Smt. K. Radha vs Sri Veereshappa K.N on 9 April, 2015

Before the Motor Accident Claims Tribunal at Bangalore
(SCCH-8)
Present: Shri P.J. Somashekar B.A., LL.B.,
XII Additional Small Causes Judge
and Member, M.A.C.T., Bangalore.

Dated this the 09th day of April 2015

M.V.C.No.3004/2011

Petitioners

1. Smt. K. Radha,
W/o Late Narayana G.,
Aged about 24 years,
Occ: Nil, R/o Ullala Upanagara,
Bangalore North Taluk,
Bangalore.

2. Master Bhuvan,
S/o Late Narayana G.,
Age 5 years,
R/o Ullala Upanagara,
Bangalore North Taluk.
(Sri Suresh M. Latur, Advocate)

Vs.

Respondents

1. Sri Veereshappa K.N.,
S/o Veerabasappa,
R/o Kodagavalli Post,
Holalkere Taluk,
Chitradurga District.
(Owner of lorry bearing
registration No.KA-16-A-1220)
(Sri R. Shashidhara, Advocate)

2. The Divisional Manager,
Sriram General Insurance Co. Ltd.,
3rd Floor, Monarch Chambers,
Infantry Road, Bangalore - 560 001.
(Policy No.10003/31/11/056763)
(Valid from 26-05-2010 to 25-05-2011)
(Sri K. Prakash, Advocate)

3. Sri H.N. Kapanaiah,
Major, M/s. Nanjundeswara Mandy Pvt.
Ltd., Venkatappa Complex,
Opp. to Syndicate Bank,
Magadi Main Road,
Sunkadakate Circle,
Bangalore.
(Exparte)

4. The Manager,
Royal Sundaram Alliance Insurance Co.
Ltd., No.186/7, Raghavendra Plaza,
Ground Floor, 1st Cross, Wilson Garden,
Hosur Main Road,
Bangalore - 560 027.
(Sri Ravi S. Samprathi, Advocate)

5. Sri Gangadharaiah @ Gangadharappa,
S/o Late Kariyappa,
Age 55 years,
(Sri K.S. Nagaraja, Advocate)

6. Smt. Rajamma,
W/o Gangadharaiah @ Gangadharappa,
Age 50 years,
R/at Billikallu, Vishwaneedam Post,
BTM Layout, Magadi Main Road,
Bangalore - 91.
(Sri K.S. Nagaraja, Advocate)

JUDGMENT

This is a claim petition filed by the petitioners against the respondents under Section 166 of Motor Vehicles Act, 1989, for seeking compensation of Rs.20,00,000/- for the death of Narayana G., son of Gangadhar in a road traffic accident.

2. The brief facts of petition are as under;

The petitioners said to be the financial dependents and legal heirs of the deceased Narayana G., in their claim petition were alleged that, on 03-07-2010 at about 5.00 a.m., Narayana G., was traveling in a canter lorry bearing No.KA-02-C-9245 as a cleaner from Chitradurga to Bangalore on NH-4 road, after crossing Aimangala, when the said canter lorry was reached near Parameshwarappa's house, at that time the driver of the Eicher lorry bearing No.KA-16-A-1220 which was proceeding in front of the canter lorry suddenly applied the break of the Eicher lorry, as a result the accident was taken place, due to the impact, the deceased has sustained grievous injuries and succumbed on the spot due to the accidental injuries.

3. Prior to the accident the deceased was hale and healthy, aged about 28 years, working as a cleaner and earning a sum of Rs.6,000/- per month and he was contributing the entire earning to the family maintenance. Due to the sudden and un-natural death they lost the company of the deceased, love and affection and they were put to deep mental shock and agony. The accident in question was taken place on the rash and negligent driving of the driver of the Eicher lorry bearing No.KA-16-A-1220. Thereby, Aimangala Police have registered the case in their police station crime No.105/2010 for the offences punishable u/s 279, 337 and 304(A) of IPC. The respondent No.1 and 2 being the owner and insurer of the Eicher lorry and respondent No.3 and 4 being the owner and insurer of the canter lorry are jointly and severally liable to pay the compensation and prays for allow the claim petition.

