IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 24TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR. JUSTICE K NATARAJAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

MISC. FIRST APPEAL NO.200296 OF 2024 (MV-D)

BETWEEN:

1. VEERSHETTI @ VEERSHETTY
   S/O NARAYAN,
   AGE: 49 YEARS, OCC: PRIVATE WORK,
   RESIDENCE OF RAJGIRA,
   TQ. AND DIST. BIDAR
   NOW AT KOLAR-B,
   TQ. AND DIST. BIDAR-585401.

2. BHIMA SHANKAR S/O VEERSHETTY,
   AGE: 25 YEARS, OCC: PRIVATE WORK,
   RESIDENCE OF RAJGIRA,
   TQ. AND DIST. BIDAR,
   NOW AT KOLAR-B,
   TQ. AND DIST. BIDAR-585401.

3. AKASH KUMAR
   S/O VEERSHETTI @ VEERSHETTY,
   AGED ABOUT 19 YEARS, OCC: STUDENT,
   RESIDENCE OF RAJGIRA,
   TQ. AND DIST. BIDAR,
   NOW AT KOLAR-B,
   TQ. AND DIST. BIDAR-585401.

...APPELLANTS

(BY SRI. SANTOSH BIRADAR, ADVOCATE)

Digitally signed by NIJAMUDDIN JAMKHANDI
Location: HIGH COURT OF KARNATAKA

AND:

1. BABU S/O PEERAPPA,
   AGE: 41 YEARS, OCC: NOT KNOWN,
   R/O VILLAGE ZAMISTANPUR,
   TQ. AND DIST. BIDAR-585401.

2. THE BRANCH MANAGER,
   IFFCO TOKIO GENERAL INSURANCE COMPANY
   LIMITED,
   SHOP NO.200, 201 AND 202
   1ST FLOOR, HAVAPPA COMPLEX,
   UDGIR ROAD, OPP: TVS SHOWROOM, SHIVNAGAR
   SOUTH BIDAR-585401.

…RESPONDENTS

(BY V/O DATED 15.02.2024 NOTICE TO R-1 DISPENSED WITH;
SRI. SUDARSHAN M., ADVOCATE FOR R-2)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173 (1) OF M.V. ACT, PRAYING TO ALLOW THE APPEAL, MODIFY THE IMPUGNED JUDGMENT AND AWARD DATED 25.07.2023 PASSED BY THE COURT OF II ADDL. SENIOR CIVIL JUDGE AND JMFC, AT BIDAR, IN M.V.C.NO.47/2022 AND ENHANCE COMPENSATION AS PRAYED FOR.

THIS APPEAL, COMING ON FOR FURTHER ORDERS THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE K NATARAJAN
AND
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL)

This appeal is filed challenging the judgment and award dated 25.07.2023 passed in MVC.No.47/2022 by the II Additional Senior Civil Judge and JMFC, at Bidar.

02. The husband and children of the deceased have filed a claim petition under Section 166 of the M.V. Act, 1988, claiming compensation for the accidental death of Smt. Kasturibai on 06.08.2021. It is averred that on 06.08.2021, the deceased – Smt. Kasturibai along with the claimant No.2 were proceeding to Kolar-K from Rajgira village in their motorcycle bearing Reg.No.KA-38-R-9424, at that time another motorcycle bearing Reg.No.KA-38-L-4391 came from the opposite direction, ridden by its rider in a rash and negligent manner and dashed to the motorcycle of the deceased, which resulted in an accident

and Smt. Kasturibai sustained grievous injuries and later she succumbed to the said injuries. It is further averred that the deceased was aged about 45 years and working as sweeper in a private institute and earning Rs.25,000/- per month at the time of the accident.

03. The respondents opposed the claim petition by denying the age, income, avocation of the deceased and liability.

04. The Tribunal recorded the evidence. The claimants examined PW-1 and 2 and got marked Ex.P.1 to 12 documents. The respondents did not adduce any evidence. The Tribunal considering the income of the deceased at Rs.10,000/- per month, awarded the total compensation of Rs.12,60,060/- along with the interest at the rate of 9% p.a. from the date of petition till realization by directing the insurance company to pay the compensation. Being aggrieved by the same, the claimants are in this appeal seeking higher compensation.

05. Sri. Santosh Biradar, the learned counsel appearing for the appellants submits that the deceased was working as sweeper in a private institution and thereafter, she used to do other works. Hence, her income ought to have been assessed at Rs.25,000/- per month. It is submitted that the claimants are also entitled for an additional 25% of the assessed income, under the head of loss of future prospects of the deceased and also consortium of Rs.40,000/- each, with compensation under the conventional heads. Hence, he seeks to allow the appeal.

