

**(2015) 08 KAR CK 0035**  
**In the Karnataka High Court**  
**Case No : MFA No. 4361/2013 (MV)**

Madava Suvarna and Others

APPELLANT

Vs

K. Nalluswamy and Others

RESPONDENT

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**Date of Decision :** 21-08-2015

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation :** (2015) 08 KAR CK 0035

**Hon'ble Judges :** N.K. Patil and P.S. Dinesh Kumar, JJ.

**Bench :** Division Bench

**Advocate :** Pushpalatha for B.L. Acharya, Advocate, for the Appellant

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## Judgement

N.K. Patil, J.—This is claimants" appeal filed against the impugned judgment and award dated 16th January 2013 passed in MVC No. 327/2010 on the file of the Principal Senior Civil Judge and Member, MACT, Mangalore, (hereinafter referred to as "Tribunal" for short), for enhancement of compensation.

2. The Tribunal by its judgment and award has awarded a sum of Rs. 4,10,000/- under different heads after deducting 50% towards contributory negligence on the part of the deceased with interest at 6% per annum from the date of petition till the date of deposit, on account of the death of the deceased late Sri Manikraj Suvarna, in the road traffic accident.

3. In brief, the facts of the case are:

The 1st and 2nd appellants are parents and 3rd and 4th are sisters of the deceased and they have filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation on account of the death of the deceased in the road traffic accident, contending that, when the deceased Manikraj Suvarna, on 30.12.2009 at about 10.45 a.m., was riding a motorcycle No. KA 19 W 46, on Airport Road, Near KPT Hostel Gate, Mangalore, the driver of a LPG Tanker No. KA 21 B 7197, negligently turned the same towards right side and dashed the same against the motorcycle, thereby caused grievous injuries to

Manikraj Suvarna. Immediately after the accident, the injured Manikraj Suvarna has been shifted to Mangala Hospital, Kadri, but on the way to the hospital, the deceased succumbed to the injuries. Due to the death of the deceased, the appellants have suffered mental agony and they have spent huge amount for transportation of the dead body, funeral and obsequies of the deceased. It is the further case of the appellants that, the deceased was aged about 24 years at the time of accident, hale and healthy and working as site supervisor at Coastal Housing builders and land Developers and being a partner in Shubham Enterprises, Mangalore and getting salary of Rs. 12,000/- p.m. and looking after the welfare of the family and due to his untimely death, they suffered socially and economically. The said claim petition had come up for consideration before the Tribunal. The Tribunal after appreciating the oral and documentary evidence and other material available on record has allowed the claim petition in part and awarded the compensation of Rs. 4,10,000/- under different heads with interest at 6% p.a., from the date of petition till the date of deposit after deducting 1/3rd towards personal expenses of deceased and 50% towards contributory negligence fixed on the part of the deceased. Not being satisfied with the compensation awarded by the Tribunal, the appellants have presented this appeal, for enhancement of compensation.

4. The submission of the learned counsel appearing for the appellants is that, the Tribunal has failed to assess the just and reasonable income of the deceased as per Ex. P9 Salary certificate issued by the Coastal Housing Builders and Developers and the income of Rs. 5,000/- per month assessed by the Tribunal is on the lower side since the accident has occurred on 30.12.2009 and the Tribunal has not assessed the income of the deceased properly. The Tribunal has erred in not awarding reasonable compensation towards injury, pain and suffering, medical expenses, conveyance, nourishing food and attendant charges, loss of amenities, comfort and happiness and loss of future income. Further, the Tribunal has erred in fixing 50% contributory negligence on the part of the deceased which is contrary to the oral and documentary evidence as there is no negligence on the part of the deceased being driver. The appropriate multiplier applicable is "14" if the age of the mother of the deceased is taken. Further he submitted that Tribunal has erred in not appreciating Ex. P5 spot sketch and Ex. P6-True copy of IMV Report the contents of both the documents establish that there is no contributory negligence on the part of the motor cycle of the deceased. This aspect is not looked into nor appreciated as the police after due investigation, have filed charge against the driver of the lorry involved in the accident. Therefore he submitted that the reasoning given by the Tribunal at Para Nos. 20 and 25 of its judgment may be modified fixing the entire negligence on the part of the driver of the lorry involved in the accident. Therefore, impugned judgment and award passed by the Tribunal, is liable to be modified by awarding just and reasonable compensation under all heads, fixing entire negligence on the part of the driver of the lorry.

5. Per contra, Sri. Ravish Benni, appearing for respondent No. 2 - Insurer inter

alia contended and substantiated that, the impugned judgment and award passed by the Tribunal is just and proper and is passed after considering the oral and documentary evidence and interference by this Court is not called for.

6. Regarding contributory negligence fixed on the part of the deceased, he has taken us through Ex. P5, the True Copy of Sketch and Ex. P4 Copy of Mahazar and Ex. P6 True copy of IMV report and Ex. 7 Inquest Mahazar and Ex. P8 Copy of charge sheet and submitted that nature of the damage caused to the motor cycle involved in the accident as per Ex. P6 establishes the entire negligence on the part of the rider of the motor cycle rather than the driver of the lorry. He Further submitted that when the tanker lorry was turning from KPT junction and Yeyyady Road, i.e. main road towards a cross road, the motorcycle which was running on the main road, dashed to the left rear part of the tanker lorry and caused damage to vehicle bearing No. KA 21B7197 as per Ex. P6 MVI Report left side rear wheel mudguard of the tanker lorry of the articulated vehicle dented. The Tribunal ought to have fixed reasonable contributory negligence on the part of the rider of the motor cycle also after appreciation of the oral and documentary evidence available on record and the reasoning given in para-25 is liable to be modified.

