



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 16TH DAY OF OCTOBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

AND

THE HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

MISCL. FIRST APPEAL NO.200245 OF 2025 (MV-D)

BETWEEN:

THE DIVISIONAL MANAGER,
THE CHOLA MS GENERAL INSURANCE CO. LTD.,
BLOCK NO.VIII, NEAR S.V. PATEL CHOWK,
ASIAN PLAZA COMPLEX, KALABURAGI – 585 103.
NOW REPRESENTED BY ITS MANAGER,
BANGALORE.

...APPELLANT

(BY SRI. MANJUNATH MALLAYYA SHETTY, ADVOCATE)

AND:

1. GURUMURTHY S/O VEERABHADRA SUTAR,
AGE ABOUT: 61 YEARS, OCC: AGRICULTURE,
2. VEERABHADRA S/O GURUMURTHY SUTAR,
AGE ABOUT: 31 YEARS, OCC: COOLIE,
3. MALLIKARJUN S/O GURUMURTHY SUTAR,
AGE ABOUT: 24 YEARS, OCC: COOLIE,
4. SHARADA W/O SIDDHARAM SONAR,
D/O GURUMURTHY SUTAR,
AGE ABOUT: 29 YEARS, OCC: HOUSEHOLD,



5. DEVAKKAI W/O CHANNAPPA MURUGANOOR,
D/O GURUMURTHY SUTAR,
AGE ABOUT: 27 YEARS, OCC: COOLIE,
ALL ARE R/O GHULANOOR, TQ.AFZALPUR,
DIST.KALBURAGI, NOW AT H.NO.105, NEAR
SHAHABAZAR NAKA, KALABURAGI – 585 103.
6. NADAGOUDA S/O KALYANAPPAGOUDA BIRADAR,
AGE: MAJOR, OCC: DRIVER OF BOLERO PICK UP
BEARING NO.KA 32 AA 3344, R/O. MURUGANOOR,
TQ.JEWARGI, DIST.KALABURAGI – 585 310.
7. GUNDAPPAGOUDA S/O REVAPPAGOUDA,
AGE: MAJOR, OCC: OWNER OF BOLERO PICK UP
BEARING NO.KA 32 AA 3344, R/O MURUGANOOR,
TQ.JEWARGI, DIST.KALABURAGI – 585 310

...RESPONDENTS

(BY SRI. KRUPA SAGAR PATIL, ADV. FOR R1 TO R5;
R6 & R7 ARE SERVED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173 (1) OF THE MOTOR VEHICLES ACT, 1988, PRAYING TO ALLOW THE ABOVE MISCELLANEOUS FIRST APPEAL AND CONSEQUENTLY BE PLEASED TO THE JUDGMENT AND AWARD DATED 14.10.2024 PASSED BY THE Court OF THE PRL. SENIOR CIVIL JUDGE AND MACT AT KALABURAGI IN MVC NO.856/2023, AND CONSEQUENTLY BE PLEASED TO REDUCE COMPENSATION AWARDED BY THE TRIBUNAL.

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

CORAM: HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD
AND
HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD)

This appeal under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act', for short) has been filed by the Insurance Company being aggrieved by the judgment and award dated 14.10.2024 passed by the Principal Senior Civil Judge and Member, MACT Kalaburagi, in MVC No.856/2023.

2. Facts giving rise to the filing of the appeal briefly stated are that on 03.04.2023 at about 10:15 a.m., when the deceased Indirabai W/o Gurumurthy Sutar along with her husband was proceeding on a motorcycle bearing Reg.No.MH-13/AV-2588 for Kalikammadevi Jatra from Ghulanoor village to Yargal B.K.Village, Sindagi Taluk, and when they came near Tiwari Petrol Pump after crossing the Moratagi on Vijaypur-Kalaburagi NH-50 road, the husband of the deceased stopped his motorcycle and went to the petrol bunk for filling, at that time, deceased Indirabai went to attend nature's call and while returning, the driver



of the Bolero City Pick Up vehicle bearing Reg. No. KA-32/AA-3344 came from Sindagi side with high speed in a rash and negligent manner and dashed to the deceased, due to which, she sustained grievous injuries and succumbed to the injuries on the spot.

