

**(2009) 07 KAR CK 0111**  
**In the Karnataka High Court**  
**Case No : M.F.A. No. 7309 of 2004**

Annappa Naika and Pari Bai

APPELLANT

Vs

Chand Basha Sattar, Chandra Trading Co. and Others

RESPONDENT

---

**Date of Decision :** 22-07-2009

**Acts Referred:**

**Citation :** (2010) ACJ 1787 : (2010) ILR (Kar) 804

**Hon'ble Judges :** N.K. Patil, J;H. Billappa, J

**Bench :** Division Bench

**Advocate :** G.S. Balagangadhar, for the Appellant; H.S. Lingaraj, for R3 and M.V. Ramesh Jois, for R-4 to 7, for the Respondent

---

## Judgement

N.K. Patil, J.—The appellants, being aggrieved by the judgment and award dated 9th August 2004 passed in MVC No. 660/2001 by the Additional Civil Judge (Sr. Dvn.) and Additional Motor Accidents Claims Tribunal, Shimoga, (in short "Claims Tribunal"), have presented this appeal, seeking enhancement of compensation, on the ground that the amount awarded by the Claims Tribunal is inadequate, in so far as it relates to loss of dependency, for not awarding any compensation towards love and affection and also for apportioning the compensation to respondents-5 to 7.

2. The deceased Sri. Lokyanaika was an Arrack vendor. The 2th appellant and 5th respondent are the wives; the 1st appellant and respondents-6 and 7 are the sons and 4th respondent is the mother of the deceased Sri. Lokyanaika. That on 18.9.2001 the deceased was proceeding by walk from his Arrack shop to his house on the left side of the road at about 9.45 p.m. and while he was proceeding on B.H Road near Channabasaveshwara Temple, Balavagoppa, Shimoga Taluk, along with one Najeebai, at that time a Canter bearing No. 20/5057 driven by second respondent came in a rash and negligent manner with high speed and hit the deceased Sri. Lokyanaika and on account of it, deceased sustained grievous injuries all over the body and became unconscious and immediately he was taken to Mc. Gan Hospital and doctor declared him as dead.

On account of the death of the deceased Sri. Lokyanaika, the appellants have filed a claim petition, claiming compensation of Rs. 5,90,000/-. In the said petition, respondents-4 to 7 have impleaded themselves as the legal representatives of the deceased. The said claim petition had come up for consideration before the Claims Tribunal on 9th August 2004. The Claims Tribunal, after analysing the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs. 3,84,000/- as compensation under different heads with interest at 6% pa. from the date of petition till the date of actual deposit. Since the amount awarded by the Claims Tribunal in respect of loss of dependency is inadequate and also for not awarding any amount towards love and affection, the appellants have presented this appeal, seeking enhancement of compensation.

3. Learned Counsel appearing for appellants vehemently submitted that, the Claims Tribunal has committed an error in deducting 1/3rd towards personal expenses of the deceased from his monthly income, which is taken at Rs. 3,000/- p.m. He also submitted that the Claims Tribunal ought to have deducted "1/5th" towards personal expenses of the deceased instead of "1/3rd" having regard to the total number of dependents of the deceased who are 06 in numbers while determining the loss of dependency. Therefore, he submitted that the judgment and award passed by the Claims Tribunal is liable to be modified. Further he submitted that, the Claims Tribunal has committed an error in not awarding any amount towards love and affection on account of the death of the deceased Sri. Lokyanaika for appellant No. 2 and respondents-4, 6 and 7 and therefore, it needs to be modified. He also submitted that the amount awarded by the Claims Tribunal in favour of 5th respondent cannot be sustained as she is the second wife of the deceased and legally she is not entitled for any compensation and therefore, it needs to be modified.

4. Per contra, learned Counsel appearing for third respondent- Insurance Company, inter alia contended that, the Tribunal on proper consideration of the material on record, has rightly awarded just and reasonable compensation and therefore, it does not call for interference.

5. After careful consideration of the submissions made by learned Counsel appearing for both the parties, including the judgment and award passed by the Claims Tribunal, the interference by this Court is not called for, in so far as the amount awarded by the Claims Tribunal towards transporting the dead body and for conducting funeral and obsequies etc., loss of consortium and loss of expectancy is concerned.

