**(2012) 03 KAR CK 0008**

**In the Karnataka High Court**

**Case No :** M.F.A. No. 8008 of 2009 (MV)

ICICI Lombard General Ins. Co. Ltd. APPELLANT

Vs

Mohanlal Ram, Santhosh Devi and N S Manjunath RESPONDENT

**Date of Decision :** 13-03-2012

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 166

**Citation :** (2012) 03 KAR CK 0008

**Hon'ble Judges :** B. Sreenivasa Gowda, J

**Bench :** Single Bench

**Advocate :** A.N. Krishna Swamy, for the Appellant; Kenchappa, for R1 and R2, for the Respondent

**Final Decision :** Allowed

# Judgement

B. Sreenivasa Gowda

1. This appeal is by the insurer challenging the quantum of compensation awarded by the Tribunal as excessive and seeking reduction of the same. Heard the learned counsel appearing for the parties and perused the Judgment and award of the Tribunal.

2. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.

3. As there is no dispute regarding death of deceased Anil M. in a road traffic accident occurred on 23.04.2008 due to rash and negligent driving of the offending car bearing registration No. KA-05-D-4302 by its driver And liability of the insurer of the said vehicle, the only point that arises for my consideration in the appeal is:

Whether compensation of Rs. 4,74,000/-awarded by the Tribunal is just and reasonable or does it call for reduction?

4. Learned counsel appearing for the insurer submits that it is a case of death of

a bachelor and the Tribunal has committed an error in deducting 1/3rd of his income towards personal expenses and taking 2/3rd of his income as his contribution to family, instead of deducting 50% of his income toward personal expenses and taking remaining 50% of his income as his contribution to family.

5. As the method adopted by the Tribunal in awarding compensation towards loss of dependency and towards conventional heads is not just and proper, I reassess and award the following compensation.

6. The deceased was a bachelor aged about 21 years. The claim petition is filed by his parents seeking compensation u/s 166 of MV Act.

7. Claimants in support of their contention that the deceased was earning a sum of Rs. 18,000/- per month by working as a Manager at Mahaveer Hotel, near Shanthala Silks, Majestic, Bangalore, have examined 1st claimant-father of the deceased as PW1 and have produced B.Com marks card at Ex. P9 and salary certificate at Ex. P10. But they have not examined the author of salary certificate, Ex. P10, nor they examined the proprietor of Mahaveer Hotel to establish the profession and income of the deceased. In the absence of proof of income, considering his age as 21 years, year of accident as 2006 and ha educational qualification and keeping in mind hit future prospects, his Income could be easily assessed Rs. 4,000/- per month. As he was bachelor, 50% of his income is to be deducted towards personal expenses and remaining 50% is to be taken as his contribution to family.

8. The age of the father of the deceased is shown as 52 years and that of his mother is shown as 35 years, at the same time the age of the deceased is shown as 21 years. If that is so, the mother must have been in the age group of 36-40 and the multiplier applicable to her age group is ''15''. Thus, ''loss of dependency'' works out to Rs. 3,60,000/- (4000 x 1/2 x 12 x 15) and it is awarded as against Rs. 4,32,000/- awarded by the Tribunal

9. A sum of RS. 30,000/- is awarded under different heads of convention as against Rs. 42,000/-awarded by the Tribunal

10. Thus, the claimants are entitled for the following compensation:-

HEADS

Rs.

a)

Loss of dependency

-

3,60,000

b)

conventional heads

-

30,000

TOTAL

-

3,90,000

11. According, the appeal is allowed in part The judgment and award passed by the Tribunal is modified to the extent stated herein above. The claimant is entitled for total compensation of Rs. 3,90,000/- as against Rs. 4,74,000/- awarded by the Tribunal with interest at 6% p.a. from the date of claim petition till the date of realisation. The compensation awarded by the Tribunal is reduced by Rs. 84,000/-.

12. Balance of compensation amount to be deposited by the Insurance Company together with interest within two months from the date of receipt of a copy of this judgment. From which, 75% with proportionate interest is ordered to be invested in faced deposit in the name of the 2nd claimant in any Nationalised Bank/Scheduled Bank/post Office for a period of 9 years renewable once in 3 years and with a right of option to withdraw interest periodically. Remaining 25% of amount with proportionate interest is ordered to be released in favour of both the claimants with equal proportion, immediately after the deposit. The amount in deposit is ordered to be transferred to the Tribunal for disbursement. No order as to cost.