

Bharathi vs P Sureshkumar

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Court : Karnataka

Decided On : Dec-02-2024

Judge : K.S.Mudagal,Vijaykumar a. Patil

Appeal No. : MFA/2808/2021

Appellant : Bharathi

Respondent : P Sureshkumar

Judgement :

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF DECEMBER, 2024 PRESENT THE
HON'BLE MRS JUSTICE K.S.MUDAGAL AND THE HON'BLE MR
JUSTICE VIJAYKUMAR A. PATIL MISCELLANEOUS FIRST APPEAL
NO.2808/2021 (MV-I) C/w MISCELLANEOUS FIRST APPEAL
NO.2802/2021 (MV-I) MISCELLANEOUS FIRST APPEAL
NO.2805/2021 (MV-I) MISCELLANEOUS FIRST APPEAL
NO.2809/2021 (MV-I) MISCELLANEOUS FIRST APPEAL
NO.2810/2021 (MV-I) MISCELLANEOUS FIRST APPEAL
NO.3224/2021 (MV-D) MFA No.2808/2021: BETWEEN: BHARATHI W/O

S.MAHALINGA HOUSE WIFE AGED ABOUT 44 YEARS R/AT ASHWATH NAGARA, KADUR TOWN CHIKKAMAGALURU DISTRICT - 577 101 APPELLANT (BY SRI GIREESHA S.N. FOR SRI MANJUNATH N.D., ADVOCATES)

Digitally MFA No.2802/2021: signed by K S RENUKAMBA BETWEEN: Location: High Court of K M PRIYANKA Karnataka D/O MAHALINGA STUDENT AGED ABOUT 21 YEARS R/AT ASHWATH NAGARA, KADUR TOWN CHIKKAMAGALURU - 577 101 APPELLANT (BY SRI GIREESHA S.N. FOR SRI MANJUNATH N.D., ADVOCATES) MFA No.2805/2021: BETWEEN: PRAKRUTHI D/O LATE ANAND -2- AGED ABOUT 18 YEARS STUDENT R/AT VENKATESHANAGARA, KADUR TOWN

CHIKKAMAGALURU DISTRICT - 577 101 APPELLANT (BY SRI GIREESHA S.N. FOR SRI MANJUNATH N.D., ADVOCATES) MFA No.2809/2021: BETWEEN: C S DHANALAKSHMI D/O S SREENIVASA AGED ABOUT 21 YEARS R/AT BENKI COLONY KADUR TOWN CHIKKAMAGALURU DISTRICT - 577 101 APPELLANT (BY SRI GIREESHA S.N. FOR SRI MANJUNATH N.D., ADVOCATES) MFA No.2810/2021: BETWEEN: DARSHAN C S S/O SREENIVASA STUDENT AGED ABOUT 21 YEARS R/AT BENKI COLONY, KADUR TOWN CHIKKAMAGALURU DISTRICT - 577 101 APPELLANT (BY SRI GIREESHA S.N. FOR SRI MANJUNATH N.D., ADVOCATES) MFA No.3224/2021: BETWEEN:

1. SMT KOMALA W/O LATE DEEPU @ SANDEEP KUMAR AGED ABOUT 28 YEARS HOUSE WIFE R/AT ASHWATH NAGARA, KADUR TOWN CHIKKAMAGALURU DISTRICT - 577 101

2. BABY PRAGNA D/O DEEPU @ SANDEEPKUMAR AGED ABOUT 7 YEARS MINOR REP. BY HER MOTHER & NATURAL GUARDIAN APPELLANT NO.1 -3-

3. SMT TRIVENI W/O LATE MANJUNATH HOUSE WIFE AGED ABOUT 48 YEARS R/AT ASHWATH NAGARA, KADUR TOWN CHIKKAMAGALURU DISTRICT - 577 101 APPELLANTS (BY SRI GIREESHA S.N. FOR SRI MANJUNATH N.D., ADVOCATES) AND:

1. P SURESHKUMAR AGED ABOUT 38 YEARS S/O K V PEERYASWAMY R/AT NO.2-408, MARIYAMMAN KOVIL ROAD, NAGIYAMPATTI KENGAVALLI TALUK, SELAM DISTRICT TAMILNADU STATE - 636 002

