IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF FEBRUARY, 2026

R

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO. 2193 OF 2018(MV-D)

C/W

MISCELLANEOUS FIRST APPEAL NO. 3926 OF 2018(MV-D)

IN MFA No. 2193/2018

BETWEEN:

UNITED INDIA INSURANCE COMPANY LIMITED,
DIVISIONAL OFFICE, TP HUB,
BALLAL CIRCLE, CHAMARAJAPURAM,
MYSURU-570 005,
NOW REPRESENTED BY ITS REGIONAL OFFICE,
6TH FLOOR, KRISHI BHAVAN,
NRUPATHUNGA ROAD,
BENGALURU-560 001.
REP. BY ITS AUTHORIZED SIGNATORY.

...APPELLANT

(BY SRI. A.M.VENKATESH., ADVOCATE)

AND:

1. SMT.SHIVAMMA
W/O. SANGAPPASHETTY,
AGED ABOUT 77 YEARS,

2. SRI. SANGAPPASHETTY
S/O. LATE. SIDDALINGAPPA,
AGED ABOUT 82 YEARS,

BOTH ARE R/AT
KUSHALNAGAR, HASSAN ROAD,
IN FRONT OF MILK SOCIETY,
KANIVE VILLAGE AND POST,
SOMWARPET TALUK,

KODAGU DISTRICT-571 236.

3. SRI. H.T.KUSHALAPPA
S/O. THIMMAIAH,
AGED ABOUT 42 YEARS,
R/O. AALILUGUPPE VILLAGE,
THORENOOR POST, KUSHALNAGAR,
SOMWARPET TALUK-571 234.
(OWNER OF INSURED VEHICLE BEARING,
NO. KA-12/N-8992 - MAHINDRA BOLERO)

...RESPONDENTS

(BY SRI. R.D.PANCHAM., ADVOCATE FOR R3;
SRI. V.PADMANABHA KEDILAYA., ADVOCATE FOR R1 & R2)

THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 21.09.2017 PASSED IN MVC NO.155/2015 ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AND M.A.C.T., KODAGU-MADIKERI, AWARDING COMPENSATION OF RS.9,40,943/- WITH INTEREST AT 9% P.A. PENDETE-LITE AND FUTURE INTEREST TILL THE DATE OF REALIZATION OF AWARD AMOUNT.

IN MFA NO. 3926/2018

BETWEEN:

1. SMT. SHIVAMMA
W/O SANGAPPASHETY,
AGED ABOUT 78 YEARS,

2. SRI. SANGAPPASHETTY,
S/O LATE SIDDALINGAPPA,
AGED ABOUT 82 YEARS,
SHRUTHI.SK. V.KUTTAPPA,

BOTH ARE RESIDING AT
KUSHAL NAGAR, HASSAN ROAD,
IN FRONT OF MIL SOCIETY,
KANIVE VILLAGE AND POST,
SOMAWARPET TALUK,
KODAGU DISTRICT-571 236.

...APPELLANTS

(BY SRI. PADMANABHA KEDILAYA.V., ADVOCATE)

AND:

1. SRI. H.T.KUSHALAPPA
   S/O THIMMAIH,
   AGED ABOUT 43 YEARS,
   R/O AALILUGUPPE VILLAGE,
   THORENOOR POST, KUSHALNAGAR,
   SOMWARPET TALUK-571 234.

2. UNITED INDIA INSURANCE CO.LTD.,
   DIVISIONAL OFFICE, TP HUB,
   BALLAL CIRCLE, CHAMARAJAPURAM,
   MYSORE-570 005.

...RESPONDENTS

(BY SRI. A.M.VENKATESH., ADVOCATE FOR R2;
V/O DTD: 03.12.2018-NOTICE TO R1-
DISPENSED WITH)

THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 21.09.2017 PASSED IN MVC NO.155/2015 ON THE FILE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE, MACT, KODAGU, MADIKERI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THESE APPEALS, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL JUDGMENT

1. I.A.No.1/2022 is an application seeking production of additional documents. Learned counsel for the appellant/Insurance Company in MFA No.2193/2018 submits that he seeks to produce the case diary of the accident as well as the case sheet of the deceased Nanjundaswamy.

2. Although, learned counsel for the respondents/ claimants has not filed any objection, she submits that these documents are unnecessary for the purposes of deciding the present appeals. Learned counsel further submits that the Impugned Award has already been passed based on the detailed examination of not only the FIR but the charge sheet, and Ex.R2 placed on record by the appellant/Insurance Company is the copy of the case diary. Thus, these documents are not requisite.