3. The claimants filed a petition under Section 166 of the Act seeking compensation for the death of the deceased Indirabai along with interest.

4. On service of summons, respondent Nos.1 to 3 have appeared through their counsel. Respondent Nos.1 and 2 have filed their common statement of objections and respondent No.3 filed separate written statement denying the averments made in the claim petition.

5. On the basis of pleadings of the parties, the Claims Tribunal framed the issues and thereafter recorded the evidence. The claimants, in order to prove the case, examined claimant No.1, husband of the deceased as PW-1 and got exhibited documents namely Ex.P1 to



Ex.P11. On the other hand, respondent No.3 got examined its official as RW.1 and marked Ex.R.1 insurance policy. The Claims Tribunal, by the impugned judgment, *inter alia*, held that the accident took place on account of rash and negligent driving of the offending vehicle by its driver, as a result of which, the deceased sustained injuries and succumbed to the injuries. The Tribunal further held that the claimants are entitled to a compensation of Rs.18,90,800/- along with interest at the rate of 6% p.a. and directed respondent No.3 to deposit the compensation amount along with interest. Being aggrieved, this appeal has been filed.

6. Learned counsel for the Insurance Company has raised the following contentions:

a) Firstly, the accident occurred due to negligence of the deceased. The deceased was crossing the National Highway without noticing passing of the vehicles in the Highway. Since she suddenly entered into main road, the driver of the



offending vehicle, though made all best efforts to avoid the accident, beyond his control, the accident has occurred and therefore, he contended that deceased has also contributed to the accident. The Tribunal has erred in holding that driver of the offending vehicle alone is negligent in causing the accident.

b) In respect of quantum, he has contended that claimant Nos.1 is the husband of the deceased, claimant Nos.2 and 3 are the major sons and claimant Nos.4 and 5 are the married daughters of the deceased and the daughters are not residing with the deceased. But the Tribunal has deducted personal expenses of the deceased at $\frac{1}{4}$ instead of $\frac{1}{3}^{\text{rd}}$ which is contrary to the judgment of the Hon'ble Apex Court in the case of ***Sarla Verma Vs. Delhi Transport Corporation, [(2009) 6 SCC 121]***. Hence, he sought for allowing the appeal filed by the Insurance Company by reducing the compensation amount.



7. Learned counsel for the claimants has raised the following counter contentions:

a) Firstly, the accident occurred due to negligence of driver of the offending vehicle. He came to the extreme right side of the road after crossing the median line and dashed against the deceased. Due to the impact, the deceased fell down, suffered injuries and succumbed to the same.

b) Secondly, he contended that immediately after the accident, FIR has been registered against the driver of the offending vehicle. Police have filed charge sheet against the driver of the offending vehicle. To prove the case, claimant No.1 has been examined as PW.1. The Insurance Company has not examined the driver of the offending vehicle. Therefore, the Tribunal has rightly held that the driver of the offending vehicle is negligent in causing the accident. There are five claimants i.e., husband, 2 sons and 2 daughters of the deceased. The Tribunal



has rightly deducted 1/4th of the income of the deceased towards her personal expenses.

c) Further, he contended that the Tribunal has rightly added 10% of the income towards future prospects in view of the law laid down by the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. -v- Pranay Sethi and Others [AIR 2017 SC 5157]***.

d) Thirdly, as per the judgment of the Hon'ble Supreme Court in the case of ***Magma General Insurance Co. Ltd. -v- Nanu Ram [2018 ACJ 2782]***, each of the claimants are entitled for compensation of Rs.48,000/- under the head of 'loss of consortium'.

