

**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 1ST DAY OF JUNE, 2026**

PRESENT

**THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI
MISCELLANEOUS FIRST APPEAL NO.102121 OF 2015**

C/W

MFA CROB. NO.100092 OF 2016

IN MFA NO.102121/2015

BETWEEN:

THE NEW INDIA ASSURANCE CO. LTD.,
BY ITS DIVISIONAL MANAGER,
DIVISIONAL OFFICE, CLUB ROAD,
BELAGAVI, HEREIN REPRESENTED
BY NEW INDIA ASSURANCE CO. LTD
REGIONAL OFFICE, MOTOR THIRD
PARTY HUB OFFICE, SRINATH
COMPLEX, 2ND FLOOR, NEW
COTTON MARKET, HUBBALLI-580 029,
REPRESENTED BY ITS
AUTHORIZED SIGNATORY.

...APPELLANT

(BY SRI R.R. MANE, ADVOCATE)

AND:

SHAILA W/O PIRAJI PATIL
SINCE DECEASED BY LRS.,

1. SHRI PRAVEEN S/O PIRAJI PATIL,
AGE:27 YEARS, OCC: PRIVATE SERVICE,
R/O: H.NO.78/1, VIDYA NAGAR,

HUBBALLI, DIST: DHARWAD.

2. MRS. RANI W/O SACHIN PATIL,
AGE:28 YEARS, OCC: HOUSEHOLD WORK,
R/O: MENSII GALLI, BELAGAVI.

3. SHRI NEETA TOURS AND TRAVELS,
REPRESENTED BY ITS AUTHORIZED PERSON,
H.NO.772,
MUMBAI-NASHIK ROAD,
PADGHA-421302, BHIWANDI,
MAHARASHTRA STATE.

...RESPONDENTS

(BY SRI SANTOSH B. RAWOOT, ADVOCATE FOR R1 AND R2)
(NOTICE TO R3 DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173 (1) OF THE MOTOR VEHICLES ACT, 1988, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 30.04.2015 PASSED IN MVC.NO.915/2013, ON THE FILE OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE AND MEMBER ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL AT BELAGAVI, AWARDING THE COMPENSATION OF RS.5,13,800/- WITH INTEREST AT THE RATE OF 9% P.A. FROM 07.05.2013 TILL REALIZATION.

IN MFA CROB.NO.100092/2016

BETWEEN:

1. SHRI. PRAVEEN S/O. PIRAJI PATIL,
AGE: 28 YEARS, OCC: PRIVATE SERVICE,
R/O: H.NO.78/1,
VIDYA NAGAR, HUBBALLI,
DIST: DHARWAD – 580 008.

2. MRS. RANI W/O. SACHIN PATIL,
AGE: 29 YEARS, OCC: HOUSEHOLD WORK,

R/O: MENSİ GALLI,
BELGAVI – 590 016.

...CROSS OBJECTORS

(BY SRI SANTOSH B. RAWOOT, ADVOCATE)

AND:

1. SHRI. NEETA TOURS AND TRAVELS,
REPRESENTED BY ITS AUTHORIZED PERSON,
H.NO.772, MUMBALI-NASHIK ROAD,
PADGA – 421302, BHIWANDI,
MAHARASTRA STATE – 421 302.
2. THE NEW INDIA INSURANCE CO., LTD.,
REPRESENTED BY ITS DIVISIONAL MANAGER,
DIVISIONAL OFFICE, CLUB ROAD,
BELAGAVI – 590 012.

...RESPONDENTS

(SRI R.R. MANE ADVOCATE FOR R2;
NOTICE TO R1 DISPENSED WITH)

THIS CROSS OBJECTION IS FILED UNDER ORDER 41 RULE 22 OF CPC., PRAYING TO DISMISS MFA NO.102121/2015 AGAINST THE JUDGMENT AND AWARD DATED 30.04.2015 PASSED BY THE LEARNED TENTH ADDL. DISTRICT AND SESSIONS JUDGE AND ADDL. MACT, BELAGAVI, IN MVC NO.915/2013 AND AWARD THE COMPENSATION AS CLAIMED IN THE CLAIM PETITION BY ALLOWING THIS APPEAL, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL IS COMING ON PRONOUNCEMENT AND THE SAME HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 15.04.2026, THIS DAY, DELIVERED THE FOLLOWING:

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI)

The insurer of the bus bearing No.MH-04-FK-6464 has preferred the appeal in MFA No.102121/2015 praying to set aside the judgment and award dated 30.04.2015 passed in MVC No.915/2013 by learned X Additional District and Sessions Judge and Additional MACT, Belagavi.

