BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL, XXI ADDITIONAL JUDGE OF SMALL CAUSE COURT AND A.C.M.M. AT BENGALURU.

PRESENT: Smt.Ashwini M Hattiholi,
(B.Com., LL.B),
XXI Addl.Small Causes Judge,
A.C.M.M and Member, M.A.C.T, Bengaluru.

DATED: This the 24th day of March, 2021.

<u>MVC. No.3069/2019</u>

<u>Petitioner/s</u> :

1. Sri. Harish Kumar. K
@ Harish. K,
S/o Krishnappa,
Aged about 41 years.

2. Sri. Hemanth Kumar. H,
S/o Harish Kumar. K
Aged about 19 years.

3. Kumari. Bhavya. H,
D/o Harish Kumar. K
Aged about 17 years.
Represented by her father
All are residing at :
R/o Kurubarakunte,
Janatha Colony, Avathi,
Bangalore Rural District.

(By Sri. Chandrashekar Rodnavar, Advocate)

v/s

<u>Respondent/s</u> :

1. The Branch Manager,
The IFFCO-Tokio General
Insurance Company Ltd.,
Sai Ranga Building,
TG Extension,
Hosakote-562114.
Vehicle bearing No.KA-43-9051
Policy No.1-12C42WRB
valid from: 12.03.2019
to 11.03.2020

(By Sri.S. Maheswara Advocate)

2. S.K. Enterprises,
\# Sy.No.96/1,
Muddanayakanahalli (V)
B Idaluru (P), Devanahalli Taluk,
Bangalore Rural District-562110.

(Exparte)

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J U D G M E N T

This claim petition is filed under the provisions of Sec.166 of M.V Act, 1988 seeking compensation for the death caused in a Road Traffic Accident.

2. The facts leading to the filing of top noted petition are that, on 17.04.2019 at about 2.30 p.m, the deceased Smt. Lakshmamma was driving TVS XL bearing Reg.No.KA-04-Y-4054, on B.B. Service road, very slowly and cautiously by observing all the traffic rules & regulations. When she reached Kurubarakunte Janatha Colony, at Rani Circle, all of a sudden a Tipper Lorry bearing Reg.No.KA-43-9051, driven by its driver came at a high speed, in a rash and negligent manner, without observing traffic rules & regulations and dashed against the TVS XL scooter. As a result the deceased fell down and the rear left wheel of the Lorry ran over the deceased's head and she sustained grievous injuries all over the body. Immediately after the accident the driver of Lorry with the help of the public took the deceased to Devanahalli Government Hospital for treatment. The duty doctor who attended the patient declared her to be brought dead. Post Mortem was conducted at Devanahalli Government Hospital & her body

was handed over to the petitioners on the same day, who spent huge amount towards funeral expenses.

3. Prior to the accident the deceased was hale and healthy. She was doing Vegetable and milk vending business and was earning Rs.20,000/- per month. She contributed her earnings to the maintenance of the family. The deceased was having two minor children. The petitioners have spent huge amount for the cremation and funeral ceremony of the deceased. Due to the death of the deceased the petitioners are put to great mental shock and agony. The jurisdictional police who were informed about the accident have registered a case against the driver of the Lorry in Crime No.54/2019 for the offences punishable u/s; 279 and 304(A) of IPC. Stating so, prayed to award compensation of Rs.25,00,000/- with interest at 18% p.a.

4. After registering the case, notices were issued to the respondents. The respondent No.2 failed to appear despite due service of notice. Hence he was placed exparte. Respondent No.1/ Insurance company appeared through its counsel and filed objections denying the petition averments. The respondent No.2 denied the very involvement of the vehicle in the alleged accident. Further it emphatically denied the occurrence of accident and contended that if at all the alleged accident had taken place, it was only due to the negligence on the part of the deceased herself and not due to the negligence on the part of driver of the Tipper Lorry.

5. It is further submitted that the driver who was driving the Tipper Lorry had no valid driving license and the said Lorry did not have valid permit & FC as on the date of accident. Hence there is breach of the terms and conditions of the policy by the insured. As such the petition is liable

to the dismissed against the insurance company. Further the relationship of the petitioners with the deceased and their dependency, age & avocation of the deceased are also denied in particular. Contending so, prayed to dismiss the claim petition.

