
(2025) 04 SC CK 0286

In the Supreme Court Of India

Case No : Civil Appeal No. 5666 Of 2025 (@ Special Leave Petition (C) No.27391 Of 2018)

Malakappa & Ors

APPELLANT

Vs

Iffco Tokio General Insurance Company Limited & Anr

RESPONDENT

Date of Decision : 29-04-2025

Acts Referred:

Citation : (2025) 04 SC CK 0286

Hon'ble Judges : Sudhanshu Dhulia, J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : Chinmay Deshpande, V. N. Raghupathy, Gopal Singh

Final Decision : Disposed Of

Judgement

K. Vinod Chandran, J

1. Leave granted.

2. The appellants who were the claimants before the Tribunal sought compensation for the death of the wife of the first appellant whose children are second and third appellants. The claim arose from the death of a pillion rider in an accident which occurred on 22.02.2015, as a result of which the pillion rider succumbed to the injuries sustained in the accident; two days later i.e. on 24.02.2015.

3. Before the Tribunal, the claimants asserted an income of ₹ 15,000/- for the deceased, while she was alive, claiming her to be a Coolie. The Tribunal considering the unspecified work in which the deceased was employed, took the income at ₹ 7,000 and reduced 1/3rd of the income determined for personal expenses; finding the husband to be not dependent on the deceased, in which event the dependant family consisted of the deceased and her two children. Fifty percent was added for future prospects and considering the age of the deceased, i.e. 35 years, a multiplier of 16 was applied, determining the total loss at ₹ 13,44,000/-. On other heads also compensation was awarded totalling

□ 18,81,966/- as shown hereinbelow:

Nos.

Particulars

Amount in □

1

Loss of dependency

13,44,000/-

2

Loss of consortium

50,000/-

3

Medical expenses

21,966/-

4

Transport and funeral expenses

30,000/-

5

Loss of estate

3,36,000/-

6

Love and affection

1,00,000/-

Total

18,81,966/-

4. The insurance company filed appeal before the High Court against the award also alleging that the accident was not due to the rash and negligent driving of the motor cycle, based on the eye-witness testimony and also the charge-sheet registered against the driver. The High Court found the accident to have been caused due to the rash and negligent driving of the driver of the bike, whose owner is indemnified by the insurance company. We find no reason to differ from the said findings.

5. The next issue considered was as to whether the petitioner No.1 is a

dependent. The husband of the deceased was not a dependent though he was a legal heir especially since he was an able bodied person of 40 years, was the finding.

6. As far as the income of deceased though ₹ 15,000/- was claimed, the income determined by the Tribunal was ₹ 7,000. The High Court enhanced the income to ₹ 8,000/-; though there was no appeal by the claimants.

7. The deduction applicable for personal expenses was fixed at 1/3rd, considering the dependent family as one comprised of the deceased and only two children. However, we are of the opinion that since there was no employment specified of the husband, it cannot be assumed that he would not have been at least partially dependent on the income of the deceased. Hence the family has to be comprised of 4 in which circumstances the deduction for personal expenses shall be at 1/4th.

8. As far as the additions are concerned, the Tribunal accepted 50% as future prospects, which the High Court deleted. In *National Insurance Co. Ltd. v. Pranay Sethi* (2017) 16 SCC 680, a Constitution Bench, insofar as a self-employed person below the age of 40 years, declared an addition for future prospects, which was limited to 40%. The appropriate multiplier to be applied was taken as 16 since the deceased was aged 35 years. The future prospects of 50% as awarded by the Tribunal was deleted which is proper, but this has to be granted at the rate of 40%. For loss of estate and funeral expenses, ₹ 15,000/- was granted while for loss of consortium a sum of ₹ 40,000/- was granted. In *New India Assurance Company vs. Somwati* 2020 (9) SCC 644 held that loss of consortium is not restricted to the wife alone but has to be awarded to the children and parents.

9. Since there was no appeal filed from the order of the Tribunal determining the income at ₹ 7,000/-, we find no reason to increase the income but however, the claimant would be entitled to 40% for future prospects and the deduction for personal expenses will be 1/4th. The medical expenses as accepted by the Tribunal based on bills has to be granted. In addition to spousal loss of consortium children too are entitled at the rate of ₹ 40,000/-. In the above circumstances, we award the following compensation under the following heads:

Nos.

Particulars

Amount in ₹

1

Loss of dependency

$8000 \times 12 \times 140\% \times 16 \times 1/4$

16,12,800/-

2

Loss of consortium

1,20,000/-

3

Medical expenses

21,966/-

4

Transport and funeral expenses

15,000/-

5

Loss of estate

15,000/-

Total

17,84,766/-

10. There is no scope for loss of love and affection, since already loss of consortium has been awarded. We are conscious of the fact that incremental increases have been made from the award of the Tribunal though the appellant had not challenged the Tribunal's order. We are of the opinion that what has been enhanced is only the pro-rata amounts under the conventional heads, while the percentage adopted for future prospects and the deduction for personal expenses have been reduced. We do this exercise on the trite principle that what is to be awarded is 'just compensation' as has been held by the Constitution Bench. The award as modified by us also does not exceed that granted by the Tribunal. We dispose of the appeal with the above modifications.

11. Pending applications, if any, shall stand disposed of.