

KADG020062332020



Presented on : 19-12-2020
Registered on : 19-12-2020
Decided on : 25-10-2022
Duration : 1 years, 10 months, 6 days

**IN THE COURT OF
PRL SENIOR CIVIL JUDGE AND CJM AT Davangere,
DAVANGERE**

**Presided Over by SMT PREETI SADGURU
SADARJOSHI**

M.V.C./553/2020

Dated this 25th day of October - 2022.

1. Laxmidevi L.D,
W/o M.H.Ajjappa,
Aged about 40 years,
Housewife,
2. Pallavi M.A,
D/o Ajjappa M.H,
Aged about 22 years,
Student,
3. Pradeep M.A,
S/o M.H.Ajjappa,
Aged about 20 years,
Student,

All are R/o #138, S.O.G, Colony,
Davanagere.

....**Petitioner/s.**

-VERSUS -

1. Gururaj M.Mukhtedhar,
S/o Murulidhr Mukhtedher,
Aged about 25 years,
Driver of car bearing Reg.
No.KA-03/MD-8158,
R/o #1425 behind Basavarj Theater,
Theggina Honi Kustagi,
Koppal district, Pin-583231.
2. Willy P. Jose,
S/o Jose Thomas,
Aged about 43 years,
Owner of car bearing Reg.
No.KA-03/8158,
R/o # H-202 tower 3 daffodils,
Adrsha Plama Retretrve,
Devara Besanahalli Belandur,
Bengaluru.

.....**Respondents.**

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Petitioner by Sri.V.D.P Advocate
Respt. No.1 by Sri.R.K.M Advocate
Respt. No.2 Ex-parte.

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-:J U D G M E N T:-

The petitioners have filed petition U/Sec.166 of
M.V. Act claiming compensation of Rs.1,05,00,000/- with

interest at the rate of 12% p.a for the death of M.H.Ajjappa in road accident occurred on 28/12/2019.

2. Brief facts of the case of petitioners is as under:-

The petitioners have averred that on 28/12/2019 the deceased M.H.Ajjappa and his higher officer had been to NH-50 for checking the vehicles as per the order of higher officer. At about 10-35 a.m deceased Sri. M.H.Ajjappa was standing by road side near Surya Poultry farm on NH-50 road, Donnehalli village, Jagalur taluk, Davanagere district. At that time, the respondent No.1 being the driver of car bearing Reg.No.KA-03/MD-8158 drove the vehicle from Chitradurga in a rash and negligent manner with high speed endangering human life without following traffic rules and regulations dashed deceased M.H.Ajjappa. Due to this M.H.Ajjappa sustained grievous injuries and succumbed on the way to hospital. For funeral expenses and transportation charges Rs.1,00,000/- is spent. Prior to the date of accident deceased M.H.Ajjappa was working as a driver in RTO office, Davanagere and was earning salary of Rs.31,951/- per month. The family of the deceased are in mental shock and suffered financial loss. The petitioner No.1 is the wife and petitioner No.2 & 3 are

the children of the deceased. The deceased M.H.Ajjappa is only bread earning member in his family. The petitioner No.1 has lost love and affection of husband at small age and petitioner No.2 & 3 have lost love and affection of their father. The respondent No.1 is the driver and respondent No.2 is the owner of the vehicle. A case is registered under Jagalur P.S Crime No.193/2019 for offences punishable U/s.279, 304A of IPC. Hence, the respondents are jointly and severally liable to pay the compensation to the petitioners.

3. On proper service of notice, the respondent No.2 did not appear before Tribunal. Hence, the respondent No.2 was placed ex-parte.

4. The respondent No.1 has filed objections to main petition denying the petition averments. The respondent No.1 denied petition paras and has admitted that on the date of accident, Ajjappa was driving the car involved in the accident as the respondent No.2 has entrusted him as the driver of the said car. RC owner/respondent No.2 of the said car has engaged him as driver of the said car from Bengaluru to Hospet. The respondent No.2 alone is liable to pay compensation to the petitioners. Hence, the respondent No.1 prayed to dismiss the petition.

5. On 30/12/2021 the following issues were framed:-
1. Whether the petitioners prove that on 28/12/2019 at about 10-35 a.m the deceased M.H.Ajjappa and his higher officer were checking the vehicles near Surya Poultry farm on NH-50 road at Donnehalli village, Jagalur taluk, Davanager, at that time the respondent No.1 being the driver of car bearing Reg.No.KA-03/MD-8158 drove the vehicle in a high speed rash and negligent manner and dashed Ajjappa, as a result M.H.Ajjappa sustained grievous injuries and succumbed to injuries, as stated in petition?
 2. Whether the respondent No.1 proves that, he is not liable to pay any compensation as stated in his objections?
 3. Whether the petitioners are entitled for compensation as claimed? If so, to what extent and from whom?
 4. What Order or Award?
6. In order to prove the case of petitioners, the petitioner No.1 is examined as PW1 by filing affidavit in

lieu of examination-in-chief and also examined RTO, Davanagere as PW2 and relied upon Ex.P1 to 14.

