are to be deducted towards Income Tax and Professional Tax respectively. After such deductions, the monthly income to be considered is Rs.44,433/-.



8. Another contention raised is that the amounts paid towards bonus and GRPALLW are required to be deducted from the salary while computing the monthly income. The said contention is not acceptable. It is not the case of the appellant-Insurer that the said payments were made only for the particular month for which the pay slip, as per Ex.P.35, is issued. Ex.P.35 constitutes the best evidence on record. It is contended that the payments towards bonus and GRPALLW are based on the terms of employment and form part of the pay package.

8.1 This Court had an occasion to consider a similar issue in **MFA No.1567/2024 c/w MFA No.498/2024**, decided on **29.05.2025**, wherein, upon considering the judgments of the Hon'ble Supreme Court in **Sunil Sharma and Others vs. Bachitar Singh and Others, (2011) 11 SCC 425** and **Triveni Kodkany vs. Air India Ltd., (2021) 19 SCC 214**, it has held as under:

"18. As held by the Hon'ble Supreme Court in **Pranay Sethi (supra)**, established and sustainable income is to be considered. The allowances, namely Car Allowance, Holiday Allowance, Fuel and Vehicle Maintenance, Compensatory Allowance, Engagement Performance



Bonus, and Food Valet, are paid in addition to the basic salary and HRA. Pay slips for the months of November and December 2018, and January 2019, indicate that these allowances were paid consistently every month, without variation. These allowances are in lieu of employment and form part of the salary. The allowances are part of the pay package agreed upon between the deceased and the employer. In assessing just compensation, amounts that were to be paid to the deceased by his employer, whether as perks or under any other nomenclature, should be added to his monthly income. Such monthly income forms the basis for computing compensation.

19. It is relevant to refer the following judgments of the Hon'ble Supreme Court,

(i) In ***Sunil Sharma and Others vs. Bachitar Singh and Others, (2011) 11 SCC 425***, wherein it has been held as under,

"(a) Computation of income

6. In the case of *National Insurance Co. Ltd. v. Indira Srivastava* [(2008) 2 SCC 763 : (2008) 1 SCC (Cri) 550 : (2008) 1 SCC (Civ) 744 : AIR 2008 SC 845] S.B. Sinha, J. has observed that: (SCC p. 767, para 9)

"9. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay-packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to



the family on a death of a near and dear one can hardly be compensated on monetary terms."

7. His Lordship also stated that if some facilities were being provided whereby the entire family stood to benefit, the same must be held to be relevant for the purpose of computation of total income on the basis of which the amount of compensation payable for the death of the kith and kin of the applicants was required to be determined. This Court held that: (*Indira Srivastava case* [(2008) 2 SCC 763 : (2008) 1 SCC (Cri) 550 : (2008) 1 SCC (Civ) 744 : AIR 2008 SC 845] , SCC p. 768, para 12)

"12. ... superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family."

8. This Court clarified that by opining that: (*Indira Srivastava case* [(2008) 2 SCC 763 : (2008) 1 SCC (Cri) 550 : (2008) 1 SCC (Civ) 744 : AIR 2008 SC 845] , SCC p. 771, para 17)

" 'just compensation' must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay-packet is what the dependants have lost [in view of] death of the deceased. It is in the nature of compensation for future loss towards the family income."

and that: (*Indira Srivastava case* [(2008) 2 SCC 763 : (2008) 1 SCC (Cri) 550 : (2008) 1 SCC (Civ) 744 : AIR 2008 SC 845] , SCC p. 772, para 19)

"19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the



statutory amount of tax payable thereupon must be deducted.”

11. Based on the aforementioned judgments, we are of the view that deductions made by the Tribunal on account of HRA, CCA and medical allowance are done on an incorrect basis and should have been taken into consideration in calculation of the income of the deceased. Further, deduction towards EPF and GIS should also not have been made in calculating the income of the deceased.

(ii) ***Triveni Kodkany vs. Air India Ltd., (2021) 19 SCC 214***, wherein it has been held as under,

"9. Both the sides have prefaced their submissions by relying on the principles which have been evolved by the court in determining compensation under the Motor Vehicles Act, where an accident has resulted in death. The table which we have reproduced in the earlier part of the judgment would indicate that the total CTC per annum, on account of the employment of the deceased, to his employer was AED 4,82,395. This comprises of the basic pay, house rent allowance, transport allowance, telephone allowance, LTA, medical aid and gratuity. The ion which has been made by the employer in the salary of the deceased is, in our view, no reason to make any deductions from the total CTC of AED 4,82,395. The consolidated amount is the amount annually borne by the employer on account of the employment of the deceased. Hence, we are unable to accept the reasons which weighed with NCDRC in making a deduction of AED 30,000 from the total CTC. Similarly and for the same reason, we are unable to accept the submission of Air India that the transport allowance should be excluded. The bifurcation of the salary into diverse heads may be made by the employer for a variety of reasons. However, in a claim for compensation arising out of the death of the employee, the income has to be assessed on the basis of the entitlement of the employee. We, therefore,



proceed for the purpose of computation on the basis of the annual income of AED 4,82,395."