06. *Per contra*, Sri. Sudarshan M. the learned counsel appearing for the contesting respondent supports the impugned judgment and award of the Tribunal and submits that the Tribunal has assigned detailed reasons at Para No.23 of the impugned judgment. It has assessed the income of the deceased at Rs.10,000/- per month taking note of Exs.P.11 and 12 salary slip issued by her employer. Hence, there is no need to reassess the income

as sought by the appellants. It is submitted that the award of compensation by the Tribunal is just and appropriate and does not call for any enhancement. Hence, he seeks to dismiss the appeal.

07. We have heard the arguments of the learned counsel for the appellants, the learned counsel for the respondents and meticulously perused the material available on record.

08. The only point that arise for our consideration in this appeal is :-

> "Whether the impugned judgment and award of the Tribunal requires modification and the claimants are entitled for higher compensation.?"

09. It is not in dispute that in a road traffic accident on 06.08.2021, one Smt. Kasturibai, wife of the claimant No.1 succumbed to the injuries. It is also not in dispute that the accident is caused due to the actionable negligence of the rider of the motorcycle bearing

Reg.No.KA-38-L-4391, which was insured with the respondent No.2 - insurance company. Considering the same, the Tribunal has rightly saddled the liability on the insurance company and directed them to pay compensation. The Tribunal considering Exs.P.11 and 12, assessed the income of the deceased at Rs.10,000/- per month. We are of the considered view that the Tribunal has erred in assessing the income of the deceased at Rs.10,000/- per month. The pleading and evidence on record indicate that the claimants have claimed that the deceased was working as sweeper and also doing other work at different places and used to earn Rs.25,000/- per month. Admittedly, there is no legally acceptable evidence to accept the claim of Rs.25,000/- per month. Hence, we are of the considered view that the interest of justice would be met if we consider the income of the deceased at Rs.14,250/- per month placing reliance on the notional income chart prepared by the Karnataka State legal Service Authority.

10. Having re-assessed the income at Rs.14,250/- per month and considering the age of the deceased as 45 years, the claimants are entitled an addition of 25% of the assessed income under the head of loss of future prospects as per the law laid down by the Hon'ble Supreme Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and others***[1]. The compensation under the head of loss of dependency is reassessed as under:-

Rs.14,250/- (income) + (25% future prospects i.e., Rs.3,562/-) = Rs.17,812/- minus 1/3rd (deduction towards personal living expenses) = Rs.11,875/- x 12 x 14 = Rs.19,95,000/-.

11. The claimants being the husband and children of the deceased are entitled to consortium of Rs.40,000/- each as per the law laid down by the Hon'ble Supreme Court in the case of ***Magma General Insurance Co. Ltd vs. Nanu Ram @ Chuhru Ram***[2]. Hence, the claimants in total are entitled for Rs.1,20,000/- under the head of loss of consortium.

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[1] *(2017) 16 SCC 680*

[2] *(2018) 18 SCC 130*

12. The claimants are also entitled to compensation of Rs.15,000/- under the head of loss of estate and Rs.15,000/- under the head of transportation of dead body and funeral expenses. Thus, the compensation is re-assessed as under:

Description	***Amount***
Loss of dependency	Rs.19,95,000/-
Loss of consortium (Rs.40,000/- x 3)	Rs.1,20,000/-
Loss of Estate	Rs.15,000/-
Transportation of dead body and funeral expenses	Rs.15,000/-
Total	**Rs.21,45,000/-**

13. For the aforesaid reasons, we proceed to pass the following;

O R D E R

i) The appeal is allowed in part.

ii) The judgment and award dated 25.07.2023 passed in MVC.No.47/2022 by the II Additional Senior Civil Judge and JMFC, at Bidar, is modified.

iii) The claimants are entitled for total compensation of Rs.21,45,000/- as against Rs.12,60,060/- awarded by the Tribunal, which shall carry interest at the rate of 6% per annum from the date of petition till the date of realization.

iv) The apportionment and investment order made by the Tribunal is unaltered.

v) The respondent No.2 – insurance company shall deposit the compensation amount within a period of 08 weeks from the date of receipt of copy of this judgment.

Sd/-
(K NATARAJAN)
JUDGE

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

KJJ
List No.: 1 Sl No.: 25
CT:SI