7. After considering the submissions made by the learned counsel appearing for both the parties and on perusal of the material available on record, including the impugned judgment and award passed by the Tribunal, the only point that arise for consideration is:

"Whether the quantum of compensation awarded by the Tribunal is just and reasonable?"

8. It is not in dispute that the deceased died in the road traffic accident. Further it is not in dispute that, the deceased was aged about 24 years at the time of accident, hale and healthy and looking after the welfare of the appellants. The accident has occurred on 30.12.2009 and by profession he was site supervisor at Costal Housing builders and Land Developers. The income of the deceased is stated to be Rs. 12,000/- p.m. as per Ex. P9 and oral evidence of PW3- Manager of Costal Housing and Builders and land Developers. Accepting the same, we deem it fit to re-assess the income of the deceased at Rs. 12,000/- p.m. Due to his un-timely death, claimants have lost their only breadwinner and facing great mental shock and monetary loss. The claimants are none other than the parents and unmarried sisters of the deceased, who have lost their future security due to his untimely death. Having regard to all these aspects we are of the opinion, the appellants have made out a case for enhancement of reasonable compensation under different heads. Having regard to the age, avocation and year of accident, we can safely re-assess the income of the deceased at Rs. 12,000/- per month, to meet the ends of justice as against the income assessed by the Tribunal. Out of it, if 50% is deducted towards the personal expenses of the deceased being bachelor it comes to Rs. 6,000/-. In the light of the decision in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the appropriate

multiplier applicable is "14" taking the age of the mother of the deceased as 45 years. Accordingly, the appellants are entitled towards loss of dependency at Rs. 10,08,000/- (Rs. 6,000/- x 12 x 14).

9. Considering the facts and circumstances of the case that, the parents have lost their son at an young age and the sisters have lost the love and affection, inspiration and guidance in life and have lost future security, we deem it fit to award Rs. 25,000/- towards loss of estate, Rs. 1,00,000/- towards loss of love and affection at the rate of Rs. 25,000/- to each claimant and Rs. 25,000/- towards funeral and transportation expenses. In all, the claimants are entitled for Rs. 11,58,000/-.

10. Regarding contributory negligence fixed by the Tribunal at 50% on the part of the deceased, it can be seen that the Tribunal after critical evaluation of the oral and documentary evidence available on file, particularly Ex. P5 sketch and Ex. P4 copy of Mahazar, Ex. P6 True copy of MVI report, Ex. P8 Charge Sheet Ex. P7 Inquest mahazar, has fixed contributory negligence at 50% on the part of the deceased. The reasoning given by the Tribunal at Para-25 of its judgment regarding the rash and negligent driving by the drivers of both the vehicles and fixing equal negligence on their part, is just and proper, as the same is passed on the basis of documentary evidence available on file. Further, as per Ex. P6 IMV report damage caused to both the vehicles is as follows:

KA21B7197-Vehicle of the tanker lorry:--

1. Left side rear wheel mudguard of the tanker lorry of the articulated vehicle dented.

KA19W46- vehicle of the deceased:--

1. Front fork found damaged.
2. Headlight assembly found broken in to pieces.
3. Fuel tank found dented.
4. Engine guard found dented
5. Front number plate found dented. 6 T-joint found broken
7. Handle found bent
8. Step bar found bent
9. Front wheel and mudguard damaged.
10. silencer found dented.

11. After careful perusal of documents and nature of the damage caused to both the vehicles and spot mahazar, it establishes that when the tanker lorry was turning from KPT junction and Yeyyady Road i.e. main road towards a cross road, the motorcycle which was running on the main road, dashed against the left rear

part of the tanker lorry. It is clear that driver of the tanker lorry and rider of the motorcycle have not taken care and caution while driving their vehicles. The contributory negligence fixed on the drivers of both the vehicles, as per Exs. P4 to P8 is just and proper. The Tribunal is justified in fixing the contributory negligence at 50% each on the part of the driver of the motor cycle and driver of the tanker lorry hence interference by this Court is not called for and accordingly, we uphold the contributory negligence fixed on the part of the deceased at 50%.

12. Therefore from the total compensation, of Rs. 11,58,000/-, if 50% towards contributory negligence on the part of the deceased is deducted, it comes to Rs. 5,79,000/- as against Rs. 4,10,000/- awarded by the Tribunal and there will be enhancement of Rs. 1,69,000/-.

13. Having regard to the facts and circumstances of the case as stated above, appeal is allowed in part. The impugned judgment and award passed by the Tribunal dated 16.1.2013 in MVC No. 327/2010 is hereby modified. The total compensation payable comes to Rs. 5,79,000/- as against Rs. 4,10,000/- awarded by the Tribunal. There will be an enhancement of Rs. 1,69,000/- with 6% interest per annum.

The 2nd respondent is directed to deposit the enhanced compensation of Rs. 1,69,000/- with interest at 6% p.a., from the date of petition till the date of realization within three weeks from the date of receipt of a copy of this judgment.

Out of the enhanced compensation, Rs. 50,000/- each with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, in the names of the 1st and 2nd appellants/parents of the deceased for a period of five years and renewable for another five years, with liberty to them to withdraw the interest accrued on it.

The remaining Rs. 69,000/- with proportionate interest shall be released in favour of the 1st and 2nd appellants in equal proportion, immediately, on deposit by the 2nd respondent.

Draw the award, accordingly.