4. In response of the notice, the respondent No.3 did not appear nor file his written statement, as he was placed exparte. The respondent Nos.1, 2 and 4 were appeared through their respective counsel. Though, the sufficient time has been granted to the respondent No.1, but he did not file the written statement. So, the written statement of the respondent No.1 taken as not filed. The respondent No.2 being the insurer of the Eicher lorry has filed his written statement in which he has alleged that the claim petition filed by the petitioners is not maintainable either in law or on facts, but the has admitted about the issuance of the policy in respect of the Eicher lorry in favour of the respondent No.1 and the policy was valid from 26-05-2010 to 25-05-2011 and its liability subject to terms and conditions of the policy and he has alleged that as on the date of the alleged accident the offending vehicle driver was not holding valid and effective driving licence and either the owner of the vehicle nor the jurisdictional police have not complied the mandatory provisions of Section 134(c) and 158(6) of MV Act in furnishing better particulars and the accident was occurred due to the sole negligence of the driver of the canter bearing No.KA-02-C-9245 who drove the vehicle without having a driving licence to drive the said vehicle in a rash and negligent manner, without following the traffic rules and regulations, due to the sole negligence of the driver of the said canter the accident was occurred, that is the reason why, the complaint was filed against him and the police have registered the case against the canter driver. So, the claim petition filed by the petitioners is not maintainable against him and he has denied the averments made in column No.1 to 6 and 8 to 21 of the claim petition and as on the date of the alleged accident the driver of the Eicher lorry has suddenly applied the break, as a result the accident was occurred and one Narayana was succumbed due to the said accident and he has also denied the age, avocation and income of the deceased and prays for reject the claim petition.

5. The respondent No.4 being the insurer of the Canter lorry has filed his written statement in which he has alleged that the claim petition filed by the petitioners is not maintainable either in law or on facts and he has alleged that either the owner of the vehicle nor the jurisdictional police have not complied the mandatory provisions of Section 134(c) and 158(6) of MV Act in furnishing better particulars and he has not collected any premium to cover the risk of the cleaner traveling in the lorry and as such the policy do not cover the risk of the cleaner traveling during the course of the employment with the insured is not covered. Therefore, he is not liable to pay any compensation and he has denied the averments made in column No.1 to 14 and 17 to 21 of the claim petition and he has alleged that the accident was occurred due to the rash and negligent driving of the lorry driver, as the canter lorry was constructed to carry goods alone and cannot carry any passengers in violation of rules in M.V. Act and conditions of the policy and as on the date of the alleged accident the lorry was being driven in a reasonable speed and careful manner and there was no rashness or negligence on the part of the driver of the lorry bearing No.KA-16-A-1220 alone and it was not taken place on the negligence of the lorry bearing No.KA-02-C- 9245 and he has denied the age, avocation and income of the deceased and prays for reject the claim petition.

6. On the basis of the pleadings of the parties, my Predecessor has framed the following issues:

> 1. Whether the petitioner proves that deceased Narayana G., died in a road traffic accident on 03-07-2010 at about 5.00 a.m., on NH-4 road, near Aimangala, due to the rash and negligent driving of the driver of the canter lorry bearing

No.KA-16-A-1220?

2. Whether petitioner is entitled for any compensation? If so to what extent and from whom?

3. What Order or Award?

7. The petitioners in order to prove the claim petition, the petitioner No.1 has examined herself as PW1 and got marked the documents as Ex.P1 to Ex.P10 and they have examined one witness on their behalf as PW2. The respondent No.2 has examined its Legal Officer as RW1 and got marked the document as Ex.R1. The respondent No.4 has not examined any witness nor marked any documents in his favour.

8. It is an admitted fact my Predecessor has framed the Issue No.1 based on the allegation made in the petition, but the police records and the materials on record clearly reflects that the accident was occurred due to the rash and negligent driving of the driver of the canter lorry bearing No.KA-02-C-9245. Therefore, it is just and necessary to recast the issue No.1 in view of Order 14 Rule 5 of CPC, since the parties were already led the evidence relating to rash and negligent driving of the driver of the canter lorry bearing No.KA-02-C-9245. Therefore, issue No.1 is recasted as stated below:

1. Whether the petitioner proves that deceased Narayana G., died in a road traffic accident on 03-07-2010 at about 5.00 a.m., on NH-4 road, near Aimangala, due to the rash and negligent driving of the driver of the canter lorry bearing No.KA-02-C-9245?

2. Whether petitioner is entitled for any compensation? If so to what extent and from whom?

3. What Order or Award?

9. Heard arguments on both side.

10. My finding on the above issues are as under:

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

REASONS

11. Issue No.1:

The petitioners said to be the financial dependents and legal heirs of the deceased Narayana G., were approached the court on the ground that on 03-07-2010 at about

5.00 a.m., the deceased Narayana G., was traveling in a canter lorry bearing No.KA-02-C- 9245 as a cleaner from Chitradurga to Bangalore on NH-4 road, when the said canter lorry was reached in front of Parameshwarappa's house, the driver of the Eicher lorry bearing No.KA-16-A-1220 has drove the same in a rash and negligent manner and suddenly applied the break, as a result the accident was occurred and the deceased Narayana has sustained grievous injuries and succumbed on the spot due to the accidental injuries. Thereby, the petitioners said to be the financial dependants and legal heirs of the deceased were filed the instant claim petition against the respondents.

