

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20<sup>TH</sup> DAY OF APRIL 2012

BEFORE

THE HON'BLE MR. JUSTICE B. SREENIVASE GOWDA

M.F.A. NO.6274/2009 (MVC)

BETWEEN

- 1 HANUMAKKA  
W/O LATE VEERANNA  
AGED 41 YEARS  
HOUSEHOLD WORK
- 2 SRI V. RAMESHA S/O LATE VEERANNA  
AGED 24 YEARS  
DRIVER OF THE AUTORIKSHAW
- 3 SANTOSH S/O LATE VEERANNA  
AGED 20 YEARS STUDENT

ALL ARE R/O ANEKONDA BASAPURA VILLAGE  
DAVANAGERE TALUK

... APPELLANTS

(BY SRI JAGADEESHGOUD PATIL, ADV.)

AND :

- 1 BASAVARAJ PAKKIRAPPA KATTIMANI  
S/O PAKKIRAPPA KATTIMANI MAJOR,  
PATIL AGRO CENTER, P.B. ROAD  
RANEBENNUR, HAVERI DISTRICT
- 2 BRANCH MANAGER  
UNITED INDIA INSURANCE CO.LTD

BRANCH OFFICE, MOKTALI BUILDING  
INFRONT OF KSRTC HAVERI

... RESPONDENTS  
(BY SRI B C SEETHARAMA RAO, ADV. FOR R2  
R1 NOTICE DISPENSED WITH )

MFA FILED U/S 173(1) OF MV ACT AGAINST THE  
JUDGMENT AND AWARD DATED:29.12.2008 PASSED IN  
MVC NO.1070/2006 ON THE FILE OF THE I ST  
ADDITIONAL CIVIL JUDGE(SR.DN)AND III RD ADDITIONAL  
MACTAT DAVANAGERE, PARTLY ALLOWING THE CLAIM  
PETITION FOR COMPENSATION AND SEEKING  
ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR ORDERS THIS DAY,  
THE COURT DELIVERED THE FOLLOWING:-

### J U D G M E N T

This appeal is by the claimants seeking  
enhancement of compensation awarded by the  
Tribunal.

2. Heard, the appeal is admitted and with the  
consent of learned counsel appearing for parties, it is  
taken up for final disposal.

3. For the sake of convenience, the parties are  
referred to as they are referred to in the claim petition  
before the Tribunal.

4. As there is no dispute regarding death of the deceased in a road traffic accident occurred on 18.7.2006 due to rash and negligent driving of the offending Mini lorry bearing registration No KA-27-5822 by its driver and liability of the insurer of the offending vehicle, the only point that arises for my consideration in the appeal is:

"whether compensation of Rs.3,13,000/- with interest at 6% p.a. awarded by the Tribunal is just and reasonable or does it call for enhancement?"

5. After hearing the learned counsel appearing for parties and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and hence it is required to be enhanced.

6. The deceased was aged about 50 years at the time of his death in the accident as evident from the post mortem report Ex.P-3. The multiplier applicable to his age group is 13. The claim petition is filed by his wife and two major sons seeking compensation under Section 166 of MV Act. The claimants in support of their contention that the deceased was an autorickshaw driver and earning a sum of Rs.300/- to 400/- per day have examined the wife of the deceased as PW-1 and produced driving licence, election identity card and membership card issued by Auto Driver And Owner Association of the deceased at Ex.P-6 to 10 respectively. Therefore, considering his age as 50 years, year of accident as 2006 and his profession as an Autodriver, his income can be assessed at Rs.4,500/- per month as against Rs.3,000/- per month assessed by the Tribunal. Even after excluding the second claimant who was major and 23 years old at the time of accident and considering the first claimant-wife and claimant No.3 who attained majority just a year before the accident  $1/3^{\text{rd}}$  of the income of the

deceased has to be deducted towards his personal expenses and 2/3<sup>rd</sup> of his income has to be taken towards family contribution. Therefore, the 'loss of dependency' works out to **Rs. 4,68,000/-** (4500 x 2/3 x 13 x 12) and it is awarded as against Rs 2,88,000/- awarded by the Tribunal.

7. Further, it is just and proper to award a sum of **Rs. 35,000/-** towards "conventional heads" as against Rs. 25,000/- awarded by the Tribunal.

8. Thus, the claimants are entitled for the following compensation:-

	PARTICULARS	Rs.
1	Loss of Dependency	4,68,000
2	Conventional heads	35,000
	TOTAL	5,03,000
	Compensation awarded by the Tribunal	3,13,000
	BALANCE	1,90,000

9. Accordingly, the appeal is allowed in part. The judgment and award passed by the Tribunal is

modified to the extent stated herein above. The claimants are entitled for an additional compensation of **Rs. 1,90,000/-** with interest at 6% p.a. from the date of claim petition till the date of realisation.

10. The Insurance Company is directed to deposit the additional compensation amount with interest within two months from the date of receipt of a copy of this judgment.

11. Out of the additional compensation, Rs.1,00,000/- with proportionate interest is ordered to be invested in fixed deposit in the name of first claimant and Rs.25,000/- each with proportionate interest is ordered to be invested in fixed deposit in the names of claimants No.2 and 3 in any Nationalised Bank/Scheduled Bank/Post Office in any Nationalised Bank/Scheduled Bank/Post Office for a period of 9 years renewable once in 3 years and with a right of option to withdraw interest periodically.

Remaining amount with proportionate interest is ordered to be released in favour of all the claimants in equal proportion immediately after the deposit.

12. No order as to costs.

Sd/-  
JUDGE

DM