

IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE
AND ADDL. M.A.C.T, HASSAN

DATED THIS THE 22ND DAY OF OCTOBER 2020

PRESENT

Sri S.B.Kembhavi, LL.M.,
Member, Addl. M.A.C.T, Hassan.

MVC No.1/2018

- Petitioners**
- 1) Smt.Veena W/o. D.S.Yogesha, 29 years,
 - 2) Jeevangowda S/o. D.S.Yogesha, 2½ years,
2nd petitioner being minor represented by his natural mother, 1st petitioner by name Smt.Veena.
 - 3) Sannegowda S/o. Nanjegowda, 60 years,

All are R/o. Doddapura, Kasaba
Hobli, Hassan Taluk.

Reptd. By :: Sri D.V.G, Advocate)

V/s

- Respondents**
- 1) Divisional Controller, K.S.R.T.C,
Hassan Division, Hassan.
 - 2) Ganeshgowda H.D S/o.
Doddegowda, major, K.S.R.T.C

Driver, Hulagatturu, Huchchangi
Post, Yasaluru Hobli, Sakaleshapura
Taluk, Hassan District.

Reptd. By :: Sri M.N, Advocate for R1,
R2 - Ex parte)

JUDGMENT

The petitioners have filed this petition under Section 166 of Motor Vehicles Act, 1989, against the respondents, claiming compensation of Rs.20,00,000/- with interest at the rate of 18% per annum for the death of D.S.Yogesha in the Road Traffic Accident.

2. The case of the petitioners in brief is as under;

The petitioner No.1 is the wife, petitioners No.2 is the son and petitioner No.3 is the father of one D.S.Yogesha. Petitioners have contended that on 07.10.2017 at about 2.45 p.m., while the said D.S.Yogesha was proceeding as a pillion rider in the motor cycle bearing Reg. No.KA-13-EH-2095, in front of Petrol Bunk at B.Katihalli, Hassan, the driver of the K.S.R.T.C Bus bearing Reg. No.KA-17-F-1121 by driving the same in a rash and negligent manner dashed against the motor cycle, in which D.S.Yogesha was proceeding and thereby caused the accident. In the said accident, D.S.Yogesha had sustained grievous injuries to his right

shoulder, right hand and right thigh. Immediately after the accident, he was taken and admitted to Janapriya Hospital, Hassan, wherein he underwent surgery and took treatment as inpatient for a period of one week and then discharged. The petitioners have spent Rs.1,00,000/- towards the treatment of deceased D.S.Yogesha. Though he was discharged from the hospital, he was taking treatment at home and in between at the hospital. But on 03.11.2017 at 6.30 p.m, D.S. Yogesh developed severe pain and while he was again in the process of shifting to the hospital, he died on the way to hospital. The petitioners have transported the dead body to their native place and performed last rituals by spending Rs.50,000/-.

3. Prior to the accident, the deceased was 31 years old with good health and he was Lorry Driver by profession and earning Rs.20,000/- per month and also doing agriculture and earning Rs.5,00,000/- annually. The family of the petitioners was totally dependent upon the income of deceased D.S.Yogesha. Petitioner No.1 being the wife of the deceased had lost her husband at a young age. Petitioner No.2 is minor son of deceased, who lost love and affection of his father. Petitioner No.3 is the age old father of deceased and lost care and affection of his son. According to

petitioners, this accident occurred due to rash and negligent driving of driver of K.S.R.T.C Bus bearing Reg. No.KA-13-F-1121, who by driving his vehicle in a rash and negligent manner and dashed against a motor cycle bearing Reg. No.KA-13-EH-2095, in which the deceased D.S.Yogesha was proceeding as a pillion rider. The petitioners further contended that they were totally dependent upon the income of the deceased D.S.Yogesha and due to his sudden death, the petitioners are put to untold hardship and misery. Hence, the petitioners have sought for compensation of Rs.20,00,000/- together with interest at the rate of 18% per annum.

4. In pursuance of the notice, the Respondent No.1 has entered its appearance before the Tribunal through its counsel and contested the petition by filing its objection statement. In spite of service of notice, the respondent No.2 has not appeared before the Tribunal and hence, he has been placed as ex-parte.