12. The petitioners in order to prove the claim petition, the petitioner No.1 has filed her affidavit as her chief-examination as PW1, in which she has stated that on 03-07-2010 at about 5.00 a.m., her husband was traveling in a canter lorry bearing No.KA- 02-C-9245 as a cleaner from Chitradurga to Bangalore on NH-4 road, after crossing Aimangala, when the said canter lorry was reached near Parameshwarappa's house, the driver of the Eicher lorry bearing No.KA-16-A-1220 has drove the same in a rash and negligent manner, without observing the traffic rules and regulations and suddenly applied the break without giving any signals, as a result the accident was occurred and the canter lorry has dashed against the back side of the Eicher lorry, due to the impact her husband has sustained grievous injuries and succumbed on the spot due to the accidental injuries. So, immediately after the accident he was taken to General Hospital, Hiriyur with the help of the public, wherein post mortem was conducted and death was confirmed due to the hemorrhage, shock and multiple organs injury caused in a road traffic accident. So, she has spent Rs.50,000/- towards transportation and funeral expenses. The accident in question was taken place on the rash and negligent driving of the lorry driver. Thereby, Aimangala Police have registered the case in their police station crime No.105/2010 for the offences punishable u/s 279, 337 and 304(A) of IPC. The PW1 in her cross examination has admitted that the complaint was lodged against the driver of the lorry bearing No.KA-02-C-9245, after the investigation the charge sheet has been filed against the lorry driver and they have not challenged the charge sheet and she has denied that the accident was not occurred due to the rash and negligent driving of the Eicher lorry bearing No.KA-16-A-1220 and she has admitted that she was not the witness to the accident and her husband was working under one Rajanna and prior to the accident he was working as a cleaner and she has denied that as on the date of the alleged accident her husband was not traveling as a cleaner in the canter lorry bearing No.KA-02-C-9245.

13. The petitioners have examined one witness on their behalf as PW2 who is said to be the eye witness of the alleged accident in his evidence has stated that on 03-07-2010 he saw the accident, when he was traveling in a car from Chitradurga towards Bangalore, at about 5.00 a.m., when he was reached near Aimangala, a canter bearing No.KA-02-C-9245 was proceeding in front of the car prior to that a lorry bearing No.KA-16-A-1220 was proceeding with high speed in a rash and negligent manner and applied the break suddenly, due to which the said canter was going in front of the car has lost the control over the vehicle and dashed against the said lorry. So, immediately he stopped the car and went to the spot and found that the cleaner of the canter has sustained grievous injuries and died on the spot. After the accident the dead body was shifted to General Hospital, Hiriyur. The PW2 in his cross examination has admitted that the complaint is lodged before the

Aimangala Police in which stated that the accident was occurred on the negligence of the driver of the canter lorry bearing No.KA-02-C-9245 and the police after conducting the investigation have chargesheeted against the driver of the canter lorry. The learned counsel for the respondent No.4 has cross examined the PW2 and the PW2 in his cross examination has admitted that the lorry driver has suddenly applied the break, as a result the accident was occurred.