2. C SUBRAMANIYAN S/O CEERANGA GOWNDAR R/AT NO.1/58, SILUVAMPATTI & POST NAMKKAL TALUK & DISTRICT TAMILNADU STATE - 637 001

3. RELIANCE GENERAL INS. CO. LTD., SRI LAKSHMI COMPLEX, 1ST FLOOR BHARATHI STREET, OMALUR MAIN ROAD SWARNAPURI, TAMILNADU - 636 004

4. VINODKUMAR AGED ABOUT 33 YEARS S/O GOVINDANAIAK R/AT TANGALI THANDYA VILLAGE TANGALLI POST, KADUR TALUK - 577 548

5. NEW INDIA ASSURANCE CO. LTD., DIVISIONAL OFFICE, 4TH FLOOR FORTUNE BUILDING OPPOSITE ATHENA HOSPITAL, FALNIR MANGALURU - 574 142 RESPONDENTS (COMMON) (BY SRI D VIJAYA KUMAR, ADVOCATE FOR R3; NOTICE TO R1, R2, R4 & R5 D/W VIDE ORDER DATED 03.12.2021 IN MFA NO.2808/2021, MFA NO.2805/2021, MFA NO.2809/2021, MFA NO.2810/2021 & MFA NO.3224/2021;

NOTICE TO R1, R2, R4 & R5 D/W VIDE ORDER

DATED 30.10.2024 IN MFA NO.2802/2021) -4- THESE MISCELLANEOUS FIRST APPEALS ARE FILED UNDER

SECTION 173(1) OF MV ACT PRAYING TO MODIFY THE JUDGMENT

AND AWARD DATED 03.03.2020 PASSED IN MVC NOS.188/2015, OF THE SENIOR CIVIL JUDGE AND MMACT, KADUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THESE MISCELLANEOUS FIRST APPEALS COMING ON FOR FURTHER HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER: CORAM: HON'BLE MRS JUSTICE K.S.MUDAGAL AND HON'BLE

ORAL JUDGMENT

(PER: HON'BLE MRS JUSTICE K.S.MUDAGAL) These appeals arise out of common judgment and award dated 03.03.2020 passed by the Senior Civil Judge & MACT, Kadur. The particulars of M.V.C.Nos., corresponding M.F.A.Nos. and appellants are as follows: Sl. M.F.A.No. M.V.C.No. Appellant/ No. claimant

1. 2808/2021 188/2015 Bharathi

2. 2802/2021 187/2015 K.M.Priyanka

3. 2805/2021 184/2015 Prakruthi

4. 2809/2021 191/2015 Dhanalakshmi

5. 2810/2021 190/2015 Darshan

6. 3224/2021 192/2015 Komala & Others

2. Awards in M.V.C.Nos.189/2015, 186/2015, not challenged in these appeals. Respondent Nos.1 to 5 were -5- the respondents before the Tribunal. The parties are referred to henceforth according to their ranks before the Tribunal.

3. On 24.09.2014 at 10.15 a.m. when the claimants

were travelling in Mahindra maxi cab bearing Registration No.KA-18-B-5892 from Kadur to Puradamma temple, Hassan, near fire station of Kadur Town, Ashoka Leyland gas tanker lorry bearing Registration No.KA-21-A-7749 hit the said Maxi Cab. In the accident all the aforesaid claimants suffered grievous injuries. Tanker Gas Lorry was insured with Reliance General Insurance Company Limited and Maxi Cab was insured with New India Assurance Company Limited.

4. Claimants filed the above referred claim petitions

contending that the accident occurred due to actionable negligence on the part of the driver of gas tanker bearing Registration No.KA-21-A-7749, due to the injuries

sustained in the accident they are not able to lead their normal lives and have spent huge amount for medical treatment. Hence sought compensation from the respondents.

5. The respondents contested the petition denying actionable negligence on the part of the driver of gas tanker lorry and the entitlement of the claimants to the compensation as sought by them. -6-

6. The Tribunal consolidated all the matters and

recorded common evidence. The claimants were examined as PWs.1 to 10 and got marked Exs.P1 to P285. On behalf of the claimants, the doctors who treated them were examined as CWs.1 to 10 and documents produced by those doctors were marked as Exs.C1 to C35. In M.V.C.No.440/2015, one Dr.Jayanth Kumar was examined as CW.1 and Exs.C1 to C4 were marked. On behalf of the respondents, RWs.1 and 2 were examined and Exs.R1 to R15 were marked.

