



IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 13TH 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.200303 OF 2022 (MV-D)

BETWEEN:

1. ROOPALABAI
W/O VASANT @ VESRAM RATHOD,
AGE 43 YEARS,
OCC: HOUSEHOLD WORK,
2. GEETA
D/O VASANT RATHOD,
AGE: 21 YEARS,
OCC: STUDENT,
3. LAVA
S/O VASANT RATHOD
AGE: 19 YEARS,
OCC: STUDENT,
4. KUSHA
S/O VASANT RATHOD,
AGE: 17 YEARS,
OCC: STUDENT,

(THE APPELLANT NO.4 IS
MINOR REPRESENTED
HIS MOTHER NATURAL
GUARDIAN APPELLANT NO.1)



ALL ARE R/O: MAKANAPUR THANDA,
TQ: VIJAYAPURA,
DISTRICT : VIJAYAPURA – 586 103.

...APPELLANTS

(BY SRI KOUJALAGI CHANDRAKANT LAXMAN, ADVOCATE)

AND:

1. RAMESH
S/O JAWANEPPA RATHOD,
AGE: 43 YEARS,
OCC: BUSINESS,
R/O: TELAGI, TQ: BASAVANA BAGEWADI,
DIST: VIJAYAPURA – 586 203.
2. THE MANAGER LEGAL/CLAIMS
TATA AIG GENERAL INSURANCE CO. LTD.,
PENINSULA CORPORATE PARK, NECHOLAR
PIRAMAL TOWER, 9TH FLOOR,
GANAPATRAO KADAM MARG,
LOWER PAREL, MUMBAI – 400 013.
(MAHARASHTRA STATE)

...RESPONDENTS

(BY SRI SUDARSHAN M., ADVOCATE FOR R2;
R1 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173 (1) OF THE MOTOR VEHICLES ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 28.01.2021 PASSED IN MVC NO.668/2017 ON THE FILE OF THE COURT OF THE IV ADDL. SENIOR JUDGE AND MEMBER MOTOR ACCIDENT CLAIMS TRIBUNAL NO.XV VIJAYAPURA AT VIJAYAPURA AND ALLOW THIS APPEAL BY ENHANCING THE COMPENSATION AMOUNT OF RS.20,88,500/- ONLY AS CLAIMED BY THE APPELLANT BEFORE THIS HON'BLE COURT, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS MFA 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 is by the claimants filed under Section 173(1) of the Motor Vehicles Act, 1988 being aggrieved by the judgment and award dated 28.01.2021 passed by the IV Addl. Senior Civil Judge MACT-XV, Vijayapura in MVC No.668/2017 seeking enhancement of compensation and to fastening liability on the insurance company instead of fastening on the respondent No.1.

2. Facts giving rise to the filing of the appeal briefly stated are that, on 12.05.2017 at about 12.45 p.m. when deceased Vasant was traveling in the Piaggio Rickshaw bearing Reg.No.KA-28/A-0763 and when the said vehicle reached near Kannur Darga Cross, at that time, the driver of Autorickshaw drove the same a very high speed, rash and negligent manner resulting in turtle



of the same. As a result of which, deceased Vasant sustained fatal injuries and died on the spot.

3. The deceased was hale and healthy at the time of accident and was earning Rs.25,000/- per month from his agricultural work. The petitioners being the wife and children of deceased were solely depending on his earnings. Due to untimely death of deceased, the petitioners lost their earning member. Hence, the claimants filed the claim petition under Section 166 of Motor Vehicles Act before the Claims Tribunal seeking compensation for the injuries sustained in the road traffic accident.

4. Pursuant to the summons, respondent Nos.1 and 2 appeared and filed their separate written statements denying the averments made in the claim petition.

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,



claimant No.1 got examined herself as PW-1 and got exhibited documents namely, Ex.P1 to Ex.P6. On behalf of respondent No.2, the Legal Manager is examined as R.W.1 and got marked three documents as Exs.R.1 to 3.

6. The Claims Tribunal, by the impugned judgment *inter alia* held that the accident took place on account of rash and negligent driving of the driver of the offending vehicle, as a result of which, deceased sustained injuries and succumbed to the injuries. The Tribunal, upon considering the oral and documentary evidence placed before it, held that the claimants are entitled to compensation of Rs.14,11,500/- along with interest at the rate of 6% p.a. and directed respondent No.1 to deposit the compensation by exonerating the respondent No.2 - Insurance Company. Being dissatisfied with the quantum of compensation and questioning the fastening of liability on the respondent No.1, this appeal has been filed.