14. The petitioners in support of the oral evidence have produced the documents marked as Ex.P1 to Ex.P10. Ex.P2 is the information filed by one Veereshappa K.N., son of Veerabasappa in which he has stated that on 02-07-2010 he left the Chikkajajooru by loading the maize in the lorry bearing No.KA-16-A-1220 proceeding towards Bangalore and one Razak who is the cleaner of the said lorry, when he was reached in front of Parameshappa's house after passing Aimangala, the driver of the canter lorry was came on the back side of the lorry with high speed in a rash and negligent manner and dashed behind the lorry, as a result the lorry was fell down in the drainage towards left side of NH-4 road. So lorry cabin was damaged and the cleaner Razak has sustained injuries and the canter lorry front portion is fully damaged and one person was sitting in the cabin of the said canter lorry was sustained grievous injuries and succumbed on the spot and one Ramesh who is the driver of the canter lorry has drove the same in a rash and negligent manner and dashed behind the lorry, as a result the accident was occurred. So based on the information Aimangala Police have registered the case against the canter lorry driver in their police station crime No.105/2010 for the offences punishable u/s 279, 337 and 304(A) of IPC. The learned counsel for the respondent No.2 and 4 were cross examined the PW1, but nothing is elicited to disbelieve her evidence. Though, the respondent No.2 has suggested the PW1 that the accident was occurred due to the rash and negligent driving of the driver of the lorry bearing No.KA-16-A-1220 for which she has denied the same and she has admitted that they have not challenged the charge sheet filed by the I.O., and the I.O., after conducting the investigation has filed the charge sheet against the canter lorry driver and she has denied that as on the date of the alleged accident her husband was not traveling in a canter lorry as a cleaner. The learned counsel for the respondent No.4 has cross examined the PW1 and suggested that as on the date of the alleged accident one Razak was traveling as a cleaner in the canter lorry for which she has denied the same. So one thing is clear that the accident in question was occurred on the rash and negligent driving of the canter lorry driver, that is the reason why, the lorry bearing No.KA-02-C-9245, driver has lodge the complaint against the canter lorry driver and case was registered against the canter lorry driver. But the Ex.P2 nowhere appears that as on the date of the alleged accident, the lorry driver has suddenly applied the break without giving any indication nor signal, that is the reason why, the accident was occurred, if that is so the matter would have been different. Even either the respondent No.4 nor the petitioners were not placed any materials to show that the accident was occurred due to the rash and negligent driving of the driver of the lorry bearing No.KA-16-A-1220, as the lorry driver without giving any indication or signal has suddenly applied the break, as a result the accident was occurred. In the absence of the materials on record, it is very difficult to believe that the lorry driver has suddenly applied the break without giving any signal for which the accident was occurred, even the reasons best known to the respondent No.4 nor the petitioners were not placed the materials to show that the accident was occurred on the rash and negligent driving of the lorry driver. The petitioners were come up with the instant claim petition on the ground that the lorry driver without giving any signal has applied the break, as a result the accident was occurred, but Ex.P1 and Ex.P2 are clearly reflects that the accident in question was

taken place on the rash and negligent driving of the canter lorry driver. If at all the accident was taken place on the rash and negligent driving of the lorry bearing No.KA- 16-A-1220 driver nothing is prevented to the respondent No.3 and 4 to challenge the final report filed against the canter lorry driver, that is the reason why, the learned counsel for the respondent No.2 who is the insurer of the lorry bearing No.KA-16-A-1220 has drawn the court attention on the decision reported in 2007 ACJ 1928 in between Oriental Insurance Co. Ltd., vs. Premlata Shukla and others reads like thus;

Motor Vehicles Act, 1988, section 166 - Claim application - Maintainability of - Negligence - Proof of rashness and negligence of driver of offending vehicle is sine qua non for maintaining claim application - Collision between a van and truck and a passenger in van sustained fatal injuries - Registration number of truck could not be noted - On the basis of F.I.R. lodged by a passenger in van, criminal case against driver of truck was initiated but had to be closed as the truck and its driver could not be traced -

Claimants filed claim against driver, owner and insurance company of van - Tribunal on the basis of evidence including F.I.R. held that van driver ws not driving rashly and negligently and dismissed the claim application - High Court relied upon the deposition of two witnesses and observed that as F.I.R. was not legally proved, driver of van should be held guilty of rash and negligent driving - F.I.R. had been relied upon by the parties on both sides and the claimants had made a reference to it in their claim application - F.I.R. was marked as an exhibit as both the parties intended to rely upon it

- Whether the Tribunal was justified in relying upon the F.I.R. irrespective of the fact that contents of the document have been proved or not

- Held: yes; judgment of High Court set aside and claim application dismissed.

15. On careful perusal of the above said decision, in the said decision the deceased Shivanandan Prasad Shukla was traveling in a tempo trax for going to Allahabad from Bhopal. The accident was occurred in between the tempo trax and truck, but the registration number of truck could not be noticed and the truck also could not be traced out. A first information report was lodged by one of the occupants of tempo trax. The investigation was conducted based on the information for the offences punishable under Section 304(A) of the Indian Penal Code, as the case was registered against the truck driver, during the investigation the truck could not be traced out. So, the case was closed. The legal heirs of Shivanandan were filed the claim petition before the Motor Accident Claims Tribunal and the same was dismissed by the Tribunal on the ground the first information report has been filed against the truck driver and the case was registered against the driver of the truck. So, there is no rash and negligent driving on the part of the tempo trax driver, as the claimants were filed the claim petition against the driver, owner and insurer of the tempo trax. So, the claimants were filed the appeal before the Hon'ble High Court and the Hon'ble High Court held that there is a rash and negligent driving of the tempo trax driver. So, the insurance company has challenged the judgment of the Hon'ble High Court before the Hon'ble Supreme Court and the Hon'ble Supreme Court held that the Tribunal on the basis of the evidence including the F.I.R. held that the tempo trax driver was not driving rashly and negligently and dismissed the claim

application, but the High Court relied upon the deposition of two witnesses and observed that as F.I.R. was not legally proved, driver of the tempo trax should be held guilty of rash and negligent driving, F.I.R. had been relied upon by the parties on both sides and the claimants had made a reference to it in their claim application, F.I.R. was marked as an exhibit as both the parties intended to rely upon it. The tribunal was justified in relying upon the F.I.R. irrespective of the fact that contents of the document have been proved or not. The judgment of High Court set aside and claim application was dismissed.

