



**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD**

**DATED THIS THE 30<sup>TH</sup> DAY OF APRIL, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE RAVI V.HOSMANI**

**MISCELLANEOUS FIRST APPEAL NO.103246 OF 2014 (MV)**

**BETWEEN:**

NATIONAL INSURANCE CO. LTD.,  
THROUGH DIVISIONAL MANAGER,  
DIVISIONAL OFFICE, HUBLI,  
HEREIN REPRESENTED BY:  
NATIONAL INSURANCE CO. LTD.,  
REGIONAL OFFICE, 2<sup>ND</sup> FLOOR, ARIHANT PLAZA,  
KUSUGAL ROAD, KESHWAPUR, HUBLI-580023.  
REPRESENTED BY ITS DEPUTY MANAGER.

...APPELLANT

(BY SRI RR MANE, ADVOCATE)

**AND:**

1. SMT.DURGAMMA ISHWAR NAIK,  
AGE ABOUT 49 YEARS, OCC: COOLIE.
2. SUSHILA D/O ISHWAR NAIK,  
AGE ABOUT 28 YEARS, OCC: HOUSEHOLD.
3. BABY D/O ISHWAR NAIK,  
AGE ABOUT 25 YEARS, OCC: STUDENT.
4. SUDHA D/O ISHWAR NAIK,  
AGE ABOUT 22 YEARS, OCC: STUDENT.

[ALL ARE R/O: MAVINKATTE KOTEBAGIL,  
SHIRALI, TQ: BHATKAL, DIST: U.K.]

5. A.J. SUNNY S/O SRI JHON,  
AGE MAJOR, OCC: REGD. OWNER OF  
TRUCK NO.KL-8/G-8955,  
R/O ABHANDY HOUSE, NADAVARAMBA,  
DIST: IRRNJAL KUNDA, KERALA STATE-680121.





6. ARVIND R. KALE,  
AGE MAJOR, OCC: REGD. OWNER OF  
TRUCK NO.KA-25/4861,  
KALA TRANSPORT, R/O AMARGOL,  
TQ: HUBLI, DIST: DHARWAD.
7. THE DIVISION MANAGER,  
UNITED INDIA INSURANCE CO. LTD.,  
DIVISIONAL OFFICE, KARWAR.

...RESPONDENTS

(BY SRI JS SHETTY, ADVOCATE FOR R1 TO R4;  
SRI GN RAICHUR, ADVOCATE FOR R7 (VC);  
NOTICE TO R5 AND R6 DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT 1988, AGAINST THE JUDGMENT AND AWARD DATED 22.08.2014, PASSED IN MVC.NO.125/2010, ON THE FILE OF THE ADDITIONAL MACT., HONNAVAR, (ITINERARY COURT AT BHATKAL) AWARDED COMPENSATION OF RS.4,59,200/- ALONG WITH THE INTEREST AT THE RATE OF 9% P.A FROM THE DATE OF PETITION TILL REALIZATION & ETC.

THIS MFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 29.04.2026 AND COMING FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

### **CAV JUDGMENT**

Challenging judgment and award dated 22.08.2014 passed by Additional Motor Accident Claims Tribunal, Honnavar, (Itinerary Court at Bhatkal) (for short '**Tribunal**') in MVC no.125/2010, this appeal is filed.



2. Sri RR Mane, learned counsel for appellant (**'NICL'**, for short) submitted appeal was by insurer challenging award passed by tribunal on ground of maintainability.

3. Sri JS Shetty, learned counsel for respondents no.1 to 4 - claimants and Sri GN Raichur learned counsel for respondent no.7 - United India Insurance Co., Ltd.

4. It was submitted, at 10:15 pm on 19.12.1996, Ishwar Sankusa Naik, a petty businessman was going in Lorry no.KA-25/4861 (insured with respondent no.7 - **'UIICL'**, for short), from Bhatkal to Kundapur along with two gunny bags of coconut, when driver of Lorry no.KL-8/G-8955 (insured with **'NICL'**), drove it in rash and negligent manner and dashed against claimant's Lorry. In accident, Ishwar Naik sustained grievous injuries and despite treatment at Government Hospital, Bhatkal and KMC Hospital, Manipal, he did not recover fully and sustained loss of earning capacity. Therefore, he filed MVC no.555/2001 against owner and insurer of both Lorries under Section 166 of Motor Vehicles Act, 1988 (**'MV Act'** for short). Same was allowed awarding compensation of ₹8,77,000/- as follows:



