

## K. Chandrashekar Shetty and Others Vs Sheena Naik and Others

**Court:** Karnataka High Court

**Date of Decision:** Oct. 15, 2015

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

**Hon'ble Judges:** N.K. Patil and P.D. Waingankar, JJ.

**Bench:** Division Bench

**Advocate:** S. Vishwajith Shetty, Advocate, for the Appellant

**Final Decision:** Partly Allowed

### Judgement

N.K. Patil, J.

This appeal by the claimants is directed against the judgment and award dated 10th October 2013, passed in MVC No.

544/2012, by the Additional District & Sessions Judge & Additional Motor Accident Claims Tribunal, Udupi (sitting at Kundapura), Kundapura,

(for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 7,95,967/- awarded in favour of the

claimants as against their claim for Rs. 25,00,000/-, is inadequate.

2. The facts in brief are that, the claimants are the parents of deceased K. Suhas Shetty. They filed the claim petition under Section 166 of the

Motor Vehicles Act, contending that at about 09:25 A.M., on 26-05-2012, when the deceased K. Suhas Shetty was riding Motor Cycle bearing

Registration No. KA-20/R-8894, from Koteshwara side towards Kundapura side, slowly and in a steady manner, near Ithalbettu, over left side

(western side)NH-66, Koteshwara Village, a Bus bearing Registration No. KA-20/A-8875 suddenly entered into western side from eastern side

road and came from opposite side, i.e. Kundapur side towards Koteshwara side, driven by its driver at a very high speed, in a rash and negligent

manner, on the extreme wrong side of the road so as to endanger human life and property, and dashed against the motor cycle of the deceased.

Due to the impact, the deceased fell down on the road and the deceased sustained grievous injuries and succumbed to the same on the spot.

3. It is the case of the appellants that, the deceased was aged about 35 years and a Civil Engineering graduate. It is stated that he was a registered

Civil Contractor, earning a sum of Rs. 40,000/- per month and hale and healthy prior to the accident. On account of the untimely death of the

deceased, the claimants/parents have lost the love and affection, social and moral support apart from financial security and therefore, they have to

be compensated reasonably.

4. On account of the death of the deceased, the appellants filed the claim petition before the Tribunal, seeking compensation against the

respondents. The said claim petition had come up for consideration before the Tribunal on 10th October, 2013. The Tribunal, after considering the

relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of

Rs. 7,95,967/- under different heads, with 6% interest per annum, from the date of petition till the date of payment. Being dissatisfied with the

quantum of compensation awarded by the Tribunal, the appellants are in appeal before this Court, seeking enhancement of compensation.

5. We have gone through the grounds urged in the memorandum of appeal and heard learned counsel appearing for appellants and learned counsel

appearing for third Respondent/Insurer, for quite some time.

6. The submission of Shri. S. Vishwajith Shetty, learned counsel appearing for appellants, at the outset is that, the Tribunal grossly erred in

assessing the income of the deceased by taking the average income of deceased for three assessment years and applying the multiplier, taking the

average age of the parents of the deceased for calculating loss of dependency and the same is contrary to the law laid down by the Hon'ble Apex

Court and this Court in host of judgments. He further submitted that the reasoning given by Tribunal is perverse and liable to be set aside and that

the Tribunal, at least considering the returns filed for the previous assessment years, ought to have assessed reasonable income of the deceased.

Therefore, he submitted that reasonable income may be re-assessed and adopt the multiplier, taking the age of the younger parent and award

reasonable compensation towards loss of dependency.

Further, he submitted that the compensation awarded by Tribunal towards conventional heads is also on the lower side and liable to be re-

determined, as per the latest decisions of the Hon'ble Apex Court and this Court in catena of decisions. Thus, he sought for modification of the

impugned judgment and award passed by Tribunal, by awarding just and reasonable compensation towards loss of dependency and also

conventional heads.

7. As against this, learned counsel appearing for third respondent - Insurer sought to justify the impugned judgment and award stating that the same

is passed after due appreciation of the oral and documentary evidence available on file and the Tribunal has rightly assessed the income of the

deceased having regard to his age, avocation and the year of accident. Therefore, interference in the impugned judgment and award passed by

Tribunal is not called for.

