

IN THE HIGH COURT OF KARNATAKA AT BANGALOREDATED THIS THE 19TH DAY OF APRIL, 2012

BEFORE

THE HON'BLE MR. JUSTICE B.SREENIVASE GOWDAMiscellaneous First Appeal No. 8303 of 2009 (MV)**BETWEEN**

1. NIRMALA N,
W/O. LATE S. LOKESH,
AGED ABOUT 29 YEARS.
2. V. SUBADRAMMA,
W/O. LATE T. R. SRINIVAS,
AGED ABOUT 55 YEARS.

BOTH THE APPELLANTS ARE
R/AT NO.5, 12TH CROSS,
NANJEGCWDA LAYOUT,
(B K LAYOUT), THINDLU,
VIDYARANAYAPURA POST,
BANGALORE - 97.

... APPELLANTS

(By Sri. SHRIPAD V. SHASTRI, ADV.)

AND

1. THE ORIENTAL INSURANCE CO. LTD.,
D. O. VII SHANKAR HOUSE,
4 RMV EXTN., MEKHRI CIRCLE,
BANGALORE - 80.
BY ITS MANAGER.
2. BASAVARAJU, MAJOR,
R/AT. BYARAPPA NILAYA,
JALAHALLI CROSS, 100 FEET ROAD,
T. DASARAHALLI ,

BANGALORE – 58.

... RESPONDENTS

(By R.1 – SERVED,
R.2 NOTICE DISPENSED WITH)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 30.3.2009 PASSED IN MVC NO.5376/2007 ON THE FILE OF THE I ADDL. SCJ & MEMBER, MACT, BANGALORE, (SCCH 11), PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

This appeal coming on for Hearing, 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 learned Counsel appearing for parties, and perused the judgment and award of the Tribunal.

3. For the sake of convenience 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 Lokesh in a road traffic accident occurred on

09-07-2007 due to rash and negligent riding of Honda Activa bearing registration No.KA-02-EP-2365 by its rider and liability of the insurer of the offending vehicle, the only point that remains for my consideration in the appeal is:

Whether quantum of compensation awarded by the Tribunal is just and reasonable or does it call for enhancement?

5. After hearing the learned Counsel 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 therefore, it is deserved to be enhanced.
6. Deceased was aged about 32 years at the time of his death in the accident as per post mortem report - Ex.P.5. Multiplier applicable to his age group is '16'. Claim petition is filed by his wife and mother seeking compensation under Sec. 166 of Motor Vehicles Act. Claimants in support of their contention that the deceased was earning Rs.10,000/- per month by working as a Senior Executive in Pride Housing Co. have

examined the first claimant – wife of the deceased as P.W.1 and Senior Administrative Officer of Pride Housing Co. as P.W.2 and have produced authorisation letter issued by the company of P.W.2 at Ex.P.21 and appointment order at Ex.P.22. P.W.2 in his evidence has stated, deceased was getting salary of Rs.8,000/-. Exs.P. 11 and 13 also shows he was getting salary of Rs.8,000/-. Tribunal disbelieving the evidence of the claimant and the Administrative Officer examined as P.Ws. 1 and 2 respectively has taken the salary of the deceased at Rs.5,000/- per month. No certificate showing the educational qualification of the deceased is produced. Therefore Justice would be met if the income of the deceased is assessed at Rs.6,000/- per month as against Rs.5,000/- assessed by the Tribunal. Deduction of $1/3^{\text{rd}}$ of his income towards his personal expenses and taking $2/3^{\text{rd}}$ of it as his contribution to family is just and proper. So, loss of dependency works out to Rs.7,68,000/- ($\text{Rs.6,000/-} \times 12 \times 2/3 \times 16$) and it is awarded as against Rs.6,00,000/- awarded by the Tribunal under this head.

7. The Tribunal after careful scrutiny of medical bills has rightly awarded Rs.20,000/- towards medical expenses.

8. Rs.35,000/- awarded by the Tribunal towards conventional heads is just and proper.

9. Thus claimants are entitled for the following compensation:

1) Loss of dependency	Rs 7,68,000/-
2) Medical expenses	Rs. 20,000/-
3) Towards conventional heads	Rs. 35,000/-

Rs.8,23,000/-

**Less compensation awarded
by the Tribunal Rs.6,55,000/-**

Additional compensation comes to Rs.1,68,000/-

10. Accordingly the appeal is allowed in part and the Judgment and award of the Tribunal is modified to the extent stated herein above. The claimants are entitled for an additional compensation of Rs.1,68,000/- with interest at 6% p.a. from the date of claim petition till the date of realisation.

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11. The Insurance Co. is directed to deposit the additional compensation amount with interest within two months from the date of receipt of a copy of this judgment, from which Rs.1,00,000/- with proportionate interest is ordered to be deposited in FD in the name of the first claimant - wife of the deceased in any nationalised or scheduled Bank or post office for a period of 6 years, renewable once in every two years, with a right of option for her to withdraw interest periodically and the remaining amount is ordered to be released her favour.

No order as to costs.

Sd/-
JUDGE

mgn*