

Lolakshi vs Ksrtc on 31 January, 2024

KABC020217812019

BEFORE THE COURT OF SMALL CAUSES AND
MOTOR ACCIDENT CLAIMS TRIBUNAL, AT
BENGALURU
(SCCH-16)

Present: Sri. Ganapati Bhat,
B.Sc., LL.B. (Spl.). L.L.M.
X Addl. Judge, Court of Small Causes
& Member, MACT, Bengaluru.

MVC No.5160/2019

Dated: 31st January 2024

Petitioners

1. Smt. Lolakshi,
W/o Channabasavaiah @
Channabasavanna,
Aged about 41 years,
2. Sri Channabasavanna @
Channabasavaiah,
S/o Chandri Huchappa,
Aged about 45 years,
3. Smt. Hanumakka,
W/o Chandri Huchappa,
Aged about 75 years,

All are residing at T
Kasaba Hobli, Gubbi Ta
Tumkur District.
4. Smt. Vedavathi,
W/o Hanumantaraju D.C
Aged about 22 years,
Darmegowdanapalya,
Nonavinakere Hobli,

Tiptur Taluk, Tumkur District.
(Sri H.T. Anand, Advocate)

Vs.

- Respondents 1. The Manager,
KSRTC Central Division,
Shanthi Nagar,
Bengaluru.
(KSRTC Bus bearing
No.KA-17-F-1625)
(Sri Mahadevaiah, Advocate)
2. Sri Nawaz Pasha,
S/o Abdul Samdu,
Aged about 43 years,
No.# 354 TSS CRS,
Janatha Colony,
Maraluru Main Road,
Tumkur Town, Tumkur-572 101.
(Sri Gangadhar K., Advocate)
3. The Manager, TATA AIG General
Insurance Co. Ltd.,
1st Floor, MGI Complex,
Opp. Ganesha Temple,
Near Caltex Circle, Tumkur.
(Sri V.R. Muralidhara, Advocate)

JUDGMENT

The petitioners have filed this petition under Section 166 of M.V. Act 1989, seeking compensation of Rs.25,00,000/- from respondents for the accidental death of Sanjay, who died due to the accident caused by the driver of the KSRTC Bus bearing No.KA-17-F-1625. 3 (SCCH-16) MVC 5160/2019

2. The facts in brief stated in the petition are as under;

On 04-07-2019, at about 7.30 p.m., the deceased was traveling in a passenger auto rickshaw bearing No.KA-06-B-5989 as paid passenger. He was traveling from Gubbi to Tumkur on Highway No.206 with intent to attend the mason work. When the autorickshaw reached before Union Office near Mallasandra dairy, at that time one KSRTC Bus bearing No.KA-17-F-1625 came from Tumkur side. In order to overtake the another tempo, the driver of the said bus drove his vehicle in rash and negligent manner and took the right side and dashed front side of the autorickshaw. As a result of the said accident, the inmates of auto have suffered multiple head injuries and died at spot. Immediately after the accident, the deceased was shifted to Government Hospital, Tumkur. He was declared as dead and postmortem of the body was conducted. Thereafter postmortem, the dead body was handed over to the petitioners. The petitioners have incurred Rs.60,000/- for funeral ceremony and transportation body of the 4 (SCCH-16) MVC 5160/2019 deceased. Prior to accident, the deceased was hale and healthy and earning Rs.25,000/- per month by doing mason work under the licensed contractor. The petitioner No.1 is the mother, petitioner No.2 is the father, petitioner

No.3 is the grand mother and petitioner No.4 is the sister of the petitioner. They have suffered mental shock and agony. The accident was due to sole negligence of the driver of the offending bus. Tumkur Rural Police have registered the Criminal case against the driver of the offending vehicle. The respondent is liable to pay the compensation to the petitioners. The petitioners have sought for compensation of Rs.25,00,000/- together with interest at the rate of 12% per annum. They have prayed to allow the petition.