3. It is settled law that additional evidence is only required to be adduced when the documents that have been placed on record before the learned Trial Court are

not sufficient for the Appellate Court in reaching its decision. The Supreme Court in ***Union of India Vs. Ibrahim Uddin and another***[1] has held that the power under Order XLI Rule 27 of the CPC is an exception and not a rule, and additional evidence cannot be permitted to fill up lacunae or to improve a party's case. It has been categorically held that where the evidence on record is sufficient to enable the Appellate Court to pronounce judgment, no additional evidence can be allowed. It is apposite to set out the relevant extract below:

> *"36.The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal.* ***<u>However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist</u>****. The parties are not entitled, as of right, to the admission of such evidence.* ***<u>Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly.</u>*** *Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself.*

XXX XXX XXXX

[1] (2012) 8 SCC 148

> *49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause.* ***The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court."***
>
> [Emphasis Supplied]

4. Given the fact that the Impugned Award has based itself on the charge sheet as well as other documents filed, this application is without any merit and is dismissed.

5. Both these appeals seek to challenge the common Judgment and Award dated 21.09.2017 in MVC No.155/2015 passed by the Principal District Judge & MACT, Kodagu at Madikeri (hereinafter referred to as the "Impugned Award"). By the Impugned Award, learned Tribunal has awarded a compensation Rs.9.40,943/- to the

claimants. The challenge in MFA No.2193/2018 is by the Insurance Company while the challenge in MFA No.3926/2018 is by the claimants. This Court has examined both these appeals together since they both seek to challenge the common Impugned Award.

6. The brief facts of the case are that on 30.05.2015, at around 07.30 p.m. when the deceased Nanjundaswamy was going by walk by the side of the road, at that time, a Mahindra Bolero Jeep bearing registration No.KA-12-N-8992 came in a rash and negligent manner and dashed against the Nanjundaswamy. As a result of the accident, the deceased sustained fatal injuries and was hospitalised at Kushalnagar Government Hospital and thereafter shifted to J.S.S. Hospital, Mysore, where he was treated as an in-patient and discharged. In spite of taking follow-up treatment, the deceased Nanjundaswamy succumbed to the injuries at Kushal Nagar Hospital on 12.06.2015.

6.1. A Claim petition was filed by the parents of the deceased claiming compensation in a sum of

Rs.15,80,000/-. The respondent Nos.1 and 2 being the owner and insurer of the offending vehicle contested the matter.

6.2. On the basis of the pleadings, the following issues were framed by the learned Tribunal:

> *"1. Whether the petitioners/LRs prove that, on 30.05.2015 around 7.30 p.m., at Kanive village, when deceased Nanjundswasmy was going by walk, as a result of accident caused by Mahindra Bolero Jeep bearing Registration No.KA-12-N-8992, due to its rash and negligent driving, he succumbed to injuries?*
>
> *2. Whether the petitioners/LRs prove that they are entitled for compensation, if so to what extent and from whom?*
>
> *3. What order or award?"*

6.3. The claimant No.2/Sangappa Shetty who is the father of the deceased was deposed as P.W.1, One Manjunath (eye witness) was examined as P.W.2 while the PSI of Kushalnagar Police Station was examined as R.W.1. The learned Tribunal after examining the pleadings between the parties awarded amounts for loss of dependency, loss of love and affection, loss of estate, transport and other non-pecuniary heads in the following manner:

Sl.No.	**Particulars**	**Amount (Rs.)**
01	Loss of dependency	Rs.6,72,000-00
02	Loss of love and affection	Rs. 50,000-00
03	Towards Transport and funeral expenses	Rs. 25,000-00
04	Towards loss of estate	Rs. 50,000-00
05	Medical expenses	Rs.1,43,943-00
	Total	Rs.9,40,943-00

6.4. The learned Tribunal also held that the respondent/Insurance Company is liable to make payment of the compensation.

7. Learned counsel for the Insurance Company has made three contentions. Firstly, he submits that the insured vehicle was not involved. Secondly, he submits that the deduction was wrongly taken as 1/3rd by the learned Tribunal when the deceased was a bachelor and was survived by his only two parents. Lastly, a feeble challenge has been made to the interest awarded at 9% per annum.

8. Learned counsel for the claimants on the other hand has raised a challenge to the non-grant of future prospects in the matter. Learned counsel for the claimants fairly

submits that the deduction was wrongly taken at one third wherein in terms of the judgment of ***National Insurance Co.Ltd. Vs. Pranay Sethi***[2], it should have been taken for the bachelor at one half.

8.1. However, on the remaining contentions of the Insurance Company with regard to involvement of the vehicle as well as the interest, learned counsel for the claimants submits that the Impugned Award has dealt with in detail about the involvement of the vehicle. She submits that the charge sheet, which is exhibited as Ex.P9, also sets out the fact that a Bolero Jeep bearing registration No.KA-12-N-8992 was involved. In addition, she submits that Ex.R3, the case diary which was filed by the Insurance Company itself shows the involvement of the vehicle.