"11. The material on record does not indicate that the deceased was entitled to a specified quantum of ESOPs as a matter of right. These would be linked to performance. Apart from the letter of the employer, no evidence was produced before NCDRC to indicate that the ESOPs were payable at a certain rate or quantum every year. These were incentives paid to the deceased. Similarly, the other financial benefits which have been adverted to in the above extract from the letter dated 21-3-2011, have not been demonstrated to be a matter of right. The letter indicates that the deceased was *eligible* for certain benefits on an annual basis. In the absence of cogent evidence indicating that this was a part of the salary package which was payable to the deceased as an entitlement irrespective of performance, we are not inclined to accept the submission that the incentive benefits should be added back to the income for the purposes of computation."

20. In view of the consistent payment of allowances from month to month, it must be considered as established and sustainable income. Merely bifurcating the earnings under different heads does not alter the character of the income of the deceased. What is essential to consider is the consistent income of the deceased. Payments made under various heads to the deceased remain part of his income. The allowances cannot be considered speculative, as they were paid consistently on month-to-month basis. Ex.P.10, the Offer-cum-Appointment Letter, provides the salary structure. According to the agreed structure between



the employer and the deceased, the deceased was entitled to monthly allowances under various heads, in addition to the basic salary. While the allowances may be separated from the basic salary, they nonetheless remain part of the composite earnings of the employee/deceased. The payment of allowances is not attached with any other contingencies, to consider it as not permanent or not accrued. The right to allowances has accrued to the deceased under the pay package as agreed by the employer."

8.2 In the light of the above, and in the absence of any contrary evidence, the payments towards bonus and GRPALLW are to be treated as forming part of the pay package, having been paid consistently and bearing the character of permanent income. Hence, the amounts paid under the said heads need not be deducted and shall form part of the computation for compensation.

8.3 A beneficial reference may be made to the judgment of the Hon'ble Supreme Court in ***Kavita Devi and Others vs. Sunil Kumar and Another [2025 SCC OnLine SC 1639]***, wherein it has been held as under:

"17. This Court has consistently held in case of the allowances which are included in the component of salary of the deceased, Tribunal has to take into



consideration these allowances as they were used for supporting the family. The claimants have to show that these allowances were regularly received and used for the family's benefit. Further, while determining whether the allowances form a part of the salary or not, the Tribunal by looking into the facts of each case and by considering the extent of dependency of the claimants on the salary of the deceased including the allowances, have to determine whether these allowances should be excluded from determination of the income of the deceased. If the answer of the Tribunal is in affirmative, then the allowances may be excluded for determination of loss of dependency. If the Tribunal answers the above point in negative, then the Tribunal has to include the allowances for computation of income of the deceased, thus determining the loss of dependency."

8.4 In the aforesaid judgment, the Hon'ble Supreme Court has held that where allowances are utilized for supporting the family of the deceased and are paid regularly, such allowances are to be treated as forming part of the income of the deceased for the purpose of determination of compensation. In the present case, it is not even the contention of the appellant-Insurer that the amounts towards bonus and GRPALLW were not paid consistently. In the absence of any evidence to the contrary, it cannot be presumed that the amounts paid under



the said heads were not utilized by the deceased for the welfare and benefit of the family members.

9. Thus, the total compensation is recomputed and tabulated as under;

$$46,677 - (2044 + 200) = \text{Rs.44,433/-}$$

$$44,433 \times 12 = \text{Rs.5,33,196/-}$$

$$5,33,196 + (40\% \text{ of } 5,33,196) = \text{Rs.7,46,474/-}$$

$$7,46,474 - (1/3 \text{ of } 7,46,474) = \text{Rs.4,97,649/-}$$

$$4,97,649 \times 17 = \text{Rs.84,60,033/-}$$

Heads of Compensation	Compensation by Tribunal	Compensation by this Court
Towards loss of dependency	Rs.88,49,214-00	Rs.84,60,033/-
Towards loss of consortium	Rs.88,000-00	Rs.88,000/-
Towards loss of estate	Rs.16,500-00	Rs.16,500/-
Towards funeral & obsequies ceremony	Rs.16,500-00	Rs.16,500/-
Total	Rs. 89,70,214-00	Rs.85,81,033/-

The claimants are entitled to compensation of Rs.85,81,033/- as against Rs.89,70,214/- as awarded by the Tribunal.

10. Though other grounds are raised in the appeal, they are not pressed. Hence, the following:



Order

- (i) The appeal is ***allowed in-part.***
- (ii) The judgment and award dated 09.05.2025 in MVC No.1190/2022 by the III Additional Judge and MACT, Bengaluru, is modified by re-computing the compensation of Rs.85,81,033/- as against Rs.89,70,214/-.
- (iii) The remaining compensation shall be deposited within six weeks.
- (iv) The rate of interest, deposit and apportionment is maintained.
- (v) The amount in deposit shall be transferred to the Tribunal, forthwith.
- (vi) Draw modified decree accordingly.

**SD/-
(S.G.PANDIT)
JUDGE**

**SD/-
(K. V. ARAVIND)
JUDGE**