3. Initially, the petitioners have filed this petition against the Managing Director of the KSRTC Bus (respondent No.1). Later, the petitioners have impleaded the respondent No.2 and 3. In response to the notice, the respondent No.1 to 3 appeared through their counsel. The respondent No.1 and 3 have filed their separate 5 (SCCH-16) MVC 5160/2019 written statements. The respondent No.2 did not choose to file written statement.

4. The facts in brief stated in the written statement of the respondent No.1 are as follows;

The respondent No.1 has stated that the petition is not maintainable. It has further stated that the driver and insurance company of the auto rickshaw are necessary parties to this petition. It has stated that the accident was not due to rash and negligent driving of the driver of the KSRTC Bus bearing No.KA-17-F-1625. It has stated that the compensation claimed by the petitioners is exorbitant. It has stated that the accident was due to rash and negligent driving of the driver of the auto rickshaw. It has denied the age, avocation and the income of the deceased. It has further denied the manner of accident stated by the petitioners in their petition. It has stated that at the time of accident, the driver of the KSRTC Bus was moving in slow and cautious manner. At that time, a car overtook the bus and immediately taken left turn. The driver of the bus applied break and moved to right side. Then the driver of the auto rickshaw who 6 (SCCH-16) MVC 5160/2019 was driving the said auto rickshaw in rash and negligent manner came from the opposite direction and in the middle of the road dashed the KSRTC Bus and caused the accident. It has further stated that the KSRTC had given Rs.15,000/- to the relative of the deceased as interim compensation. It has stated that there is contributory negligence of 50% of the driver of auto rickshaw in this case. It has further stated that rash and negligent driving of the driver of the auto rickshaw caused the accident. Hence, it has prayed to dismiss the petition.

5. The facts in brief stated in the written statement of the respondent No.3 are as follows;

The respondent No.3 has stated that the petition is not maintainable. It has issued commercial policy to the auto rickshaw. It has further stated that the insured and police have not complied the Section 134(c) and 158(6) of IMV Act by not furnishing the information regarding the accident and not forwarding the documents. It has stated that it is not a necessary party to the petition. It has further stated that the second respondent has willfully entrusted the vehicle to a person who is not having the 7 (SCCH-16) MVC 5160/2019 valid driving licence. It has further stated that the driver of the auto has violated the permit condition by plying it outside the radius of its permissible limit. It has denied the age, avocation and monthly income of the deceased. It has further denied the relationship between the petitioners and deceased. It has further stated that the accident is due to rash and negligent driving of the driver of the bus and not due to the fault of the driver of the auto

rickshaw. It has denied the alleged monthly income of Rs.20,000/- of the deceased and his avocation as mason. It has stated that the compensation amount claimed is excessive. Hence, it has prayed to dismiss the petition.

6. Based on the pleadings the following issues came to be framed:

1. Whether the petitioners prove that deceased Sanjay succumbed to the injuries sustained in vehicular accident alleged to have occurred on 04-02-2019 at about 7.30 p.m., due to the rash and negligent driving of the drivers of the KSRTC Bus, bearing registration No.KA- 17-F-1625 and Autorickshaw bearing 8 (SCCH-16) MVC 5160/2019 No.KA-06-B-5989?
2. Whether the petitioners are entitled to compensation? If so, what is the quantum and from whom?
3. What order or Award?

7. In order to prove their case, the petitioner No.1 got herself examined as PW1 and got marked documents as Ex.P1 to Ex.P11. They have also got examined one eyewitness as PW2. The respondent No.1 has got examined its driver as RW1 and got marked documents as Ex.R1 and Ex.R2. The official of the respondent No.3 got examined as RW2 and got marked documents as Ex.R3 and Ex.R4. The respondent No.2 has not adduced any defence evidence.

8. Heard arguments of learned counsel for the petitioner. The learned counsel for the petitioners has argued that the accident was due to rash and negligent driving of driver of the KSRTC Bus, bearing registration No.KA-17-F-1625 He has further argued that the petitioner Nos.1 to 4 being the legal heirs and depending on the deceased, they are entitled to the 9 (SCCH-16) MVC 5160/2019 compensation. He has further argued that the deceased was having the income of Rs.20,000/- per month as he was working as mason. He has further argued that the police papers would show that the driver of the offending vehicle has dashed the vehicle of the deceased and caused the accident. He has further argued that the concerned police have filed the charge sheet against the driver of the offending vehicle. Hence, he has prayed to allow the petition.