6. On the basis of the above pleadings, the following issues were framed:

ISSUES

1. Whether the petitioners proves that on 17.04.2019 at about 2.30 p.m, on BB Service Road, Near Rani Circle, towards Kurubarakunte Janataa Colony, Avathi, Devanahalli, the driver of the Tipper Lorry bearing No.KA-43-9051 drove it rash and negligently and dashed against the TVS XL bearing No.KA-04-Y-4054 and caused the death of this vehicle rider by name Smt. Lakshmamma ?

2. Whether the petitioners are entitled for compensation ? If so, to what amount and from whom ?

3. What Order or award?

7. The Petitioner No.1 got examined himself as PW.1. Ex.P1 to 15 were marked on behalf of the petitioners. The Respondent No.2/Insurance company did not choose to lead evidence.

8. Heard arguments on both sides.

9. Perused the entire materials placed on record. My answers to the above issues are as follows:-

Issue No.1:	**In the Affirmative**
Issue No.2:	**Partly in the affirmative**
Issue No.3:	**As per final order**
	for the following:

<u>**R E A S O N S**</u>

10. <u>**ISSUE NO.1:**</u> There is no dispute with regard to the occurrence of the accident on the relevant date, time and place. The parties are also not at variance with regard to the factum of the death of the deceased due to the injuries

sustained in the said accident. The conflict is with regard to actionable negligence. The petitioners plead that the accident was caused due to the sole negligence of the driver of Tipper Lorry bearing No.KA-43-9051. Whereas the insurance company contends that the accident in question occurred because of negligence of the deceased.

11. From the evidence on record it can be seen that after the receipt of complaint lodged by one Jayanth. M (elder sister's son of the deceased), the International Airport Traffic Police Station, Devanahalli have registered a case against the driver of Tipper Lorry in Crime No.54/2019 and filed charge sheet against him for the offences punishable u/s 279 & 304(A) of IPC after due investigation. From the Spot Mahazar and Sketch it is prima facie clear that the accident had taken place on account of the negligence of driver of Tipper Lorry. Because it was he who was driving his vehicle at high speed & without observing the

deceased's vehicle which was coming from service road, suddenly took a left turn to go towards Nandhi Hills and caused the accident.

12. Though as per the suggestion made by the learned counsel for Respondent No.1/Insurnace company to PW.1, which is accepted to be true, the persons travelling on the service road could see the vehicles plying on the Highway. But PW.1 categorically stated that the deceased i.e., his wife was riding her vehicle at a slow speed. As without putting on indicators the Lorry driver suddenly took a left turn to go towards Nandhi Hills, the accident occurred. Infact nothing worthwhile was elicited from PW.1's mouth to prove that the deceased also contributed her negligence in causing the accident.

13. The respondent No.2 did not choose to appear despite due service of notice of the petition upon him. The

respondent No.1/Insurance company which has denied the very involvement of the offending Tipper Lorry has not led any evidence to prove its defence. Mere taking up of defence is not sufficient to dislodge the evidence led by the petitioners. Just because as per the IMV Report, the offending Lorry did not sustain any damages, it is not sufficient to hold that it was not at all involved in the accident. Compared to the size of the TVS XL vehicle which was driven by the deceased at the time of accident, the Tipper Lorry is a heavier and bigger vehicle. Therefore, the offending Lorry not sustaining any visible damages in the accident is quite obvious. Further the respondent No.1/Insurance company did not make any attempt to examine the driver of Tipper Lorry who is the best witness to depose about the cause of accident. There is no explanation to that effect. Non- examination of the driver of offending Lorry is fatal to the case of respondent No.1. Hence its contention that there was no negligence on the part of driver of Tipper Lorry has to be disbelieved. Under such circumstances, the evidence of PW.1 which is supported by police documents has to be accepted. Consequently I hold that the accident is proved to have been caused due to the negligence of the driver of the Tipper Lorry. As such, I answer Issue No.1 in the **Affirmative.**

