Karnataka High Court M.N. Rajan And Ors. vs Konnali Khalid Haji And Anr. on 7 August, 2003 Equivalent citations: III (2004) ACC 273, 2004 ACJ 484, ILR 2004 KAR 3731 Author: S Nayak Bench: S Nayak, S Majage ORDER 6 RULE 1 - PLEADINGS - IN DEFENCE PLEA OF CONTRIBUTORY NEGLIGENCE - HELD - The plea of contributory negligence should be taken in the written statement before Tribunal. It is well settled that the burden of establishing the defence of contributory negligence is on the defendant who admits that on account of the conduct of the plaintiff, his negligence had gone into the background and it was the conduct of the plaintiff that resulted in the accident; it is not for the claimant to disprove it. In this case, there is neither pleading nor any proof of contributory negligence. Further, contributory negligence on the part of the deceased or the driver of the motor cycle cannot be inferred on the basis of evidence on record. ... The driver of the lorry was not examined by the owner or insurer of the vehicle. Therefore, an adverse inference can be drawn against them. Therefore, the plea of contributory negligence urged by the learned Counsel for the respondent 1 and 2 for first time in this Appeal is required to be noticed, only to be rejected in limine. (D) MOTOR VEHICLES ACT, 1988 - SECTION 166 - QUANTUM - FATAL ACCIDENT - CLAIMANTS - JUST AND REASONABLE - FATHER, MOTHER AND BROTHER - DEPENDENCY - The deceased was earning monthly income of Rs. 3,000/- as typist cum-receptionist, as per the salary certificate issued by the employer. The father aged 59 years, mother aged 46 years and the brother aged 23 years . Since the deceased was unmarried and the brother was a major. HELD - It is just and reasonable to deduct 50% of the income of the deceased towards personal expenses and if personal expenses of the deceased, the monthly loss of dependency would be Rs. 1500/-. Having regard to the age of the parents and taking average of the same, the appropriate multiplier to be applied for determining the loss of dependency would be 12. In addition, the claimants are also entitled to a compensation under the conventional heads such as 'loss of love and affection, 'Loss of estate' and funeral expenses. Appeal was partly allowed, awarding Rs. 2,61,000/-together with interest @ 6% p.a. from the date of petition. JUDGMENT S.R. Nayak, J. 1. The Claimants in a Motor Vehicle Compensation case being aggrieved by the Judgment and Award dated 28.07.2001 passed in M.V. C.No. 708/1995 on the file of the Court of the Principal Civil Judge (Sr. Division) and Addl. M.A.C.T., Mandya (for short 'the MACT') have preferred this appeal under Section 173(1) of the Motor Vehicles Act, 1988 (for short 'the Act'). The MACT by the impugned award has awarded compensation of Rs. 50,000/- with 9% interest to the Appellants under 'no fault liability' and dismissed the claims of the appellants for compensation based on 'actionable negligence'. 2. The facts of the case in brief are as follows: On 02.06.1995 at about 5.15 p.m., the deceased Ms. R. Vani was travelling on RX Yamaha motor cycle as pillion rider from Mandya towards Mysore on the left side of the road and when they were going near Shambulingeswara Temple, the veil of the deceased was stuck with the back wheel of the Motor cycle and on account of that, she fell down. At that time, the lorry bearing registration No. KL.10 5616 came from Bangalore side driven in a rash and negligent manner

and ran over the body of Ms. M.R. Vani. On the date of the accident, the deceased was hale and healthy and she was employed as Typist-cum-Receptionist in M.M. Equipments and she was also working as Music Teacher and she was earning monthly income of Rs. 5000/-. The Claimants 1 and 2 are father and mother of the deceased whereas the Claimant No. 3 is the brother of the deceased and all of them were entirely depending upon the income of the deceased for their livelihood. With the above factual matrix MVC.No. 7/1995 was filed before the M.A.C.T. claiming total compensation of Rs. 15,00,000/-. 3. Although the notice was served on Respondent No. 1- owner of the vehicle, he remained unrepresented and, therefore, he was placed ex parte. The Respondent No,2-Insurance Company put in appearance through its Counsel and filed written statement inter alia admitting that the vehicle involved in the accident was insured with it on the date of accident but denying all other allegations in the claim petition. It was also contended by the second respondent that since the Claimants have not made the owner and the insurer of the motor cycle as parties to the petition, the petition is bad for non-joinder of necessary parties. It was also contended that the accident occurred due to rash and negligent driving of the motor cycle and in no way the driver of the lorry contributed to the accident and, therefore, the second respondent is not liable to pay any compensation to the petitioners. 