

**(2009) 09 KAR CK 0019**  
**In the Karnataka High Court**  
**Case No : M.F.A. No. 3477 of 2003**

Dr. Annapurna and Others

APPELLANT

Vs

Vijay and Others

RESPONDENT

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**Date of Decision :** 07-09-2009

**Acts Referred:**

**Citation :** (2011) ACJ 2613 : (2010) ILR (Kar) 1614

**Hon'ble Judges :** Ravi Malimath, J; N.K. Patil, J

**Bench :** Division Bench

**Advocate :** Ajitkumar S. Chinde, for the Appellant; R.V. Nadagoudar, for R3, for the Respondent

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## Judgement

N.K. Patil, J.—This appeal is directed against the common judgment and award dated 13-12-2002 passed in M.V.C. No. 152/1999 on the file of Prl. District Judge & MACT at Gulbarga (herein after referred to as "Claims Tribunal" for short). The Claims Tribunal by its Judgment and Award, awarded a sum of Rs. 11,70,000/- with interest at 6% p.a. from the date of petition till the date of realisation. Being dissatisfied with the quantum of compensation awarded, the appellants have presented the instant appeal.

2. The brief facts of the case is that, appellant No. 1 is the wife of deceased Vijay Hogade: appellant Nos. 2 and 3 are the minor sons and appellants Nos. 4 and 5 are the parents of deceased. The deceased Dr. Vijay Hogade, aged about 44 years, died in an accident that occurred on 8-11-1998. The deceased Dr. Vijay Hogade and other inmates were travelling in a Maruti Car bearing registration No. KA-32-M-1272 with driver to Bidar for attending a conference near Uplaon Cross at 9.30 A.M., a lorry bearing registration No. AP-13-T-6401 which was going behind the Maruti Car and at that time another car came from the opposite direction, inspite of taking all care and caution, following the traffic rules and giving a light signal and also hand signal, the driver of the lorry came at a high speed in a rash and negligent manner, dashed against the Maruti Car, the Car was turned turtle and the lorry ran over the Maruti Car. On account of the serious

injuries sustained, the deceased Dr Vijay Hogade and other inmates in the Car died in the accident. The deceased Dr Vijay Hogade is the bread-earner in the family. Therefore, the appellants were constrained to file the Claim Petition, claiming compensation of Rs. 1,04,65,000/- against the respondents.

3. The said claim petition filed by the Claimants/appellants herein had come up for consideration before the Claims Tribunal. The Claims Tribunal after evaluation of the oral and documentary evidence and other relevant materials available on the file, taking into consideration the occupation of the deceased that he is the bread-earner in the family, has allowed the claim petition in part, awarding a sum of Rs. 11,70,000/- as against Rs. 1,04,65,000/- claimed by the claimants/appellants herein. The claimants/appellants herein claiming that the amount awarded by the Claims Tribunal is inadequate and it requires for enhancement, presented the instant appeal.

4. The submission of the Learned Counsel appearing for the appellants is that the amount awarded towards "Loss of Dependency" is inadequate and it requires enhancement. To substantiate this fact, he has referred to Ex.P 16 - Salary Certificate issued by the Dean of Mahadevappa Rampure Medical College, Gulbarga, wherein it shows that Dr. Vijay Hogade, working as Prof, of Medicine and getting net salary of Rs. 15,256/- after giving proper deductions towards the Income Tax and Professional Tax at the rate of Rs. 300/- & Rs. 100/- respectively. Further, he submitted that the Tribunal has committed an error in giving 1/3rd deduction towards the personal expenses of the deceased. Taking the dependents of the deceased into consideration, the Tribunal ought to have taken just and proper deduction of 1/4th instead of 1/3rd towards personal expenses of the deceased and the multiplier applicable is 14 (because the deceased is aged about 44 years) Therefore, the Judgment and Award passed by the Claims Tribunal is liable to be modified towards "Loss of Dependency". He further submitted that the amount awarded towards Loss of Consortium: Loss of Love and Affection; Loss of Estate and Funeral & incidental expenses are inadequate, the same may be modified in view of the Division Bench decision of this Court in MFA No. 1846/2003 dated 22-9-2008.

5. Per contra, Sri. R.V. Nadagoudar, Learned Counsel appearing for the third respondent-Insurance Company, inter alia, contended and substantiated, the judgment and award passed by the Claims Tribunal as just and proper and no interference is called for.

6. We have heard the Learned Counsel appearing for the appellants, Learned Counsel appearing for the second respondent and the Learned Counsel appearing for the third respondent-Insurance Company at a considerable length of time.

7. After careful consideration of the submission made by the Learned Counsel appearing for the parties, the only point that arises for consideration is:

Whether the amount awarded by the Claims Tribunal towards "Loss of Dependency" is just and proper?

