IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JULY 2018

PRESENT

THE HON'BLE MR. JUSTICE RAGHVENDRA S. CHAUHAN

AND

THE HON'BLE MR. JUSTICE H. T. NARENDRA PRASAD

M.F.A.No.377 OF 2015 (MV)

BETWEEN:

The Manager
The New India Assurance Company Limited
R.K. Arcade, Opposite to Vali Medical Store
Vidyarthi Bhavan, Davanagere.
Represented by the Manager
Regional Office (Motor TP Hub)
The New India Assurance Company Limited
Mahalakshmi Chambers, No.9, M.G. Road
Bangalore-560 001.

… Appellant

(By Sri Rajagopalan R., Advocate)

AND:

1. Smt. Manjula
   Aged about 41 years
   House wife

2. Master Preetham
   Aged about 9 years

3. Kum. Aadya
   Aged about 6 ½ years

   R1 is the wife and R2 and R3

Are the children's respectively
of Late. Shri Manjunatha G Jannu

Respondents 2 and 3 being minors
Are represented by their mother/
Natural guardian 1st Respondent

4. Smt Savithri
Daughter of Shri Gangadhara Jannu
Aged about 53 years

Respondents 1 to 4 are
Residing at No.3101/1
2nd Cross, 9th Main, MCC-B Block
Davanagere-577 001.

5. Shri K.J. Sudhakar
Son of Shri K. Jayadevappa
Aged about 36 years
Residing at No.1923/49
7th Cross, 45th Main
Swami Vivekananda Layout
KTJ Nagar, Davanagere-577 001.

6. Smt. Latha
Daughter of Shri. G.V. Revankar
Aged about 44 years
Proprietor, Naveen Ladies Tailor

7. Master Ganesh
Son of Smt. Latha
Aged about 21 years

Respondents 6 and 7 are
Residing at Naveen Ladies Tailor
2nd Floor, Diamond Plazza
Durgada Bail, Hubli-580 020.

... Respondents

(By Ms. Savitha Kulkarni., Advocate for R1 and R4
Ms. Shobha S Bhavikatti., Advocate for R6 and R7
Sri Sreeharsha, Advocate for R5)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 3.9.2014 PASSED IN MVC NO.1143/2010 ON THE FILE OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE, MEMBER, MACT-3, DAVANAGERE, AWARDING A COMPENSATION OF RS.33,79,886/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL ITS DEPOSIT.

THIS MFA COMING ON FOR ADMISSION THIS DAY, **RAGHVENDRA S. CHAUHAN J**, DELIVERED THE FOLLOWING:

J U D G M E N T

The appellant, the New India Assurance Co. Ltd., has challenged the legality of the award, dated 3.9.2014, passed by the Motor Accident Claims Tribunal-III, Davanagere, whereby for the death of Manjunath. G. Jannu, the learned Tribunal has granted a compensation of Rs.33,79,886/-, along with an interest at the rate of 6% p.a., from the date of filing of the petition till the date of its deposit to the claimant-respondents.

2. Briefly the facts of the case are that on 14.9.2010, at about 11.45 p.m., Mr. Manjunath. G. Jannu, was riding a motorcycle on the Davanagere-Shamanur Road. When he reached near Hiremath, situated on the said road, a

motorcycle, bearing Registration No.KA-17-EB-2727, being driven in a rash and negligent manner, came and dashed against the motorcycle ridden by Mr. Manjunath. Resultantly, Mr. Manjunath not only suffered grievous injuries, but also died on the spot.

3. Since the legal representatives, namely, Smt. Manjula, the second wife, and two children, Master Preetham and Kum. Aadhya, had suddenly lost the bread-earner of the family, they filed a claim petition before the learned Tribunal. In order to establish their case, they examined two witnesses, and submitted thirty documents. Since the first wife, Smt. Latha, was also impleaded as respondent in the claim petition, along with her son, Master Ganesh, Smt. Latha was examined as RW-1. The respondents submitted five documents in order to support their case. After appreciating the evidence, the learned Tribunal has granted the compensation, as aforementioned, and proportioned the compensation between the second wife and the first wife.

4. The second wife, Smt. Manjula, and the first wife, Smt. Latha, of Mr. Manjunath. G. Jannu, have also filed two separate appeals before this Court, namely, MFA No.3194/2015, and MFA No.2327/2015. However, as the issues in these two appeals are different from the issue in the present appeal, those two appeals shall be decided separately by this Court.