2. The claimants in MVC No.915/2013 have filed cross objection in MFA CROB No.100092/2016 praying to dismiss the appeal preferred by the insurer and to award the compensation as sought in the claim petition.

3. The claimants are the wife and children of deceased Sri Piraji Patil. They maintained the petition in MVC No.915/2013 under Section 166 of Motor Vehicles Act against the owner and insurer of bus bearing No.MH-04-FK-6464 seeking compensation of Rs.30,00,000/- for the death of Sri Piraji Patil in a road traffic accident, caused by the driver of the bus.

4. On service of notice, the insurer appeared before the Tribunal and contested the petition by filing its objection.

However, the owner of the bus remained absent before the Tribunal. Hence, he was placed ex-parte.

5. Based on the pleadings, the Tribunal framed relevant issues, recorded the evidence and then disposed of the claim petition on merits of the case. The Tribunal held that the accident occurred due to contributory negligence of the driver of the bus and that of the deceased and apportioned their contributory negligence to an extent of 70% and 30% respectively. Though the Tribunal arrived at quantum of compensation as Rs.7,34,000/-, in view of contributory negligence of the deceased, it held that the claimants are entitled to only a sum of Rs.5,13,800/- by way of compensation together with interest at the rate of 9% p.a. from the date of petition till its realization.

6. Sri Ravindra R. Mane, learned Counsel for the Insurer submitted that the Tribunal rightly held that Claimant No.1 being the widow of the deceased was alone entitled to compensation under the head of loss of dependency, loss of consortium and loss of estate as she was the sole dependant on the deceased. He further submitted that even then the Tribunal committed an error in awarding the compensation under these

heads ignoring the death of Claimant No.1 during pendency of the claim petition. He submitted that the Tribunal lost sight of the fact that the children of the deceased had no right to seek compensation under the head of loss of dependency and as such, the Tribunal would have awarded compensation to them only under the head of loss of estate and other relevant conventional heads. He also submitted that the rate of interest awarded by the Tribunal is on higher side. As such, he prayed to allow the appeal and to set aside impugned judgment and award.

7. Per contra, Sri Santosh B. Rawoot, learned Counsel for the Claimants vehemently submitted that the Tribunal has failed to appreciate relevant factors such as the income and age of the deceased, the future prospects and his contribution to the family while determining loss of dependency and that the award is not a just and proper compensation. He further submitted that the Tribunal has erred in saddling 30% of negligence on the part of the deceased in the absence of any supporting material and it is illegal. As such, he prayed to allow the appeal and to award the compensation as prayed in the claim petition.

8. Having heard learned Counsel appearing for the parties and perused the materials on record, the following points arise for the consideration of the Court:

- i. Whether the Tribunal was justified in attributing contributory negligence of 30% to the deceased?
- ii. Whether the claimants have made out valid grounds to seek enhancement of the compensation?
- iii. Whether the Tribunal is justified in awarding compensation under the head of loss of dependency and such other heads in spite of death of widow of the deceased during pendency of the claim petition?

Point No.(i) :

9. Brief facts of the case are that on 22.12.2012 at 06.20 a.m., while the deceased was standing near Hirebagewadi Police Samudaya Bhavan on Pune-Bengaluru Highway in order to cross the road, the bus bearing No.MH-04-FK-6464 came from the side of Dharwad in very high speed and dashed against the deceased, due to which he sustained grievous injuries and succumbed to the injuries on 25.12.2012 while undergoing treatment at KIMS hospital, Hubli. The insurer specifically denied the alleged accident and contended that the information and the narration about the accident was self serving and concocted. On the other hand, they contended that

the accident was equally due to rash and negligent act of the deceased, who tried to cross the highway wherein he was not supposed to cross.