5. The objection of respondent No.1 in brief is as follows:

The respondent No.1 in his objection statement has contended that the petition filed by the petitioner is not maintainable either in law or on facts. The petition is bad for

non-joinder of necessary parties i.e. the owner and insurer of the motor cycle bearing Reg. No.KA-13-EH-2095. The respondent No.1 has denied the age, income and occupation of the deceased D.S.Yogesha and the expenses incurred by the petitioners towards medical expenses, transportation of dead body, cremation and obsequies ceremony of the deceased. The respondent No.1 has denied that the accident was occurred due to the rash and negligent driving of the driver of K.S.R.T.C Bus bearing Reg. No.KA-13-F-1121 and contended that it is the rider of the motor cycle bearing Reg. No.KA-13-EH-2095, who by riding his bike by taking the deceased as a pillion rider rode the same in a rash and negligent manner and also tried to overtake the lorry and came on the right side of the road and dashed against the K.S.R.T.C Bus. Hence, the rider of the motor cycle is responsible for the accident. As per the sketch prepared by the police, the spot of the accident is right side of the road. The petitioners colluding with police have lodged false complaint against the respondent only to claim compensation. It is further contended that the compensation amount and interest claimed by the petitioners are very excessive and exorbitant. Hence, on all these grounds, prayed to dismiss the petition.

6. Based on the above pleading, this court has framed the following issues;

1. Whether the petitioners prove that deceased D.S.Yogesha died in the alleged Road Traffic Accident on 17.10.2017 at about 2.45 p.m., in front of Petrol Bunk, at B.Katihalli, Hassan, due to rash and negligent driving of the driver of K.S.R.T.C Bus bearing Reg. No.KA-17-F-1121, while he was proceeding as a pillion rider in the motor cycle bearing Reg. No.KA-13-EH-2095?
2. Whether the petitioners are entitled to the compensation? If so, what is the quantum and from whom among the respondents?
3. What order or award?

7. The petitioners, in order to prove their case have got examined the petitioner No.1 as P.W.1 and one witness on their behalf as P.W.2 and got marked 14 documents as per Ex.P.1 to Ex.P.14. On the other hand, the driver of the K.S.R.T.C Bus got examined himself as R.W.1 but not got marked any documents.

8. Heard the arguments of both sides. Perused the entire materials on record.

9. My findings on the above issues are as follows;

Issue No.1 : In the affirmative

Issue No.2 : Partly in the affirmative
Issue No.3 : As per the final order
for the following:

REASONS

10. **Issue No.1**: The petitioner No.1 is the wife, petitioner No.2 is the minor son and petitioner No.3 is the father of one D.S.Yogesha. It is the case of the petitioners that the said D.S.Yogesha died in the Road Traffic Accident that occurred on 07.10.2017 at about 2.45 p.m. in front of Petrol Bunk at B.Katihally of Hassan due to rash and negligent driving of K.S.R.T.C Bus bearing Reg. No.KA-17-F-1121 while the deceased was proceeding as a pillion rider in the motor cycle bearing Reg. No.KA-13-EH-2095, which was being driven by Ranganatha. It is further specific case and allegation of the petitioners that the said accident had occurred due to the rash and negligent driving of K.S.R.T.C Bus by its driver.

11. On the other hand, it is the case of total denial by respondent No.1 K.S.R.T.C. Further, it is the specific defence of respondent No.1 that the rider of the motor cycle bearing Reg. No.KA-13-EH-2095 while riding his bike by taking the deceased as a pillion rider rode the same in a rash and negligent manner and dashed against the K.S.R.T.C Bus

bearing Reg. No.KA-13-F-1121. It is the specific allegation of respondent No.1 that the rider of motor cycle bearing Reg. No.KA-13-EH-2095 by riding his bike in a rash and negligent manner, tried to overtake a Lorry, which was proceeding ahead of them and thereby, dashed against the K.S.R.T.C Bus, which was coming from opposite direction. There was no negligence on the part of driver of K.S.R.T.C Bus. It is also the contention of respondent No.1 that as per the Sketch of spot of the accident, the accident took place on the right side of direction of the motor cycle and hence, the accident was caused due to rash and negligent riding of the bike by its rider. Accordingly, the petition of the petitioner is bad for non-joinder of owner, rider and insurer of the bike bearing Reg. No.KA-13-EH-2095.

