

IN THE COURT OF THE IX ASCJ. SMALL CAUSES AND**ADDL. MACT, BENGALURU, (SCCH-7)****BEFORE: SRI.UMESH S. ATNURE,****B.Com.LL.B.(Spl)**

IX Addl. Small Causes Judge,
Court of Small Causes,
Member, MACT-7, Bengaluru.

M.V.C. No.7514/2018**DATED THIS 25th DAY OF NOVEMBER – 2021**

01. Smt.Savithramma,
W/o Late Ramakrishnegowda,
Aged about 50 years,
02. Manoj.K.R.,
S/o Late Ramakrishnegowda,
Aged about 17 years,
03. Chowdamma,
W/o Late Channegowda,
Aged about 70 years,

All are residing at:
Kemmale Village, Sathanoor Hobli,
Kanakapura Taluk,
Ramanagara District.

(Since Petitioner No.2 is minor and

hence rep. By his mother and
natural guardian Petitioner No.1)

Petitioner/s

-VERSUS -

01. Nanjegowda,
S/o Puttaswamy, Major,
R/at Kalegodanadoddi Village,
Shivanahalli Post,
Kanakapura Taluk,
Ramanagara District.

(RC Owner of Maxi Cab bearing registration
No.KA-03-B-6334)

02. The New India Assurance Co. Ltd.,
No.9, 2nd Floor,
Mahalakshmi Chambers,
M.G. Road, Bangalore – 01.

(Policy No.67010431180200004214
period: 14.06.2018 to 13.06.2019)

Respondent/s

= = =

Petitioner/s by Sri.G.C.R., Advocate

Respondent No.1 placed Exparte

Respondent No.2 by Sri. B.R.V.K., Advocate

= = =

Date of filing of Petition : 22.12.2018

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: J U D G M E N T :

1. This claim petition claimed by the claimants seeking compensation of Rs.30,00,000/- for the death of Ramakrishnegowda in the accident occurred on 04.12.2018.
2. It is the case of the petitioners that on 04.12.2018 at about 7-00 p.m., deceased Ramakrishnegowda was going on Bicycle from Sathnoor towards Kemmale village, on extreme left side road of Sathnoor – Halaguru main road and when he reached opposite to Harsha Dhabha, Sathnoor town, NH-209 road Sathanoor – Halaguru main road at that time driver of Maxi cab bearing registration No.KA-03-B-6334 driven from Sathnoor side towards Halaguru side with high speed, rash and negligent manner and dashed against the deceased from behind and due to which he sustained severe injuries. Immediately the deceased was shifted to Kanakapura Government Hospital wherein first

aid treated was given and then shifted to NIMHANS Hospital, Bangalore and then he was referred to Victoria Hospital and during shifting to Victoria Hospital deceased succumbed to the injuries. Prior to the date of accident the deceased was hale and healthy and aged about 55 years and doing agricultural work and also doing mason thereby earning Rs.20,000/- p.m. All of them are depending on the income of the deceased. Now due to the death of Ramakrishnegowda they lost their earning member of the family and they have put to mental agony. This accident is caused due to the negligence of the driver of the Maxi cab vehicle bearing registration No.KA-03-B-6334 the respondent No.1 is the owner and respondent No.2 is the insurer of the said car they are jointly and severally liable to pay compensation to them. Hence they prayed to allow the petition.

3. In response to the notice the respondents No.1 is placed exparte and the respondent No.2 appeared through their counsel and filed their written statements.
4. The respondent No.2 filed written statement and denied the entire contention of the petitioner. Further the respondent No.2 contended that they have issued the policy to the Maxi cab vehicle bearing registration No.KA-03-B-6334 and as on the date of the accident the policy was in force but their liability is subjected to terms and conditions of the policy. Further the respondent No.2 contended that the person who was driving the Maxi Cab was not holding the valid and effective driving licence at the time of accident or prior to that permitting the said person to drive the particular class of vehicle involved in the accident and though the respondent No.1 is aware of this fact consciously allowed such person to driver the vehicle in question.