7. The Tribunal on hearing the parties, by the

impugned judgment and award held that the accident occurred solely due to actionable negligence on the part of the driver of gas tanker lorry bearing Registration No.KA-21-A-7749. The Tribunal on examining the evidence on record and hearing the parties, awarded compensation in the claim petitions as follows:

Sl.	M.F.A.	M.V.C.	Appellant/	compensation
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8. The claimants have filed these appeals questioning the adequacy of compensation awarded to them.

9. Sri Gireesha S N for Sri Manjunath.H.D, learned

Counsel for the claimants in all appeals submits that the disability assessed and the compensation awarded in all these cases is on the lower side. Whereas, Sri D.Vijaya Kumar, learned Counsel for Reliance General Insurance Company Ltd. justifies the compensation awarded, contending that the same is based on the

evidence on record.

10. None of the respondents in claim petitions have

challenged the finding of the Tribunal regarding occurrence of accident due to actionable negligence on the part of the driver of lorry, therefore what remains for consideration is adequacy of compensation awarded.

11. On considering the submissions of both side and examining the materials on record, we find it appropriate to examine the correctness of the compensation awarded in each of the above referred cases as below. M.F.A.No.2808/2021 (M.V.C.No.188/2015):

12. Claimant/Bharathi contended that she suffered permanent physical disability due to the injuries sustained by -8-

her and she was earning Rs.10,000/- p.m. by doing agriculture and coolie work. In support of her contention, she examined CW.2/Dr.Sharmila G.S., Oral and Maxillofacial Surgeon and CW.8/Dr.H.C.Shivakumar, Senior Consultant and Orthopaedic Surgeon, Shivamogga.

13. As per the evidence of CW.2 and the records

produced by her, the claimant had swelling, tenderness, deformity bilateral maxilla region and swelling and tenderness of left mandible region. She further deposed that surgery was conducted on her. According to CW.2, facial disability of the claimant was 15%. CW.8 deposed that the claimant had suffered pubic symphysis diastasis. He deposed that disability of the claimant to her left lower limb was at 35.19%. Both doctors did not depose as to what was the permanent physical disability to the whole body. Therefore the Tribunal was right in adding both percentages of disability and taking 1/3rd of the same, namely 17%, as whole body disability.

14. The claimant was aged 38 years. There was no

proof of her actual income. However, considering her age, prevailing wage rates and cost of living during the relevant time, her income could be reasonably

assessed at Rs.8,500/- -9- per month. The applicable multiplier is 15. Therefore loss of future earnings comes to Rs.8,500/- x 12 x 15 x 17%=Rs.2,60,100/-.

15. The claimant could not have attended to her work for minimum of three months. Therefore loss of income during laid up period comes to Rs.8,500/- x 3 = Rs.25,500/-.

16. Medical expenses awarded was based on evidence

on record and documents produced. Therefore that needs to be maintained. Having regard to the nature of the injuries, compensation awarded on the heads of conveyance charges, pain and suffering, need to be maintained.

17. The claimant had suffered injuries on her face and she could not have been able to chew or attend to her regular

routine because of her inability and there could be disfigurement. Considering the nature of the injuries, the Tribunal ought to have awarded Rs.50,000/- on the head of loss of amenities.

18. As spoken by the doctor and the evidence on

record, the claimant was treated as inpatient between 24.09.2014 and 06.10.2014 for a period of 12 days. Thus compensation awarded on the head of attendant charges need - 10 - to be modified from Rs.20,000/- to Rs.15,000/-. Therefore just compensation payable is as follows: Sl. Particulars Compensation No. in Rs.