12. The petitioners in order to prove their case have got examined petitioner No.1 as P.W.1 and got as many as 14 documents at Ex.P.1 to P14. P.W.1 in her evidence reiterated the averments of the petition regarding rashness and negligence on the part of driver of K.S.R.T.C Bus. P.W.1 has further deposed regarding manner of accident and injuries sustained by her husband and death of her husband due to accidental injuries while taking treatment. P.W.1 has also deposed regarding the expenses incurred for providing

treatment to her husband. P.W.1 has also deposed regarding age, occupation and income of the deceased and dependency of the petitioners on the income of the deceased.

13. The petitioners further got examined the rider of bike bearing Reg. No.KA-13-EH-2095 as P.W.2. In his evidence, P.W.1 has clearly narrated regarding the manner of accident as well as rash and negligent driving of K.S.R.T.C Bus bearing Reg. No.KA-13-F-1121 as cause for accident and injuries to deceased Yogesha. It is also to be borne in mind that P.W.2 is the eyewitness to the accident and rider of the bike bearing Reg. No.KA-13-EH-2095. Incidentally P.W.2 himself had lodged the complaint alleging rashness and negligence on the part of driver of K.S.R.T.C Bus bearing Reg. No.KA-13-F-1121.

14. The petitioners in support of oral evidence of P.W.1 and P.W.2, have produced and got marked true copies of F.I.R, complaint and medical intimation as per Ex.P.1 to P3. On perusal of Ex.P.1 to P3, it is clear that the rider of bike bearing Reg. No.KA-13-EH-2095 by name Ranganatha.T.K had lodged the complaint with jurisdictional police alleging rashness and negligence on the part of driver of K.S.R.T.C Bus bearing Reg. No.KA-13-F-1121. As per the case of the

petitioners, the accident occurred on 07.10.2017 at 2.45 p.m. whereas the complaint regarding the said accident came to be lodged by P.W.2 Ranganatha T.K on the same day at 5.30 p.m. There is no delay in prompt lodging of the complaint regarding the accident. Ex.P.5 is the true copy of Crime Details Form and spot as well as seizure mahazar. On perusal of Ex.P.5, it is clear that the police after registering the case, have visited the spot and held mahazar on the spot on the same day between 6.00 p.m to 6.30 p.m. and seized both the vehicles involved in the accident and drawn rough sketch of the spot of the accident. The details of sketch of spot of the accident will be discussed at a later stage. Ex.P.7 is the I.M.V Report, wherein the Motor Vehicle Inspector has clearly pointed out damages found on both the vehicles involved in the accident and given his opinion that accident had not occurred due to any mechanical defects in both vehicles involved in the accident. Ex.P.6 is the true copy of Inquest Mahazar and Ex.P.8 is the true copy of P.M Report of deceased D.S.Yogesha S/o. Sannegowda. On perusal of Ex.P.6., it is clear that deceased D.S.Yogesha died due to accidental injuries on the way to Hospital on 03.11.2017 at 6.30 p.m. Inquest mahazar was held by jurisdictional police on 04.11.2017 at mortuary of Government Hospital, Hassan. Thus, Ex.P.6 establish death of D.S.Yogesh. Ex.P.8 P.M

Report makes it clear that the death of D.S.Yogesh occurred due to Thromboembolism as a complication of Right Femur Fracture sustained. Thus, Ex.P.6 and P8 documents clearly establish that late D.S.Yogesha died due to complications of injuries sustained due to the accident. Further, the petitioners produced and got marked true copy of the charge sheet filed by jurisdictional police as per Ex.P.4. On perusal of Ex.P.4 it is clear that the police, having held detailed investigation in the case, have filed charge sheet against driver of K.S.R.T.C Bus bearing Reg. No.KA-13-F-1121 holding him as rash and negligent in causing the accident to the bike bearing Reg. No.KA-13-EH-2095, in which the complainant Ranganatha T.K and deceased D.S.Yogesha were proceeding.