6. The Claims Tribunal has committed an error in deducting 1/3rd out of the monthly income of the deceased towards his personal expenses, without taking into consideration the number of dependants who are the mother, wives and children, totally 06 in numbers. If this aspect is taken into consideration, the Claims Tribunal ought to have deducted 1/5th out of the monthly income of the deceased towards his personal expenses. If 1/5th is deducted towards personal

expenses of the deceased out of his monthly income of Rs. 3,000/- p.m. it would be just and reasonable and accordingly, 1/5th is deducted towards the personal expenses of the deceased. If 1/5th is deducted from the monthly income of the deceased towards his personal expenses, the net income comes to Rs. 2,400/- per month which would be the contribution of the deceased towards maintenance of the family. If the net income of the deceased is taken at Rs. 2,400/- per month and if Multiplier of "15 is applied, the total loss of dependency comes to (Rs. 2,400 ? 12 ? 15) = 4,32,000/-. Accordingly, we award a sum of Rs. 4,32,000/- towards loss of dependency instead of Rs. 3,60,000/- as awarded by the Claims Tribunal.

7. After careful perusal of the judgment and awarded, it is manifest that the Claims Tribunal has committed an error in not awarding any amount towards love and affection. In the instant case, it is an admitted fact that the appellant No. 1, respondents-4, 6 and 7 are entitled for love and affection, for the reason that appellant No. 1 and respondents-6 and 7 have lost their father at their young age and respondent No. 4 has lost her son. In our considered view, if a sum of Rs. 5,000/-each is awarded to the appellant No. 1 and respondents-4, 6 and 7 towards love and affection, it would be just and reasonable. Accordingly, a sum of Rs. 20,000/- is awarded towards love and affection.

8. Learned Counsel appearing for appellants submitted that 5th respondent is the second wife of the deceased Sri. Lokyanaika and legally she is not entitled to any compensation and therefore, the apportionment of a sum of Rs. 64,000/- made by the Claims Tribunal in favour of 5th respondent is liable to be modified. We find some substance in the said submission. As per the law laid down by the Apex Court and this Court in hosts of judgment, 5th respondent who is the second wife of the deceased is not legally entitled to any compensation on account of the death of her husband deceased Sri Lokyanaika. Therefore, we deem it fit to modify the judgment and award passed by the Claims Tribunal in so far as it relates to awarding a sum of Rs. 64,000/- in favour of 5th respondent holding that, the 5th respondent being the second wife of the deceased is not legally entitled to any compensation and the appellants-1 and 2 and respondents-4, 6 and 7 are equally entitled for the amount which has been awarded In her favour. On perusal of the judgment and award it emerges that, out of Rs. 64,000/- awarded in favour of 5th respondent, a sum of Rs. 40,000/- has been invested in two fixed deposits for a period of 3 and 5 years each in her favour and in view of the fact the 5th respondent being the second wife is not entitled to any compensation, the Claims Tribunal is directed to disburse a sum of Rs. 40,000/- which has been kept in fixed deposit in the name of the 5th respondent with interest, equally, in favour of appellants-1, 2 and respondents-4, 6 and 7.

9. The total compensation payable comes to Rs. 4,76,000/- and the breakup is as follows:

1. Towards loss of dependency Rs. 4,32,000/- 2. Towards transporting the dead

body and for funeral and obsequies etc. Rs. 4,000/- 3. Towards loss of consortium Rs. 10,000/- 4. Towards loss of expectancy Rs. 10,000/- 5. Towards love and affection Rs. 20,000/- \_\_\_\_\_ Total Rs. 4.76.000/-

---

10. Accordingly, the appeal is allowed and the impugned judgment and award passed by the Claims Tribunal in MVC No. 660/2001 stands modified, granting a compensation of Rs. 4,76,000/- instead of Rs. 3,84,000/-(enhancement being Rs. 92,000/-) with interest at 6 % pa from the date of petition till the date of deposit.

The insurance company is directed to deposit the enhanced compensation amount with interest within eight weeks from today.

The Claims Tribunal is directed to disburse the enhanced compensation amount of Rs. 92,000/- with interest at 6% pa., in favour of appellant Nos. 1 and 2 and respondent Nos. 4, 6 and 7 in equal proportion, immediately, on deposit made by the Insurance Company.

Further, the Claims Tribunal is directed to disburse a sum of Rs. 40,000/- which has been invested in Fixed Deposit in the name of the 5th respondent, equally in favour of appellant Nos-1 and 2 and respondent Nos. 4, 6 and 7 with interest. It is needless to clarify that, a sum of Rs. 20,000/- already drawn by the 5th respondent is undisturbed.

Draw up the award, accordingly.