10. The impugned judgment indicates that the Tribunal proceeded to hold contributory negligence on the part of the deceased based on the contents of spot sketch (Ex.P5), the complaint (Ex.P2), the charge sheet (Ex.P3) and the admission of PW-1, on the ground that at the place of accident there was no zebra crossing and that in the said place National Highway Authority had fenced the road on both sides in order to avoid the general public crossing the road. Admittedly, PW-1 is the daughter of the deceased and she was not an eye witness to the accident. Thereby, it becomes clear that her statements were no way helpful for the Tribunal in deciding the question of negligence.

11. The materials on record indicate that immediately after the accident, a complaint came to be lodged against the driver of the bus alleging he was responsible for the accident. Based on such complaint, the jurisdictional police registered a case and investigated the matter. On completion of the investigation, they laid a charge sheet against the driver of the

bus with an accusation that he was responsible for the accident. These police papers give raise to a presumption in favour of the claimants. Admittedly, the insurer adduced no evidence before the Tribunal to rebut the presumption arising out of the police papers and particularly the charge sheet laid against the driver of the bus. In the above circumstances, this Court holds that the Tribunal has erred in attributing contributory negligence against the deceased based on assumption. Accordingly, it is held that the driver of the bus was solely responsible for the accident and Point No.(i) is answered in the negative.

Point Nos.(ii) and (iii)

12. As noted above, the wife and children of the deceased maintained the claim petition on 07.05.2013 seeking compensation for the death of Sri Piraji Patil in a road traffic accident. Claimant No.1 was the wife of the deceased. She died during pendency of the petition i.e., on 31.07.2014. In the said circumstances, Claimant Nos.2 and 3 proceeded with the matter in their capacity as the claimants as well as the Class-I heirs of Claimant No.1.

13. The main contention of the insurer is that the widow of the deceased i.e., Claimant No.1 was alone entitled to compensation under the heads of loss of dependency, loss of consortium, loss of estate etc. being the sole dependant of the deceased and that upon her death, the claim under above mentioned heads stood abated. As such, they contended that the Tribunal committed serious error in awarding compensation under the heads of loss of dependency, loss of consortium, loss of estate etc.

14. It is well settled that the claims and legal liabilities crystallized at the time of the accident itself and changes post thereto ought not to ordinarily affect pending proceedings as held in **Kirti and Another etc. versus Oriental Insurance Company Ltd.**, reported in **(2021) 2 SCC 166**. In the present case the wife of the deceased was alive for more than one year from the date of the accident. Admittedly, she was one of the claimants in the petition, which was pending for adjudication as on the date of her death. Thereafter, the proceeding was continued by the remaining claimants in their individual capacity as well as the Class-I legal heirs of Claimant No.1, which is clear from the memo filed by them before the Tribunal on 03.03.2015. In view of the above, this Court does not find

any force in the contention of the insurer about abatement of portion of the claim on account of the death of Claimant No.1. Accordingly, the said contention of the insurer is rejected.

15. The Tribunal arrived at total quantum of compensation as under:

Sl. No.	Head	Amount (in Rs.)
1.	Loss of dependency	4,29,000.00
2.	Loss of estate	1,00,000.00
3.	Loss of love and affection	90,000.00
4.	Loss of consortium	50,000.00
5.	Transportation and funeral expenses	25,000.00
6.	Medical, conveyance, attendant charges, etc.	40,000.00
	Total	7,34,000.00

16. The claimants have sought for enhancement of compensation on the ground that the Tribunal did not take into consideration the actual income of the deceased and his future prospects while determining the loss of dependency. According to them the deceased was earning a sum of Rs.15,000/- per month as an auto driver but the Tribunal took the income of the deceased only as Rs.6,500/- per month. The materials on record indicate that the claimants did not adduce any evidence before the Tribunal either to prove the avocation or the income of the deceased by producing relevant documents. In such circumstances, the Tribunal presumed the avocation of the deceased as a coolie/unskilled labour and relying on decision in

Sayed Sadiq and others Vs Divisional Manager, United India Insurance Company reported in **2014 ACJ 627** presumed the notional income of the deceased as Rs.6,500/- per month. Even the KSLSA Chart for Lok-Adalat settlements suggests notional monthly income of Rs.6,500/- for the year 2012.