15. P.W.1 and 2 have been cross-examined at length by learned counsel for respondent No.1 but nothing material has been elicited from the mouth of those witnesses to disprove the case of the petitioners or to probabalize the defence taken by respondent No.1. P.W.1 in her cross-examination clearly deposed that Ranganatha had lodged the complaint regarding the accident and he was proceeding in the motor cycle taking her husband Yogesha as pillion rider. P.W.1 has clearly denied suggestion made to her that

the rider of the bike, in which her husband was proceeding as a pillion rider, by riding the said bike in a rash and negligent manner dashed against the bus by going on the right side of the road and thereby, accident had occurred due to gross fault and negligence of rider of the bike himself. It is also suggested to P.W.1 that as the bike was not duly insured by its owner, the owner of the bike has not been arrayed as the party in this petition. Such suggestion came to be clearly denied as false by P.W.1.

16. Further, it is relevant here to take note of the cross-examination of P.W.2. In his cross-examination, P.W.2 has deposed that he was riding the bike at the time of accident and he was possessing valid and effective D.L to ride the bike and his bike was duly insured. P.W.2 has also admitted the spot of the accident as road running from Arasikere towards Hassan in front of Sri Ramanjaneya Ceramics and Tiles. It is also relevant here to note that P.W.2 has admitted the rough sketch of the spot of the accident, which is marked as Ex.P.5. P.W.2 has also admitted that on the date of accident, himself and Yogesha were coming from Arasikere Side towards Hassan Diary Circle in their motor cycle. P.W.2 has also admitted that as per Ex.P.5 Sketch, the spot of the accident is on the right

side of the road running from Arasikere towards Hassan diary Circle. Further, P.W.2 has clearly and voluntarily deposed that they were proceeding on the wrong side of the road and the bus coming from opposite direction dashed against their bike and caused accident. P.W.2 has clearly denied suggestion made to him that the said accident occurred due to his own negligence and there is no negligence on the part of driver of K.S.R.T.C Bus.

17. Further, it is also relevant here to take note of evidence of driver of K.S.R.T.C Bus, who got examined as R.W.1. In his evidence, R.W.1 has deposed that he was driving the Bus belonging to respondent No.1 bearing Reg. No.KA-13-F-1121 from Hassan Diary Circle towards Kendriya Vidyalaya on Arasikere Road and he was driving his bus on the left side of his direction cautiously and by following traffic rules and at that time, the rider of the bike bearing Reg. No.KA-13-EH-2095, by riding his bike in a rash and negligent manner came on the right side of the road and dashed against his bus and thereby, this accident had occurred due to the sole rashness and negligence on the part of rider of the bike himself. R.W.1 has also deposed that there is no negligence on his part in the said accident. In his evidence, R.W.1 has also deposed though spot of the

accident is on the right side of direction of the bike, the police have filed false charge sheet against him. Hence, R.W.1 has prayed to dismiss the case.

18. It is also relevant here to note that R.W.1 in his cross-examination has deposed that there was no conductor in his bus as it is the school bus to fetch the students of Kendriya Vidyalaya, Hassan. R.W.1 has also deposed that Kendriya Vidyalaya School will be closing by 2.50 p.m. in the afternoon. It is also suggested to R.W.1 that as the School was closing at the time of accident, he was driving his bus in a rash and negligent manner to reach the school in time and such suggestion denied as false by R.W.1. At this juncture, it is to be noted that the time of accident was 2.45 p.m on 07.10.2017. Then, it cannot be ruled out that the driver of the said K.S.R.T.C Bus in order to reach to the school in time might have driven his bus in a hurry. Further, it is interesting to note that R.W.1 in his further cross-examination deposed that he had lodged the complaint before the police stating that there was no fault on his part in the said accident. But R.W.1 has not placed any materials to show that he had lodged such complaint alleging rashness and negligence on the part of rider of the bike. R.W.1 in his further cross-examination clearly admitted that

based on the charge sheet filed by jurisdictional police, a criminal case is going on against him in respect of the said accident.