7. The respondent No.1 is examined as RW1 by filing affidavit in lieu of examination-in-chief.

8. Heard arguments of learned respective counsels on main petition. Perused materials available on record.

9. This Court answers above referred issues as under:-

Issue No.1:- In affirmative.

Issue No.2:- In affirmative.

Issue No.3:- Partly in affirmative.

Issue No.4:- As per final order for following:-

-: R E A S O N S :-

10. **Issue No.1 to 3:-** Since these issues are inter connected with each other, to avoid repetition of facts, issue No.1 to 3 are taken together for common discussion.

11. The death of M.H.Ajjappa due to road traffic accident is not in dispute.

12. The point in dispute and crux of matter is whether the respondents are liable to pay compensation to the

petitioners.

13. In order to prove the case of the petitioners, petitioner No.1 is examined as PW1 by filing affidavit in lieu of examination-in-chief and relied upon Ex.P1 to 14.

1. Ex.P1 is the true copy of complaint given to Senior Motor Vehicle Inspector, RTO Davanagere to PI, Jagaluru Police station.

2. Ex.P2 is the true copy of FIR No.193/2019 for offences punishable U/s.279, 304A of IPC.

3. Ex.P3 is the inquest panchanama of M.H.Ajjappa.

4. Ex.P4 is the MVI report wherein the motor vehicle inspector is of the opinion that the accident is not caused due to any mechanical defects of the vehicle.

5. Ex.P5 is the charge sheet filed by the PI Jagaluru Circle for offences punishable U/s.279, 304A of IPC and Section 146, 196 of MV Act. As per Ex.P5 due to rash and negligent driving by the respondent No.1 the accident has occurred and M.H.Ajjappa sustained grievous injuries and succumbed to injuries. It is an admitted fact that car belongs to the respondent No.2. As per Ex.P5, charge sheet is filed against the accused for offence punishable U/s.196 of MV Act. The respondent No.2 allowed the respondent No.1 to drive

car in contravention of Section 146 of MV Act i.e. driving uninsured vehicle.

6. Ex.P6 is the PM report of M.H.Ajjappa wherein the age of the M.H.Ajjappa is shown as 44 years. As per Ex.P6 the final opinion as to cause of death is due to hemorrhagic shock recovery to multiple long injuries due to road traffic accident.

7. Ex.P7 is the spot mahazar pertaining to spot of accident.

8. Ex.P8 is the salary slip of M.H.Ajjappa for the month of December 2019 wherein the gross salary is Rs.30,951/- per month.

9. Ex.P9 is the certificate.

10. Ex.P10 is the genealogy tree of the deceased M.H.Ajjappa.

11. Ex.P11 to 13 are the true copies of Aadhar cards of the petitioner No.1 to 3.

9. Ex.P14 is the true copy of S.R register of the deceased M.H.Ajjappa.

14. PW1 has reiterated the petition averments and stated that the accident has occurred due to negligent driving by driver of KA-03/MD-8158. In this regard the documents at Ex.P1 to 7 prove the fact that on the date

of accident due to rash and negligent driving by the respondent No.1 the accident has occurred. PW1 is not an eyewitness to the accident. The respondents have only denied the manner of accident and have not produced any material evidence on record. The I.O after due investigation has filed charge sheet against the driver of offending vehicle. Hence, I am of the considered opinion that the accident has occurred due to rash and negligent driving by the respondent No.1. The respondents have not challenged the charge sheet in any Court of Law. On careful consideration of materials available on record due to rash and negligent driving by the respondent No.1 the accident has occurred.

15. To disprove the case of the respondent No.1, the respondent No.1 is examined as RW1 by filing affidavit in lieu of examination-in-chief. During course of cross-examination of RW1, RW1 has admitted that the vehicle belongs to respondent No.2 and the respondent No.2 has entrusted the vehicle to the respondent No.1/driver. RW1 has admitted that he is having valid driving licence.

16. On careful consideration of Ex.P1 to 7 it is clear

that the deceased was aged about 44 years at the time of accident. The deceased M.H.Ajjappa was working as a driver in RTO, Davanagere and earning salary of Rs.30,951/- per month which is not in dispute. As per Pranay Sethi's case addition of 30% future prospects is to be awarded for those above 40 to 50 years for those with permanent job. In the present case deceased was 44 years old. Hence 30% future prospects has to be awarded. It comes to Rs.9,285/-. So, it will be Rs.30,951/- + Rs.9,285/- = Rs.40,236/-.