14. ISSUE NO.2 : The petitioner No.1 filed affidavit in lieu of his chief examination and deposed that he is the Husband of the deceased. That the petitioners No.2 and 3 are their children. The Aadhaar cards which are exhibited at Ex.P9 to 12 reflect the aforesaid relationship of the claimants with the deceased. It is pertinent to note that this relationship of the petitioners with the deceased has not been disputed by the respondent No.1/Insurance company, as is evident from the tenor of cross examination of PW.1. Nothing contrary is elicited during the cross examination of PW.1 to disbelieve his evidence as far as the relationship of the petitioners with the deceased is concerned. Since the evidence led by PW.1 is satisfactory and also taking into consideration the fact that there are no rival claimants, I hold that the petitioners are the legal representatives of the deceased Lakshmamma W/o Harish Kumar. H. PW.1 has specifically deposed that due to untimely death of the deceased, they have been put to great hardship. Apart from that they are suffering from great mental shock, pain & agony. Under such circumstances the petitioners are entitled for compensation.

15. **LOSS OF DEPENDENCY INCLUDING FUTURE PROSPECTS:** To ascertain the loss of dependency the age, income of the deceased and number of dependents on the deceased are relevant. PW.1 has produced the Notarized copy of the Aadhaar card of the deceased at Ex.P12, in which her date of birth is shown as 01.01.1979. A

suggestion to this effect was accepted by PW.1 during the course of his cross examination that as per his wife's Aadhar card her date of birth is 01.01.1979. This goes to shows that the deceased was aged 40 years as on the date of accident. Hence the age of the deceased is considered as 40 years. Therefore the appropriate multiplier as per Sarla Verma's case is '15'.

16. According to PW.1, the deceased was earning Rs.20,000/- p.m, by doing Vegetable and Milk vending business. This assertion is seriously disputed by the respondent No.1. However neither the avocation and income of the deceased is substantiated by producing cogent materials nor any witness is examined in this regard. In the absence of proof, the version of petitioner No.1 that the deceased was earning Rs.20,000/- p.m, is not acceptable. Under such circumstances, this court has to consider the income notionally for calculating the

compensation. Hence the notional income of the deceased is taken as Rs.10,000/- p.m, as the accident took place in the year 2019. Needless to mention, also taking into consideration the age of the deceased and nature of her work.

17. In a decision reported in **2017 ACJ 2700 (National Insurance Co.Ltd V/s Pranay Sethi & Ors)** the Hon'ble Apex Court held that, 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 40-50 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. It is also held that the age of the deceased should be the basis for applying the

multiplier. It is further held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

18. In a decision reported in **2018 ACJ 5 (Hem raj V/s Oriental Insurance Company Ltd & others**), wherein the Hon'ble Apex Court held that, there cannot be distinction where there is evidence of income and where minimum income is determined on guesswork, as such addition on account of future prospects is admissible where minimum income is determined on guesswork in the absence of proof of income.

19. In the case on hand the deceased was aged 40 years. Her notional income is taken as Rs.10,000/- p.m. As per

dictum of Hon'ble Apex Court 25% of income is to be added towards future prospects. 25% of Rs.10,000/- works out to Rs.2,500/-. Therefore the total income comes to Rs.12,500/- (10,000+2500). There are three dependents. Hence 1/3rd is to be deducted towards her personal expenses. 1/3rd of Rs.12,500/-works out to Rs.4,167/-. Income for consideration is Rs.8,333/- (12,500 – 4,167). Annual income works out to Rs.99,996/- (8,333 X 12). Appropriate multiplier is '15'. Thus loss of dependency works out to **Rs.14,99,940/-** (99,996 X15).

20. **LOSS OF CONSORTIUM:** Recently the Hon'ble Apex Court in the decision reported in **Civil Appeal No.3093 to 3099/2020**, decided on 7.9.2020 between **the New India Assurance Company Ltd V/s Smt.Somwati & others**, has held that the claims Tribunal shall award Parental and Filial Consortium in a sum of **Rs.40,000/- each** apart from

Spousal consortium. Accordingly the petitioners in addition to a sum of **Rs.14,99,940/-** towards Loss of dependency are also entitled to Rs.40,000/- each towards Spousal Consortium (Petitioner No.1) & Filial Consortium (Petitioner No's.2 & 3).

21. **<u>LOSS OF ESTATE</u>:** Petitioners are entitled for **Rs.15,000/-** towards loss of estate.

