

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 25<sup>TH</sup> DAY OF MAY, 2012.

: BEFORE :

**THE HON'BLE MR. JUSTICE N.K. PATIL**

M.F.A.NO. 11260 OF 2008 (MV)

Between:

National Insurance Co., Ltd.,  
Moodabidri Branch (D.K.),  
Through its Regional Office,  
No.144, Subharam Complex,  
M.G.Road, Bangalore-1.  
Rep. by its Administrative Officer,  
Smt. D.Karthika.

... Appellant

(By Shri. B.C. Seetharama Rao, Advocate)

And:

1. Smt. Eveline D'Silva,  
W/o. Late Robert D'Silva,  
Aged 53 years
2. Miss Nancy D'Silva,  
D/o. Late Robert D'Silva,  
Aged 24 years.

Both are R/at. C/o. Vivian D'Silva,  
Lobo Compound,  
University Road, Kuthar,  
Mangalore-574 183.

... Respondents

(By Shri. Devi Prasad Shetty, Advocate for R1 & R2)

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This MFA is filed U/S 173(1) of MV Act, against the Judgment and Award dated: 08/07/2008 passed in MVC No. 1653/2002 on the file of the I Additional Civil Judge(Sr.Dn) and CJM, Member, Motor Accident Claims Tribunal, Mangalore, awarding a compensation of ₹6,22,000/- with interest at 6% p.a. from the date of petition till deposit.

This MFA coming on for Hearing, this day, the Court delivered the following:

### J U D G M E N T

This appeal by the Insurer is directed against the impugned judgment and award dated 8<sup>th</sup> July 2008 passed in MVC No. 1653/2002 by the I Additional Civil Judge(Sr.Dn) and CJM, Member, Motor Accident Claims Tribunal, Mangalore, (for short, 'Tribunal'), for reduction of compensation on the ground that, the compensation of ₹6,22,000/- awarded in favour of the claimants as against their claim for ₹20,00,000/-, is excessive, higher side and is liable to be reduced.

2. The facts in brief are that, claimant Nos.1 and 2 are respectively the mother and younger sister of the deceased late Robert D'Silva. They filed the claim petition under Section 166 of the Motor Vehicles Act, contending that, the deceased met with a road traffic



accident, at about 7:45 P.M, on 09-05-2002, when the deceased along with others had gone for an evening walk and while coming back at about 7:45, at Kodangallu-Marigudi, an auto-rickshaw bearing Registration No.KA-19/A-4718 came from Moodabidri side in a rash and negligent manner and in a wrong side and hit the deceased. Due to the impact, the deceased fell on the road and sustained grievous head injuries and she was immediately shifted to Alva's Health Centre, Moodabidri for treatment. But, unfortunately, she was declared dead on the same day.

3 It is the case of the claimants that, the deceased was hale and healthy prior to the date of accident, which resulted in her death and that she was aged about 25 years, and a graduate and working at New Reliant Traders, Pranthya, Moddabidri since three years and ten months and getting salary of ₹4,000/- per month was contributing the entire sum towards the family requirements and in view of her untimely death, the family has become displaced and they are in great



financial distress and have lost the only hope and aspiration in life and also the sole bread winner.

4. On account of the death of the deceased, the claimants filed the claim petition before the Tribunal, seeking compensation of a sum of ₹20.00 lakhs against the appellant insurer and the owner of the offending vehicle. The said claim petition had come up for consideration before the Tribunal on 8<sup>th</sup> July 2008. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of ₹6,22,000/- under different heads, with 6% interest per annum, from the date of petition till the date of deposit. Being aggrieved by the quantum of compensation awarded by the Tribunal, the Insurer is in appeal before this Court, seeking reduction of compensation.

5. I have gone through the grounds urged in the memorandum of appeal carefully, perused the impugned judgment and award passed by Tribunal and



heard the learned counsel for Insurer as well as the counsel for claimants.

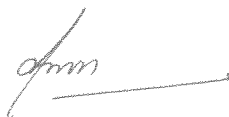
6. The principal submission canvassed by learned counsel appearing for appellant Insurer, is that the Tribunal grossly erred in assessing the income of the deceased at ₹4,000/- per month, deducting 1/3<sup>rd</sup> towards personal expenses of the deceased and adopting multiplier of '17', on the basis of the age of the deceased, even though she was unmarried. Therefore, he submits that in view of the well settled law laid down by the Hon'ble Apex Court in **Sarla Verma's case (2009 ACJ 1298)**, 50% may be deducted from out of the income of the deceased and appropriate multiplier may be adopted based on the age of the mother of the deceased and reasonable compensation may be awarded, by reducing the compensation.

7. Per contra, learned counsel appearing for respondents claimants submits that the compensation awarded by Tribunal is just and reasonable as the same is awarded after assessing the oral and documentary



evidence available on file. Further, he submits that the Tribunal in fact has erred in assessing the monthly income of the deceased at only ₹4,000/- even though she was working as an Accountant in a private firm and the accident is of the year 2002. Further, he submits that the deceased was the sole earning member in the family and she was looking after the entire family and due to her untimely death, the claimants are in severe financial crisis and have lost the security and the Tribunal has not considered these aspects of the matter. Therefore, he submits that interference in the impugned judgment and award passed by Tribunal is uncalled for.

8. After going through the impugned judgment and award passed by Tribunal and after re-appreciation of the oral and documentary evidence available on file, I am of the considered view that the Tribunal has grossly erred in assessing the monthly income of the deceased at ₹4,000/-. The accident is of the year 2002 and the deceased was working as an Accountant in a private firm and was the sole bread winner of the family.



Therefore, having regard to the age, avocation and the year of accident and other relevant material available on file, I re-assess the monthly income of the deceased at ₹5,000/- and since she was unmarried, I deduct 50% towards personal expenses of the deceased and adopt the multiplier of '11' based on the age of the mother, as she was aged about 52 years at the time of accident, as per the decision of the Apex Court in **Sarla Verma's case (supra)**. Thus, the loss of dependency would workout to ₹3,30,000/-, (i.e. ₹2,500/- x 12 x'11') as against ₹6,12,000/- awarded by Tribunal.

9. However, so far as the compensation of ₹10,000/- awarded by Tribunal towards the conventional heads is concerned, I am of the view that the same is on the lower side and needs to be enhanced. As per the decision of the Apex Court in **Sarla Verma's case (supra)**, I award a sum of ₹45,000/- towards conventional heads, such as loss of estate, loss of love and affection and transportation of dead body and



funeral expenses as against ₹10,000/- awarded by Tribunal.

10. Thus, the total compensation would come to ₹3,75,000/- as against ₹6,22,000/- awarded by Tribunal, with interest at 6% per annum, from the date of petition till the date of realization. There would be reduction of compensation by ₹2,47,000/-.

11. In the light of the facts and circumstances of the case, stated above, the appeal filed by appellant/ Insurer is allowed in part;

The impugned judgment and award dated 8<sup>th</sup> July 2008 passed in MVC No. 1653/2002 by the I Additional Civil Judge(Sr.Dn) and CJM, Member, Motor Accident Claims Tribunal, Mangalore, is hereby modified, reducing the compensation by a sum of ₹2,47,000/-.

The Insurer is directed to deposit the remaining compensation with interest thereon at 6% per annum, within three





weeks from the date of receipt of copy of the judgment and award.

The apportionment and the manner of disbursement ordered by Tribunal shall get reduced to the extent of reduction of compensation made by this Court.

The amount, if any, in deposit by the Insurer shall be transmitted to the jurisdictional Tribunal, forthwith.

Office to draw the award, accordingly.

Sd/-  
JUDGE

BMV\*