1. Loss of future earnings 2,60,100/-

2. Medical expenses 1,44,894/-

3. Loss of income during laid up 25,500/- period

4. Pain and sufferings 50,000/-

5. Loss of amenities 50,000/-

6. Conveyance 20,000/-

7. Diet, nourishment and 15,000/- attendant charges Total 5,65,494/- Less: Awarded by the Tribunal 4,20,894/- Enhancement 1,44,600/- M.F.A.No.2802/2021 (M.V.C.No.187/2015):

19. As per CW.5 and Exs.49 to P57 i.e. wound

certificate, bills and discharge summaries etc., claimant/Priyanka suffered fracture of shaft of middle 1/3rd of left femur. The claimant was aged 12 years. CW.5 assessed disability at 32.44% to left lower limb and disability to the whole body was not assessed. Therefore the Tribunal was justified in taking 1/3rd of the same i.e. 11% as disability to the whole body. Since the claimant was aged below 14 years, she cannot be considered as a labourer earning any income. Under the circumstances, the Tribunal was justified in applying the

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judgment of the Honble Supreme Court in Master Mallikarjuna

v. National Insurance Co. Ltd.¹ and awarding global compensation of Rs.3,00,000/- on the head of pain and suffering, physical and mental shock, hardship, inconvenience and discomfort, loss of amenities and permanent disability.

20. The claimant was treated as inpatient between

24.09.2014 to 30.09.2014 in Sahyadri Narayana Multispecialty Hospital, Shivamogga. Considering that compensation awarded on the head of attendant charges, diet etc. at Rs.25,000/- and compensation of Rs.25,000/- awarded towards loss of earnings of the parents is just one. The Tribunal has even awarded Rs.25,000/- on future medical expenses. That is not challenged by the respondent/Insurer. Medical expenses at Rs.46,627/- awarded by the Tribunal was based on the documents produced by the claimant. The Tribunal in all has awarded Rs.4,21,627/- which is just and reasonable one. Therefore the appeal deserves no merit. M.F.A.No.2805/2021 (M.V.C.No.184/2015):

21. In this appeal, the claimant/Prakruthi was aged 12 years. The doctors who treated her were examined as CWs.1, 6 and 10.

(2014) 14 SCC 396 - 12 -

22. As per the evidence of CW.1/Dr.Sharmila G.S. Oral and Maxillofacial surgeon, the claimant suffered the following injuries:

- (i) lefort 3 fracture of the facial region;
- (ii) fracture of shaft of left humerus;
- (iii) fracture of both bone of left wrist forearm;
- (iv) mild head injury and soft tissue injury.

23. As per Ex.C1/disability certificate, she assessed 15% disability of the middle third of facial region.

24. As per CW.6/Dr.H.C.Shivakumar, Senior Consultant Orthopaedic surgeon, Shivamogga, the claimant suffered the following injuries:

- (i) left arm deformity and swelling;
- (ii) left forearm deformity and swelling;
- (iii) nasal bleeding, loss of consciousness and vomiting.
- (iv) fracture shaft of left humerus;
- (v) fracture of both bone, left forearm;
- (vi) multiple facial bone fracture;
- (vii) mild head injury; and (viii) soft tissue injury. - 13 -

25. As per Ex.C19/disability certificate, the claimant suffered 32.13% disability to left upper limb.

26. As per CW.10/Dr.Madhusudhan N., Neuro Surgeon, Metro Hospital, Shivamogga, he found the following injuries:

(i) ENT bleed;

(ii) periorbital swelling bilateral

(iii) multiple facial abrasion.

27. As per Ex.C32/disability certificate, the claimant had 35% Neuro behavioral disability.

28. Considering multiple fractures on face, arm and

neuro behavioral disability which relates to the entire body, we are of the considered opinion that the Tribunal was not right in assessing disability only at 24% to the whole body. The Tribunal ought to have taken disability at 65% to the whole body. In such cases, considering the judgment of the Honble Supreme Court in Master Mallikarjuns case referred to supra, on the heads of pain and suffering, physical and mental shock, hardship, inconvenience and discomfort, loss of amenities and permanent disability, global compensation of Rs.5,00,000/- has to be awarded to the claimant.

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29. Compensation awarded on the head of medical expenses and other heads need to be maintained. Therefore just compensation payable is as follows: Sl. Particulars Compensation No. amount in Rs.

1. Pain and suffering, physical and mental 5,00,000/- shock, hardship, inconvenience and discomfort, loss of amenities and permanent disability

2. Loss of earnings to the parents during the 25,000/- period of hospitalisation

3. Medical expenses 1,74,558 /-

4. Attendant charges, conveyance during the 25,000/- period of hospitalization

5. Future medical expenses 25,000/- Total compensation 7,49,558 /- Less: awarded by the Tribunal 5,49,558/- Enhancement 2,00,000/- MFA No.2809/2021 (MVC No.191/2015):

30. In this case, at the time of accident, the claimant C.S.Dhanalakshmi was aged 14 years. As per Ex.P137/wound certificate, she had suffered the following injuries:

(i) Circumferential lacerated wound over the forehead extending from just above the right ear all around the forehead beyond just above the left ear measuring 18 cm x 2 x 1 cm.