4. On the basis of the above pleadings, the M.A.C.T has framed the following issues:- "1. Whether the petitioners prove that accident on 02.06.1995 took place on account of rash and negligent driving of the vehicle bearing No. KL.10C.5616 by its driver and deceased sustained injuries and died in the accident? 2. Whether the petitioners are entitled for compensation? If so, what and from whom? 3. What order or decree?" 5. On behalf of the claimants, the first petitioner himself got examined as PW1 and examined another person, Sri Javaregowda by name as PW2 and produced 10 documents marked as Exs P1 to P10. 6. On behalf of second respondent, no one was examined nor any documents were produced. 7. The M.A.C.T. having appreciated the evidence oral and documentary, answered the first issue in the negative and held that the petitioners-claimants are entitled to the compensation only under "No Fault Liability" and they are not entitled to compensation under Section 165 of the Act inasmuch as they have failed to prove "actionable negligence" against the driver of the lorry. Hence this appeal by the aggrieved claimants 8. We have heard Sri Ashok R. Kalayanshetty, learned Counsel for the Appellants and Sri A.M. Venkatesh, learned Counsel for the first respondent - owner and Sri S.V. Hegde, learned Counsel for the second respondent - Insurance Company. 9. Sri Ashok Kalyanshetty, would contend the finding of the M.A.C.T on issue No. 1 is perverse; the evidence of PW2 who is an independent eyewitness would clearly show that the accident occurred due to rash and negligent driving of the lorry by its driver. Sri Kalyanshetty would point out that none of the Respondents have chosen to lead any rebuttal evidence to contest the credibility of the evidence adduced by the Appellants-Claimants and therefore, the MACT ought to have answered the first issue in the positive. Sri Kalyanshetty, as regards the compensation to be awarded would, contend that the deceased was 22 years of age with very good health, a bright young

lady and she was earning not less than Rs. 5000 p.m. working as Typist-cum-Receptionist and also as Music Teacher on the date of accident and there was every possibility of she earning more income in future. Sri Ashok Kalayanshetty would also contend that all the Appellants-Claimants were entirely depending upon the income of the deceased and, therefore, though the deceased was unmarried, for computation of loss of dependency, in the facts and situation of the case, only 1/ 3rd of income has to be deducted towards her personal expenses. Sri A.M. Venkatesh and Sri S.V. Hegde, learned Counsel for the owner and the Insurance Company, on the other hand, would contend that the accident took place on account of negligence of the driver and pillion rider of the Motor Cycle and though the driver of the lorry did his best to avert the accident, he could not do so because it was beyond his control. Alternatively, the learned Counsel for the Respondents 1 and 2 would contend that if the Courts were to hold that since the driver of the lorry was not examined to contest the oral evidence of PW2 and on that count, the evidence of PW 2 cannot be discarded, even then, it would be a case of contributory negligence on the part of the driver of the motor cycle. Sri Hegde, would contend that the deceased ought to have taken precaution and care to see that her veil did not come in touch with the wheel of the Motor Cycle and since she has failed to take such care, the claimants are not entitled to claim compensation. In reply, Sri Kalyanshetty would contend that in the written statement filed by the second respondent - Insurance Company, no plea of contributory negligence is taken and, therefore, the point now urged by the learned Standing Counsel for the Insurance Company is untenable. 10. Having heard the learned Counsel for the parties, the following points do arise for our consideration and decision. 1) Whether the finding recorded by the MACT on issue No. 1 is justified and based on substantive legal evidence? 2) If answer to point No. 1 is in the positive, whether the Appellants claimants are entitled to compensation and if they are entitled to, what shall be the just compensation? 