



NC: 2025:KHC-K:3841
MFA No. 202819 of 2023

IN THE HIGH COURT OF KARNATAKA,
KALABURAGI BENCH



DATED THIS THE 11TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCL. FIRST APPEAL NO. 202819 OF 2023 (MV-D)

BETWEEN:

NINGAPPA
S/O NINGAPPAGOUDA,
S/O KAREGOUDA BIRADAR @ GOUDAR,
AGE: 56 YEARS,
OCC: COOLIE,
R/O: RAMATAL, TALUK: HUNAGUND,
NOW RESIDING AT MUDDAPUR,
TALUK: NIDAGUNDI,
DISTRICT VIJAYAPURA.

...APPELLANT

(BY SRI BASAVARAJ R.MATH, ADVOCATE)

AND:

1. PRABHATBHAI
S/O BHAVANBHAI HUMBAL,
AGE: 46 YEARS,
OCC: TRANSPORT BUSINESS,
R/O: KENIL GANDHI SMRUTI-3,
SATELLITE PARK, PEDAK ROAD, RAJKOT,
GUJARAT - 380 003.
LORRY BEARING NO.GJ.03/BW.6905.
2. THE MANAGER LEGAL,
RELIANCE GENERAL INSURANCE
COMPANY LIMITED,
2ND FLOOR, DARBAR SQUARE,
RAM MANDIR ROAD,
VIJAYAPURA - 586 101.





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POLICY NO.784722123340000520
POLICY VALID FROM
22.02.2021 TO 21.02.2022.

...RESPONDENTS

(BY SMT.PREETI PATIL MELKUNDI, ADVOCATE FOR R2;
NOTICE TO R1 IS DISPENSED WITH
V/O/DATED 10.08.2023)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT,
PRAYING TO MODIFYING THE IMPUGNED JUDGMENT AND AWARD
DATED 28.04.2023 PASSED BY THE III ADDITIONAL SENIOR CIVIL
JUDGE AND MACT-XII AT VIJAYAPURA IN MVC NO.110/2022, IN THE
INTEREST OF JUSTICE AND EQUITY.

THIS MFA IS COMING ON FOR *ADMISSION*, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 28.04.2023
passed by III Additional Senior Civil Judge and MACT-XII,
Vijayapura, (for short, 'Tribunal') in MVC no.110/2022, this
appeal is filed.

2. Sri Basavaraj R.Math, learned counsel for appellant
submitted, appeal was by claimant for enhancement of
compensation. It was submitted, on 07.07.2021, Smt.Yallawwa
employed for Highway repair work, was working on NH-50,
Vijayapura – Hunagund road near KSRTC Bus stand, Nidagundi,



when driver of Lorry bearing registration no.GJ-03/BW-6905, drove it in a rash and negligent manner and dashed against Smt.Yallawwa, causing accident. Despite being admitted to hospital, she died during treatment. Alleging loss of dependency, her husband filed claim petition under Section 166 of MV Act against owner and insurer of Lorry.

3. Despite service of notice, owner of Lorry did not appear and was placed *ex-parte*. Only insurer opposed claim petition on all grounds denying date, time and place of accident and that accident occurred due to negligence by driver of insured vehicle as well as dependency of claimant. Allegation of violation of terms and conditions of policy of insurance was also contended.

4. A specific plea about claimant not entitled for compensation on ground that deceased residing separately from claimant was urged.

5. Based on pleadings, tribunal framed following issues and recorded evidence.

"1. *Whether the petitioner proves that, the deceased Smt.Yallawwa W/o Ningappa @ Ningappagouda*



Biradar @ Goudar was died in a motor vehicle accident taken place on 07.07.2021 at about 03:00 p.m. on NH-50 Vijayapura - Hunagund road, near Honda Showroom, KSRTC bus stand, Nidagundi, Dist: Vijayapura, due to the rash and negligent driving of the driver of the lorry bearing no.GJ-03/BW-6905?

2. *Whether the petitioner proves that, he is the dependent of the deceased Smt.Yallawwa W/o Ningappa @ Ningappagounda Biradar @ Goudar?*
3. *Whether the respondent No.2 proves that, there is a violation of policy conditions by the respondent No.1?*
4. *Whether the petitioner is entitled for compensation? If so, what amount & from whom?*
5. *What order or award?"*

6. Thereafter, claimant examined himself and two others as PWs.1 to 3. Exhibits P.1 to P.8 were got marked. Official of Insurance Company was examined as RW.1 and got marked Exhibits R1 & R2.

7. On consideration, Tribunal held accident was due to rash and negligent driving of insured vehicle by its driver, leading to death of Smt.Yallawwa and therefore, claimant was entitled for compensation from Insurer as follows:



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1	For loss of consortium of petitioner	Rs.40,000-00
2	For funeral, obsequies ceremony and conveyance	Rs.15,000-00
3	For Loss of estate	Rs.15,000-00
	TOTAL	Rs.70,000-00

Dissatisfied with award, claimant is in appeal.

8. At time of assessment, Tribunal took note of contents of complaint about deceased residing separately from her husband to deny compensation towards loss of dependency. Aggrieved claimant was in appeal.

9. It was submitted, Ex.P2 – complaint was filed by brother of deceased. Complainant was examined as PW.3, who had clarified about his submission in complaint that deceased was residing separately but in same village. Besides provisions of Section 166 of MV Act would provide for claim petition being filed by legal representatives and husband being Class-I heir was entitled to maintain claim petition. Therefore, denial of compensation by Tribunal was not justified. On said grounds, sought for allowing petition.