(ii) Type II open fracture left ring finger middle phalanx with extensor tendon injury;

(iii) Mandibular symphysis with left mandibular condyle fracture. - 15 -

31. Initially, the claimant was treated in Kadur Government Hospital. Then she was shifted to Sahyadri

Narayana Multispeciality Hospital, Shivamogga. She was treated as inpatient from 24.09.2014 to 29.09.2014 i.e. for 6 days under CW-3/Dr.Sharmila G.S., Oral and Maxillofacial surgeon of Sahyadri Narayana Multi Specialty Hospital. She examined the claimant on 24.09.2014 and found Type II open fracture of left ring finger, head injury and mandible symphysis and left mandible condyle fracture. She assessed the disability of claimant at 10% towards lower mandible region.

32. Claimant also examined CW-7/Dr.H.C.Shivakumar,

Senior Consultant and Orthopaedic Surgeon, Sahyadri Narayana Multispeciality Hospital. Evidence of CW.7 and other evidence show that, claimant had suffered diffused facial edema, there was deviation of jaw on opening, occlusion deranged and sutured scalp lacerated wound. He assessed her disability at 22.47% to left upper limb and issued disability

certificate/Ex.C22. Dr.Madhusudhan N., Neuro Surgeon of Metro Hospital, Shivamogga (CW-9) deposed that when he examined the claimant, large circumferential wound over the scalp and forehead were present and claimant had

type-II open - 16 - fracture of left ring finger and fracture of mandible symphysis

and left mandibular condyle. He spoke about the treatment given to the claimant and assessed that she had 40% neuro behavioral disability and issued Ex.C28 recording the same. The Tribunal added the disability spoken by the above witnesses to the particular limbs and considered its 1/3rd, namely $10\% + 22.47\% + 40\% = 72.47/3 = 24\%$ as disability

to whole body. The Tribunal, applying the judgment of the Hon'ble Supreme Court in Mallikarjuns case referred to supra awarded compensation as follows: Sl. Particulars Compensation No. awarded in Rs.

1. Medical expenses 1,19,530/-

2. Pain and suffering already

undergone and to be suffered in future, mental and physical shock, hardship, inconvenience and discomfort etc. and loss of amenities in life on account of permanent disability 3,00,000/-

3. Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization 25,000/-

4. Medical and incidental expenses during the period of hospitalization 25,000/-

5. Future medical expenses for correction of the mal union of fracture and incidental expenses for such treatment 25,000/- Total 4,94,530/- - 17 -

33. Sri.Gireesha S N for Sri Manjunath, learned Counsel

for the claimant submits that neuro disability applies to the whole body and the Tribunal was in error in reducing the same to 1/3rd. Therefore, the compensation awarded needs to be re- assessed.

34. Sri D.Vijaykumar, learned Counsel for the insurer

submits that there was no evidence to show that claimant had suffered 40% neuro behavioral disability and mandibular disability does not lead to neuro behavioral

disability.

35. Though the insurer disputed 40% neuro behavioral

disability before this Court, it has not challenged the findings of CW.3, CW.7 and CW.9 about the disabilities of the claimant assessed by them. Neuro behavioral disability not only affects the facial area in particular or portion of the body. The disability certificate issued by CW-9 shows that while assessing her neuro behavioral disability, the Doctor had assessed her general mental ability, PGI memory test, self-care, inter- personal activities, communication and understanding etc. in

detail. Ex.C-29 shows that the general mental ability and memory test showed that those functions were below average level. Ultimately, it was observed that claimant has below average level of intelligence and memory function. Therefore, -
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it cannot be said that injury suffered by the claimant was restricted to only a particular organ and 40% cannot be taken. The Tribunal ought to have taken 40% neuro behavioral disability. In respect of the disability spoken by CW.3 and CW.7, it was justified in taking 1/3rd of its total. Therefore, the claimant's disability comes to $22.47 + 10 = 32.47 / 3 = 10.82\% + 40\% = 50.82\%$ rounded to 51%. In such event, as

per the judgment of the Hon'ble Supreme Court in Mallikarjun's case referred to supra, claimant is entitled to compensation of Rs.4,00,000/- on the head of pain and suffering already undergone and to be undergone in future, mental and physical shock, hardship, inconvenience and discomfort etc. as against Rs.3,00,000/- awarded by the Tribunal. The compensation awarded under rest of the heads is as per the judgment of the Hon'ble Supreme Court in Mallikarjun's case referred to supra. That needs to be maintained. Therefore, the just compensation payable in this case is as follows: Sl. Particulars Compensation No. awarded in Rs.

