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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO. 3886 OF 2020 (MV-D)

C/W

MISCELLANEOUS FIRST APPEAL NO. 4216 OF 2020 (MV-D)

IN MFA No. 3886/2020

BETWEEN:

THE NATIONAL INSURANCE COMPANY LTD.,
REP. BY ITS DIVISIONAL MANAGER,
1ST FLOOR, SRI VIDYAPOORNA COMPLEX,
NEAR HEAD POST OFFICE,
UDUPI,
NOW REP. BY ITS
REGIONAL OFFICE
NO. 144, SHUBHARAM COMPLEX,
M.G. ROAD
BENGALURU- 560 001.
REP. BY ITS AUTHORIZED SIGNATORY

...APPELLANT

(BY SRI.LAKSHMI NARASAPPA, ADVOCATE FOR
SRI. A.M. VENKATESH, ADVOCATE)

AND:

1. GEORGE MENEZES
(BROTHER OF DECEASED),
AGED ABOUT 55 YEARS
S/O VALERIAN MENEZES
R/AT MOODABETTU,
KATPADI,
UDUPI TALUK AND DISTRICT.

2. JANET RODNEY ARAKEL
(SISTER OF DECEASED)
AGED ABOUT 52 YEARS
W/O ARAKEL RODNEY
R/AT SAIPRABHU APARTMENT
PLOT NO. 85, FLAT NO.101,
KANSAI SECTION
AMBARNATH, THANE,
MAHARASHTRA - 421 501.

3. ANITHA D'SOUZA
(SISTER OF DECEASED),
AGED ABOUT 49 YEARS
W/O. HILLARY D'SOUZA
R/AT E1, G3,
MOHAN PURAM COMPLEX
SAI KANSAI SECTION,
NEAR GAUTAM JATHALE HOSPITAL,
AMBARNATH, THANE,
MAHARASHTRA - 421 501.

4. A MATHEW D'SOUZA
AGED ABOUT 52 YEARS
S/O. MARCEL D'SOUZA,
R/AT ANANDA TRAVELS,
MILAGRES MANSION,
HAMPANAKATTA,
MANGALORE.

...RESPONDENTS

(BY SRI. B.S.SACHIN, ADVOCATE FOR R1 TO R3,
VIDE ORDER DATED 09/01/2024,
NOTICE TO R4 IS HELD SUFFICIENT)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 10.01.2020 PASSED IN MVC NO. 256/2018 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND ADDITIONAL MACT, UDUPI, AWARDING COMPENSATION OF RS.10,60,000/- WITH INTEREST AT 6 PERCENT P.A. FROM THE DATE OF PETITION TILL REALIZATION.

IN MFA NO. 4216/2020

BETWEEN:

1. GEORGE MENEZES (BROTHER OF DECEASED)
AGED ABOUT 55 YEARS
S/O VALERIAN MENEZES,
R/A MOODABETTU,
KATPADI,
UDUPI TALUK AND DISTRICT-574 105.

2. JANET RODNEY ARAKE (SISTER OF DECEASED)
AGED ABOUT 52 YEARS
W/O ARAKEL RODNEY,
R/A SAIPRABHU APARTMENT,
PLOT NO.85, FLAT NO.101,
KANSAI SECTION,
AMBARNATH, THANE
MAHARASHTRA-421 501.

3. ANITHA D'SOUZA (SISTER OF DECEASED)
AGED ABOUT 49 YEARS,
W/O HILLARY D'SOUZA
R/A E1, G3,
MOHAN PURAM COMPLEX,
SAI KANSAI SECTION,
NEAR GAUTHAM JATHALE HOSPITAL,
AMBARNATH, THANE,
MAHARASHTRA-421 501.

...APPELLANTS

(BY SRI. B.S. SACHIN, ADVOCATE)

AND:

1. A. MATHEW D'SOUZA
AGED ABOUT 52 YEARS,
S/O MARCEL D'SOUZA,
R/A ANANDA TRAVELS MILAGRES MANSION,
HAMPANAKATTA,
MANGALORE-575 001.

2. THE NATIONAL INSURANCE CO. LTD.,
REPRESENTED BY ITS BRANCH MANAGER
1ST FLOOR, SRI VIDYAPOORNA COMPLEX,
NEAR HEAD POST OFFICE
UDUPI-576 101.