9. The learned counsel for the respondent No.1 has argued that the accident was not due to rash and negligent driving of the driver of the KSRTC Bus, bearing registration No.KA-17-F-1625. He has further argued that the driver of the auto rickshaw was negligent at the time of accident. He has further argued that the driver of the KSRTC Bus was driving in slow manner at the time of accident. He has further argued that the autorickshaw driver could have avoided the accident. He has further argued that the petitioners have not proved the income and avocation of the deceased. He has further argued that the respondent No.1 has paid Rs.15,000/- as interim 10 (SCCH-16) MVC 5160/2019 compensation to the family member of the deceased. Hence, prayed to dismiss the petition.

10. The learned counsel for the respondent No.3 has argued that the accident was not due to rash and negligent driving of the driver of the autorickshaw. He has further argued that the driver of the bus came to the extreme right side of the road and dashed the autorickshaw which was moving in the correct side of the road. He has further argued that the police have filed the charge sheet against the driver of the respondent No.1 only. Hence, there is no negligence on the part of the driver of the autorickshaw. Hence, respondent No.2 and 3 are not liable to pay any compensation in this case. He has prayed to dismiss the petition against respondent No.2 and 3.

11. Perused the pleadings and evidences, on the basis, findings on the issues are as under:

Issue No.1 : Partly in the Affirmative Issue No.2 : Partly in the Affirmative Issue No.3
: As per final order for the following 11 (SCCH-16) MVC 5160/2019 REASONS ISSUE
No.1:

12. The Petitioners have stated that accident was due to rash and negligent driving of the KSRTC bus bearing Reg. No.KA-17-F-1625. It is the further case of the Petitioners that, the rash and negligent driving of the driver of the said bus is the reason for the accidental injuries and death of the deceased. It is the further case of the Petitioners that, the deceased was hale and healthy prior to the accident. They have further stated that, the jurisdictional police have filed the charge sheet against the driver of the offending vehicle for the offences punishable u/s 279, 304(A) of IPC.In order to succeed in this petition, the petitioners have to prove that the death of the deceased was due to rash and negligent driving of the driver of the offending vehicle.

13. In Kusum and Others vs Satbir and Others reported in (2011) SCC 646, the Hon'ble Supreme Court has held that in a case relating to the Motor Accident Claims, the claimants are not required to

12 (SCCH-16) MVC 5160/2019 prove the case as needs required to be done in a criminal trial.

14. In Parameshwari vs. Amir Chand and others reported in (2011) SCC 635, the Hon'ble Supreme Court has held that a road accident claims the strict principle of proof in a criminal case are not required.

15. In Bimla Devi and others vs. Himachal Road Transport Corporation and others reported in (2009) 13 SCC 513, the Hon'ble Supreme Court has held that the claimants were merely to establish their case on touch stone of preponderance of probability and that standard of proof on beyond reasonable doubt could not have been applied.

16. In Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another ruling reported in (2013) 10 SCC 6, the Hon'ble Supreme court has held as follows:

"7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required

to be decided by the learned 13 (SCCH-16) MVC 5160/2019 Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt."

17. In Anita Sharma and others vs. The New India Assurance Co. Ltd., and another, ruling reported in (2021) 1 SCC 171, the Hon'ble Supreme Court has held as follows:

"Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true."

18. Therefore, from the above rulings of the Hon'ble Supreme Court it is clear that the strict proof of accident is not required and preponderance of probability is to be applied in all the MVC cases. The 14 (SCCH-16) MVC 5160/2019 concept of beyond reasonable doubt is not applicable in deciding the MVC cases by the Tribunal.