11. POINT No. 1 :- The Claimants have examined Sri Javaregowda, an eye witness as PW 2. PW2 in his evidence recorded on 13.08.1989 has deposed thus: “In the year 1995, two persons going on a Yamaha Motor cycle on B’lore-Mysore road. Rider, of the motor cycle was driving the motor cycle on the left side of the road slowly. The Pillion rider was one girl her saree caught into the wheel of the motor cycle and fell down. At that time, a lorry driver came in speed and dashed to the girl. The lorry passed over the girl on account of which she sustained injuries. I was just sitting near the temple. The rider of the motor cycle return again to Mandya. We sent words to the Police. The accident took place on account of negligent driving of the driver of the lorry. 12. Although in the cross examination of PW2 certain suggestions were made to deny the deposition made by the witness in the examination-in-chief, nothing is elicited from the witness on the basis of which, the Court could discredit the oral testimony of PW2. It needs to be noticed that PW2 is an independent eyewitness. In his evidence, he has clearly stated that the driver of the motor cycle was driving the vehicle on the left side of the road slowly and when the pillion rider -girl fell down because of her saree was caught into the wheel of the Motor Cycle, the lorry came in high speed from behind and ran over the body

of the girl. The question is whether there is any substantial or weighty piece of evidence to doubt the integrity of the deposition of PW2. In our considered opinion, there is none. The M.A.C.T. in its Judgment has pointed out that as per inquest mahazar, the dead body of the deceased, was laying in the centre of the road and therefore, that fact falsifies the statement of PW-2 that the driver of the Motor Cycle was going on the left side of the road. This reasoning, if we may say so, is perverse, because, there is absolutely no evidence to show that after the lorry came in contact with the body of the deceased, how the body of the deceased was dragged and in what direction. 13. In the tort of negligence, breach of"duty" is the chief ingredient of the tort. In Clerk and Lindsell on Torts (Fifteenth edition), it is stated thus: "Carelessness on the highway. A common cause of action in negligence arises out of user of the highway. Three types of case are involved: a duty by one user to another or his property; a duty by users of the highway to persons and property not on the highway; and a duty of occupiers or users of adjacent property to users of the highway. 14. It is not for every careless act that a man may be held responsible in law, nor even for every careless act that causes damage. He will only be liable in negligence if he is under a legal duty to take care. Therefore, it becomes imperative for the Court to determine whether this crucial element of the tort exists in this case or not. Although Brett M.R. in 1883 in HEAVEN v. PENDER, (1883) 11 Q.B.D. 503, 509 made an attempt to formulate a general principle, the most important generalisation is that of Lord Atkin in DONOGHUE v. STEVENSON, (1932) A.C. 562; Weir, Casebook on Tort, 5th ed., 15. Lord Atkin in the said case held as follows:"In English law there must be, and is, some general conception of relation giving rise to a duty of care, of which the particular cases found in the books are instances. The liability for negligence, whether you style it such or treat it as in other Systems as a species of 'culpa,' is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy. The rule that you are to love your neighbour becomes, in law, you must not injure your neighbour; and the lawyer's question, Who is my neighbour? Receives a restructed reply. You must take reasonable care to avoid acts or omissions which you can reasonably forsee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be persons who are so closely and directed affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question". 15. The Court, therefore, in deciding whether there is a duty of care, should first ask itself whether there was sufficient"proximity" between plaintiff and defendant. If the answer to this is in the affirmative then the Court will find a duty of care unless it is satisfied that there are considerations which ought to negate, or reduce or limit that duty. In ruling on "sufficient proximity", the test is that of the foresight of a reasonable man. Was injury to the plaintiff, the reasonable foreseeable consequence of the defendant's act or omissions? This is