5. As far as the present appeal is concerned, Mr. Rajagopalan. R, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, although the learned Tribunal is justified in relying on the date of birth given by the deceased in his income-tax returns for the year 2009-10 (Ex.P-20), the learned Tribunal has committed a mathematical error. According to the income-tax returns (Ex.P-20), the deceased himself had declared his date of birth as 12.6.1958. The accident had occurred on 14.9.2010. Therefore, the Tribunal is unjustified in concluding that on the date of his death, the age of the deceased was “42 years 2 months 28 days”. Instead, mathematically the deceased was “52 years 2 months 28 days” on the date of his death. According to the appellant, the said mathematical error is apparent on the face of the record itself. Consequently, the age of the deceased should to be taken as “52 years”, instead of “42 years”.

Secondly, the multiplier which can be applied in the present case needs to be reduced from “14” to “11”.

Thirdly, even the benefit of adding “loss of future prospects” will have to be taken as 10%, as prescribed by the Hon’ble Supreme Court in the case of **NATIONAL INSURANCE CO. LTD. -v- PRANAY SETHI AND OTHERS [(2017) 16 SCC 680].**

Fourthly, according to the income-tax returns (Ex.P-20), the deceased was earning Rs.39,936/-, as the yearly income from the property. Even after his death, the claimants would continue to receive the said amount.

Therefore, the said amount cannot be taken into account for calculating the compensation under the category of "loss of dependency" suffered by the claimants. Thus, the said amount has to be deducted from his annual income of Rs.2,27,430/-. Hence, the annual income of the deceased should have been taken as Rs.1,87,494/- (Rs.2,27,430 – Rs.39,936), instead of Rs.2,27,430/-.

Lastly, since the deceased had left, at best, six dependents, the learned Tribunal is not justified in deducting one-fifth of his income as the personal expenses incurred by the deceased. According to the decision of the Hon'ble Supreme Court in the case of **SARLA VARMA AND OTHERS -v- DELHI TRANSPORT CORPORATION AND ANOTHER [(2009) 6 SCC 121],** it should be taken as one-fourth.

6. On the other hand, Smt. Saritha Kulkarni, the learned counsel for the respondent Nos.1 to 3, has raised the following counter-contentions:-

Firstly, the learned Tribunal is unjustified in relying upon the date of birth given in the income-tax returns (Ex.P-20). In fact, the learned Tribunal should have relied on the school record. According to the school record, the deceased was born in the year 1968, and not in the year 1958. Therefore, on the date of his death, the deceased was aged 42 years, and not 52 years.

Secondly, since the deceased was 42 years old at the time of his death, the learned Tribunal is justified in applying the multiplier of "14". Thus, there is no need to reduce the multiplier from "14" to "11".

Thirdly, on the point of personal expenses that needs to be deducted from the income of the deceased, the learned counsel concedes that it should have been taken as one-fourth, rather than one-fifth.

Fourthly, the learned counsel submits that since the Insurance Company has not raised the plea before the learned Tribunal that the amount of income received by the deceased from the property should not be considered for the purpose of calculating the "loss of dependency", the said plea cannot be raised by the appellant-Insurance Company, at the appellate stage. Therefore, the learned counsel has partly supported the impugned award.

7. Smt. Shobha S. Bhavikatti, the learned counsel for the respondent Nos.6 and 7, echoes the arguments of Smt. Saritha Kulkarni, the learned counsel for the respondent Nos.1 to 3.

8. In rejoinder, Mr. Rajagopalan, the learned counsel for the appellant, submits that since the school records were not submitted by the claimants, the learned Tribunal could not have relied upon those records. Moreover, since the date of birth was given by the deceased himself in the income-tax returns filed by him, the date of birth tantamounts to an admission by the deceased. Therefore, the said date of birth cannot be doubted. Thus,

the learned Tribunal was justified in taking the date of birth of the deceased as 12.6.1958. As mentioned above, according to the learned counsel, there is a mathematical error in calculating age of the deceased.

9. Moreover, the learned counsel submits that the fact that the deceased was receiving a rent of Rs.39,936/- from the property, is obvious from the income-tax returns (Ex.P-20). While calculating the "loss of dependency", the learned Tribunal should have been aware of the fact that the said amount would be received by the claimants-respondents even after the death of the deceased. Therefore, even if the said contentionw were not raised, the learned Tribunal ought to have applied its mind to the facts of the case, while calculating the "loss of dependency".