19. In order to prove the case the Petitioners that, they have produced as many as 11 documents. Out of the said documents, Ex.P1 is the FIR, Ex.P2 is the Complaint, Ex.P3 is the Charge sheet, Ex.P4 is the Spot mahazar, Ex.P5 is the Sketch Ex.P6 is the PM report, Ex.P7 is the Inquest, Ex.P8 is the IMV report and Ex.P9 to 11 are the Aadhaar cards of the Petitioners No.1, 2 and deceased. In Ex.P1 and 2, it is stated that the accident was due to rash and negligent driving of the driver of the KSRTC Bus bearing Reg. KA-17-F-1625. It is further stated that the driver of the KSRTC bus was overtaking a car vehicle and he took his right side and caused the accident to the auto rickshaw coming from opposite direction. It is further stated that due to the accident the passengers including the deceased who was traveling in the auto rickshaw sustained grievous injuries. The deceased succumbed to the injuries on the way to the hospital. In Ex.P4, the description of the accident spot is mentioned. In Ex.P5- the hand sketch, the accident spot 15 (SCCH-16) MVC 5160/2019 is shown. From these documents, it is clear that the accident took place in the extreme right of side of the road. They show that the driver of the offending vehicle has taken the extreme right turn and moved to the extreme right side of the road from the bus. It is further clear from the said documents that the driver of the auto rickshaw was driving it on his left side. Therefore, these documents would show that the accident had taken place in the extreme right side of the on the road from KSRTC bus. From Ex.P6 and 7, the injuries to the deceased can be seen. The injuries to the deceased would tally with the manner of the accident took place in this case. In Ex.P6, the doctor who conducted the Postmortem has opined that accident was due to head injury sustained. From this document, it is clear that the death is due to head injuries to the deceased. The Police have recorded statement of the witnesses. The witnesses have stated that the accident was due to rash and negligent driving of the driver of the KSRTC bus. In Ex.P8, the damages to the both vehicles are stated. The right front portion of the bus

gets damaged and the 16 (SCCH-16) MVC 5160/2019 right front portion of the two wheeler vehicle gets damaged. The damages to the vehicle tally with the manner with accident stated by the petitioners in the petition. Ex.P3 is the Charge sheet filed by the Police against the driver of the offending vehicle. In the said Charge sheet, the Police have stated that the accident was due to rash and negligent driving of the driver of the KSRTC bus bearing Reg. No.KA-17-F-1625. The Police have alleged the offences punishable U/s 279, 238, 304(A) of IPC and Sec.187 of IMV Act against the driver of the offending vehicle. In the said Charge sheet, the police have alleged that the driver of the bus ran away without giving proper treatment to the injured and without informing the fact of the accident. In all the police records and other records, it is stated that the driver of the offending vehicle was rash and negligent in driving the bus at the time of accident. It is further stated in those documents that the deceased sustained injuries in the said accident and he was succumbed to the injuries.

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20. The Petitioner No.1 entered into the witness box and got examined as PW.1. She has re-iterated the contents of the Petition in her examination in chief. In the cross-examination, it is suggested that at the time of accident the bus was moving in its left side. This suggestion is contrary to the police records and other records. She has denied the suggestion that the driver of the auto was driving his vehicle in rash and negligent manner. Therefore, nothing contrary was achieved in the cross-examination of advocate of Respondent No.1. In the cross-examination of advocate for Respondent No.3, she has admitted that the driver of the KSRTC was overtaking a tempo vehicle which was in front of him and took his bus to his extreme right side. It has dashed the auto where in deceased was traveling. She has admitted that the driver of the auto rickshaw was not driving it rash and negligent manner. An eyewitness witness who has running Tea shop near to the accident spot got examined as PW.2. He has supported the case of the petitioners. In the cross-examination, he has stated that the KSRTC bus was overtaking a tempo and 18 (SCCH-16) MVC 5160/2019 the driver of the KSRTC bus had taken bus to the extreme right side of the road. He has further stated that the driver of the bus dashed the vehicle of the deceased and caused the accident. In the cross-examination by the Respondent No.1, he has stated the date of accident and number of the bus, accurately. The Conductor of the bus of the Respondent No.1 got examined as RW.1 He has re-iterated the contents of the Written statement of the respondent No.1. In the cross- examination, he has stated that he has not given complaint to the police regarding the accident. He has admitted that the car was in front of his bus at the time of accident. He has admitted that the driver of the offending bus was suspended from the service. He has admitted in the cross-examination of the Advocate for petitioner that the KSRTC department has paid Rs.15,000/- to the family members of the deceased as interim compensation. The driver of the bus has not been examined in this case. The legal manager of the Respondent No.3 got examined as RW.2. In his evidence, he has stated that the accident was not due to rash and 19 (SCCH-16) MVC 5160/2019 negligent driving of the driver of the auto rickshaw. Though an effort is made by the advocate of the Respondent No.1 to show that the driver of the auto was also rash and negligent at the time of accident, but that contention is not supported by any documentary or oral evidence. The learned counsel for the advocate of Respondent No.1 has argued that there is a contributory negligence on the part of driver of the vehicle of Respondent No.2. But, the documents would reveal that the driver of the bus had moved

