



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

MISCELLANEOUS FIRST APPEAL No. 1449 OF 2025

(MV-D)

BETWEEN:

1. SMT JAYANTHI
AGED ABOUT 52 YEARS
W/O. LATE. SHIVA
R/O No.7-53A7, ANUGRAHA
RAJEEVA NAGAR, PUTTUR, NITTUR
UDUPI DISTRICT-576 103.

...APPELLANT

(BY SRI. PAVANA CHANDRA SHETTY H, ADVOCATE)

AND:

1. AKASH NITHYANANDA KAITKAR
AGED ABOUT 25 YEARS
S/O NITHYANANDA
R/AT, 1-105 A4, SHANTHINAGARA
MALPE CROSS ROAD, SANTHEKATTE
UDUPI- 576 105.
2. GOWRI PRASAD
AGED ABOUT 35 YEARS
R/AT, SANSKRITHI HOUSE, RATHNAGIRI
GURUVAYANAKERE POST
DAKSHINA
KANNADA- 574 217.
3. THE DIVISIONAL MANAGER
FUTURE GENERAL INDIA INS. CO. LTD.,





DIVISIONAL OFFICE, 2ND FLOOR
EMPIRE MALL, M.G. ROAD
MANGALORE.

...RESPONDENTS

(BY SRI B PRADEEP, ADVOCATE FOR R3
R1 & R2 ARE SERVED UNREPRESENTED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED 09.12.2024 PASSED IN MVC No.364/2023 ON THE FILE OF THE ADDITIONAL MACT AND PRINCIPAL SENIOR CIVIL JUDGE, CJM, UDUPI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

CORAM: HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

ORAL JUDGMENT

1. This appeal is filed by the appellant - claimant seeking enhancement of the compensation awarded by the Tribunal in judgment and award dated 09.12.2024 passed in MVC No. 364/2023 by the Principal Senior Civil Judge and Additional MACT, Udupi.

2. Facts leading to filing of the claim petition by the appellant are as under:



a. On 29.11.2022 at about 11.20 am husband of the claimant was standing on the road divider after crossing the western lane at a place called Puttur Durgaparameshwari Dwara, NH-66. In the meantime, motorcycle bearing registration No. KA-21-V-2895 coming from Santhekatte side towards Udupi side driven by its rider in high speed came closer to the divider and dashed to the pedestrian by name Shiva – husband of the claimant. He fell down and sustained severe head injury. He was taken to the hospital and he succumbed to the injuries on 01.12.2022. The claimant being the wife of the deceased made a claim petition. The deceased was aged about 55 years and was doing coolie work.

b. Respondent Nos.1 and 2 were owner and rider of the vehicle and they remained absent before the Tribunal. Respondent No. 3 – insurer, in the statement of objections, denied the averments of the petition. It also denied rash and negligent riding of the motorcycle by its



rider. It contended that rider of the motorcycle was not having driving licenece at the time of the incident.

c. On the basis of the pleadings the Tribunal framed the following issues:

- "1. Whether the petitioner prove that the deceased succumbed due to the injuries sustained in a road traffic accident that occurred on 29.11.2022 at about 11.20 a.m., opposite Shri Babbu Swami Temple, Puttur Village, Udupi due to the actionable negligence on the part of the driver of motorcycle bearing Reg.No.KA-21-V-2895?*
- 2. Whether the petitioner proves that she is the legal representative and dependent of deceased Mr.Shiva?*
- 3. Whether the petitioner is entitled for compensation? If so, what is the quantum and from whom?*
- 4. What order or award?"*

d. Claimant examined herself as P.W.1 and got examined one witness as P.W.2 and got marked Ex.P.1 to Ex.P.12. Respondent No. 2 has been examined as R.W.1



and Manager of respondent No. 3 has been examined as R.W.2 and got marked Ex.R.1 to Ex.R.6.

e. The Tribunal, after hearing arguments on both sides and appreciating the evidence on record awarded compensation under different heads as under:

Love and Affection	Rs.1,00,000/-
Conveyance	Rs.5,000/-
Funeral Expenses	Rs.15,000/-
Medical Expenditure	Rs.28,764/-
Loss of dependency	Rs.10,80,000/-
Total	Rs.12,28,764/-

f. The Tribunal has also awarded interest at the rate of 6% p.a. The Tribunal held that there is contributory negligence on the part of the claimant to the extent of 25% and deducted 25% in the total compensation and awarded Rs.9,21,573/- with interest. Aggrieved by the said finding of the Tribunal with regard to the contributory negligence and seeking enhancement of the compensation



awarded by the Tribunal the claimant has filed the present appeal.

3. Heard learned counsel for appellant - claimant and learned counsel for respondent No.3 - Insurer. Respondent Nos.1 and 2 who are driver and owner of the offending vehicle have remained absent and unrepresented.