10. On other hand, Smt.Preeti Patil Melkundi, learned counsel for Insurer opposed appeal. It was submitted,



complaint was given by none other than brother of deceased in which he had stated that deceased had married claimant about 20 years ago. On ground that she was unable to conceive, claimant had remarried about 10 years ago and since then, deceased was residing separately. As they were poor, she was earning livelihood by Coolie work. Said unequivocal assertion at undisputed point of time would justify impugned award. It was further submitted that despite having signed complaint, complainant examined as PW.3 feigned to be illiterate. Taking note of fact and circumstances, Tribunal has rightly denied compensation towards loss of dependency and sought dismissal of appeal.

11. Heard learned counsel and perused impugned judgment and award and certified copies of deposition and Exhibits made available for perusal by learned counsel for appellant.

12. From above and since it is claimant's appeal for enhancement, point that would arise for consideration is:

"Whether claimant is entitled for enhancement of compensation as sought for?"



13. Occurrence of accident due to rash and negligent driving of insured vehicle leading to death of claimant's wife- Smt.Yellawwa, vehicle being covered with insurance and insurer being liable to pay compensation are not in dispute. Only ground on which appeal is filed is error committed by Tribunal denying compensation towards loss of dependency. While answering issues no.2 and 4, Tribunal referred to specific contention that claimant not being dependant on deceased and having contracted second marriage and residing separately. It has also referred to deposition of claimant as PW.1 claiming that he was husband of deceased; and to deposition of PW.3- brother of deceased, who stated that claimant was his sister's husband and Police had wrongly mentioned in complaint that his sister and claimant were residing separately. It referred to admission in cross-examination that he did not know contents of complaint and there was no divorce between deceased and claimant. It notes that PW.3 denied all other suggestions made in cross-examination. Thereafter, Tribunal referred to deposition of official of insurance company as RW.1, who deposed based on contents of Ex.P2-complaint, stating that marriage of claimant with deceased was solemnized 20 years



earlier and they did not have any issues and that brother of deceased had stated about separation of couple and his sister residing with him.

14. From above, it is observed that there is no dispute about relationship of husband and wife between claimant and deceased and that there was no severance of said relationship. But referring to decision of High Court of Punjab and Haryana in case of ***National Insurance Co.Ltd., v. Premjeet Singh and Others*** reported in ***2017 ACJ 1784*** and ***National Insurance Co.Ltd., v. Rajendra Singh and Others*** reported in ***2019 ACJ 1368***, which enable legal representatives to maintain claim petition, Tribunal proceeded to hold that claimant would be entitled for compensation under conventional heads only and not under loss of dependency. Decision in ***Premjeet Singh*** and ***Rajendra Singh*** cases (supra) would indicate ratio being laid down while explaining scope of words 'legal representatives' for purpose of determination of compensation in case of motor vehicle accident claims.

15. Courts have time and again held that there cannot be restrictive interpretation of word 'dependents'. When award



of compensation towards loss of consortium, funeral expenses and loss of estate is not challenged by Insurer and compensation towards spousal consortium is also accepted, it would not lie in mouth of Insurer to contend that claimant would not be entitled for compensation towards loss of dependency.

16. Residing together cannot be added as additional condition to be established by claimant in order to be entitled for compensation. Burden to establish separation would be on Insurer. In instant case, Insurer is relying upon contents of complaint given by brother of deceased, who is examined as PW.3. In his deposition, he has stated that he does not know contents of complaint due to illiteracy. Merely on ground that he has signed complaint, there cannot be presumption about he being literate. When Insurer did not confront him with signature and elicited admission either contradicting his assertion or falsifying it, same has to be accepted as sufficient explanation. In any case, husband would be Class-I heir and dependent on wife. There is absolutely no material to establish or indicate that claimant had contracted second marriage. Nothing has been elicited in this regard during cross-



examination of claimant. Under such circumstances, denial of compensation towards loss of dependency by Tribunal would be contrary to law and compensation has to be computed under said head.

17. Deceased was aged 42 years, working as Coolie and stated to be earning Rs.20,000/- per month. However, same is not substantiated with any material. In absence of specific proof of income, it has to be assessed notionally. Since accident occurred in year 2021, notional income for said year i.e., Rs.14,250/- as adopted by KSLSA for settlement of cases before Lok Adalath, has to be considered as monthly income. Since deceased was self-employed, there would be addition of 25% towards future prospects. Claimant is sole dependent. Hence, 50% has to be deducted towards personal expenses and applicable multiplier would be '14'. Thus, compensation towards 'loss of dependency' would be **Rs.14,96,250/-** (Rs.14,250/- + 25%) x 50% x 12 x 14).

18. Point for consideration is answered partly in affirmative. Consequently, following:

**ORDER**

- i. Appeal is ***allowed in part***;
- ii. Judgment and award dated 28.04.2023 passed by III Additional Senior Civil Judge and MACT-XII, Vijayapura, in MVC no.110/2022 is *modified*.
- iii. Claimant is entitled for additional compensation of Rs.14,96,250/- with interest at rate of 6% per annum from date of claim petition till realization.
- iv. Insurer is held liable to pay same and is directed to deposit same with interest before Tribunal within six weeks.
- v. On deposit, Tribunal is directed to release 50% of amount by keeping 50% in deposit for three years.

**Sd/-
(RAVI V HOSMANI)
JUDGE**