to the extreme right side of the road and caused the accident. Further, the driver of the auto was driving it in left side of the road at the time accident. Therefore, the manner of accident and the evidence would show that the accident was due to rash and negligent driving of the driver of the offending vehicle. From the documentary and oral evidence, the petitioners have proved that the accident was due to rash and negligent driving of the driver of the offending vehicle. They have further shown that due to accident deceased had sustained grievous injuries 20 (SCCH-16) MVC 5160/2019 and he was succumbed to injuries. Hence, I answer issue No.1 in the affirmative.

ISSUE No.2:

21. As discussed above, the petitioners have shown that the vehicle of the respondent No.1 has caused the accident and the accident is due to rash or negligent driving of the driver of the offending vehicle. The petitioners have produced their Aadhar Cards, to show their relationship with the deceased. From these documents, it is clear that the petitioner No.1 is the mother, the petitioners No.2 is the father and 3 is the grand mother and the petitioners No.4 is the sister of the deceased. The petitioners being the legal representatives of the deceased, they are entitled to the compensation.

In the case of National Insurance Co. vs. Birender ruling reported in (2020) 11 SCC 356, the Hon'ble Supreme Court has held as follows:

"12. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependant on the deceased, would be 21 (SCCH-16) MVC 5160/2019 still covered by the expression "legal representative" of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative.

Notably, the expression "legal representative" has not been defined in the Act. In Manjuri Bera (supra), the Court observed thus:

"9. In terms of clause (c) of subsection (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said subsection makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents.

Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.

10.The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom

such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

11. According to Section 2(11) CPC, "legal representative" means a person who in law represents the

22 (SCCH-16) MVC 5160/2019 estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g)

12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino vs. Nalini Bai Naique [1989 Supp (2) SCC 275 the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". As observed in Gujarat SRTC vs. Ramanbhai Prabhatbhai [(1987) 3 SCC 234 a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

13. In Manjuri Bera (supra), in paragraph 15 of the said decision, while advertizing to the provisions of Section 140 of the Act, the Court observed that even if there is 23 (SCCH-16) MVC 5160/2019 no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly and 2 (claimants) even though they are major sons of the deceased and also earning.

14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only."

According to the ratio laid down in this ruling the legal representatives though not fully dependent on the deceased are entitled to claim compensation under all 24 (SCCH-16) MVC 5160/2019 the

heads i.e., under both conventional and non- conventional heads. The total compensation is to be calculated in the following manner:

The compensation towards loss of dependency : The petitioner No.1 is the mother, the petitioners No.2 is the father and 3 is the grand mother and the petitioners No.4 is the sister of the deceased. The petitioners have stated that they were depending upon the deceased. They have shown that they are legal representatives of the deceased, hence, they are entitled to compensation under the head of loss of dependency. In order to calculate the loss of dependency, the first step is to determine the age and income of the deceased.