Towards pain and sufferings	Rs.1,52,000/-
Towards medical expenses	Rs.70,000/-
Towards loss of amenities and expectation of life, and un-happiness in future life	Rs.50,000/-
Towards loss of earnings during the period of treatment	Rs.10,000/-
Towards conveyance and on attendants during the period of inpatient in hospital	Rs.31,600/-
Nourishment and food during the treatment period.	Rs.5,000/-
For future medical expenses	Rs.60,000/-
Future attendants charges	Rs.60,000/-
Medical expenses during the pendency of petition	Rs.56,000/-
Attendant charges during the pendency of petition.	Rs.56,000/-
Towards loss of earning capacity due to permanent disability of 80% of whole body	Rs.3,26,000/-
Total	<b>Rs.8,77,000/-</b>

5. It was submitted, tribunal apportioned negligence between two Lorries at 50% each. Aggrieved, UIICL filed MFA no.7973/2002 before this Court, in which claimant filed MFA-CROB no.317/2004. During pendency, claimant – Ishwar Naik died on 29.09.2005. And on 18.06.2010, while disposing of Appeal/Cross-Objection, this Court observed:

- (i) *Appeal filed by Insurance company MFA no.7973 of 2002 is dismissed.*
- (ii) *Cross-Objection no.317 of 2004 is also dismissed.*
- (iii) *However, liberty is reserved to the legal representatives of the claimants to prosecute their*



*claim if they choose to do so in a manner known to law.*

*(iv) The High Court registry is directed to transmit the amount deposited by the insurance company at the time of preferring this appeal to the Tribunal for being paid to the claimants forthwith.*

*(v) Parties to bear their own costs.*

6. In terms of liberty granted, legal representatives filed present claim petition in MVC no.125/2010. Same was opposed by NICL on ground that claim petition filed on same cause of action earlier had ended in award, which was complied by it and another claim would not be maintainable. It was also contended earlier award was by assessing 100% disability, leaving no scope for further award even in case of death of injured-claimant. However, overruling said objections, tribunal passed impugned award granting further compensation of Rs.4,59,200/- with interest at 9% per annum.

7. It was submitted, UIICL did not challenge award and Appeal by NICL was mainly on ground of maintainability of second claim petition. Relying on decision of Hon'ble Supreme Court in case of ***Oriental Insurance Company Limited v.***



***Kahlon @ Jasmail Singh Kahlon (Deceased) through his LRs. and Anr.,*** reported in ***(2022) 13 SCC 494,*** it was submitted in case claimant in personal injury claim died after passing of award assessing compensation including future loss of income, due to accidental injuries, his legal representatives would not be entitled to file fresh claim petition for assessment of 'loss of dependency', and at best could seek reconsideration as a death claim.

8. It was submitted, Hon'ble Supreme Court had overruled Full Bench decision of this Court in ***Kannamma v. Deputy General Manager*** reported in ***ILR 1990 KAR 4300 (FB).*** In view of above, Division Bench decision of this Court in ***V. Anitha Gangadhara and Ors., v. S. Srirama Reddy and Anr.,*** reported in ***ILR 2015 Karnataka 3495,*** referring to ***Kannamma's*** decision, would stand watered down. Therefore, second claim application was not tenable. It was submitted, liberty granted by this Court in MFA no.7973/2002 was to pursue claim only in accordance with law, which was since clarified in ***Kahlon's*** case (*supra*) that separate claim would not be tenable. Hence, impugned award would call for interference.



9. It was alternatively submitted, even in case claim arising out of accident suffered by Ishwar Naik, were to be considered as death claim, entire compensation awarded by tribunal earlier had to be deducted.

10. On other hand, Sri JS Shetty, learned counsel for claimants sought to rely on Division Bench decision of this Court in **V. Anitha Gangadhara's** case (*supra*). It was submitted, after examining position in law, Division Bench had opined that there would be no impediment for legal representatives of injured claimant to seek compensation towards loss of dependency in case of his death due to accidental injuries. It was submitted, this Court in MFA no.7973/2002 had granted liberty to claimants, to pursue their claim in accordance with law. It was further submitted, while passing impugned award, tribunal was conscious of legal position and provided for appropriate deductions to avoid double compensation. Thus, there was no merit in appeal and sought for dismissal.