19. On over all appreciation of entire evidence on record, it can be concluded that this accident had occurred due to rash and negligent driving of K.S.R.T.C Bus by its driver. No doubt, the respondent No.1 Corporation had tried to put the negligence on the part of rider of the bike bearing Reg. No.KA-13-EH-2095 on the strength of Ex.P.5 sketch of the spot. Except Ex.P.5, no other materials have been placed on record by respondent No.1 or by R.W.1 to show that the said accident had occurred due to negligence on the part of rider of the bike. No doubt, in Ex.P.5 sketch, the spot of the accident has been shown little right side from median line of road running from Arasikere towards Dairy Circle. Though the rider of the bike travelled little right side after median/middle line of the road but that does not mean that the driver of the K.S.R.T.C Bus had an open licence to hit the said bike and kill the persons travelling in that bike. It is to be noted that the driver of the bus being in the big vehicle had a clear vision and he would have avoided the accident by taking a little deviation towards the left side or by applying the break. There is no evidence on the part of

respondent No.1 or by R.W.1 regarding the efforts made by the driver of the K.S.R.T.C bus to avoid the accident. It is also to be borne in mind that the deceased being a pillion rider in the bike bearing Reg. No.KA-13-EH-2095 is a third party to both the vehicles. Further, the respondent No.1 Corporation as well as R.W.1, who was the driver of offending K.S.R.T.C Bus have not placed any materials before this Tribunal except placing their reliance upon sketch annexed to Ex.P.5 mahazar to show that the accident had occurred due to rashness and negligence on the part of rider of the bike himself. Nothing prevented R.W.1 to immediately lodge the complaint against rider of the bike if at all the accident had occurred due to his own negligence. But he has not done so. Merely because the spot of the accident is little after the median line of the road of the direction of the bike does not mean that rider of the bike was solely negligent and rash resulting into accident. It is also to be noted that all the police papers will point out the rashness and negligence on the part of driver of K.S.R.T.C Bus. Hence, the contention of respondent No.1 that the said accident had occurred due to the sole negligence of rider of the bike bearing Reg. No.KA-13-EH-2095 or with his contributory negligence is not acceptable one. Even for the sake of arguments, it is taken as the accident occurred due

to the contributory negligence of both rider of bike and driver of K.S.R.T.C. bus, the deceased and petitioners being his legal heirs are third parties to both vehicles. Thus, the petitioners being the legal heirs of the deceased D.S.Yogesh can very well proceed against one of the joint tortfeasors and they are not bound to implead of all parties who have contributed to the accident. However, there are no materials in this case, to conclude that the said accident occurred due to sole negligence or contributory negligence of rider of the bike.

20. In the decision reported in **2009 ACJ 287 (National Insurance Company v. Pushpa Rama and others)**, wherein it was held that, certified copy of the criminal court records such as F.I.R, recovery memo and mechanical inspection of vehicle are documents of sufficient proof to reach the conclusion that, driver was negligent – proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit. Hence, strict rules of evidence are not required to be followed in this regard.

21. In a claim for compensation under Section 166 of Motor Vehicles Act, 1988, the claimant is to prove the incident only on preponderance of probabilities and the standard of proof beyond reasonable doubt is not required

as held by Hon'ble Supreme Court in the decision reported in **2011 SAR (CIVIL) 319 Kusum and others V/s Satbir and others.**

22. Further Hon'ble Supreme Court in case of **Bimla Devi and others v. Himachal Road Transport Corporation and others (2009) 13 SCC 530**, wherein it is held that, it was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

23. As per the ratio laid down in the above decisions and in view of evidence of P.W.1 and P.W.2 and documentary evidence as discussed above, it can be clearly concluded that this accident was occurred due to rash and negligent driving of the K.S.R.T.C Bus bearing Reg. No.KA-13-F-1121 by its driver resulting into death of D.S.Yogesha, the husband of petitioner No.1 and father of petitioner No.2 and son of petitioner No.3. Accordingly, Point No.1 is answered in the Affirmative.