The determination of age and income of the deceased : The petitioners have stated that the age of the deceased as on the date of accident is 19 years. To substantiate this point, the petitioners have produced the copy of the Aadhar Card of the deceased, wherein the date of birth of the deceased is mentioned as 17-11- 1999. Admittedly, the accident took place on 04-07- 25 (SCCH-16) MVC 5160/2019 2019. Therefore, as on the date of accident the age of the deceased was about 19 years.

The petitioners have stated that the deceased was working as a mason under licensed contractor and he was having monthly income of Rs.20,000/- . The petitioners have not produced any documents to show the income of the deceased. Therefore, the notional income is to be considered as income of the deceased as per the guidelines of the Karnataka State Legal Services Authority.

In G.T. Basavaraj vs. Niranjan and another in MFA No.7781/2016 judgment dated 11-08-2022, in Ramanna and another vs. Y.B. Mahesh and another in MFA No.140/2017 judgment dated 16-01-2020, in New India Assurance Co. Ltd., vs. Anusaya and others in MFA No.101195/2014 judgment dated 05-01-2023, the Hon'ble High Court of Karnataka has held that when the income is not proved, then the notional income of the deceased as per the guidelines issued by Karnataka State Legal Services Authority is to be adopted as the income of the 26 (SCCH-16) MVC 5160/2019 deceased. The accident took place in the year 2019. Therefore, the notional income is to be treated as Rs.14,000/- per month. Therefore, his annual income would be Rs.1,68,000/-.

As per the ratio laid down in the ruling of National Insurance Co. Ltd. vs. Pranay Sethi and others, reported in (2017) 16 SCC 680, the deceased is also entitled to future prospects though he is not a permanent employee. Since the deceased is aged about 19 years and not a permanent employee, the future prospects would be 40% of his income. Therefore, 40% of Rs.1,68,000/- comes to Rs.67,200/-. Therefore, the future prospects of the deceased comes about Rs.67,200 /-. If this income is added to the notional income, then it comes about Rs.2,35,200/-. This income is within the limits of the exemption limit under the Income Tax Act.

The deduction of personal expenses and calculating the multiplicand : The family of the deceased consist of 4 persons i.e., petitioners No.1 to 4. Therefore, the number of the dependents is 4. 27 (SCCH-16) MVC 5160/2019 Therefore, deduction towards the personal expenses comes about 1/4th i.e., Rs.58,800/-. Therefore, the multiplicand is as follows:

Rs.2,35,200 / - Rs.58,800 / - = Rs.1,76,400/- is the contribution towards the family/multiplicand.

Ascertaining the multiplier : The appropriate multiplier should be applied as per the decision of the Hon'ble Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298. The age of the deceased is found as 19 years. Therefore, the appropriate multiplier is 18.

Therefore, the compensation under the head of loss of dependency is calculated as follows :

The age of the deceased is 19 years, number of dependents are 4, the notional income + future prospects is Rs.2,35,200/- per annum. Multiplicand is Rs.1,76,400/-, multiplier is 18. Therefore, the compensation to the petitioners under the head of loss of dependency is Rs.31,75,200/- Hence, an amount of

28 (SCCH-16) MVC 5160/2019 Rs.31,75,200/- is awarded to the petitioners towards loss of dependency.

Compensation under conventional heads : As per the judgment of the National Insurance Co. Ltd. vs. Pranay Sethi and others reported in (2017) 16 SCC 680, following conventional heads they are permissible.

- 1) Loss of estate Rs.15,000/-
- 2) Loss of consortium Rs.40,000/-
- 3) Funeral expenses Rs.15,000/-

Six years have been lapsed from the date of the judgment. Therefore, 20% is to be increased on this amount. Therefore, the loss of consortium comes about Rs.48,000/-, funeral expenses comes about Rs.18,000/- and loss of estate comes about Rs.18,000/-.

In Magma General Insurance Co.

Ltd vs Nanu Ram Alias Chuhru Ram and others ruling reported in (2018) 18 SCC 130, the Hon'ble Supreme Court has held as follows:

"21. A Constitution Bench of this court in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 29 (SCCH-16) MVC 5160/2019 680: (2018) 3 SCC (Civ) 248: (2018) 2 SCC (Cri) 205] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium".