Hence there is a breach of terms and conditions of the policy. Further they contended that the accident is not occurred on account of rash and negligent driving of the Maxi cab vehicle bearing registration No.KA-03-B-6334 by its driver and the said Maxi Cab is not involved in this accident and the petitioner colluding with the police have filed false complaint against the driver of the Maxi Cab. Hence they prayed to dismiss the petition.

5. On the basis of above pleadings following Issues were framed.

:: ISSUES ::

- (1) Whether the petitioners prove that they
are legal heirs of deceased
Ramakrishnegowda S/o Channegowda?
- (2) Whether the petitioners proves that
Ramakrishnegowda was died on account

of road traffic accident took place Opp.
Harsha Dhabha, Sathnoor Town, on NH-
209 Road, Sathanuru Hobli, Kanakapura
Taluk, Ramanagara District due to rash
and negligent driving of the driver of the
Maxi Cab bearing registration No.KA-03-
B-6334 dated: 04.12.2018 at about 07.00
p.m.?

(3) Whether petitioners are entitled for
compensation? If so, what is the
quantum? from whom?

(4) What order or award?

6. In support of the case of the petitioners, the petitioner No.1
is examined as PW-1 and got marked Ex.P-1 to P-14 and
one eye witness got examined as PW.2 and closed their side.
The Assistant Manager of respondent No.2 company is
examined as RW.1 and got marked Ex.R.1 to Ex.R.4 and

R.C.H. Officer of Ramanagara is examined as RW.2 and closed their side.

7. Heard the arguments of counsel for petitioner. The learned counsel for the respondent No.2 filed written argument and I have perused the same.

8. My findings to the above referred Issues are as under;

Issue No.1 :- In the affirmative

Issue No.2 :- In the affirmative

Issue No.3 :- Partly in the affirmative

Issue No.4 :- As per final order

for the following.....

: R E A S O N S :

9. **Issue No.1:-** The petitioners are contended that they are the legal heirs of the deceased Ramakrishnegowda. The respondent No.2 denied the said contentions. In the examination in chief the PW.1 deposed as per contentions

taken by them. In her cross-examination nothing worth is brought on record to show that the petitioners are not the legal heirs of the deceased Ramakrishnegowda. Further by perusing the Adhar Cards marked as per Ex.P.9 to Ex.P.12 it is clear that the petitioner No.1 is wife, petitioner No.2 is the minor son and petitioner No.3 is the mother of the deceased Ramakrishnegowda and they are the legal heirs of the deceased Ramakrishnegowda. **Hence, I answered the Issue No.1 in the affirmative.**

10. **Issue No.2:-** In support of their contention the petitioner No.1 is examined as PW.1. In her examination in chief she deposed as per contentions taken by them and she got marked FIR/Ex.P-1, Complaint/Ex.P-2, Spot Mahazar/Ex.P-3, Seizer Mahazar/Ex.P-4, IMV Report/Ex.P-5, Inquest Report/Ex.P-6, Postmortem Report/Ex.P-7 and Charge Sheet/Ex.P-8. By perusing these documents it

clearly goes to show that the accident was caused due to the negligence of the driver of the Maxi cab vehicle bearing registration No.KA-03-B-6334. In the cross-examination of PW.1 she deposed that she has not seen the accident one Shivamadanna was informed them about the accident and he was seen the accident and her daughter Shilpa lodged the complaint with regard to this accident and she is residing in Sathanuru Village ad she is married and her daughter is not seen the accident and immediately after the accident she went to the spot at that time her husband was at the spot he was breathing and thereafter they have taken him to Government Hospital Kanakapura and as per the advise of the Doctor of Kanakapura Government Hospital they taken the injured to the Victoria Hospital at that time Shivamadanna was not accompanied them. Further she deposed that the people gathered at the spot were told that the Garments vehicle was caused the

accident. Further she deposed that when she went to the spot of the accident at that time the Garments vehicle and KSRTC Bus were there and she denied that even though they are knowing that this accident was caused by KSRTC Bus only with an intention to claim compensation they have filed false complaint against the Garments vehicle and she also denied that she colluding with the police got filed false complaint against the driver of the Maxi Cab.