what is meant when it is asked whether the duty was “owed to” the claimant. It also needs to be noticed that the test is not one of physical proximity but of foresight. In PALSGRAF v. LONG ISLAND RAILROAD, 248 N.Y.339: 162 N.E. 99(1928) Cardozo C.J. observed thus: “If no hazard was apparent to the eye of ordinary vigilance, an act innocent and harmless, at least to outward seeming, with reference to her, did not take to itself the quality of a tort because it happened to be wrong, though apparently not one involving the risk of bodily insecurity, with reference to someone else. The orbit of the danger as disclosed to the eye of reasonable vigilance would be the orbit of the duty”. 16. In this case, we are concerned with the duty of the driver of the lorry to the pillion rider and driver of the Motor Cycle only. The Courts, in pursuance of their policy of preventing harm, do insist on stricter standards of care being observed. This is especially, true in highway cases where the accident rate causes concern. In RIDER v. RIDER AND ANR., (1973) O.B. 505 considering the earlier opinion in BRIGHT v. MINISTRY OF TRANSPORT, (1971) 2 Lloyd’s Rep. 68 their Lordships held that while driving the Motor Vehicles on highways, it is folly not to anticipate folly in others. This opinion was reiterated in RAE v. DUMBARTON COUNCIL., 1973 S.L.T . (Notes) 23. Thus, it is clear that high standard of care is expected of by the highway, users and in fact there are various statutory regulations on special matters. Apart from the standard of care required of a person who use the highways, the principles upon which the law proceeds are of ordinary negligence cases, viz. that a person should not do or omit anything which he should reasonably anticipate might injure another person. When a person drives the vehicle on the highway, the speed at which the vehicle should be driven must be reasonable in the circumstance. No hard and fast rule can be specified. The general rule is that the vehicle should be driven at a speed which enables the driver to stop within the limits of his vision, particularly having regard to the weather and state of the road. If the driver does not exercise these precautions while driving the vehicle, his failure to do this will very likely result in the driver being held, in whole of in part, responsible for the collision. In “JUNGNICKEL v. LAING, (1966) 111 S.J. 19 it was held that the driver is under no duty to give warning of his intention to slow down; those following should keep clear. The only exception is that the driver of a following vehicle cannot be blamed if the vehicle ahead stops so suddenly as to give him no chance of avoiding a collision. 17. The precept of”negligence" means failure to observe, for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The test of negligence lies in default to exercise the ordinary care and caution which is expected of a prudent man in the circumstances of a given case. The duty to exercise such a care and caution including reasonable use of his faculties of sight and intelligence to observe and appreciate danger or threatened danger of injury is undoubtedly on the driver of an automobile. If he fails to do so and such failure is the proximate cause of the injury or death, he is guilty of negligence. In otherwords, the test is whether the driver could, by exercising normal diligence and caution, avert the accident. “Negligence” is the omission to do which a reasonable man,

guided upon the considerations, which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. It is trite, the negligence is not a question of evidence; it is an inference to be drawn from proved facts. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omission which could be reasonably foreseen to be likely to cause physical injury to persons. The degree of care required, of course, depends upon the facts in each case. 18. It is true the burden to prove negligence lies on the claimant who alleges the negligence. Therefore, the question is whether in the instant case, the claimants have proved the negligence on the part of the driver of the lorry. PW2 in unmistakable terms has stated that at the time of accident, the rider of the motor cycle was driving the motor cycle on the left side of the road slowly and since the saree of the pillion rider was stuck inside the wheel, she fell down. At that time, the lorry driver came in high speed and dashed against the pillion rider from behind and the lorry passed over the girl. It is true that the event that the saree of the pillion rider was caught inside the wheel of the motor cycle might be an unexpected event for the driver of the lorry, but, that circumstance itself could not absolve the driver of the lorry from exercising due care and caution to avert the accident. The question is whether, after seeing the unexpected event ahead of him, the driver of the lorry had taken reasonable care expected of him to avert the accident. A reasonable careful driver does not always assume that other users of the road, whether drivers of others, will behave with reasonable care and he guards against the negligence of others when experience shows such negligence should be common. In other wards, even assuming that due to negligence of the driver or pillion rider of the motor cycle, the saree was caught in the wheel and they fell down on the road, that fact itself would not be a license or justification for the driver of the lorry not to perform the duty cast on him carefully and not to avert the accident. The test for determining the negligence is whether the driver could be exercising normal care and diligence which ordinarily cautious persons, put in similar circumstances, would have done, to avert the accident. It is stated the reasonable man, that is, a man of ordinary prudence is presumed to be both free from over apprehension and from over confidence. 