24. **Issue No.2**: It is already observed that the death of D.S.Yogesha was occurred in the accident due to rash and negligent driving of the driver of K.S.R.T.C Bus bearing Reg. No.KA-13-F-1121. The petitioners have contended that petitioner No.1 is the wife, petitioner No.2 is minor son and petitioner No.3 is the aged father of deceased D.S.Yogesha. The whole family of the petitioners was depending upon income of the deceased D.S.Yogesha. In view of sudden death of D.S.Yogesha, they have been put to untold hardship and misery. Regarding the dependency, advocate for respondent No.2 has cross-examined P.W.1 suggesting that they were not dependent upon income of the deceased D.S.Yogesha and such suggestion came to be denied as false by P.W.1. Except such suggestion, the learned counsel for the respondent No.1 has not seriously disputed the relationship of the deceased with the petitioners. Therefore, petitioner No.1 being the wife and petitioner No.2 being the minor son and petitioner No.3 being the aged father of the deceased D.S.Yogesha are entitled for compensation as dependents of the deceased D.S.Yogesha.

25. Regarding age and income of late D.S.Yogesha, the petitioners have contended that deceased D.S.Yogesha was 31 years old at the time of accident and he was hale and

healthy and he was Lorry driver by profession and earning Rs.20,000/- per month and also doing agriculture and earning Rs.5,00,000/- annually. The petitioners, in order to show that the deceased was working as Lorry driver, have produced the Letter at Ex.P.9 issued by Syed Althaf, Transport Contractor, wherein it is mentioned that the deceased was getting salary of Rs.14,000/- per month and Rs.200 batta per day, which amounts to Rs.6,000/- per month and totally he was getting income of Rs.20,000/-. But the petitioners have not examined the author, who issued the Ex.P.9 letter. The petitioners have produced 6 RTC Extracts at Ex.P.10 and 14 and they are one and the same to show that the deceased was owning agriculture lands to the extent of 29½ guntas. But except such materials no other documents have been produced by the petitioner to prove the exact income of the deceased. However, having regard to the nature of the job undertaken by deceased, his income can be determined notionally.

26. At his juncture, it is relevant here to note that the Hon'ble High Court of Karnataka, Principal Bench at Bengaluru while holding Lok-Adalath is considering the notional income in the absence of proof of income at Rs.11,000/- for the year 2017. The same had been

circulated by the Karnataka State Legal Services Authority, Bengaluru directing to take into account such notional income while holding lok-adalats at District Courts. It is also to be noted that such Notional Income considered by Hon'ble High Court of Karnataka is accepted and admitted by Insurance Companies at the time of conciliation held before Lok-Adalath by Hon'ble High Court of Karnataka. Hence, this Tribunal is of the opinion that it is just and proper to fix the notional income of petitioner at Rs.11,000/- per month in the absence of proof of income of the petitioner.

27. It is further relevant here to note that the Hon'ble Supreme Court of India in the matter of ***National Insurance Company Limited v. Pranay Sethi and others*** reported in (2017) 16 SCC 680 has clearly observed at para 61 (iv) as under:

“(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of

computation. The established income means the income minus the tax component.”

In this case, it has been contended by the petitioner that deceased was Lorry driver by profession and also undertaking agriculture. Though the petitioners have failed to establish that the deceased was working as Lorry driver, they have produced RTC Extracts of the property standing in the name of the deceased at Ex.P.10 and 14. Thus, it cannot be ruled out that the deceased was undertaking agricultural activities. Accordingly, there is no bar for this Tribunal to consider that deceased was undertaking agriculture. In the above quoted decision, the Hon'ble Supreme Court has held that in case the deceased was self employed or on a fixed salary, an addition of future prospects is to be made while determining the income of the deceased for the purpose of calculation of compensation under the head Loss of Dependency. As the deceased was an agriculturist, he can be termed as a self employed. Thus, future prospects are to be added to the income of the deceased as provided in **Pranay Sethi Case** (Supra) for the purpose of determining income of the deceased. This Court had already considered the notional income of the deceased at Rs.11,000/- per month. As per the judgment in Pranay Sethi Case, an

addition of 40% of the established income to be added as future prospects while determining the income for the purpose of computing compensation for the age below 40 years. Future prospects of the deceased would be 40% of the established income. That would come to

$$11,000 \times 40/100 = 4400.$$

Thus the total income of the deceased for determining compensation would amount to Rs.11,000/- + 4,400/- = 15,400/-.