8. Heard the learned counsel for the parties and perused the judgment and award of the Tribunal.

9. The case of the claimants that on 03.04.2023 at about 10:15 a.m., deceased Indirabai had gone to attend nature's call. After returning, when she was crossing the road on Sindagi-Kalaburagi road, near Tiwari Petrol Bunk,



the driver of the offending vehicle i.e., pickup vehicle bearing Reg.No.KA-32/AA-3344 came from Sindagi side with a high speed in a rash and negligent manner and dashed against the deceased. Due to the impact, she sustained injuries and succumbed to the injuries on the spot. Immediately after the accident, a complaint has been lodged against the driver of the offending vehicle as per Ex.P2. The police have registered an FIR as per Ex.P1. The police after detailed enquiry filed Charge sheet against the driver of the offending vehicle. To prove the case, the claimant No.1 has been examined as PW.1. In his evidence, he has reiterated the statement made in the claim petition. To disprove the evidence of PW.1, respondent-Insurance Company has not examined the driver of the offending vehicle. Even as per sketch produced in Ex.P4, it is very clear the road has total width of 40ft. The offending vehicle was coming from Sindagi towards Kalaburagi. The accident has occurred 15ft. away from the left side of the road. Therefore, it is very clear



that the driver of the offending vehicle crossed the median line and came to the extreme left side and dashed against the deceased Indirabai. It is very clear from the FIR, charge sheet, complaint, spot mahazar and IMV report, the driver of the offending vehicle is negligent in causing the accident. The Tribunal is justified in answering issue No.1 in the affirmative.

10. In respect of quantum, it is not in dispute that claimant No.1 is the husband of the deceased, claimant Nos.2 and 3 are the major sons and claimant Nos.4 and 5 are the married daughters of the deceased. It is also very clear from the evidence that claimant Nos.4 and 5 are the married daughters and living separately and they are not dependent upon the income of the deceased. Therefore, the Tribunal has erred in deducting 1/4th of the income of the deceased towards personal expenses. In view of the judgment of the Hon'ble Apex Court in the case of **Sarla Verma** (supra) 1/3rd of the income of the deceased has to be deducted towards personal expenses. The Tribunal has



rightly assessed the notional income of the deceased at Rs.15,250/- and has rightly added 10% of the income towards future prospects. The Tribunal rightly applied multiplier at '11'. Therefore, loss of dependency has been reassessed at Rs.14,76,200/- ($16775 \times 12 \times 11 \times 2/3$).

11. In addition, the claimants are entitled to compensation of Rs.18,000/- on account of 'loss of estate' and compensation of Rs.18,000/- on account of 'funeral expenses'.

12. In view of the law laid down by the Supreme Court in the case of '**Magma General Insurance**' (supra), claimant No.1 being husband of the deceased is entitled to Rs.48,000/- towards spousal consortium; claimant Nos.2 to 5 being children of the deceased are entitled for compensation of Rs.48,000/- each under the head of 'loss of parental consortium'.

13. Thus, the claimants are entitled to the following compensation:



Compensation under different Heads	Amount in (Rs.)
Loss of dependency	14,76,200/-
Funeral expenses	18,000/-
Loss of estate	18,000/-
Loss of Spousal consortium	48,000/-
Loss of parental consortium	1,92,000/-
Total	17,52,200/-

14. In the result, the following order is passed:

ORDER

- a) The appeal is **allowed in part.**
- b) The judgment of the Claims Tribunal is modified.
- c) The claimants are entitled to a total compensation of **Rs.17,52,200/-** as against Rs.18,90,800/- awarded by the Tribunal.
- d) The Insurance Company is directed to deposit the compensation amount along with



interest at 6% p.a. from the date of filing of the claim petition till the date of realization, within a period of six weeks from the date of receipt of copy of this judgment.

e) The apportionment, deposit and release of amount shall be made in terms of the award of the Tribunal.

f) Registry is directed to transmit the amount in deposit and the Trial Court Records forthwith to enable the claimants to withdraw the compensation amount.

Sd/-
(H.T.NARENDRA PRASAD)
JUDGE

Sd/-
(TYAGARAJA N. INAVALLY)
JUDGE