...RESPONDENTS

(BY SRI. LAKSHMI NARASAPPA, ADVOCATE FOR
SRI. A.M.VENKATESH, ADVOCATE FOR R2,
VIDE ORDER DATED 30.09.2024,
NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 10.01.2020 PASSED IN MVC NO.256/2018 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND ADDITIONAL MACT, UDUPI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION

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

CORAM: HON'BLE MR. JUSTICE UMESH M ADIGA

ORAL JUDGMENT

These appeals arises against the judgment and award dated 10.01.2020 passed by the Principal Senior Civil Judge and Addl.MACT, Udupi (for short `Tribunal'), in MVC No.256/2018. MFA.No.3886/2020 is filed by the insurance company and MFA.No.4216/2020 is filed by the claimants.

2. For the sake of convenience, the parties are referred to as per their rankings before the Tribunal.

3. Both these appeals arises out of common judgment and award. Therefore, they are taken up together for disposal.

4. The brief facts of the case are that on 12.07.2017, at around 08.15 p.m., in front of Vyavahar complex, Udupi, the deceased Prem Prakash Menezes met with an accident due to rash and negligent driving of a bus bearing registration No.KA-19-AB-3811 by its driver, as a result the deceased Prema Prakash sustained grievous injuries and while undergoing treatment he succumbed to the injuries. He was aged about 44 years. He was unmarried and working as a coolie and earning Rs.500/- per day. Claimants are his brother and sisters depending upon his earnings. With these reasons, prayed to award compensation of Rs.25,08,700/-.

5. Respondent No.1 is the owner and respondent No.2 is the insurer of the offending vehicle. Respondent No.1 remained *exparte* before the Tribunal. Respondent No.2 appeared and filed written statement and denied its liability to pay the compensation and further contended that claimants are

brother and sisters of the deceased and they cannot be considered as dependants of the deceased and hence prayed to dismiss the claim petition.

6. From the rival contentions of the parties, the Tribunal framed necessary issues for its determination.

7. The claimants to prove their case examined one witness as PW-1 and marked 9 documents, as per Exs.P-1 to P-9. The respondent No.2 has not led any evidence.

8. The Tribunal after hearing both the parties and appreciating the evidence on record, awarded Rs.10,60,000/- as compensation under following heads:

Particulars	Amount in Rs.
Loss of estate	10,50,000
Funeral expenses and other incidental expenses	10,000
Total	10,60,000

9. Heard the arguments of the learned counsel appearing for the claimants as well as learned counsel for respondent-insurer.

10. Learned counsel for the insurer vehemently contended that the deceased was unmarried. The claimants were his brother and sisters, the sisters were married and residing in their respective husband's house. They cannot be considered as legal heirs or dependants of the deceased, even if that is considered, they are entitled for 'loss of estate' and not for 'loss of dependency'. The Tribunal erred in awarding the compensation considering the brother and sisters as legal heirs and dependants. In support of his contention, he relied on the judgment of Hon'ble Apex Court in the case of ***New India Assurance Co. Ltd. vs. Vinish Jain and others***[1]. Therefore, prayed to recalculate the amount of compensation.

11. Learned counsel for the claimants contend that the claimants were dependent upon the earnings of the deceased. Merely residing in their respective husbands' houses cannot be a ground to conclude that they were not dependent on the earnings of the deceased. The deceased used to contribute to the maintenance of his brothers and sisters, and no contrary

[1] 2018 ACJ 1004

evidence has been adduced by the respondent-insurer. Under these circumstances, claimants are entitled for compensation.

12. The fact of the accident and death of Prem Prakash in the said accident are not in dispute. The accident took place during the year 2017. The Tribunal assessed the income of the deceased as Rs.10,000/- per month, which is on the lower side. His age was 44 years. The Tribunal added 25% of his income towards future prospects. The Tribunal has not awarded just compensation under the conventional heads. Therefore, claimants have prayed to enhance the same.

13. Undisputedly, the deceased was unmarried and claimants were his brother and sisters which is reflected in the claim petition. In the petition as well as in the evidence of PW-1 it is stated that they were dependent upon the earnings of the deceased and deceased was contributing his earnings to the family. The Tribunal has also considered these facts in detail and relying on the judgment of the Hon'ble Apex Court and other Courts held that they were dependants.