16. In the instant case also F.I.R. was lodged against the canter lorry bearing No.KA-02-C-9245 driver, but the reasons best known to the petitioners have come up with the instant claim petition on the ground that the lorry bearing No.KA-16-A-1220 driver has drove the same in a rash and negligent manner and suddenly applied the break without giving any signal nor indication, that is the reason why, the accident was occurred, but no F.I.R. was lodged against the lorry driver which was registered against the canter lorry driver. Though, the PW2 in his evidence has stated that the lorry driver has suddenly applied the break without giving any signal nor indication, but the F.I.R. and the complaint clearly reflects that the accident was occurred due to the rash and negligent driving of the canter lorry driver. Therefore, the decision as stated above is directly applicable to the case on hand.

17. Ex.P6 is the spot panchanama clearly reflects that the accident in question was taken place on the rash and negligent driving of the canter lorry driver. Ex.P5 is the inquest panchanama in which also clearly reflects that the accident in question was taken place on the rash and negligent driving of the canter lorry driver, in which nowhere appears that the accident was occurred on the rash and negligent driving of the lorry driver, as he has suddenly applied the break without giving any indication nor signal, if that is so the matter would have been different, but the Ex.P5 clearly reflects that one Narayana was succumbed due to the accidental injuries. Ex.P3 is the final report submitted by the I.O., in which it is clear that the accident in question was taken place on the rash and negligent driving of the driver of the canter lorry bearing No.KA-02-C-9245.

18. The learned counsel for the respondent No.4 in his arguments has submitted that the accident was not occurred on the rash and negligent driving of the canter lorry driver, but the reasons best known to the respondent No.4 has not examined the driver of the canter lorry to show whether the accident was occurred on his negligence or on the negligence of the lorry driver, as he is the best witness to say about the rash and negligent driving of the lorry driver.

19. The learned counsel for the petitioners while canvassing his arguments has submitted that there is a composite negligence on the part of the driver of both vehicles and the said counsel has drawn the court attention on the decision reported in 2014 ACJ 2161 in between Yerramma and others vs. G. Krishnamurthy and another. On careful perusal of the above said decision, in the said decision the Corporation bus took a right turn to enter bus depot without giving indication and the motorcyclist following the bus collided with it and sustained fatal injuries. So, the Tribunal and the High Court fixed the liability on the driver of the bus and the motorcyclist as 75% and 25%, but the Hon'ble Apex Court set aside the finding and held that the bus driver was solely responsible for the accident and there was no contributory negligence of the deceased i.e., motorcyclist.

20. In the instant case though the petitioners were alleged in their claim petition that the lorry driver without giving any indication nor signal has suddenly applied the break, as a result te accident was occurred, but it is the bounden duty of the canter lorry driver to maintain the distance while proceeding behind the lorry bearing No.KA-16-A-1220. If the canter lorry driver maintain the distance, he would have avoided the accident, in case lorry driver applied the break either the petitioners nor the respondent No.4 would have not placed the materials on record to show that the accident was occurred on the rash and negligent driving of the lorry driver, as he has suddenly applied the break without giving any signal nor indication. Therefore, I do respect to the decision relied by the learned counsel for the petitioners, but the facts and circumstances of the present case and the above said decision are different.

21. The learned counsel for the petitioners has drawn the court attention on the decision reported in 2014 ACJ 704 in between Pawan Kumar and another vs. Harkishan Dass Mohan Lal and others. On careful perusal of the above said decision, in the said decision the accident was taken place in between the jeep and truck coming from opposite direction, due to negligence of both drivers resulting in death of two passengers in jeep and third passenger sustained injuries. So, the Tribunal held that the truck driver alone responsible for the accident and the Hon'ble High Court found that both drivers were responsible for the accident in the ratio of 70% and 30%. The Hon'ble Apex Court held that High Court to apportion liability for accident between the two drivers, principle of contributory negligence not applicable.