8.2. On the aspect interest, learned counsel for the claimants submits that this is a discretionary power. The

[2] 2017(16) SCC 680

Supreme Court has from time to time chosen to grant 9% interest or has not interfered with the grant of interest at 9%. She submits that the deceased was a bachelor and is survived only by his two old aged parents. He was the only breadwinner for the family, and given the circumstances, the award of 9% interest was not excessive.

8.3. Learned counsel for the claimants further submits that the challenge by the claimants in their appeal is on the ground of non-award of future prospects. She submits that the deceased was working as a coolie/daily wager and earning Rs.400/- per day, and therefore future prospects ought to have been awarded. Relying on the judgment of the Supreme Court in ***Meena Pawaia Vs. Ashraf Ali***[3]***,*** she submits that even the persons who are not employed also would be entitled to future prospects, since there is always an incessant effort to enhance one's income for sustenance and income of no person can remain as static.

[3] (2021)1 SCC 148,

9. Learned counsel for the Insurance Company in support of its contention seeks to rely upon the judgment of the Division Bench of this Court in ***Veerappa and Another Vs. Siddappa and Another.***[4]

10. The issue that arises for determination in the present appeals is:

> *(i) Whether the vehicle was in fact involved in the accident?*
>
> *(ii) Whether the learned Tribunal has wrongly made deduction for personal and living expenses? and*
>
> *(iii) Whether future prospects should have been awarded by the Tribunal?.*

11. The examination of the Impugned Award shows that the aspect that the vehicle was not involved in the accident was raised by the Insurance Company before the learned Tribunal as well. The learned Tribunal after examining the documents produced by the claimants and even the respondents including the FIR (Ex.,P1), spot panchanama (Ex.P2), accident report (Ex.P3) and charge

[4] ILR 2009 KAR 3562

sheet (Ex.P9) found that the driver of the Bolero Zeep was guilty of rash and negligent driving. There was no denial of the involvement of the vehicle. Given the charge sheet that was filed, the involvement of the vehicle could not be denied. The relevant extract of the Impugned Award is set out below.

"16. The petitioners/LRs in this case are also able to produce the documents in support of their case viz., Ex.P-1 to P-17.

a) Ex.P-1 FIR, wherein it is seen that a case is registered against the driver of offending Bolero Jeep and its registration number is also clearly mentioned.

b) Ex.P-2 spot panchanama, Ex.P-3 M.V. Accident report, Ex. P-4 2nd complaint, Ex. P-6 Burial spot mahazar and Ex.P-7 inquest mahazar which documents are also corroborated and supported the case of the petitioners/LRs.

c) Ex.P-8 Post Mortem Report of the deceased, wherein it is noticed that Nanjundaswamy has died due to accidental injuries caused in Road Traffic Accident.

d) Ex.P-9 charge-sheet, which discloses that which is laid against the driver of offending Bolero Jeep after the Investigation Officer found that the driver of Bolero Jeep is guilty of rash and negligent driving and actionable negligence.

17. At this juncture, it is useful to refer a decision regarding importance or evidentiary value of charge

> *sheet/police papers as held in case of UNITED INDIA INSURANCE COMPANY LTD., RAICHURU D.O. V/S. HUSSAIN SAB AND OTHERS (2006(1) KCCR 107), wherein the Hon'ble High Court of Karnataka has observed and held as follows;*
>
> > *"Motor Vehicles Act 1988- Motor Accident- FIR and other documents relating to criminal case are admissible in evidence strict - rules of evidence do not apply to the trials and enquire relating to motor accident claims tribunal".*
>
> *18. For the reasons stated above and observations made in the light of above noted authority and under the facts and circumstances of this case, I am of the considered opinion that, there is sufficient and satisfactory oral and documentary evidence placed on record to come to inevitable conclusion that, the case of the petitioners/LRs U/Sec.166 of M.V.Act, is proved. Hence, I hold and record my findings on this issue No.1 in the Affirmative.*
>
> [Emphasis Supplied]

12. This Court has also examined the documents filed. In the charge sheet (Ex.P9), the vehicle number is clearly mentioned and this aspect is not denied by the Insurance Company. Learned counsel for the Insurance Company has sought to rely upon the judgment of the Division Bench of this Court in ***Veerappa Vs. Siddappa*** case to submit that where there is a fraud being played, there is no third party liability on the Insurance Company. The issue of fraud

however is not relevant for the purposes of the present appeals. Neither was a ground of fraud raised by the Insurance Company before the learned Tribunal nor has any evidence in support been shown to this Court. In any event, given the undisputed fact that the charge sheet does contain the number of the vehicle involved, this judgment is not applicable to the facts of the present case.