8. After hearing learned counsel for the parties, and after careful perusal of the judgment and award passed by the Tribunal, the only point that

arise for our consideration in this appeal is,

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

9. The undisputed facts of the case are the occurrence of accident and the resultant death of the deceased. It is also not in dispute that the

deceased was aged about 35 years and working as a PWD and Civil contractor. It is stated that he was earning Rs. 40,000/- per month, at the

time of accident. Admittedly, as per Ex. P8, he was a registered Contractor. In support of the same, the claimants have also produced the income

tax returns submitted by the deceased during his life time for the years 2009-10, 2010-11, 2011-12 and 2012-13 as per Exs. P16, P17, P18 and

P19. The Tribunal has taken the average annual income for the four consecutive years. The same cannot be sustained. The income just preceding

the date of death of deceased is the relevant for consideration. Accordingly, for the year 2011-12, the annual income of the deceased was Rs.

2,37,926/- as per Ex. P18. The same is accepted.

10. Further, it can be seen that the Tribunal, after critical evaluation of the oral and documentary evidence available on file and also considering the

facts and circumstances of the case, has deducted 1/3rd towards the personal and living expenses of the deceased, by giving valid and cogent

reasons. The same is just and proper and accordingly accepted.

11. Accordingly, out of this, if 1/3rd (i.e. Rs. 79,308/-) is deducted from Rs. 2,37,926/- towards his personal expenses, the net income would be

Rs. 1,58,618/- per annum. The deceased was a bachelor and therefore, the age of the younger parent is to be taken into consideration.

Accordingly, as per the decision of the Hon"ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the

age of younger parent of the deceased, i.e. mother was aged about 67 years at the time of accident and for the said age, the proper multiplier

applicable is "7". Thus, the compensation towards loss of dependency would work out to Rs. 11,10,326/- (i.e. Rs. 1,58,618/- x "7") as against

Rs. 7,65,967/- awarded by Tribunal.

12. Further, the Tribunal has erred in awarding only a sum of Rs. 30,000/- towards conventional heads. The same is on the lower side. As per the

decision of the Apex Court in Sarla Verma's case (supra), we award a sum of Rs. 25,000/- towards loss of estate, Rs. 50,000/- towards loss of

love and affection and Rs. 25,000/- towards transportation and funeral expenses as against Rs. 30,000/- awarded by Tribunal. Thus the total

compensation works out to Rs. 12,10,326/- as against Rs. 7,95,957/- awarded by Tribunal.

13. Further, as rightly pointed out by learned counsel appearing for claimants, the rate of interest at 6% per annum awarded by Tribunal is on the

lower side, as the accident has occurred on 26-05-2012. Therefore, as per the ratio of law laid down by the Hon"ble Apex Court and this Court

in catena of decisions and also considering the facts and circumstances of the case, we deem it fit and proper to award rate of interest at 9% per

annum as against 6% per annum, awarded by Tribunal, on the enhanced compensation.

14. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellants is allowed in part. The impugned

judgment and award dated 10th October 2013, passed in MVC No. 544/2012, by the Additional District & Sessions Judge & Additional Motor

Accident Claims Tribunal, Udupi (sitting at Kundapura), Kundapura, is hereby modified, awarding a sum of Rs. 12,10,326/- as against Rs.

7,95,957/- awarded by the Tribunal, with interest at 9% per annum on the enhanced sum, from the date of petition till the date of realization. Thus,

there would be enhancement of compensation by a sum of Rs. 4,14,369/- with 9% interest per annum from the date of petition till the date of

realization.

The third respondent - Insurer is directed to deposit the enhanced compensation of Rs. 4,14,369/-, with interest thereon at 9% per annum, within

three weeks from the date of receipt of copy of the judgment.

Immediately on such deposit by the Insurer, a sum of Rs. 50,000/- with proportionate interest shall be invested in the name of appellant No.

1/father of deceased, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of three years, renewable by another three years, with

liberty reserved to him to withdraw the periodical interest.

A sum of Rs. 2,00,000/- with proportionate interest shall be invested in the name of appellant No. 2/mother of deceased, in Fixed Deposit, in any

scheduled/Nationalized Bank, for a period of five years, renewable by another five years, with liberty reserved to her to withdraw the periodical

interest.

Remaining sum of Rs. 1,64,369/- with proportionate interest shall be released in favour of both the appellants, in equal proportion, immediately

Office to draw award, accordingly.