22. In the instant case also the petitioners and the respondent No.4 were failed to establish the composite negligence of the both drivers to fix the liability. Therefore, the principles laid down in the above said decision are applicable to the case on hand. The police documents clearly reflects that the accident was occurred on the rash and negligent driving of the canter lorry driver. Hence, I am of the opinion that the issue No.1 is answered as affirmative.

23. Issue No.2:

> The PW1 being said to be the wife of the deceased in her evidence has stated that prior to the accident her husband was hale and healthy working as a cleaner and earning monthly income of Rs.4,500/- and batta of Rs.50/- per day. Due to the sudden and un-natural death of her husband they lost the love and affection and put to deep mental shock and agony. The PW1 in her cross examination has denied that as on the date of the alleged accident her husband was not traveling in the canter lorry as a cleaner, but he was traveling as a passenger, but she has admitted that she has not produced any document to show that her husband was working as a cleaner nor getting the income as alleged in the claim petition.

24. The RW1 being the Legal Officer of the respondent No.2 in his evidence has stated that the accident was occurred on the negligence of the canter lorry driver, but he has denied that the accident was occurred on the rash and negligent driving of the lorry driver. The learned counsel for the respondent No.4 has suggested the RW1 that the accident was occurred in the middle of the road, one cleaner was traveling in the canter lorry bearing No.KA-02-C-9245 was sustained injuries

and succumbed on the spot due to the accidental injuries for which he has admitted the same. So, that itself is clear that as on the date of the alleged accident the deceased was traveling in a canter lorry as a cleaner, that is the reason why, the learned counsel for the respondent No.4 has suggested the RW1 that as on the date of the alleged accident the cleaner was traveling in the canter lorry was succumbed due to the accidental injuries. So one thing is clear that the deceased was the cleaner of the canter lorry as on the date of the alleged accident. Though, the PW1 has stated about the income of the deceased in the claim petition, but she has not examined the owner of the canter lorry to establish the income nor the batta as alleged in the claim petition. So in the absence of the materials on record, it is very difficult to believe the income of the deceased as shown in the claim petition. So considering the age of the deceased as on the date of the alleged accident and the present life condition, it is just and necessary to consider the notional income of the deceased as Rs.6,000/- per month, it will meet the ends of justice. So deceased income is taken into consideration as Rs.6,000/- per month. So, yearly income of the deceased comes to Rs.72,000/-. Ex.P4 is the postmortem report clearly reflects that as on the date of the alleged accident the deceased was aged about 28 years. The petitioners in their claim petition also were shown the deceased age as on the date of the accident as 28 years, so deceased age is taken into consideration as 28 years as on the date of the alleged accident.

25. The learned counsel for the petitioners while canvassing his arguments has requested the court to consider the future prospects of the deceased by relying the decision reported in 2014 ACJ 1388 in between Kalpanaraj and others vs. Tamil Nadu State Transport Corporation. Now the question is whether the court can consider the future prospects while granting the compensation under the head of loss of financial dependency. Therefore, this court drawn its attention on the judgement of the Hon'ble High Court of Karnataka passed in MFA 4332/2013, in the said judgement L.Rs. of the deceased filed claim petition and sought for compensation and the Tribunal has awarded the compensation by considering the future prospects as the deceased was working as a bar bender cum cutter for R.C.Enterprises earning Rs.9,000/- per month. Thereby the insurer has challenged the award passed by the Tribunal by considering the future prospects. Thus, the Tribunal order was modified by the Hon'ble High Court and held that while adding 30% of the income towards loss of future prospects the Tribunal has followed the judgement reported in (2012) 6 SCC 421 rendered in Santhosh Devi Vs. National Insurance Company Limited. But in view of the order dated 2.7.2014 made by the Apex Court the National Insurance Company Limited Vs. Pushpa, awarding 30% of the income towards loss of future prospects does not arise. Thereby 50% of the income which was granted by the Tribunal was came to be deducted. So, by virtue of the above said judgement and the decision of the Hon'ble Supreme Court reported in SLA No.8058/2014 in between National Insurance Co., Ltd., Vs,. Pushpa and others. In the said decision also the Insurance Company has challenged the award passed by the Tribunal by adding 30% of future prospects by placing reliance on the decision of Santhosh Devi Vs. National Insurance Company Limited and others. Though the Insurance Company has challenged the award passed by the Hon'ble High court about the future prospects and the Hon'ble Supreme Court has passed the orders in 2013 ACJ 1403 in between the Rajesh and others Vs. Rajabir Singh and Others. In the said decision their lordship held that while making addition to income for future prospects the Tribunal shall follow the para 24 of the judgement in Sarla Verma, though the decision in Reshma was rendered at earlier point of time, the same has not been noticed in Rajesh and others, that is why divergent opinions have been

expressed. We are of the considered opinion that as regards the manner of addition of income for future prospects there should be an authoritative pronouncement. Therefore, we think it appropriate to refer the matter to a larger Bench. Therefore, the said case has been referred to larger bench. So, question of considering the future prospects does not arise as per the decision of the Hon'ble High Court and the Hon'ble Supreme Court. So by virtue of the above said decision the future prospects as submitted by the learned counsel for the petitioners cannot be taken into consideration and moreover the petitioners have not placed any materials to show that the deceased was the permanent employee.