22. **<u>FUNERAL EXPENSES:</u>** Petitioners are entitled for **Rs.15,000/-** towards funeral expenses.

23. Petitioners are entitled for compensation under the following heads.

1	**Loss of dependency**	**:**	**14,99,940-00**
2	**Loss of consortium**	**:**	**1,20,000-00**
3	**Loss of Estate**	**:**	**15,000-00**
4	**Funeral Expenses**	**:**	**15,000-00**
	Total	**:**	**16,49,940-00**

24. **<u>REGARDING INTEREST & LIABILITY</u>:** Relying upon the principle laid down by the Hon'ble Apex Court in the case of **Municipal Corporation of Delhi V/s Association of Victims of Upahaar Tragedy reported in AIR 2012 SC 100**, it is just and proper to award interest @ 9% p.a. from the date of petition till the date of payment. The respondent No.1 being the Insurer of the offending Tipper Lorry bearing Reg.No.KA-43-9051 and respondent No.2 being the Registered owner/insured of the said vehicle are jointly and severally liable to pay the aforesaid award amount together with interest @ 9% p.a. from the date of claim petition till realization of the entire amount to the petitioners. However the respondent No.1 being the insurer is primarily liable to satisfy the award amount together with interest within one month from the date of this order. With these observations, Issue No.2 is answered as **'Partly in the affirmative'.**

25. **ISSUE NO.3 :** In view of the findings given on issues No.1 and 2, I proceed to pass the following;

ORDER

The petition filed under Section 166 of Motor Vehicle's Act 1988, is hereby partly allowed with costs.

The petitioners are entitled for compensation of **Rs.16,49,940/-** (Rupees Sixteen Lakhs Forty Nine Thousand Nine Hundred Forty only) with interest at the rate of 9% p.a. from the date of petition till realisation.

The respondent No.1 is hereby directed to pay the aforesaid award amount together with interest to the petitioners within 30 days from the date of this order.

On deposit of the award amount together with interest, a sum equal to 30% shall be allotted to the share of Petitioner No.1 and 35%

each to the shares of Petitioner No's.2 & 3, by way of apportionment of compensation amount.

Out of the share amount of Petitioner's No.1 to 3, a sum equal to 50% shall be deposited in their names in any Nationalized or Scheduled Bank of their choice for a period of 5 years & the remaining 50% shall be released to them through E-payment on proper identification & verification. However the said petitioners are at liberty to withdraw the periodical interest accrued on their deposit amount from time to time.

In the matter of disbursement of award amount together with interest, the office shall follow the guidelines issued by the **Hon'ble High Court of Karnataka in MFA No.2509/2019 (ECA)**, vide orders dated 19.7.2019 in the case of Smt.Yamuna Channabasappa Shetty V/s K.Raghukumar @ Raghu S/o Kotrappa.

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

Draw an award accordingly.

(Dictated to the Stenographer directly on computer and printout taken by him, then corrected and pronounced by me in the open court on this the **24th day of March, 2021**)

(Ashwini M.Hattiholi)
XXI Addl. Small Causes Judge
& ACMM, Bengaluru.

ANNEXURES

List of witnesses examined for the petitioner/s:

P.W.1 : Sri. Harish Kumar. K

List of documents got marked for the petitioner/s:

Ex.P.1	: Copy of FIR
Ex.P.2	: Copy of Complaint
Ex.P.3	: Copy of Panchanama
Ex P.4	: Copy of Sketch
Ex.P.5	: Copy of IMV report
Ex.P.6	: Copy of Inquest report
Ex.P.7	: Copy of PM Report.
Ex.P.8	: Copy of Charge sheet.
Ex.P.9 to 12	: Notarized copy of Aadhaar cards
Ex.P.13	: Notarized copy of SSLC Marks card of petitioner No.2.
Ex.P.14	: Notarized copy of TC of petitioner No.2
Ex.P.15	: Notarized copy of ID Card of petitioner No.3.

List of witnesses examined for the respondent/s:

None

List of documents marked for the respondent/s:

Nil

(Ashwini M.Hattiholi)
XXI Addl. Small Causes Judge
& ACMM, Bengaluru.