28. The petitioners in the petition contended that the deceased D.S.Yogesha was aged 31 years old at the time of accident. In order to prove the age of the deceased, the petitioners have produced copy of Driving License, which shows date of birth of the deceased as 20.12.1987. Thus, the age of the deceased is taken into consideration as 31 years at the time of accident as admitted by the petitioners. The deceased D.S.Yogesha was a married person and having 3 dependents. This Court has also come to the conclusion that petitioners No.1 to 3 are the only dependents of the deceased, hence, 1/3rd of the income of the deceased shall have to be deducted towards his personal and living expenses as observed in the decision of **Sarla Varma Vs. Delhi Transport Corporation and another (2009 ACJ SC**

1298) and remaining $2/3^{\text{rd}}$ is to be taken as contribution to the family. If $1/3^{\text{rd}}$ of his income is deducted from his monthly income, it comes to Rs.8,400/- ($11000 - 3666 = 7,334/-$). Further as per **Sarla Varma's case** referred above, the multiplier applicable to the age of 31 is 16. Hence, loss of dependency is $7,334 \times 16 \times 12 = 14,08,128/-$.

29. The Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram and others** reported in (2018)18 SCC 130 and **New India Assurance Company Limited v. Somvathi and others** reported in 2020 SCC Online Supreme Court 720 has clearly observed that the grant of consortium under the head filial consortium, parental consortium and spousal consortium to each of the claimants in accordance with law does not warrant any interference. The Hon'ble Supreme Court again in **Somwati** case has further observed that there is no justification for award of compensation under separate head "Loss of Love and Affection". Even in **National Insurance Company Limited v. Pranay Sethi (2017) 16 SCC 680** has recognized the grant of consortium to various persons under the expressions Spousal consortium, parental consortium and filial consortium and guidelines have been issued to award consortium of Rs.40,000/- each to the

claimants. In the present case, the 1st petitioner being the wife of the deceased is entitled for Rs.40,000/- towards spousal consortium, petitioner No.2 being the minor son of deceased D.S.Yogesha is entitled for parental consortium of Rs.40,000/- and Petitioner No.3 being the aged father of the deceased D.S.Yogesha is entitled for Rs.40,00/- towards filial consortium. In view of grant of consortium, the petitioners are not entitled for any compensation under the head 'loss of love and affection'.

30. P.W.1 in her evidence has contended that they have spent totally Rs.50,000/- for cremation, funeral and other incidental charges. Though petitioners claimed compensation towards funeral expenses, they have not given particulars of the expenses. But, it does not mean that the dead body was transported and obsequies ceremonies were performed without any expenses. Certainly they would have spent atleast a sum of Rs.15,000/- for this. Hence, the petitioners are entitled for a sum of Rs.15,000/- under this head.

31. The deceased if had survived, certainly his dependents would have had the benefit of his estate. Hence, in my opinion, the petitioners are entitled for Rs.15,000/- towards loss of estate.

32. The petitioners have contended that they spent Rs.1,00,000/- towards medical expenses of the deceased. In support of the same, they have produced and relied upon 34 medical bills for Rs.99,702/- at Ex.P.11 and 44 medical prescriptions at Ex.P.12. There is no serious dispute regarding medical bills. On perusal of Ex.P.11 medical bills, it appears that they are the genuine bills for having spent amount towards treatment of D.S.Yogesha. Hence, petitioners are entitled for Rs.99,702/- towards medical expenses.

33. Accordingly, the petitioners are entitled for compensation under the following heads:-

Loss of dependency	-	Rs. 14,08,128
Loss of consortium	-	Rs. 40,000
Loss of parental consortium	-	Rs. 40,000
Loss of filial consortium	-	Rs. 40,000
Transportation of dead body and obsequies ceremony	-	Rs. 15,000
Loss of estate	-	Rs. 15,000
Medical expenses	-	Rs. 99,702
Total	-	Rs. 16,57,830

In total, the petitioners are entitled for Rs.16,57,830/-, which may be rounded off to Rs.**16,58,000**/-.