19. In the case of SHARADA BAI v. KARNATAKA STATE ROAD TRANSPORT CORPORATION, (DB) M.N.- Venkatachalaiah J., as he then was, speaking for this Court after recalling the words of Lord thwatt and Lord Porter in LONDON PASSENGER TRANSPORT BOARD v. UPSON, 1949 AC 155 and Lord Dunedin in CRAIG v. GLASCOW CORPORATION, (1919) 35 TLR 214 and observation of Charlesworth and Percy, in their Treatise on negligence„ (Sevent Edition) and judgment of this Court in SEETHAMMA AND ORS. v. BENEDICT D'SA AND ORS., 1966 (1) Mys.L.J. 577 held thus;- "A driver, particularly of a public transport vehicle, is expected to have a proper look-out and provide for the safety of the other users of the road. In a busy city, a driver must anticipate and provide for the more common follies of other users of the road. In crowded city roads it is not unoften that pedestrians dart across the road, cyclists and scooterists attempt to weave a zig-zag path between other

moving vehicles; school children who are left to fend for themselves, cross the streets unmindful of the hazards of the traffic; and all these are a part of the realities of the urban predicament, which any driver, more particularly of a public transport system, ought to be cognizant of. He must keep his anticipatory reflexes geared to be able to stop the vehicle at a very short-notice. Roads are not meant only for heavy vehicles; they are also meant for other users of the road and the drivers of heavy-vehicles must negotiate their vehicles in such a way as not to jeopardise the safety of the other users of the road." 20. In the case of INDIAN TRADE AND GENERAL INSURANCE, 1966 ACJ 244 (MP) and in the case of KUNDAN BALA VORA, AIR 1983 ALL 409 the Courts have held that as between a cyclist and a driver of a motor vehicle, undoubtedly, the latter's responsibility to use care increases proportionately with the danger involved in dealing with a particular type of vehicle. In this case also, that principle applies. The driver of the lorry having seen the pillion rider falling down from the motor cycle ahead of him after her saree was stuck inside the wheel, he ought to have taken due care and exercised diligence and there is absolutely no evidence from the respondents to show that the driver of the lorry had taken required care and diligence and despite his such efforts, he could not avoid the accident. It is undoubtedly a pathatic case for the Respondents because it is not known why the driver of the lorry was not examined on behalf of the respondents and he would have been the best person to speak about the care and diligence exercised by him when he saw the pillion rider of the motor cycle falling on the road after her saree was caught inside the wheel of the motor cycle. In the absence of his evidence and since we have no any good reason to discredit the evidence of PW2, the only reasonable conclusion that is possible on the basis of the evidence on record is that the accident took place on account of rash and negligent driving of the lorry by its driver. 21. We also do not find any merit in the alternative contention of the learned Counsel for the owner and the insurer of the lorry that at the worst, it is a case of contributory negligence and therefore, the liability to pay the entire compensation cannot be fastened on the owner and the insurer of the lorry. In the first place, it needs to be noticed that the plea of contributory negligence is not taken in the written statement filed by the 2nd Respondent Insurance Company. The respondents 1 and 3 did not file the written statements at all. In the case of PANDIAN ROAD WAYS, it is held that plea of contributory negligence should be taken in the written statement before the Tribunal. Furthermore, in the case of YATAYAT NAGAM, it is held that where the negligence of plaintiff's bus driver was not pleaded by the defendant, no issue was framed by the trial Court covering contributory negligence and no evidence was led, the Rajasthan High Court took exception to the judgment of the Appellate Court in making out a new case with regard to contributory negligence. 22. The existence of a duty of care is essential to a cause of action for negligence, but for contributory negligence it is quite unnecessary that the claimant should owe a duty to the respondent. All that is required is that the claimant should have failed to take reasonable care for his own safety. In Winfield and Jolowicz on Tort (12th Edition), the learned authors speaking about "Standard of care" state thus: "The standard of care expected of the plaintiff is