13. On the aspect of future prospects, learned counsel for the claimants has relied upon the judgment of the Supreme Court in the ***Meena Pawaia*** case, more specifically to paragraph Nos.13 to 15 to submit that the Supreme Court in ***Meena Pawaia*** case has expanded the judgment in ***Pranay Sethi*** case to include future prospects even to those cases where the deceased was not employed. The relevant extract is set out below:

> *"13. We see no reason why the aforesaid principle may not be applied, which apply to the salaried person and/or deceased self-employed and/or a fixed salaried deceased, to the deceased who was not serving and/or was not having any income at the time of accident/death. In case of a deceased, who was not earning and/or not doing any job and/or self-employed at the time of accident/death, as observed herein above his*

income is to be determined on the guesswork looking to the circumstances narrated hereinabove. Once such an amount is arrived at he shall be entitled to the addition over the future prospect/future rise in income. It cannot be disputed that the rise in cost of living would also affect such a person.

14. As observed by this Court in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , the determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Motor Vehicles Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment and/or in case of a deceased who was on a fixed salary and/or self-employed would only get the benefit of future prospects and the legal representatives of the deceased who was not serving at the relevant time as he died at a young age and was studying, could not be entitled to the benefit of the future prospects for the purpose of computation of compensation would be inapposite. Because the price rise does affect them also and there is always an incessant effort to enhance one's income for sustenance.

15. It is not expected that the deceased who was not serving at all, his income is likely to remain static and his income would remain stagnant. As observed in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] to have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Therefore we are of the opinion that even in case of a deceased who was not serving at the time of death and had no

> *income at the time of death, their legal heirs shall also be entitled to future prospects by adding future rise in income as held by this Court in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] i.e. addition of 40% of the income determined on guesswork considering the educational qualification, family background, etc. where the deceased was below the age of 40 years.*
>
> [Emphasis Supplied]

14. In view of the law as laid down by the Supreme Court in ***Meena Pawaia*** case, future prospects ought to be awarded to the claimants as well. However, the deduction of 1/3rd is to be made prior to calculation of compensation, in view of the fact that the deceased was survived by three dependants.

15. So far as concerns, the interest on the quantum of compensation awarded, there is no challenge by the either part. In any event, in view of the law as laid down by the Supreme Court in judgment ***Dharampal v. U.P. SRTC[5] and Erudhaya Priya v. State Express transport Corporation Ltd.[6],*** where interest of 9% has been

[5] (2008) 12 SCC 208
[6] 2020 SCC Online SC 601

awarded by the Supreme Court, this Court see's no reason to interfere with the award of interest.

16. Accordingly, and the view of the aforegoing discussions, the compensation awarded by the Tribunal is reassessed as follows:

Sl.No.	**Particulars**	**Amount (Rs.)**
01	Loss of dependency [9,000x1/2=4,500/- 4,500/-+25% future prospects =5,625/- 5,625x12x14]	9,45,000-00
02	Loss of consortium [Rs.40,000x2]	80,000-00
03	Towards loss of estate and funeral expenses	30,000-00
05	Medical expenses	1,43,943-00
	Total	**11,98,943-00**
	Less: awarded by Tribunal	**9,40,943-00**
	Enhanced compensation	**2,58,000-00**

17. Hence, the claimants are entitled to total compensation of **Rs.11,98,943/-** along with interest at the rate of 6% per annum from the date of petition till the date of realization.

18. Accordingly, the Court proceeds to pass the following directions:

<u>ORDER</u>

(i) M.F.A.No.2193/2018 is ***dismissed.***

(ii) M.F.A.No.3926/2018 is ***partly allowed.***

(iii) The Impugned Judgment and Award dated 21.09.2017 in MVC No.155/2015 passed by the Principal District Judge and MACT, Kodagu at Madikeri, is modified to the extent that the claimants are entitled to enhanced compensation of **Rs.2,58,000/-** along with interest at the rate of 6% per annum from the date of petition till the date of realization, in addition to **Rs.9,40,943/-** that has been awarded by the Tribunal.

(iv) The remaining portion of the Impugned Award of the Tribunal remains undisturbed.

(v) The Insurance Company shall deposit the enhanced compensation with interest at 6% p.a. within a period of eight weeks from the date of receipt of the judgment.

(vi) On such deposit of compensation, the same shall be released in favour of the claimants.

(vii) The amount in deposit by the Insurance Company before this Court shall be transmitted to the Tribunal within a week.

(viii) The Registry is directed to draw the modified Award accordingly.

(ix) The Registry is directed transmit a copy of this judgment to the concerned Tribunal, along with its records.

(x) No order as to costs.

Digitally signed by TARA VITASTA GANJU
Location: HIGH COURT OF KARNTAKA

(TARA VITASTA GANJU)
JUDGE

YN/PSJ
List No.: 1 Sl No.: 23