8. The Learned Counsel appearing for the appellants has rightly pointed out, Ex.P16 Salary Certificate issued by the Dean of Mahadevappa Rampure Medical College, Gulbarga stating that the appellant was getting the salary of Rs. 15,656/- as on 31-10-1998. The Salary Certificate dated 20-11-1998 in No. HKES/MRMCG/98-99/7899 issued by the Dean of Mahadevappa Rampure Medical College, Gulbarga, reads thus:

In Rs. Basic Pay 4,700-00/- P.M. DA 6,298-00/- P.M. H.R.A. 480-00/- P.M. Interim Relief 940-00/- P.M. Provident Fund 600-00/- P.M. Income Tax 300-00/- P.M. Life Insurance Corporation 2,158-00/- P.M. Professional Tax 100-00/- P.M. Group Insurance 60-00/- P.M. Staff Club 10-00/- P.M. Family Benefit Fund 10-00/- P.M. \_\_\_\_\_ 15,656-00 P.M. \_\_\_\_\_ (-) Income Tax 300-00 P.M. (-) Professional Tax 100-00 P.M. \_\_\_\_\_ Total 15,256-00 P.M.

9. The dependants of the deceased are his wife, two minor children and mother. We can safely take 1/4th deduction instead of 1/3rd, that comes to Rs. 3,814/- (Rs. 15,256/- divided by 1/4th) per month. The deceased, aged about 44 years, the appropriate multiplier is 14. Hence, the appellants are entitled to a sum of Rs. 19,22,256/- (Rs. 11,442/- (15,256-3,814) X 12X14) towards "Loss of Dependency". Accordingly, we award Rs. 19,22,256/- towards "Loss of Dependency".

10. So far as the amount awarded by the Claims Tribunal towards Loss of Consortium, Loss of Love and Affection, Loss of Estate and Funeral & incidental expenses are modified in view of the Division Bench Judgment of this Court in MFA No. 1846/2003 dated 22-9-2008. The break ups are as follows:

Loss of Consortium Rs. 1,00,000/- Loss of Love and Affection Rs. 50,000/- Loss of Estate Rs. 50,000/- Funeral, Transportation & Incidental expenses Rs. 25,000/- \_\_\_\_\_ Total Rs. 2,25,000/- \_\_\_\_\_

11. Having regard to the facts and circumstances of the case as stated above, the common judgment passed by the Claims Tribunal dated 13-12-2002 passed in M.V.C. No. 152/1999 on the file of Prl. District Judge & MACT at Gulbarga is hereby modified as follows:

(i) Loss of Dependency Rs. 19,22,256/- (ii) Loss of Consortium Rs. 1,00,000/- (iii) Loss of Love and Affection Rs. 50,000/- (iv) Loss of Estate Rs. 50,000/- (v) Funeral, Transportation & Incidental expenses Rs. 25,000/- \_\_\_\_\_ Total: Rs. 21,47,256/- \_\_\_\_\_

12. Therefore, the appellants are entitled to total compensation of Rs. 21,47,256/- (Rupees twenty one lakhs forty seven thousand two hundred and fifty six only) as against the amount awarded by the Claims Tribunal amounting to Rs. 11,70,000/- with interest at 6% p.a. from the date of petition till the date of realisation. The enhanced amount comes to Rs. 9,77,256/-.

13. Hence, we pass the following:

## ORDER

(1) The appeal is allowed in part.

(2) Out of the enhanced amount, Rs. 4,00,000/- with interest shall be deposited in the name of the first appellant in any Nationalised Bank or Scheduled Bank for a period of five years. Appellant No. 1 is directed to withdraw the accrued interest, half yearly.

(3) Out of the balance enhanced amount, Rs. 2,00,000/-with interest shall be deposited in the name of the third appellant in any Nationalised Bank or Scheduled Bank till he attains the age of majority. Appellant No. 1 is directed to withdraw the accrued interest for the welfare of appellant No.3

(4) Out of the balance enhanced amount, Rs. 2,00,000/-with interest shall be deposited in the name of the second appellant in any Nationalised Bank or Scheduled Bank for a period of three years. Appellant No.2 is directed to withdraw the accrued interest.

(5) Out of the balance enhanced amount, Rs. 50,000/- each shall be released in the names of the fourth and fifth appellant with interest immediately on deposit of the amount by the third respondent-Insurance Company.

(6) Out of the balance enhanced amount, Rs. 77,256/- with interest shall be released immediately on deposit of the amount by the third respondent-Insurance Company in favour of appellant No. 1

(7) The third respondent - Insurance company shall deposit the enhanced compensation amount with interest at 6% p.a. from the date of petition till the date of realisation within six weeks from the date of receipt of a copy of this order.

The office is directed to draw up the award accordingly.

Sri. R.V. Nadagoudar, Learned Standing Counsel for the third respondent-Insurance Company is permitted to file his Memo of Appearance within four weeks from today.