1. Medical expenses 1,19,530/-

2. Pain and suffering already undergone and

to be suffered in future, mental and 4,00,000/- physical shock, hardship, inconvenience and discomfort etc. and loss of amenities in life on account of permanent disability - 19 -

3. Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization 25,000/-

4. Medical and incidental expenses during the period of hospitalization 25,000/-

5. Future medical expenses for correction of

the mal union of fracture and incidental expenses for such treatment 25,000/- Total 5,94,530/- Less: Compensation awarded by the Tribunal 4,94,530/- Enhanced compensation 1,00,000/- MFA No.2810/2021 (MVC No.190/2015):

36. In this case, the claimant Darshan was aged 12 years. To prove the injuries suffered by him and his disability, the claimant got examined CW-4/Dr.H.C.Shivakumar, Senior Consultant Orthopaedic Surgeon, Sahyadri Narayana

Multispeciality Hospital, Shivamogga. His evidence, Ex.P99- wound certificate and Ex.P135-discharge summary issued by the said hospital show that the claimant was treated in the said hospital between 24.09.2014 and 27.10.2014 as inpatient. Exs.P100 to P134 and Exs.P250 to P266 show that claimant had spent Rs.1,98,706/- towards medical expenses. The above evidence further show that the claimant had suffered the following injuries:

(1) deformity, tenderness and swelling over the left thigh

(2) crepitus and abnormal mobility - 20 -

(3) restriction of movement painful in left lower limb

(4) deformity that exposed bones and tenderness.

(5) doubtful distal vascularity and viability

(6) degloving of skin all over the right leg

37. CW-4 assessed the disability of the claimant at

45.84% to the left lower limb. The Tribunal rightly took 1/3rd of the same i.e. at 15% to the whole body. It is no doubt true that for the disability of 18% to the whole body, the Hon'ble Supreme Court in Mallikarjun's case referred to supra, on the head of pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience and discomfort, loss of amenities in life, globally awarded compensation of Rs.3,00,000/-. The victim was only

12 years. He suffered exposed bones, degloving of skin, crepitus and abnormal mobility. Therefore, his sufferance level

was of the higher degree. Having regard to the age and the injuries that caused lot of mental sufferance to the parents also, considering this as a special case, with regard to the compensation under the head of pain and suffering already undergone and to be suffered in future, mental and disability, shock, hardship, discomfort and loss of amenities on account of

- 21 - permanent disability, we find it just and fair to award Rs.4,00,000/- on the said head.

38. Medical expenses were awarded based on the records produced by the claimant. Compensation awarded on the other heads by the Tribunal was in conformity with the

judgment of the Hon'ble Supreme Court in Mallikarjun's case

referred to supra. Therefore, just compensation payable to the claimant is as follows: Sl. Particulars Compensation No. awarded in Rs.

1. Medical expenses 1,98,706/-

2. Pain and suffering already

undergone and to be suffered in future, mental and physical 4,00,000/- shock, hardship, inconvenience and discomfort etc. and loss of amenities in life on account of permanent disability

3. Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization 25,000/-

4. Medical and incidental expenses during the period of hospitalization 25,000/-

5. Future medical expenses for

correction of the mal union of fracture and incidental expenses for such treatment 25,000/- Total 6,73,706/- Less: Compensation awarded by the Tribunal 5,73,706/- Enhanced compensation 1,00,000/- - 22 - MFA No.3224/2021 (MVC No.192/2015):

39. The claimants in this case are the wife, 1 year old

daughter and mother of the deceased Deepu @ Sandeepkumar. The relationship of the deceased with the claimants was not disputed. As on the date of accident, he was aged 28 years. Though the claimants contended that he was working as Porter in APMC, Kadur and earning Rs.15,000/- p.m., no proof of actual income was produced. The Tribunal considered his wage at Rs.250/- per day i.e. monthly income at Rs.7,500/- p.m., deducted 1/3rd out of the same for his personal expenses,

applied 17 multiplier and awarded compensation of Rs.10,20,000/- under the head of loss of dependency. The Tribunal, in all awarded compensation of Rs.11,05,000/- on different heads as follows: Sl. Particulars Compensation No. awarded in Rs.

