

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JANUARY, 2022

BEFORE

THE HON'BLE Mr. JUSTICE SHIVASHANKAR AMARANNAVAR

M.F.A. No.8030/2016(MV)

BETWEEN :

1. SURESH
S/O CHANDRAKANTH
AGED ABOUT 38 YEARS.
2. SMT.SUMALATHA
W/O SURESH
AGED ABOUT 28 YEARS

BOTH ARE RESIDING AT
KATANAYAKANAHALLI
KASTURI RANGAPPANAHALLI
JAVANAGONDANAHALLI HOBLI
HIRIYUR TALUK
CHITHRADURGA DISTRICT – 577 599.

... APPELLANTS

(BY SRI BHOJARAJA, ADVOCATE)

AND :

1. D RAMESH
S/O DEVRAJAN
AGED ABOUT 45 YEARS
R/O No.10, SSS-BUILDING
AV ROAD, CHAMRAJPET
BANGALORE – 560 018.

2. M/S. NATIONAL INSURANCE
COMPANY LTD., SECOND FLOOR
81-D, NORTH CAR STREET
TIRUCHENODE
TAMILNADU – 637 211.
REGIONAL OFFICE AT
No.144, SUBBARAM COMPLEX
M.G.ROAD,
BANGALORE – 560 001
REPRESENTED BY
ITS BRANCH MANAGER.

... RESPONDENTS

(BY SMT. ANUSHA N, ADVOCATE FOR
SRI C M POONACHA, ADVOCATE FOR R2
NOTICE TO R1 DISPENSED WITH V/O DTD 5.3.2020)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED: 16.08.2016
PASSED IN MVC No.2980/2015 ON THE FILE OF XIII
ADDITIONAL SAMLL CAUSE JUDGE AND MEMBER MACT,
BENGALURU, PARTLY ALLOWING THE CLAIM PETITION FOR
COMPENSATION AND SEEKING ENHANCEMENT OF
COMPENSATION.

THIS APPEAL COMING ON FOR HEARING THROUGH
VIDEO CONFERENCE THIS DAY, THE COURT DELIVERED THE
FOLLOWING:

JUDGMENT

Heard the learned counsel appearing for the parties.

The minor girl succumbed to the injuries in an accident that occurred on 19.04.2015.

2. The Tribunal by its judgment and award dated 16.08.2016 has awarded a compensation of Rs.3,50,000/- with interest at 9% from the date of petition till the date of realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimants being parents of the deceased minor girl has filed this appeal for enhancement of compensation.

3. Learned counsel for the appellants/claimants placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Kishan Gopal and Another vs. Lala and others (AIR 2013 SCW 5037)*** wherein the Hon'ble Apex Court has awarded compensation of Rs.4,50,000/- and another Rs.50,000/- under conventional heads.

4. It is his further submission that in the case on hand, the deceased was aged 2 years at the time of accident. In the case of this nature, it is difficult to assess the loss in pecuniary term and that the Motor Vehicles Act is also silent in providing any basis to award just compensation. Under these circumstances, it is his submission that what has been held by the Hon'ble Apex Court has to be followed in the facts and circumstances of the case.

5. Learned counsel for the respondent No.2 – Insurance Company submits that the deceased was aged about 2 years and she is not an earning member of the family and the appellants are not dependants. It is her further submission that whatever the compensation awarded by the Tribunal is just and proper.

6. I have heard the learned counsel appearing for the parties and gone through the judgment relied upon by the

learned counsel for the appellants. It is difficult to assess the compensation in case of a death of minor. The age of the deceased is not in dispute. The compensation as well as the future prospects cannot be decided on the basis of gender.

7. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

8. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love, affection, care and companionship of the deceased child.

9. The Co-ordinate Bench of this Court in the case of **Sagar since deceased by his LRs. Vs. Suresh and two others reported in 2014 KAR MAC 506 (KAR)** relying on the judgment of the Hon'ble Apex Court in **Kishan Gopal's** case has awarded compensation of Rs.4,50,000/- towards 'loss of dependency' in case of death of a boy who was aged 6 years.

10. Under the circumstances, I am inclined to rely on the judgment of the Hon'ble Apex Court in Kishna Gopal's case stated supra and award compensation of Rs.4,50,000/- towards 'loss of dependency' and Rs.50,000/- towards loss of love and affection, funeral expenses and transportation of a dead body and the total compensation comes to Rs.5,00,000/-.

In the result, the appeal is **allowed in part** and the judgment and award dated 16.08.2016 passed by the XIII Addl. Small Cause Judge and Member, MACT, Bengaluru

in MVC No.2980/2015 is hereby modified by awarding additional compensation of Rs.1,50,000/- with interest at 6% p.a. from the date of petition till realization of the award amount.

**Sd/-
JUDGE**

SSD