11. Further the petitioners got examined Shivamadegowda who is the eye witness to the accident. The PW.2 in his examination in chief he deposed that he has seen the accident and he is also witness to the spot panchanama and further deposed that on 04.12.2018 at about 7-00 p.m., he was waiting for his friend in front of Harsha Dhaba, Sathanoor at that time he was noticed that the deceased Ramakrishnegowda was proceeding on his bicycle from Sathnoor side towards Kemmale village, Halaguru side on

the extreme left side of the road at that time the driver of the Maxi cab vehicle bearing registration No.KA-03-B-6334 driven by its driver came from Sathnoor side towards Halaguru side with high speed and rash and negligent manner and dashed to the bicycle of the Ramakrishnegowda and caused this accident and after Maxi Cab hit the bus which is coming from opposite direction of the Maxi Cab and in this accident Ramakrishnegowda sustained severe injuries. He came to know that he was succumbed while taking treatment in the Victoria Hospital. Further he deposed that the accident is occurred due to the negligence of the driver of the Maxi Cab. In his cross-examination he deposed that he put signature on spot mahazar and police were conducted spot mahazar at the spot on the next day of the accident at that time the daughter of the deceased were present and further he deposed that at the time of accident he was present at

the spot and he was standing at the distance of 100 feet from the spot of the accident and immediately after hearing sound of the accident he went to the spot at that time Ramakrishnegowda was fell down and Maxi Cab was there at the spot and KSRTC Bus was coming and from the spot of the accident at the distance of 100 feet Bus was coming and the Maxi cab was parked at the distance of 100 to 150 feet and after the accident the Maxi Cab and Bus were there at the spot and the daughter of the deceased lodged the complaint before the police at that time he was not accompanied with the daughter of the deceased and at the time of accident the daughter of the deceased was not there and after the accident Ramakrishnegowda was taken to Sathanoor Government Hospital and thereafter he was taken to Bangalore and this accident was seen by him. He denied that at the time of accident the Bicycle was on the right side of the Bus and Maxi Cab on the left side and

between two vehicles the deceased Ramakrishnegowda was going on his bicycle and in between these two vehicles he struck and caused this accident. Further he deposed that the information given at the hospital that this accident is caused by KSRTC Bus is wrong and Maxi cab caused this accident. He denied that even though this accident is occurred due to the negligence of the driver of the Bus they have filed false complaint against the driver of the Maxi Cab and he deposing falsely.

12. Further the respondent No.2 got examined their official as per RW.1 and in his examination in chief he deposed as per contentions taken by them and further he deposed that in MLC records of Government Hospital Kanakapura it is mentioned that H/o RTA at Kemmale Dhaba around 6-45 p.m., hit by Government Bus while going home by bicycle as such it is clear that Maxi Cab is not involved in this accident and this accident is occurred only due to the

carelessness on the part of the driver of the KSRTC Bus bearing registration No.KA-11-F-0444 who dashed against the deceased bicycle and the alleged accident is occurred only due to the negligence of the driver of the KSRTC Bus the PW.2 and the petitioners are deposed that due to the negligence on the part of the KSRTC Bus only this accident is caused as such the petition against them is liable to be dismissed. He has produced Authorization letter as per Ex.R.1, Copy of Insurance Policy as per Ex.R.2, True copy of MLC Register Extract as per Ex.R.3, Notice date 21.01.2019 as per Ex.R.4 and Postal receipt as per Ex.R.4(a). In his cross-examination he deposed that he is giving evidence on the basis of police documents and he has not seen the accident. He admitted that Charge Sheet is filed against the driver of the Maxi Cab, but he further deposed that the Charge Sheet is falsely filed against the driver of the Maxi Cab. He denied that this accident is occurred only due to

the negligence of the driver of the Maxi Cab. He admitted that the police have not filed any Charge Sheet against the driver of the KSRTC Bus and they have not challenged the Charge Sheet submitted by the police. Further he deposed that based on the MLC record KSRTC Bus is dashed to the bicycle. Further he admitted that as per the documents the Maxi cab and Bus are coming in opposite direction. Further he denied that while the deceased Ramakrishnegowda proceeding on his bicycle on the extreme left side of the road at that time from his back side Maxi Cab dashed to the Bicycle and thereafter dashed the KSRTC Bus. He further denied that after the causing the accident to the bicycle the driver has took the Maxi cab for further distance and dashed to the diesel tank of the KSRTC Bus. He further denied that at the spot of the accident the Bus and Maxi cab was there somebody has given wrong information at the time of making MLC in the Hospital. He denied that by

taking undue advantage of the facts stated by the MLC he is deposing falsely.