1. Loss of dependency 10,20,000/-

2. Loss of consortium 40,000/-

3. Loss of love and affection 25,000/-

4. Funeral expenses 15,000/-

5. Transportation of dead body 5,000/- Total 11,05,000/-

40. Learned counsel for the claimants submits that notional income taken by the Tribunal is on the lower side. - 23 - Considering the age, employment of the deceased, cost of living and the wage rates during the year 2014, the notional income assessed by the Tribunal is on the lower side. The Tribunal should have considered the same at Rs.8,500/- p.m.

41. As per the judgment of the Hon'ble Supreme Court

in National Insurance Company Limited Vs. Pranay Sethi², considering the age and employment of the deceased, 40% has to be superadded to his income towards future prospects. As per the judgment of the Hon'ble Supreme Court in Sarla Verma Vs. Delhi Transport Corporation³, applicable multiplier is 17. Therefore, the compensation payable under the head of loss of dependency comes to Rs.8,500 + Rs.3,400 (40%) = Rs.11,900 $\times$ 2/3 = Rs.7933 $\times$ 12 $\times$ 17 = Rs.16,18,332/- rounded to Rs.16,18,400/-.

42. As per the judgment of the Hon'ble Supreme Court

in Pranay Sethi's case referred to supra and Magma General Insurance Company Limited Vs. Nanu Ram⁴, each of the claimants are entitled to compensation of Rs.40,000/- under the head of consortium with escalation of 10%. Similarly, on

(2017) 16 SCC 680 2009 ACJ 1298

(2018) 18 SCC 130 - 24 - the conventional heads i.e. loss of estate and funeral expenses, they are entitled to compensation of Rs.15,000/- on each head with escalation of 10%. Therefore, the just compensation payable is as follows: Sl. Particulars Compensation No. awarded in Rs.

1. Loss of dependency 16,18,400/-

2. Loss of consortium 1,32,000/-

3. Loss of estate 16,500/-

4. Funeral expenses 16,500/- Total 17,83,400/- Less: Compensation awarded by 11,05,000/- the Tribunal Enhanced compensation 6,78,400/-

43. For the aforesaid reasons, M.F.A.No.2802/2021 is liable to be dismissed and the other appeals deserve to be allowed in part. Hence, the following:

ORDER

M.F.A.No.2802/2021 is hereby dismissed. MFA No.2808/2021, MFA No.2805/2021, MFA No.2809/2021, MFA No.2810/2021 and MFA No.3224/2021 are allowed in part. - 25 - The compensation awarded by the Tribunal in MVC Nos.188/2015, 184/2015, 191/2015, 190/2015 and 192/2015, is enhanced as follows: Sl. Compensation Case No. No. awarded in Rs.

1. MVC No.188/2015 1,44,600/-

2. MVC No.184/2015 2,00,000/-

3. MVC No.191/2015 1,00,000/-

4. MVC No.190/2015 1,00,000/-

5. MVC No.192/2015 6,78,400/-

(i) The enhanced compensation shall carry interest at 6% p.a. from the date of petition till its realization.

(ii) Reliance General Insurance Co. Ltd.-the insurer of

gas tanker lorry bearing No.KA-21-A-7749 shall deposit the above said compensation amount before the Tribunal within four weeks from the date of receipt of copy of this order.

(iii) On such deposit, the Tribunal shall release the

amount to the claimants wherever they have attained majority. In M.V.C.No.192/2015, the shares of claimant Nos.1 and 3 shall be released to them digitally and share of minor claimant No.2 shall be invested in Fixed Deposit in any Nationalised/Scheduled Bank of their choice till she attains majority. - 26 -

(iv) Registry shall transmit the records to the Tribunal forthwith. Sd/- (K.S.MUDAGAL) JUDGE Sd/- (VIJAYKUMAR A. PATIL) JUDGE KSR/RV List No.: 1 Sl No.: 37

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