10. Heard the learned counsel for the parties, and perused the impugned award.

11. The learned counsel for the respondent Nos. 1 to 3 is certainly unjustified in trying to rely on the school

records to establish that the year of birth of the deceased was 1968, rather than 1958, as declared by the deceased himself in the income-tax returns. Since the school records were not submitted before the learned Tribunal, obviously, these records cannot be relied upon at the appellate stage. Moreover, in the income-tax returns, (Ex.P.20) filed by the deceased himself, he has clearly declared his date of birth as 12.6.1958. Since it is an admission made by the deceased himself, with regard to true date of birth, the learned Tribunal was justified in relying upon the same. Further, as the accident had taken place on 14.9.2010, and as the date of birth of the deceased was 12.6.1958, obviously, the deceased was 52 years 3 months and 2 days old on the date of his death. Thus, apparently, there is a mathematical error in calculating the age of the deceased by the learned Tribunal. Hence, this Court takes the age of the deceased as “52 years”. Since the age of the deceased is increased from 42 years to 52 years, naturally, the correct multiplier to be applied in the present case is "11" instead of "14".

12. In the case of **SARLA VARMA** (supra), the Hon'ble Supreme Court has clearly opined that in case the deceased leaves behind four to six dependents, then one-fourth of his income should be taken as the amount the deceased would have spent upon himself/herself.

13. Furthermore, in catena of cases the Hon'ble Supreme Court has clearly observed that the income derived from the property continues to be available to the claimants even after the death of a person. Therefore, the said income should not be considered for the purpose of calculating the "loss of dependency". Therefore, learned counsel for the appellant-Insurance Company is justified in arguing that from the annual income earned by the deceased, the income so earned by him from the property, namely, Rs.39,936/- should have been deducted from the

gross income. Taking all these factors into account, the "loss of dependency" needs to be re-calculated as under:

Annual income of the deceased	-	2,27,430/-
LESS: House property income	-	39,936/-
	-	1,87,494/-
LESS: Income Tax	-	20,624/-
		1,66,870/-
LESS: Profession Tax	-	2,400/-
		1,64,470/-
ADD: 10% towards future prospects	-	16,447/-
	-	1,80,917/-
LESS: 1/4th towards personal expenses	-	45,229/-
Actual Income	-	**1,35,688/-**
Multiplier	-	11
Loss of dependency 1,35,688 x 11	-	**Rs.14,92,568/-**

14. For the reasons stated above, the appeal is allowed, and the impugned award dated 3.9.2014, is modified as under:

Compensation under different heads	**As awarded by the Tribunal (in Rs.)**	**As awarded by this Court in (in Rs.)**
Loss of dependency	31,54,886	14,92,568
Funeral expenses	25,000	25,000
Loss of consortium	1,00,000	1,00,000
Loss of care and guide for minors	1,00,000	1,00,000
TOTAL	**33,79,886**	**17,17,568**

15. The compensation amount of Rs.33,79,886/- as granted by the Tribunal, is, thus, reduced to Rs.17,17,568/- Registry is directed to transmit the amount deposited by the Insurance Company to the learned Tribunal.

16. By order dated 09.02.2015, this court had not only directed the appellant to deposit 50% of the award amount along with the accrued interest, but had also permitted the claimant-respondents to withdraw the said amount in terms of the award of the Tribunal subject to the result of this appeal. Consequently 50% of the award amount along with the accrued interest may have been withdrawn. Thus, an amount of Rs.16,89,943/-, along with the interest thereupon may have been withdrawn by the respondent. Since the award has been reduced to Rs.17,17,568/-, the appellant is directed to deposit the remaining amount Rs. 27,625/- along with interest at 6% per annum only on the amount of Rs.27,625/-.

17. Although the appellant has been directed to deposit the said amount to the Insurance Company, since the issue whether the respondents are entitled to receive the compensation amount, or not is subjudice before this court in MFA No.3139/2015, and MFA No.2327/2015, the learned Tribunal is directed not to disburse the compensation amount to the respondents till the above mentioned MFAs are decided by this Court.

Sd/-
JUDGE

Sd/-
JUDGE

DM