13. Further the respondent No.2 got examined the doctor who registered the MLC at Kanakapura Government Hospital as RW.2. She deposed that Ramakrishnegowda was brought to their Hospital for first aid and at that time she registered the MLC and by seeing the MLC marked as per Ex.R.5 she deposed that along with injured one Sukanya was coming with him and she put her thumb impression at the MLC register and the injured was told to her that he was going on his bicycle at that time Government Bus has caused this accident and after giving first aid she referred the injured to the some other hospital and she herself has recorded the MLC and he identified her signature in MLC. In her cross-examination she denied that who brought the injured to the Hospital have told that how this accident was took place. She also denied that when injured was brought

to the hospital his relatives were not accompanied the injured.

14. From the petition averments and Ex.P.1 to Ex.P.8 it clearly goes to shows that this accident is occurred due to the negligence of the driver of the Maxi cab vehicle bearing registration No.KA-03-B-6334. Further by perusing the spot mahazar, seizer mahazar and contention of the respondent No.2 it is also clear that in this accident Maxi cab, bicycle and KSRTC Bus were involved. As per the case of the petitioner while deceased Ramakrishnegowda was proceeding on his bicycle from Sathanoor side towards Kemmale village from his back side Maxi Cab was coming in high speed and rash and negligent manner and dashed to the bicycle of the deceased and thereafter the Maxi cab dashed to the KSRTC Bus which is coming from opposite direction. The respondent No.2 contended that in this accident Maxi cab was not at all involved and this accident

is caused due to the negligence of the driver of the KSRTC Bus. In the cross-examination of PW.1 nothing worth is brought on record to show that this accident is caused due to the negligence of the driver of the Bus. Further it is also clear that her daughter who lodged the complaint was not seen the accident and one Shivamadegowda was seen the accident and intimated about the accident and public gathered at the spot were told them that the garments vehicle caused this accident. Further PW.2 is the eye witness from his evidence it is clear that at the time of accident he was present at the spot and he has seen the accident at a distance of 100 feet. He clearly deposed in his cross-examination that while Ramakrishnegowda was proceeding on the left side of the road on his bicycle from his back side Maxi Cab was came and dashed to the bicycle of the Ramakrishnegowda and thereafter dashed to the KSRTC Bus which is coming from opposite direction. To

disbelieve the evidence of PW.2 nothing worth is brought on record in the cross-examination of PW.2 to show that the accident is caused due to the negligence of the driver of the bus. Further by perusing the spot mahazar, seizer mahazar it is clear that the Maxi Cab and KSRTC Bus are coming from the opposite direction. Further by perusing the seizer mahazar marked as per Ex.P.4 it is clear that the right side of the Bus near diesel tank there was a scratch marks. Further by perusing the spot mahazar it is clear that at the spot of the accident the KSRTC Bus and Maxi Cab were there. From the seizer mahazar and spot mahazar it clearly goes to show that after causing the accident to the bicycle the driver of the Maxi Cab was caused accident to the KSRTC Bus and due to this accident there was a scratch marks near the diesel tank of the Bus. Further if at all the Bus caused this accident the front portion of the Bus could have caused some damages but in

the spot mahazar and seizer mahazar nothing is forthcoming with regard to the damages caused to the Bus, hence it is clearly goes to shows that this accident is caused due to the negligence of the driver of the Maxi cab.

