



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.202060 OF 2018 (MV-D)

BETWEEN:

1. SMT.SHILPA W/O SUNIL JAVEER,
AGE: 29 YEARS, OCC: HOUSEHOLD WORK,
2. KHUSHI D/O SUNIL JAVEER,
AGE: 7 YEARS, OCC: NILL,
3. AKSHAY S/O SUNIL JAVEER,
AGE: 5 YEARS, OCC: NILL,
APPELLANT NO.2 AND 3 ARE MINORS,
R/BY THEIR MOTHER NEXT FRIEND APPELANT NO.1,
ALL ARE R/O HADAPSAR, TQ:HAVELI,
DIST: PUNE, NOW RESIDING NEAR IBRAHIMPUR
RAILWAY GATE, VIJAYAPUR 586 101.

...APPELLANTS

(BY SRI.SANGANABASAVA B. PATIL, ADVOCATE)

AND:

1. SMT.SANGEETA MANIK SHELAR,
AGE ABOUT: 37 YEARS, OCC: BUSINESS,
AT/POST: KEDGAON STATION, KEDGAON,
TQ:DOUN, PUNE-413 801 MAHARASTRA,
(OWNER OF ALTO CAR BEARING NO.MH-42/K-2908).



2. THE BRANCH MANAGER,
THE NEW INDIA ASSURANCE CO. LTD,
S.S.FRONT ROAD, VIJAYAPUR-586 101.
3. SMT.TARABAI W/O DAMODAR JAVEER,
AGE: 67 YEARS, OCC: PENSIONER,
R/O BHAVASAR NAGAR, DARGA ROAD,
VIJAYAPUR-586 101.

...RESPONDENTS

(BY SRI. S.S. ASPALLI, ADVOCATE FOR R2;
SRI. BASAVARAJ R. MATH, ADV FOR R3;
NOTICE TO R1 DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD PASSED BY THE COURT OF IV ADDITIONAL DISTRICT JUDGE & MACT NO.XIII VIJAYAPUR, AT: VIJAYAPUR IN M.V.C.NO.464/2016 DATED 20.06.2018 AND TO ALLOW THE CLAIM PETITION BY GRANTING THE RELIEF AS PRAYED FOR BY THE APPELLANTS.

THIS APPEAL, COMING ON FOR FINAL HEARING, 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 claimants being aggrieved by the judgment and award dated 20.06.2018 passed by the IV Additional District Judge and MACT No.XIII, Vijayapur in MVC No.464/2016.

2. Facts giving rise to the filing of the appeal briefly stated are that on 02.02.2016, at about 20:45 hours, deceased Sunil Javeer was traveling in Alto Car bearing Reg.No.MH-42/K-2908 towards Hadapsar Pune from Osmanabad, when the car came near Tandulwadi village on Barshi-Osmanabad road, at that time, the driver of the said car drove the same in a rash and negligent manner and dashed to the opposite vehicle resulting in accident. Due to which, the deceased Sunil sustained head injury and died on the spot.



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

4. On service of summons, respondent No.2 appeared through counsel and filed written statement denying the averments made in the claim petition. Respondent No.1 did not appear before the Tribunal inspite of service of notice and hence was placed ex-parte.

5. On the basis of the 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, wife of the deceased as PW-1 and other two witnesses as PW-2 and PW-3 and got exhibited documents namely Ex.P1 to Ex.P12. On behalf of respondent No.2, one witness was examined as RW-1. 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.34,90,000/- along with interest at the rate of 6% p.a. and directed respondent No.2 to deposit the compensation along with interest. Being aggrieved, this appeal has been filed.

6. The learned counsel for the claimants has raised the following contentions:

a) Firstly, the claimants claim that the deceased was aged about 36 years at the time of the accident and was earning Rs.50,000/- per month by doing stage decoration business. He was an income tax assessee. The deceased died on 02.02.2016. The annual income for the year 2015-16 was Rs.2,98,390/-. The Tribunal instead of considering the annual income of the deceased has considered the average income of previous five assessment years.

b) Secondly, 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.40,000/- under the head of 'loss of love and affection and consortium'.

c) Lastly, considering the age and avocation of the deceased, the overall compensation awarded by the Tribunal is on the lower side. Hence, he prays for allowing the appeal.

7. On the other hand, the learned counsel for the Insurance Company has raised the following counter-contentions:

a) Firstly, the Division Bench of this Court in the case of **Smt.Jayashree vs. Sri.Mahaningappa and others** in MFA No.202275/2023 disposed of on 01.03.2024 held that while assessing the annual income of the deceased, average of three years income declared has to be considered. Therefore, the Tribunal has considered the average income of the deceased on the basis of income tax returns and assessed the compensation



amount. Therefore, he contended that considering the age and avocation of the deceased, the overall compensation awarded by the Tribunal is just and proper and does not require interference.

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

9. It is not in dispute that deceased Sunil Javeer died in the road traffic accident occurred on 02.02.2016 due to rash and negligent driving of the offending vehicle by its driver. The claimants claim that deceased was aged about 36 years and was earning Rs.50,000/- per month. He was income tax assessee. As per the judgment of the Division Bench of this Court in the case of **Smt.Jayashree** (supra) in MFA No.202275/2023, the average income for previous three assessment years has to be considered. As per the documents produced by the claimants, the total annual income for the assessment year 2013-14 was Rs.2,53,287/-; for the assessment year 2014-15, the total annual income was Rs.2,63,268/- and for the



assessment year 2015-16, the total annual income was Rs.2,98,390/-. The average income for the Assessment Years 2013-14, 2014-15 and 2015-16 comes to Rs.2,71,648/- The deceased has paid Rs.14,300/- towards income tax. Therefore, the net income after tax is Rs.2,57,348/- per annum. Hence, we consider Rs.21,446/- per month as income of the deceased.

10. To the aforesaid income, 40% has to be added on account of future prospects in view of the law laid down by the Constitution Bench of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi And Others [AIR 2017 SC 5157]***. Thus, the monthly income comes to Rs.30,024/-.

11. Since there are 3 dependents, it is appropriate to deduct $1/4^{\text{th}}$ of the income of the deceased towards personal expenses and remaining amount has to be taken as his contribution to the family. The deceased was aged about 36 years at the time of the accident and multiplier applicable to his age group is '15'. Thus, the claimants are



entitled to compensation of Rs.40,53,240/- (Rs.30,024x12x15x3/4) on account of 'loss of dependency'.

12. In addition, the claimants are entitled to compensation of Rs.15,000/- on account of 'loss of estate' and compensation of Rs.15,000/- on account of 'funeral expenses'.

13. In view of the law laid down by the Supreme Court in the case of '**Magma General Insurance**' (supra), claimant No.1, wife of the deceased is entitled for compensation of Rs.40,000/- under the head of 'loss of spousal consortium', claimant Nos.2 and 3, children of the deceased are entitled for compensation of Rs.40,000/- each under the head of 'loss of parental consortium' and respondent No.3 herein, mother of the deceased is entitled for compensation of Rs.40,000/- under the head of 'loss of filial consortium'.

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



Compensation under different Heads	Amount in (Rs.)
Loss of dependency	40,53,240/-
Funeral expenses	15,000/-
Loss of estate	15,000/-
Loss of spousal consortium	40,000/-
Loss of Parental consortium	80,000/-
Loss of Filial consortium	40,000/-
Total	42,43,240/-

15. 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.42,43,250/-** as against Rs.34,90,000/- 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.

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

**Sd/-
(TYAGARAJA N. INAVALLY)
JUDGE**

VNR
List No.: 1 Sl No.: 55
CT: SB