26. The petitioner No.1 and 2 were filed the instant claim petition against the respondents. The respondent No.5 and 6 pending of the claim petition were filed the application and the said application was came to be allowed and they were brought on record who are none other than the parents of the deceased. Ex.P9 is clear that the petitioner No.1 and 2 are none other than the wife and son of the deceased and respondent No.5 and 6 are none other than the parents of the deceased. Ex.P10 is also clearly reflects that the petitioner No.1 is none other than the wife of the deceased. The learned counsel for the respondent No.2 and 4 were cross examined the PW1, but nothing is elicited to disbelieve the relationship of the petitioners and the respondent No.5 and 6 with the deceased. So one thing is clear that the petitioner No.1 and 2 and the respondent No.5 and 6 are none other than the wife, son, father and mother of the deceased.

27. So by virtue of decision reported in 2009 ACJ 1298 in between Sarla Verma and others Vs. Delhi Transport Corporation and another, the personal deduction of the deceased where the member of the dependant family members is 4 to 6 should be 1/4th has to be deducted towards personal and living expenses of the deceased. So, the personal and living expenses of the deceased should be deducted 1/4th out of the yearly income of Rs.72,000/- it comes to Rs.54,000/-. As per Sarlaverma Vs. Delhi Transportation Corporation Ltd., the multiplier applicable to the deceased is 17. So Rs.54,000X17=Rs.9,18,000/- towards loss of dependency. So the petitioner No.1 and 2 and the respondent No.5 and 6 are entitled for the said amount towards financial loss of dependency.

28. The petitioner No.1 is none other than the wife of the deceased and she lost her husband with an young age, when her age was 24 years. So, it is just and necessary to grant just compensation of Rs.20,000/- towards loss of consortium and the petitioner No.1 and 2 and the respondent No.5 and 6 are none other than the wife, son and parents of the deceased, so Rs.40,000/- is awarded towards loss of love and affection. Rs.10,000/- is awarded towards loss of estate and Rs.20,000/- is awarded towards transportation of dead body and funeral and obsequies.

29. Thus the total award stands as follows:

1.Loss of dependency Rs. 9,18,000-00

2.Loss of consortium Rs. 20,000-00

3.Loss of love and affection Rs. 40,000-00

4.Loss of estate Rs. 10,000-00

5.Transportation of dead body and Rs. 20,000-00 funeral expenses Total Rs. 10,08,000-00

30. The respondent No.4 being the insurer of the offending vehicle i.e., canter lorry has taken up the contention that he has not collected any premium to cover the risk of the cleaner traveling in the lorry and as such the policy do not cover the risk of the cleaner traveling during the course of the employment with the insured is not covered, but the reasons best known to the respondent No.4 has not placed the policy copy to show that the policy is not covered the risk of the cleaner, if that is so, the matter would have been different, that is the reason why, the learned counsel for the petitioners in his arguments has submitted that the cleaner risk is covering under the policy which was issued by the respondent No.4, that is the reason why, the respondent No.4 has not placed the policy copy before the court. But, whereas the Ex.R1 is the policy copy in which also the premium was paid to the cleaner. So, the respondent No.4 is also received the premium for the risk of the cleaner, that is the reason why, he has not produced the policy copy. It is an admitted fact though the respondent No.4 has taken up the contention that the policy is not covered the risk of the cleaner, as the respondent No.4 has not received the premium in respect of the cleaner risk, but the reasons best known to the respondent No.4 has not placed any materials nor examined any officer of the respondent No.4 to establish the said facts. In the absence of the materials on record, it is very difficult to believe the case of the respondent No.4.