11. In so far as quantum of compensation, it was submitted latest legal position was that even in personal injury claims, future prospects had to be added and compensation



under conventional heads was required to be granted. Therefore, impugned award was justified, leaving no scope for reduction. It was submitted compensation was deposited by UIICL to extent of its share was withdrawn by claimants. Therefore, relief in appeal would require to confine to share of NICL only.

12. On other hand, Sri GN Raichur, learned counsel for UIICL submitted since this Court was determining '*just compensation*', claimant cannot be allowed to retain excess compensation and prayed for appropriate adjustment.

13. Heard learned counsel, perused impugned judgment and award.

14. From above, point that arises for consideration is:

*"Whether legal representatives of injured claimant can maintain separate claim petition for loss of dependency on death of injured claimant after receiving compensation in personal injury claim?"*

15. From above, occurrence of accident due to collision of insured lorries, vehicles being covered under respective insurance policies, Ishwar Naik sustaining grievous injuries in



said accident and being entitled for compensation to extent of 50% from both insurers are not in dispute. Death of Ishwar Naik - original claimant, during pendency of appeal by UIICL and his Cross-objection for enhancement, his legal representatives may permitted to pursue claim for compensation towards loss of dependency albeit as per law is also not in dispute. Material question would be whether legal representatives required to continue claim petition filed by injured claimant or file independent claim petition.

16. A personal injury claim can be filed only by injured in his own right by himself, while in case of death, claim is by his dependants. While in personal injury claim, claimant seeks compensation for injuries sustained to wit, pain and suffering, Medical Expenses, Future Medical Expenses, other Incidental Expenses such as nutritious diet, conveyance, attendance etc., Loss of Income during laid-up period, Future Loss of Income and Loss of Amenities etc. But, in death claim, compensation is assessed towards loss of dependency, towards of funeral expenses, loss of estate and towards loss of consortium.



17. Hon'ble Supreme Court in case of ***Sarla Verma and Ors. v. Delhi Transport Corporation and Anr., reported in 2009 (6) SCC 121***, has held in case of death occurring during treatment of accidental injuries, claimants would also entitled for expenditure towards treatment. Thus, claim towards medical expenses would lie in death claim also as long as death was to accidental injuries. In instant case, there is no dispute about death being due to injuries sustained in accident. In fact, death of injured claimant in instant case is after nine long years when original claimant as well as his dependants - present claimants endured pecuniary and non-pecuniary losses.

18. Award passed in MVC no.555/2001, comprises of compensation towards pain and suffering, medical expenses, loss of amenities, expectation of life and future unhappiness, loss of earning during laid up period, conveyance and incidental expenses, medical expenses prior to filing, during claim petition and future medical expenses, attendance and future loss of income. Except compensation towards pain and suffering and loss of amenities, compensation under other heads is virtually towards expenses and compensation awarded would have to be considered as utilised for same.



19. Though at best, it would be available for insurer to contend, since death of claimant was prior to utilisation of all of said amount, insurer should be given benefit of adjustment of remainder against compensation payable towards loss of dependency, there is no appeal on quantum.

20. On other hand, even claimants would be entitled for addition of future prospects, and award of compensation under conventional heads as per ***National Insurance Co., Ltd. v. Pranay Sethi***, reported in **(2017) 16 SCC 680**, with periodic escalation. Even if compensation is calculated by applying multiplier to age and taking notional income of deceased as on date of death, scope for reduction would not be substantial.

21. Assailing legality of filing fresh claim by legal representatives after passing of award in claim petition by injured, it is contended claimants would require to re-open earlier claim and pursue it as death claim. Same would be untenable, firstly, nature of claim in personal injury claim and death claim being different as noted above, there being no suppression by claimants and absence of serious prejudice being caused to insurer.



22. For above reasons, point for consideration is answered in affirmative. Hence, following:

**ORDER**

- i. Appeal is ***dismissed***.
- ii. Appellant - Insurer is held liable to pay compensation awarded by Tribunal and is directed to deposit same within six weeks.
- iii. Amount in deposit is ordered to be transmitted to Tribunal for payment.
- iv. Apportionment, release and deposit is as per order of Tribunal.

**Sd/-  
(RAVI V.HOSMANI)  
JUDGE**

GRD  
CT:VP  
LIST NO.: 2 SL NO.: 1