15. The respondent No.2 specifically contended that in MLC register extract it is mentioned as RTA at Kemmale Dhaba hit by Government Bus while going home by bicycle. The respondent No.2 also got examined the doctor who registered the MLC. From the evidence of RW.2 it goes to shows that one of relative of the injured was accompanied the injured and injured told her that this accident is caused by Government Bus. Further from the evidence of PW.2 who is the eye witness it is very much clear that this accident is caused due to the negligence of the driver of the Maxi Cab and not due to the negligence of the driver of the KSRTC Bus. Further Sukanya who is the daughter of the deceased she was not present at the accident and PW.2 who

has intimated about the accident to the family members of the deceased who has seen the accident it shows that the intimation which has given at the hospital at the first instance was not correct. Further the police have filed Charge Sheet against the driver of the Maxi Cab and nothing is brought on record the police colluding with the petitioners have filed false Charge Sheet against the driver of the Maxi cab. Under such circumstances by perusing the entire oral and documentary evidence I am of the considered view that this accident is caused due to the negligence of the driver of the Maxi Cab and in this accident Ramakrishnegowda sustained injuries and died while taking treatment in the Hospital. **Hence, I answered the Issue No.2 partly in the affirmative.**

16. **Issue No.3:-** The petitioners are contended they are the dependents of the deceased and they are depending on the

income of the deceased. By perusing the petition averments and the evidence of PW.1 it is clear that the petitioner No.1 is the wife, petitioner No.2 is the minor son and petitioner No.3 is the aged mother of the deceased they are dependents of the deceased. Hence the petitioners are considered as dependents of the deceased Ramakrishnegowda.

17. The petitioners are contended that as on the date of accident the deceased Ramakrishnegowda was aged about 55 years and he was doing Agriculture and milk vender thereby earning Rs.20,000/- p.m. In support of this contention the petitioners relied on the postmortem report as per Ex.P.7. By perusing postmortem report it appears that at the time of death the deceased was aged about 55 years. Hence it is clear that as on the date of the accident the deceased was aged about 55 years. Hence the age of the deceased considered as 55 years as on the date of the

accident. Further the petitioners are contended that the deceased was working as agriculturist and milk vender and thereby earning Rs.20,000/- p.m. In support of this contention the petitioners are produced Bid receipts marked as per Ex.P.13 and Copy of RTC marked as per Ex.P.14. Apart from this the petitioners are not produced the documents to show the deceased was earning Rs.20,000/- p.m. In the absence of acceptable evidence with regard to the income of the deceased the notional income of the deceased is considered at Rs.9,000/- p.m., by considering the cost of leaving at the time of accident.

18. As per Sarla Varma case $1/3^{\text{rd}}$ of the income is to be deducted towards personal expenses of the deceased. Further as per Sarla Varma case multiplier 11 is applicable in the present case on hand. Further as per authority reported in *(2018) 15 SCC 654 in between Hem Raju Vs.,*

Oriental Insurance Company Ltd., 10% is added towards future prospectus of the deceased. Hence out of Rs.9,000/- $1/3^{\text{rd}}$ i.e., Rs.3,000/- is deducted it comes to Rs.6,000/- and to Rs.6,000/- 10% is added i.e., Rs.600/- it comes to Rs.6,600/-. Hence loss of dependency comes to Rs.8,71,200/- (Rs.6,600/- X 12 X 11). The petitioner No.1 is the wife she lost her husband, petitioners No.2 is the son has lost his father and the petitioner No.3 lost her son. Hence as per the authority reported in (2018) 18 Supreme Court Cases 130 in between *Magma General Insurance Company Limited Vs., Nanu Ram @ Chuhru Ram and Others* the petitioner No.1 is entitled for spousal consortium of Rs.40,000/-, the petitioner No.2 is entitled for parental consortium of Rs.40,000/- and petitioner No.3 is entitled for filial consortium of Rs.40,000/-. Hence the petitioners are entitled for compensation of Rs.1,20,000/- under the head of consortium. Further Rs.15,000/- is awarded towards loss of

estate and Rs.15,000/- is awarded towards funeral expenses. Hence the petitioners are entitled for compensation under following heads;

The details of compensation amount is as under;

Towards loss of dependency	Rs. 8,71,200.00
Towards consortium	Rs. 1,20,000.00
Towards loss of estate	Rs. 15,000.00
Towards funeral expenses	Rs. 15,000.00
Total	Rs. 10,21,200.00

Hence, petitioners are entitled for just and reasonable compensation amount of **Rs.10,21,200.00**