34. Petitioners have claimed the interest at the rate of 18% per annum. On the other hand, the respondent has contended that the interest claimed by the petitioner is excessive and exorbitant. The Hon'ble Supreme Court in the decision reported in **(2014) 42 SCD 060 (Kaladevi and others v. Bhagawan Das Chauhan and others)**, awarded interest at the rate of 9% per annum in the year 2014. Considering the aforesaid decision and also prevailing Bank rate of interest, this Court also deem it proper to award interest at the rate of 9% per annum. Hence, the petitioner is entitled total compensation of Rs.**16,58,000**/- with interest at the rate of 9% p.a. from the date of petition till the realization including the interim compensation if any awarded.

35. Regarding fixation of liability is concerned, this Court has already observed that the accident was taken place due to the negligence on the part of the driver of K.S.R.T.C Bus bearing Reg. No.KA-13-F-1121. The respondent No.2 is the driver of respondent No.1 Corporation. Therefore, the respondent No.1 being the owner

and internal insurer of the offending K.S.R.T.C Bus is vicariously liable to pay compensation amount to the petitioner with interest for the act of respondent No.1.

36. As regards the apportionment of compensation is concerned, out of the total compensation, the petitioners No.1 to 3 are entitled for compensation at the ratio of 50:30:20. Accordingly, I answer Issue No.2 partly in the Affirmative.

37. **Issue No.3:** In view of the above discussion and answer to the above Issues No.1 and 2, it is just and proper to pass the following;

ORDER

The petition filed by the petitioners U/s.166 of Motor Vehicles Act is hereby partly allowed with costs.

The petitioners No.1 to 3 are entitled for total compensation of Rs.16,58,000/- (Rupees sixteen lakhs fifty eight thousand only) with interest at the rate of 9% per annum from the date of petition till the realization including the interim compensation if any awarded.

The respondent No.1 is directed to pay compensation to the petitioners within one month from the date of this judgment.

On deposit of the compensation amount and out of the total compensation amount, the petitioners No.1 to 3 are entitled for compensation at the ratio of 50:30:20 and 40% of award amount of the petitioner No.1 shall be deposited in her name in fixed deposit for a period of 3 years and entire share amount of minor petitioner No.2 shall be deposited in his name till he attains the age of majority in any nationalized bank or scheduled bank on condition not to withdraw and encumber the deposit in any mode without prior permission of this court with a direction to the bank to make note on the deposit receipt not to avail any loan or advance. The minor guardian of the petitioner No.2 i.e. petitioner No.1 is at liberty to draw periodical interest from time to time on the said deposited amount. Remaining balance amount of 60% of the share of the Petitioner

No.1 shall be paid to her. Considering the age of petitioner No.3, his entire share amount shall be released in his favour.

Advocate's fee is fixed at Rs.1,000/-.

Draw award accordingly.

(Dictated to the stenographer, transcribed by her, corrected and taken out print from the computer and then pronounced by me in the open court on this 22nd day of October 2020)

(S.B.Kembhavi)
Member, Addl. M.A.C.T, Hassan.

ANNEXURES

List of witnesses examined for the petitioners

PW1 : Veena.P
PW2 : Ranganatha

List of witnesses examined for the Respondents

RW1 : Ganeshgowda H.D.

List of documents exhibited for the petitioners

Ex.P1 : F.I.R.
Ex.P2 : F.I.S.
EX.P3 : Medical Intimation.
Ex.P4 : Charge sheet.

Ex.P5	:	Crime details form, spot and seizure mahazar.
Ex.P6	:	Inquest Report.
Ex.P7	:	I.M.V Report.
Ex.P8	:	P.M Report.
Ex.P9	:	Details of salary and arrears.
Ex.P10	:	RTC extracts
Ex.P11	:	34 medical bills.
Ex.P12	:	44 medical prescriptions.
Ex.P13	:	Discharge Summary.
Ex.P14	:	3 RTC extracts.

List of documents exhibited for the respondents

- Nil -

Member, Addl. MACT, Hassan.