31. The respondent No.4 has taken up the contention that as on the date of the alleged accident the canter lorry driver was not holding valid and effective driving licence, but the reasons best known to the respondent No.4 has not examined either the ARTO nor the RTO to establish his case by placing materials to show that as on the date of the alleged accident the canter lorry driver was not holding valid and effective driving licence and moreover Ex.P3 is the charge sheet filed by the I.O., nowhere discloses that the canter lorry driver was not holding valid and effective driving licence. If at all the offending vehicle driver was not holding the valid and effective driving licence the I.O., would have charge sheeted against the offending vehicle driver for the offence punishable under Section 181 of MV Act. So on record there is no material to show that canter lorry driver was not holding valid and effective driving licence as on the date of the alleged accident, that itself is clear that as on the date of the alleged accident the canter lorry driver was holding valid and effective driving licence.

32. The respondent No.4 being the insurer in its written statement has admitted about the issuance of the policy in respect of the canter lorry in favour of the respondent No.4. If at all the policy was not in existence as on the date of the alleged accident, the respondent No.4 would have placed the materials before the court to show that the policy was not in existence as on the date of the alleged accident. The learned counsel for the respondent No.4 has taken up the contention that the owner of the canter lorry has violated the terms and conditions of the policy, but nothing is placed on record to substantiate his defence. So one thing is clear that as on the date of the alleged accident the policy was in existence and the canter lorry driver was holding valid and effective driving licence and the accident was occurred on the rash and negligent driving of the driver of the canter lorry. Therefore, the respondent No.1 and 2 being the owner and insurer are not liable to pay any compensation.

Therefore, the petition against the respondent No.1 and 2 is deserves to be dismissed. Therefore, the respondent No.3 and 4 being the owner and insurer of the canter lorry are jointly and severally liable to pay the compensation. But in view of the valid insurance policy the respondent No.4 alone is liable to pay the compensation to the petitioner No.1 and 2 and respondent No.5 and 6 with interest at 6% p.a. from the date of petition till its realization. In the result, the issue No.2 is answered as partly in the affirmative.

33. Issue No.3:

In view of my finding on issue Nos.1 & 2, I proceed to pass the following:

ORDER The petition filed by the petitioners under section 166 of M.V. Act as against the respondent Nos.1 and 2 is hereby dismissed.

The petition filed by the petitioners under section 166 of M.V. Act as against the respondent Nos.3 and 4 is partly allowed, with costs. The petitioner Nos.1 and 2 and the respondent Nos.5 and 6 are entitled for compensation of Rs.10,08,000/- together with interest at the rate of 6% p.a. from the date of the claim petition till its realisation.

The respondent Nos.3 and 4 are jointly and severally liable to pay the compensation. In view of the valid insurance policy the respondent No.4 being the insurer shall pay the compensation amount with interest at the rate of 6% p.a. from the date of the claim petition till its realisation within a period of 30 days from the date of this order.

On deposit of the compensation amount together with interest, 40% is allotted to the share of petitioner No.1 and 20% each is allotted to the share of petitioner No.2 and respondent Nos.5 and 6 by way of apportionment of compensation amount.

Out of the share amount of petitioner No.1 and respondent Nos.5 and 6, 40% of the amount shall be deposited in their names in any nationalised or scheduled bank of their choice for a period of three years and the remaining 60% shall be released to them by means of a/c payee cheque on proper identification. However, they are at liberty to withdraw the periodical interest accrued on their deposit amount from time to time.

Out of the share amount of petitioner No.2 being the minor entire his share amount shall be deposited in any nationalised or scheduled bank till attaining his age of majority. However, the petitioner No.1 being the natural guardian of the petitioner No.2 is at liberty to withdraw periodical interest accrued on his deposit amount. After attaining his age of majority the entire amount shall be released to him without any further proceedings.

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

Draw award accordingly.

Dictated to the stenographer, transcript thereof, corrected by me and then pronounced in the open court on this 09th day of April 2015.

(P.J.Somashekar), XII Addl. Judge-Member, MACT, Bangalore.

ANNEXURE List of the witnesses examined on behalf of petitioners:

PW1	Smt. K. Radha
PW2	Sri Ravi

List of the documents exhibited on behalf of petitioners:

Ex.P1	True copy of FIR
Ex.P2	True copy of Complaint
Ex.P3	True copy of Charge sheet
Ex.P4	True copy of PM report
Ex.P5	True copy of Inquest mahazar
Ex.P6	True copy of Spot mahazar
Ex.P7	Notarised copy of the Death certificate
Ex.P8	Notarised copy of the Birth certificate of 2nd petitioner
Ex.P9	Notarised copy of the Ration card
Ex.P10	Notarised copy of the Election ID card

List of the witnesses examined on behalf of respondents:

RW1 Sri Yallappa B.P. List of the documents marked on behalf of respondents:

Ex.R1	Policy copy

(P.J. Somashekar),
XII Addl. Judge-Member, MACT,
Bangalore.