19. While answering Issue No.1 this tribunal has come to the conclusion that due to the negligence of the driver of the Maxi cab vehicle bearing registration No.KA-03-B-6334 this accident is took place and the Ramakrishnegowda died due to the injuries sustained in the accident. The respondent No.2 admitted that as on the date of the accident the policy issued by them to Maxi cab vehicle bearing registration

No.KA-03-B-6334 was in force and their liability is subjected to terms and conditions of the policy. In this case the respondent No.2 has not adduced any acceptable evidence to show that the driver of the Maxi Cab or owner of the Maxi cab have violated any terms and conditions of the policy. As the policy was in force as on the date of the accident hence I am of the considered view that the respondent No.1 being the owner and respondent No.2 being the insurer of the said Maxi Cab are jointly and severally liable to pay compensation to the petitioner with interest at the rate of 6% p.a from the date of petition. Hence I answered the **issue No.3 in partly affirmative.**

20. **Issue No.4:-** For the above stated reasons I proceed to pass the following;

: O R D E R :

Claim petition filed by the petitioners U/Sec 166 of M.V. Act is partly allowed with costs of Rs.1,000/-.

Petitioners are awarded just and reasonable compensation of **Rs.10,21,200/-** (Rupees Ten Lakh Twenty one Thousand Two Hundred Only) with interest at the rate of 6% p.a. from the date of petition to till the date of depositing of the compensation amount in the court.

Respondent No.2 being the insurer of the Maxi Cab bearing registration No.KA-03-B-6334 is directed to deposit the awarded compensation amount in the court within 02 month from the date of this judgment.

Draw award accordingly.

: A P P O R T I O N M E N T :

In the compensation amount the petitioners No.1 is entitled for 50%, petitioner No.2 is entitled for 20% and petitioner No.3 is entitled for 30% share.

On deposit of compensation amount the petitioners No.1 and 3 shall deposit 50% of the compensation amount in any of the Nationalized Banks as F.D. for a period of 2 years.

After expiry of period of fixed deposit the Bank Authorities are at liberty to release the amount shown in the F.D. to the concerned depositor in accordance with rules and regulations of the bank after proper identification of the depositor.

The entire share of the petitioner No.2 shall be kept as FD till he attains the age of majority.

Remaining 50% amount is to be paid to petitioner No.1 and 3 under E-payment and after verifying the stay order from the Hon'ble Appellate Court.

(Dictated to the Stenographer, typed by him, corrected and then, pronounced by me in the open Court on this, the 25.11.2021).

(Umesh S.Atnure)
IX ASCJ & ACMM,
Court of Small causes,
Member- MACT, Bengaluru.

: ANNEXURE :

List Of Witnesses Examined For Petitioner/s.

PW-1 : Smt. Savithramma W/o Late Ramakrishnegowda
PW-2 : Sri. Shivamadegowda

List of exhibited documents marked for Petitioner/s.

Ex.P-1 : FIR
Ex.P-2 : Complaint
Ex.P-3 : Spot Mahazar
Ex.P-4 : Seizer Mahazar
Ex.P-5 : IMV Report
Ex.P-6 : Inquest Report along with statement of witnesses

- Ex.P-7 : Postmortem Report
Ex.P-8 : Charge Sheet
Ex.P-9 : Notarized copy of Adhar Card of Savithramma
Ex.P-10 : Notarized copy of Adhar Card of Manoj K.R.
Ex.P-11 : Notarized copy of Adhar Card of Chowdamma
Ex.P-12 : Notarized copy of Adhar Card of
Ramakrishnegowda
Ex.P-13 : Bid receipts
Ex.P-14 : Copy of RTCs

List of witnesses examined for the Respondent/s

- RW.1 : T. Varadarajan
RW.2 : Smt. Padma

List of exhibited documents marked for the Respondent/s:

- Ex.R.1 : Authorization letter
Ex.R.2 : Copy of Insurance Policy
Ex.R.3 : True copy of MLC Register Extract
Ex.R.4 : Office copy of Notice dated 21.01.2019
Ex.R.4(a) : Postal Receipt
Ex.R.5 : MLC Register

(Umesh S.Atnure)
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