7. The learned counsel for the claimants raised the following contentions:

a) The learned counsel for the claimants contended that at the time of accident deceased was aged 45 years and he was earning Rs.25,000/- per month by doing agricultural work. But, the notional income of the deceased assessed by Tribunal at Rs.10,250/- per month, which is on the lower side.

b) Secondly, he has contended that the Tribunal has not added 25% to the income of the deceased towards future prospects in view of the judgment of the Apex Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680***. Further, he submits that as per the judgment in ***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 'spousal consortium' and 'loss of love and affection.



c) In respect of liability, the learned counsel contended that the Tribunal has exonerated the insurance company on the ground that the offending vehicle was plied beyond the permitted area. It is his contention that even though insured has violated the policy condition in respect of claimants is concerned, the insurance company has to pay the compensation amount with liberty to recover the amount from the owner of the offending vehicle.

d) In support of the contentions, the learned counsel has relied on the judgment of Hon'ble Apex Court in the case of ***Amrit Paul Singh and another Vs. TATA AIG General Insurance Co. Ltd. & Ors.*** reported in ***(2018) 7 SCC*** and ***Rani and Others Vs. National Insurance Company Limited and Others*** reported in ***(2018) 8 SCC 492***. Hence, on these grounds, he sought for allowing the appeal.

8. On the other hand, Sri Sudarshan M., learned counsel appearing for the Insurance Company contend



that even though the claim of the claimants that deceased was earning Rs.25,000/- per month, they have not produced any document to establish the same. Therefore, the Tribunal has rightly assessed the notional income at Rs.10,250/- per month.

9. Secondly, the learned counsel for the Insurance Company contended that considering the age and avocation of the deceased, overall compensation awarded by the Tribunal is just and reasonable.

10. Lastly, he has contended that admittedly the insured has violated the policy conditions as the driver of the offending vehicle drove the same beyond the permitted area and therefore since the policy conditions are violated, the Tribunal has rightly exonerated the insurance company from paying the compensation amount. Hence, he sought for dismissal of the appeal.



11. Heard the learned counsel for the parties, perused the judgment and award including the appeal papers.

12. It is not in dispute that deceased Vasant died in a road traffic accident occurred on 12.05.2017 due to the injuries sustained in the accident caused by the driver of the offending vehicle i.e., Piaggio Rickshaw bearing No.28-A-0763. Even though the claimants claim that deceased was earning Rs.25,000/- p.m., they have not produced any document to establish the same. Therefore, the notional income to be assessed as per the guidelines issued by the Karnataka State Legal Services Authority. For the accident occurred in the year 2017, the notional income of deceased has to be considered at Rs.10,250/- p.m. Therefore, the Tribunal has rightly assessed the notional income of deceased at Rs.10,250/- p.m.

13. In view of the judgment of Apex Court in the case of **Praney Sethi** (supra), 25% of the income of the



deceased has to be added towards future prospects taking note of the age of the deceased as 45 years. The Tribunal taking note of number of dependents of deceased has rightly deducted 1/4th of the income of the deceased towards his personal expenses. The appropriate multiplier applicable is '14'.

14. In view of the law laid down by the Supreme Court in the case of '**MAGMA GENERAL INSURANCE**' (*supra*), claimant No.1 being the wife of the deceased is entitled for compensation of Rs.40,000/- under the head of 'loss of spousal consortium', claimant Nos.2 to 4 being the children of deceased are entitled for compensation of Rs.40,000/- each under the head of 'loss of parental consortium'.

15. Thus, on re-assessing the compensation, the claimants are entitled to the following compensation:



Compensation under different Heads	Amount in (Rs.)
Loss of dependency (10,250 + 25% x 12 x 14 less 1/4 th)	16,14,438/-
Funeral expenses	15,000/-
Loss of estate	15,000/-
Loss of spousal consortium	40,000/-
Loss of Parental consortium	1,20,000/-
Total	18,04,438/-

16. In respect of liability is concerned, admittedly the offending vehicle was plied beyond the permitted area. As such, the insured has violated the policy conditions. Therefore, the Tribunal has exonerated the insurance company from payment of compensation and liability has been fixed on the owner of the offending vehicle. The impugned judgment and award passed by the Tribunal has not been challenged by the owner of the offending vehicle



and on the other hand he has accepted the same. The appeal is filed by the claimants. The Apex Court in the case of ***Rani*** (*supra*) held that in respect of payment of compensation is concerned, the insurance company has to pay compensation amount to the claimants first reserving liberty to recover from the owner of the offending vehicle.

17. In the result, we pass the following:

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.18,04,438/- as against Rs.14,11,500/- awarded by the Tribunal along with interest at the rate of 6% per annum.
- d) The Respondent No.2 - Insurance Company is directed to deposit compensation amount



along with interest at the rate of 6% per annum 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 a copy of this judgment.

- e) Liberty is reserved to the insurance company to recover the compensation amount from the owner of the offending vehicle.
- f) The apportionment, deposit and release of compensation amount shall be as per the order of the Tribunal.

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

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