4. Learned counsel for appellant - claimant would contend that contributory negligence to the extent of 25% as held by the Tribunal is not proper. Total width of the road is 24 feet and the deceased was near the divider at a distance of 2 feet. Rider of the motorcycle ought to have applied brake and avoided the accident. Therefore, there is no negligence on the part of the deceased.

b. The Tribunal has taken the notional income of the deceased as Rs.15,000/-. As per the chart prepared by the Karnataka State Legal Services Authority notional income



is fixed as Rs.15,500/- for the year 2022 and the same has to be taken.

c. The Tribunal has not awarded future prospects and claimant is entitled to 10% future prospects as per the observations made by the Hon'ble Apex Court in the case of ***National Insurance Company Vs Pranay Sethi and Others***, reported in ***AIR 2017 SC 5157***.

d. The Tribunal has not awarded consortium. With this, he prayed to allow the appeal.

5. Learned counsel for respondent No. 3 – insurer would contend that contributory negligence as held by the Tribunal to the extent of 25% is just and proper as the deceased was crossing the road where there was no zebra crossing. The Tribunal has awarded just and fair compensation and there are no grounds for enhancement. He further submits that the Tribunal has held that the rider of the motorcycle was not possessing driving license and



has ordered payment of compensation by the insurer and to recover the same from the owner of the vehicle.

6. Having heard learned counsel for the parties, this Court has perused the impugned judgment, award and trial Court records.

7. On perusal of the material on record the following points arise for consideration in this appeal:

- i) Whether the Tribunal is justified in holding that the deceased had contributed negligence to the extent of 25%?
- ii) Whether the Tribunal is justified in taking the notional income of the deceased at Rs.15,000/-?
- iii) Whether the claimant is entitled to future prospects?
- iv) Whether the Tribunal is justified in not awarding consortium?

8. **ON POINT No. i).** The deceased was a pedestrian and he was crossing the road from Babbu



Swamy Devastana towards Putturu Devastana. On seeing the sketch – Ex.P.4 it is seen that the accident has taken place at a distance of 2 feet from the divider. Total width of the road is 24 feet. Ex.P.3 – spot mahazar does not indicate any brake marks on the spot. Said aspect itself indicates that rider of the motorcycle had not applied brake. If the rider of the motorcycle was driving his motorcycle in slow and cautious manner he could have avoided the accident. Evidence of P.W.2 also indicate that the accident has taken place due to entire negligence on the part of the rider of the motorcycle. Considering the above aspects, the Tribunal is not justified in holding that the deceased had contributed negligence to the extent of 25%. Charge sheet has been filed against the rider of the motorcycle and he was also not possessing driving licence. Therefore, negligence is on the part of the rider of the motorcycle. Accordingly, said point is answered.

9. **ON POINT No. ii).** As per the chart prepared by the Legal Services Authority notional income fixed for



the year 2022 is Rs.15,500/-. Considering the said aspect the Tribunal has erred in taking the notional income of the deceased at Rs.15,000/-. Notional income of the deceased has to be taken as Rs.15,500/-. Accordingly, said point is answered.

10. **ON POINT No. iii).** The deceased was aged 56 years as on the date of the accident. Considering the age of the deceased and as per the decision of the Hon'ble Apex Court in the case of ***National Insurance Company Vs Pranay Sethi and Others*** reported in ***AIR 2017 SC 5157***, 10% future prospects requires to be taken up for considering loss of dependency. Accordingly, the said point is answered.

11. **ON POINT No. vi).** The Tribunal has awarded a sum of Rs.1,00,000/- towards love and affection. The claimant is the wife of the deceased. Therefore, she is entitled to spousal consortium in a sum of Rs.40,000/- with escalation at 10% in a sum of Rs.44,000/-. As consortium is awarded, claimant is not entitled for



Rs.1,00,000/- awarded by the Tribunal towards love and affection. The claimant is entitled to funeral expenses and transportation of dead body in a sum of Rs.15,000/- and loss of estate in a sum of Rs.15,000/- as against Rs.5,000/- towards conveyance and Rs.15,000/- towards transportation of dead body awarded by the Tribunal. The Tribunal has rightly awarded medical expenses of Rs.78,254/-.

12. In view of the above, the appellant - claimant is entitled for compensation under different heads as under:

Loss of dependency	Rs.12,27,636/-
Funeral expenses	Rs.15,000/-
Loss of Estate	Rs.15,000/-
Consortium	Rs.44,000/-
Medical Expenses	Rs.28,764/-
Total	Rs.13,30,400/-

13. Appellant - claimant is entitled for enhanced compensation of Rs.3,58,827/- (1330400 – 971573) with interest at the rate of 6% p.a. from the date of petition till



the date of realization. The finding recorded by the Tribunal with regard to contributory negligence on the part of the deceased is set aside.

14. In the result, the following;

ORDER

- I. Appeal is allowed in part.
- II. Appellant - claimant is entitled for enhanced compensation of Rs.3,58,827/- with interest at the rate of 6% p.a. from the date of petition till the date of realization.
- III. Respondent No.3 - insurer shall pay the said enhanced compensation with interest to the appellant - claimant and is at liberty to recover the same from the owner of the motorcycle - respondent No. 2.
- IV. Respondent No. 3 - insurer shall deposit the enhanced compensation with interest before the Tribunal within a period of six weeks from this day.

Sd/-
(SHIVASHANKAR AMARANAVAR)
JUDGE