

**Eramma and Another Vs. B.M. Basappa and Another**

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**SooperKanoon Citation :** [sooperkanoon.com/370855](http://sooperkanoon.com/370855)

**Court :** Karnataka

**Decided On :** Jul-26-1990

**Reported in :** AIR1991Kant57; 1991(1)KarLJ167

**Judge :** M.P. Chandrakantaraj Urs and;M. Ramakrishna, JJ.

**Acts :** [Motor Vehicles Act, 1939](#) - Sections 110-A

**Appeal No. :** Misc. First Appeal No. 1111 of 1990

**Appellant :** Eramma and Another

**Respondent :** B.M. Basappa and Another

**Advocate for Pet/Ap. :** C.S. Shanthamallappa, Adv.

**Judgement :**

ORDER

**Chandrakantaraj Urs, J.**

1. This is a claimants' appeal against the award made by the learned district Judge Motor Accidents Claims Tribunal, Chitradurga, in M.V.C. No. 612/86
2. The award is dated 18-8-89. The claimants filed the petition under S. 110A of the Motor Vehicles Act claiming compensation for the death of one Erappa, husband of first appellant herein and father of the second appellant who was

second petitioner before the tribunal. They alleged that the deceased was involved in a motor vehicle accident which took place in Malebennur-Harihar road on 4-2-86.

3. Erappa was working as a Hamali under the second respondent Sri Maralusiddeswara Rice Mill -- a partnership concern. That firm owned a lorry bearing registration No. MYS 7201. The first respondent -- the driver of the lorry -- on that day drove the vehicle in a rash and negligent manner on Malebennur-Harihar road with the result that the lorry capsized. Erappa and another sustained injuries. Erappa was admitted to C.G. Hospital Davanagere. He was in-patient in the hospital from 4-2-86 to 31-7-86, i.e. nearly 5 1/2 months and over. He was discharged on 11-7-86 and subsequently on 13-8-86 he died at the village Alur in Muddebihal taluk, Bijapur district. In that circumstance they claimed a total sum of Rs. 1,50,000/- as compensation. The claim was made against the driver, owners of the lorry as well as the insurer. First and second respondents, the driver and the owner remained ex parte. The third respondent filed objections and resisted the proceedings. The insurer denied that the lorry was driven by the driver in a rash and negligent manner. It contended that Erappa was the passenger in the goods vehicle and he was travelling at his own risk. It, therefore, pleaded that it was not liable to pay compensation. It also raised the question of considering the petition being barred by limitation.

4. On such pleadings as many as 3 issues were framed and they were as follows:--

'1) Whether the petition need to be condoned?

2) Whether the petitioners prove that one Erappa died in a motor vehicle accident on 4-2-86 at 5.30 p.m. near Malebennur in Harihar Taluk due to rash and negligent driving of the lorry No. MYS 7201 by first respondent?

3) Whether the petitioners prove that they are entitled to compensation? If so, to what extent and from whom?'

5. Since the tribunal felt that the delay was justified and they had sufficient cause to condone the delay, it condoned the delay and entertained the petition. It recorded a finding on the evidence led that the petitioners suffered injury on account of the capsizing of the lorry in question and therefore awarded a compensation for the injury, pain and suffering of the deceased Erappa under 5 different heads. What was established by the injury certificate was the fracture of the clavicle spine. Therefore the tribunal awarded Rs. 10,000/- for injury, pain and suffering. It further awarded Rs.5,000/- for shortened expectation of life and Rs. 5,000 / - for medical expenses and another Rs. 5,000/- for loss of earning and amenities. Thus a sum of Rs. 25,000/- was awarded. It further held that the claimants were not entitled to compensation on account of the death as they failed to establish that death was due to the accident. In fact they produced no evidence whatsoever to establish the nexus between the accident and the death.

6. Aggrieved by the said order the present appeal has been filed seeking enhancement of the compensation having regard to the fact that the said Erappa died after the accident. We are unable to find fault with the tribunal, because there was no evidence whatsoever establishing the nexus between the death and the accident. For whatever reason he gave compensation for the injury suffered by the deceased, we cannot go into the correctness or otherwise of it in this appeal. However, learned counsel pressed hard, seeking permission of this Court for producing additional evidence to establish the nexus between the death and the accident. We do not think, having seen the evidence produced before the Court and the long lapse of time between the date of death, date of accident and the date of the disposal of the case in the Tribunal, we should permit production of additional material as no useful purpose will be served by receiving any additional evidence at this stage.

7. Therefore, all that we may state is the conclusion reached by the learned trial Judge that the death was not established as direct consequence of the accident must be sustained and this appeal rejected.

8. Order accordingly.