in general the same as that in negligence itself and is in the same sense objective and impersonal, though some concession is made towards children and probably towards other persons suffering from some infirmity or disability rendering them unable to come up to the normal standard. Putting aside such exceptional cases, a"person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless." The degree of want of care which will constitute contributory negligence varies with the circumstances: the law certainly does not require the plaintiff to proceed on his way like a timorous fugitive constantly looking over his shoulder for threats from others." 23. A Division Bench of this Court in the case of GENERAL MANAGER, BANGALORE TRANSPORT SERVICE v. N. NARASIMHAIAH AND ORS., 1976 ACJ 379 held as follows: "If it is found that the negligent act of omission of a driver was the proximate and efficient cause of an accident, it will not be a valid defence to say that the person injured was also negligent unless it is shown that the person injured had made it extremely difficult for the other to avoid the accident. In this case the evidence of the witness referred to above clearly establishes that Raju was riding the cycle along when the vehicle came from behind him and dashed against the cycle. The evidence of the driver of the bus, if scrutinized carefully, clearly goes to show that he did not see at all how the accident happened. It is only after he heard the sound he stopped the bus. Therefore, his story that it was due to the negligence of Raju the accident happended cannot be believed. A person driving a motor vehicle on a busy road like the one in question must drive the vehicle with reasonable care strictly observing the traffic regulations and the rules of the road so as not to imperil the safety of the other persons whether they are pedestrians or cyclists or others who have a similar right to use the highways on which he drives it. 24. It is well settled that the burden of establishing the defence of contributory negligence is on the defendant who admits that on account of the conduct of the plaintiff, his negligence had gone into the background and it was the conduct of the plaintiff that resulted in the accident; it is not for the claimant to disprove it. In the case of SHARADA BAI v. KARNATAKA STATE ROAD TRANSPORT CORPORATION (supra) speaking about the burden of proving contributory negligence, the Court held:"The burden of proving contributory negligence is on the cross-objectors in this case. It is not for the Appellant to disprove it. If the tort-feasor's negligence or breach of duty is established as causative of the damage, the onus is on him to establish that the victim's contributory-negligence was a substantial or cooperating cause. In order to establish the defence of contributory negligence the propounder of that defence must prove, first, that the victim failed to take reasonable care of himself or, in other words, such care as a man of ordinary prudence would have done and that was a contributory-cause of the accident. The amount of care which a person could reasonably be expected to take, must needs vary with the circumstances and the conditions actually prevailing at the material point of time. However, it is relevant to note that, in order to discharge the burden of proof, it is unnecessary for the propounder of that defence to adduce

evidence about the matter. Contributory negligence can be - and very often is- inferred from the evidence adduced already on the claimants behalf or from the perceptive facts, either admitted or found established, on a balance of probabilities in the case. 25. In this case, there is neither pleading nor any proof of contributory negligence. Further, contributory negligence on the part of the deceased or the driver of the motor cycle cannot be inferred on the basis of the evidence on record. In the case of DARYAOBAI AND ORS. v. MADHYA PRADESH STATE ROAD TRANSPORT CORPORATION, 1996 ACJ 1233 a Division Bench of the Madhya Pradesh High Court while holding that if the driver of the vehicle involved in the accident is not examined in the case, an adverse influence can be drawn, was pleased to observe that - "The statement of Kanhaiya Lal as corroborated by the statement of Amol Das goes to prove that the accident had occurred due to rash and negligent