14. In the case of ***National Insurance Company Ltd. vs. Birendar and others***[2]**,** the Hon'ble Apex Court held that even the married sons, daughters, brother and sisters can be considered as dependants.

15. The contention of the insurer that the married sisters are residing in their matrimonial homes and therefore, cannot be treated as dependants of the deceased is untenable. In our social context, it is not uncommon for daughters and sisters, even after marriage, to maintain a close relationship with their parental family. The earning member of the family often contributes towards their welfare and social needs. Therefore, their right to claim compensation cannot be denied merely on the ground of their marital status.

16. In this case it appears that parents of claimants were no more. Deceased was said to be an earning member of the family and it is also stated that he was taking care of the claimants and financially assisting them. There are no contra evidence to disbelieve it, except denial of said evidence.

[2] (2020) 11 SCC 356

Hence, there was no hurdles to believe that claimants were dependants on the earnings of the deceased.

17. In the case of *Vinish Jain* (Supra), the Hon'ble Apex Court considering facts and circumstances, it was held that claimants were not entitled to compensation. On the contrary, it is held that they are not entitled for compensation under the head 'love and affection', to that extent the amount was reduced. Hence, not applicable to facts of present case.

18. The claimant have not proved the earnings of the deceased. Therefore, the Tribunal has taken notional income of the deceased as Rs.10,000/- per month. The amount shown by the Tribunal is on the lower side. Following the chart prepared by the Karnataka State Legal Services Authority, the notional income of the deceased is taken as Rs.11,000/- per month. Undisputedly, the deceased was aged about 44 years at the time of accident and therefore as per the law laid down by the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd., vs Pranay Sethi***[3], 25% of his income has to be added

[3] (2017) 16 SCC 680

towards his future prospects. Since he was unmarried, 50% of his income has to be deducted towards personal expenses and as per the judgment of the Hon'ble Apex Court, in the case of ***Sarla Verma vs Delhi Transport Corporation and others,***[4] the multiplier applicable to the facts of the present case is '14'. On the basis of the aforesaid factors, the amount of compensation is re-calculated under the head `loss of dependency'**.**

19. As held in the case of *Pranay Sethi* (Supra) and *Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram*[5], the Hon'ble Apex Court held that claimants are entitled for compensation under conventional heads.

20. Accordingly, the claimants are entitled for following amount of compensation:

Particulars	Amount in Rs.
Loss of dependency (Rs.11,000+25%x12x14x1/2)	11,55,000
Loss of consortium (Rs.40,000 x 3)	1,20,000
Funeral expenses	15,000

[4] (2009) 6 SCC 121

[5] (2018) ACJ 2782

Loss of estate	15,000
Total	13,05,000
Amount awarded by the Tribunal *Enhancement*	10,60,000 2,45,000

21. Thus, the claimants are entitled for enhanced compensation of Rs.2,45,000/- with interest at 6% p.a. on the enhanced amount from the date of petition till its realization.

22. It is not in dispute that respondent No.1 is the owner and respondent No.2 is the insurer of the offending vehicle. Therefore, both the respondents are jointly and severally liable to pay the compensation.

23. Accordingly, I proceed to pass the following:

ORDER

i) Appeal in MFA.No.3886/2020 is ***dismissed*** and MFA.No.4216/2020 is ***partly allowed***.

ii) The judgment and award dated 10.01.2020 passed in MVC.No.256/2018 by the Principal Senior Civil Judge & Addl.MACT, Udupi stands modified;

iii) The claimants are entitled to enhanced compensation of Rs.2,45,000/- with

interest at the rate of 6% p.a. on the enhanced amount, from the date of petition till its realization

iv) The respondent No.2 shall deposit the amount within a period of six weeks from the date of award.

v) The apportionment, deposit and release etc., are as per the award passed by the Tribunal.

vi) Whatever amount deposited by the insurer shall be transmitted to the Tribunal for disbursement.

Send back the copy of this judgment along with trial Court records to the Tribunal.

Sd/-
(UMESH M ADIGA)
JUDGE

AG
List No.: 1 Sl No.: 13