17. In **National Insurance Co. Ltd. Vs Pranay Sethi (2017) 16 SCC 618**, it was held that 10% of the income should be considered towards future prospects in case of a self employed person where the deceased was aged between 50 to 60 years. In this case, the claimants contend that the deceased was aged 52 years at the time of the accident. Whereas, the Tribunal based on the entries in the inquest mahazar (Ex.P4) and the post mortem report (Ex.P7) held that the deceased was aged 55 years at the time of the accident. As such, a sum of Rs.650/- (i.e., 10% of Rs.6500/-) needs to be added to arrive at gross income of the deceased. Thus, the gross income of the deceased would be Rs.7,150/- (i.e., Rs.6,500/- plus Rs.650/-). Considering the age of the deceased at the relevant time, the Tribunal rightly adopted the multiplier of 11.

18. The Tribunal, taking into consideration the age and description of the Claimant Nos.2 and 3 in the cause title, opined that the son of the deceased was major and was in a private service and that Claimant No.3 was a married daughter of the deceased. During her cross examination, Claimant No.3 even admitted that she got married about 10 years ago. In the above circumstances, the Tribunal held that Claimant Nos.2 and 3 were not dependant on the deceased and that the wife i.e., Claimant No.1 was sole dependant on the deceased. In the said circumstances, the Tribunal deducted 50% of the income towards personal expenses of the deceased. In the facts and circumstances of the case, this Court finds no ground to interfere with such finding of the Tribunal. Thus, loss of dependency comes to Rs.4,71,900/- (i.e., Rs.3,575/- x 12 x 11).

19. In **Pranay Sethi's** case referred supra, Hon'ble Apex Court has standardized the compensation to be awarded under the conventional heads. As per the said judgment a sum of Rs.15,000/- each shall be awarded under the head of loss of estate and funeral expenses subject to its enhancement at the rate of 10% once in 3 years. Hence, it is held that the

claimants are entitled to a sum of Rs.16,500/- each under the head of loss of estate and funeral expenses.

20. In **Magma General Insurance Co.Ltd. Vs Nanu Ram, (2018) 18 SCC 130**, Hon'ble Apex Court has expanded the ambit of 'consortium' to include parental and filial consortium, implicitly acknowledging the emotional and relational loss suffered by children and parents alike. In view of the same and the enhancement suggested in **Pranay Sethi's** case, it is held that the claimants are entitled to a sum of Rs.44,000/- each (Rs.40,000/- plus 10% enhancement) under the head of spousal and parental consortium.

21. The Tribunal awarded a sum of Rs.40,000/- to the claimants under the head of medical expenses and incidental charges by taking into consideration the period of treatment of the deceased i.e., between 22.12.2012 to 25.12.2012. The said award was not supported by documentary evidence. Even then, this Court does not find any reason to interfere with such award made by the Tribunal and same is retained.

22. For the foregoing reasons, Point Nos.(ii) and (iii) are answered partly in the affirmative and held that the

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claimants are entitled to a total compensation of Rs.6,76,900/-
under the following heads:

Sl. No.	Head	Amount (in Rs.)
1.	Loss of dependency	4,71,900.00
2.	Loss of spousal and parental consortium	1,32,000.00
3.	Loss of estate	16,500.00
4.	Funeral expenses	16,500.00
5.	Medical expenses	40,000.00
	Total	6,76,900.00

23. In the result, this Court proceeds to pass the following:

ORDER

- (i) The appeal filed by the claimants is partly allowed and the appeal filed by the insurer is dismissed.
- (ii) Consequently, the judgment and award dated 30.04.2015 passed in MVC No.915/2013 passed by learned X Additional District and Sessions Judge and Additional MACT, Belagavi is modified.
- (iii) The claimants are entitled to a total compensation of Rs.6,76,900/- in place of Rs.5,13,800/- awarded by the Tribunal.
- (iv) The enhanced compensation amount shall carry interest at the rate of 6% per annum from the date of petition till realization.
- (v) The insurer is directed to deposit entire award amount together with the accrued interest thereon (minus the amount already deposited) before the Tribunal, within a period of two (2) months from this day.

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- (vi) The claimants are entitled to share in the compensation amount at the same proportion as ordered by the Tribunal.
- (vii) Draw the modified award accordingly.
- (viii) The Registry is directed to transmit any amount deposited in the appeal preferred by the insurer before this Court and the trial court record to concerned Tribunal, at the earliest.

Sd/-
(B. MURALIDHARA PAI)
JUDGE

RKM,YAN
CT: CMU