driving of the vehicle by the driver of the jeep. It may also be observed here that if a party specially the owner of the vehicle fails to examine the driver of the vehicle involved in the accident, an adverse inference will have to be drawn. This is not the case of respondent Union of India that the driver is not available or his attendance could not be procured despite efforts being made. Thus, it would be deemed that the driver of the jeep was purposely withheld and was not produced in the court for examination and cross-examination. In such a situation, we are inclined to believe Kanhaiya Lal and Amol Das that goes to prove that the accident occurred due to rash and negligent driving of the jeep owned by the Union of India. Even otherwise, it is the driver of the vehicle which is required to keep constant vigil on the road and vehicle coming from opposite direction including other vehicles overtaking the vehicle driven by him and, therefore, he is the best person to depose about the manner of accident. We are, therefore, not in agreement with the finding of the learned Tribunal and further hold that the accident occurred due to rash and negligent driving of the vehicle by the driver of the jeep of Narcotics Department." In this case also, evidence of PW-2 proves that the accident had occurred due to rash and negligent driving of the lorry by its driver. Quite curiously, the driver of the lorry was not examined by the owner or insurer of the vehicle. Therefore, an adverse inference can be drawn against them. Therefore, the plea of contributory negligence urged by the learned Counsel for the respondents 1 and 2 for the first time in this appeal is required to be noticed only to be rejected in limine. 26. POINT No. 11: Since we have held Point No. 1 against the respondents, the appellants-claimants are entitled to compensation. The next question is what will be the just and reasonable compensation to be awarded to the appellants within the contemplation of the Act. On the date of accident, the deceased was 22 years of age, the first appellant-father 59 years of age, the second appellant-mother 46 years of age and the third appellant-brother 23 years of age. Although it is stated in the evidence of PW1 that all the appellants were entirely depended upon the income of the deceased, since the deceased was unmarried and the third appellant even on the date of accident was a major, we think it is just and reasonable to deduct 50% of the income of the deceased towards her personal expenses. Although PW1 father in his evidence has stated that the deceased

was earning monthly income of Rs. 5,000/- being a Typist-cum-Receptionist in the establishment of M.M.Equipments, and as a Music Teacher, no evidence is produced before the MACT to show that the deceased was also earning some income as Music Teacher. Therefore, the self- interested testimony of PW1 that the deceased was also earning monthly income of Rs. 2000/ - as Music Teacher, in the absence of any corroborating evidence, cannot be believed. The claimants have produced'Ex.P10- which is the salary certificate dated 30.12.1997 issued by the Employer-M.M.Equipments. We have perused the original salary certificate available in the Lower Court's Records placed before us at the time of hearing. As per this certificate, the deceased was earning salary of Rs. 3,000/- p.m. Therefore, we can safely take the income of the deceased as Rs. 3,000/- and if 50% of that sum is deducted towards personal expenses of the deceased, the monthly loss of dependency would be Rs. 1,500/-. Having regard to the age of the parents and taking average of the same, the appropriate multiplier to be applied for determining the loss of dependency would be 12. Thus, the appellants claimants will be entitled to a sum of Rs. 2,16,000/-(Rs. 1500x12x12) under the head 'Loss of Dependency'. In addition, the claimants are also entitled to a compensation under the conventional heads such as 'Loss of Love and Affection', 'Loss to Estate' and funeral expenses. In the result and for the foregoing reasons, we allow the appeal in part with no order as to costs and award total compensation of Rs. 2,61,000/- (Rupees Two Lakhs, sixty one thousands only) under the following heads: 1. Loss of Dependency : Rs. 2,16,000.00 2. Loss of Love and Affection : Rs. 10,000.00 3. Loss to Estate : Rs. 30,000.00 4. Funeral Expenses : Rs. 5,000.00 TOTAL Rs. 2,61,000.00

With interest at 6% p.a. from the date of petition till the date of realisation. The second respondent-insurance company is directed to deposit the compensation money minus compensation under the 'no fault liability' if already paid, with interest before the MACT within a month from the date of receipt of a copy of the award.