17. It is not in dispute that the petitioners are the legal heirs of deceased M.H.Ajjappa. The petitioner No.1 is the wife and petitioner No.2 & 3 are children of deceased M.H.Ajjappa. As per Sarala Verma's case 1/3rd i.e. Rs.13,278/- of the income is to be deducted towards personal expenses of the deceased (i.e. it comes to ₹.40,236/- (-) ₹.13,278/- = ₹.26,958/-).

18. Neither documentary nor oral evidence are placed before Court to prove the fact that the petitioner No.1 to 3 have received benefits from State and Central Government for the death of M.H.Ajjappa. Hence, contention of respondent No.1 is negated.

19. The age of the deceased as on the date of accident is 44 years. The proper multiplier is 14. If we calculate the loss of dependency with proper multiplier it comes to ₹.26,958/- x 12 x 14 = ₹.45,28,944/- As per Judgment of Hon'ble Supreme Court of India in the decision reported in The National Insurance Co., -Vs- Pranay Sethi and others dated 31/10/2017 it is just and reasonable to award a sum of Rs.40,000/- towards loss of consortium in favour of the petitioner No.1. It is just and reasonable to award a sum of Rs.40,000/- towards love and affection infavour of the petitioner No.2 & 3

20. As per Pranay Sethi's case, the petitioners are entitled to Rs.15,000/- towards funeral expenses.

21. Therefore, taking into consideration of the facts and circumstances of the petition, I am of the considered opinion that it is just and proper to award compensation under conventional heads:-

1.	Towards loss of dependency	₹.45,28,944/-
2.	Towards loss of estate	₹. 15,000/-
3.	Towards funeral expenses	₹. 15,000/-
4.	Loss of consortium	₹. 40,000/-
5.	Loss of love and affection	₹. 40,000/-
	Total	₹.46,38,944/-

22. Therefore, the petitioners are entitled to total compensation of Rs.46,38,944/-. Same is rounded of Rs.46,38,950/-

23. Admittedly, the respondent No.1 is the driver, respondent No.2 is the owner of the offending vehicle. Hence, the respondent No.2 being the owner is liable to pay the compensation to the petitioners with interest at the rate of 6% p.a from the date of petition till the date of realization.

24. The respondent No.1 being the driver of vehicle, the petition as against the respondent No.1 is dismissed. Hence, I incline to answer Issue No.1 & 2 in affirmative and issue No.3 partly in affirmative.

25. **Issue No.4:-**In view of foregoing discussions, this Tribunal proceed to pass following:-

: O R D E R :

1. The petition filed U/s.166 of MV Act is allowed in part with costs.
2. The petition filed against the respondent No.1 is dismissed.
3. The petitioners are awarded compensation of

Rs.46,38,950/- (Forty Six Lakhs Thirty Eight Thousand Nine Hundred Fifty Rupees only) with interest at the rate of 6% p.a from the date of petition till the date of realization.

4. The respondent No.2 is held liable to pay the compensation awarded and is directed to deposit the said compensation amount before Tribunal within 30 days from the date of this order.

5. The petitioner No.1 is entitled to 40% of the compensation amount. The petitioner No.2 & 3 are entitled to 30% each of the compensation amount.

6. After such deposit, out of compensation amount awarded to the petitioner No.1, 70% of the compensation amount with interest shall be disbursed in favour of the petitioner No.1 and remaining 30% compensation amount with interest shall be deposited in the name of the petitioner No.1 in any Nationalized/Schedule Bank for a period 03 years.

7. Entire compensation amount awarded infavour of the petitioner No.2 & 3 is ordered to be released infavour of the petitioner No.2 & 3.

8. Advocates fee is fixed at Rs.1,000/-.

9. Draw Award Accordingly.

(Dictated to the stenographer, transcribed, typed by him, corrected, signed and then pronounced in the open Court by me on this the 25th day of October 2022)

(P.S.Sadarjoshi)
Member, MACT, IV, Davanagere.

: ANNEXURE :

List of witnesses examined of petitioner :-

PW.1 Smt. Laxmidevi L.D.
PW.2 Shridhar K.Malnad.

List of exhibited documents for petitioner :-

Ex.P1 CC of complaint
Ex.P2 CC of FIR
Ex.P3 CC of inquest mahazar.
Ex.P4 CC of IMV report.
Ex.P5 CC of charge sheet.
Ex.P6 CC of PM report.
Ex.P7 CC of spot mahazar
Ex.P8 Salary slip.
Ex.P9 Living members certificate.
Ex.P10 Genealogy.
Ex.P11 to 13 Copies three Aadhar cards.
Ex.P14 CC of SR register.

List of witnesses examined for the respondents

RW1 Gururaj Mukhtedher

List of documents marked for the Respondents

NIL

Member, MACT, IV, Davanagere