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse:

[Rajesh v. Rajbir Singh, (2013) 9 SCC 54 (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] 21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation":

(Black's Law Dictionary (5th Edn., 1979).

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".

21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have 30 (SCCH-16) MVC 5160/2019 recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

As per the ratio laid down in this case, the consortium is to be given under 3 heads i.e., spousal consortium, parental consortium and filial consortium. Therefore, the petitioners No.1 and 2 are entitled to Rs.48,000/- each towards filial consortium. The respondent No.1 has stated that it has paid Rs.15,000/- to the relative of the deceased as interim compensation. They have produced Ex.R2 to show this aspect. Hence, Rs.15,000/- requires to be deducted from the total compensation.

22. The details of compensation proposed to be awarded are as under:

Sl.	Head of Compensation	Amount/Rs
1.	Loss of dependency	Rs. 31,75,200-00
2.	Loss of filial consortium (SCCH-16)	Rs. 96,000-00
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3.	Loss of estate	Rs.	18,000-00
4.	Funeral expenses	Rs.	18,000-00
5.	Deduction of the interim Rs compensation		15,000-00
Total			Rs.32,92,200-00

23. In all, petitioners are entitled for compensation of Rs.32,92,200/- with interest at the rate of 6% per annum from the date of petition till its realization. Liability:

24. The respondent No.1 is the owner of the offending vehicle bearing registration No.KA-17-F-1625. The respondent No. 2 is the owner of the auto rickshaw and respondent No.3 is its insurance company. The petitioners have proved the rash and negligent driving of the driver of the offending vehicle. As discussed above, the contributory negligence of the auto rickshaw which is alleged by respondent No.1 is not substantiated by cogent evidence. Therefore, the respondent No.2 and 3 are not liable to pay compensation in this case. Therefore, the respondent No.1 alone liable to pay the compensation to the petitioners.

32 (SCCH-16) MVC 5160/2019 Apportionment :

25. The petitioners No.1 to 4 are the legal representatives of the deceased and they are entitled for the compensation. The petitioner No.2 is the father of the deceased and he has incurred the major expenses like funeral and transportation expenses. Therefore, she is entitled to 45% of the total compensation amount.

The petitioner No.2 is the mother of the deceased, she is entitled to 30% of the total compensation amount. The petitioner No.3 being the grand mother of the deceased, she is entitled to 15% of the total compensation amount and the petitioner No.4 being the sister of the deceased, she is entitled to 10% of the total compensation amount.

26. As discussed above, the petitioners have shown that driver of the vehicle bearing registration No.KA-17-F-1625 has caused the accident to the husband of the petitioner No.1 and the accident was due to rash and negligent driving of the driver of the said vehicle. They have further shown that they are entitled to total compensation of Rs.32,92,200/. They have 33 (SCCH-16) MVC 5160/2019 shown that the respondent No.1 is liable to pay the compensation. Hence, I answer issue No.2 partly in the affirmative.

ISSUE No.3:

27. In view of the findings, the petition deserves to be allowed in part. Hence, the following order is passed:

ORDER The petition is partly allowed with costs.

The petitioners are entitled to compensation of Rs.32,92,200/- (Rupees thirty two lakhs, ninety two thousand and two hundred only) with interest at the rate of 6% p.a., from the date of petition till realisation.

The respondent No.1 is liable to pay the compensation amount. The respondent No.1 is directed to pay the compensation amount within two months from the date of this order.

Compensation amount is
apportioned as follows:-

Petitioner No.1 - Mother	30%
Petitioner No.2 - Father	45%
Petitioner No.3 - Grand mother	15%

34 (SCCH-16) MVC 5160/2019

Petitioner No.4 - Sister 10%
Out of the compensation amount

awarded to petitioner No.1 to 4, 30% of the compensation amount with proportionate interest shall be deposited in their names as FD in any nationalized bank for the period of two years with liberty to draw the accrued interest periodically and the remaining 70% amount with proportionate interest shall be released to them through E- payment on proper identification and verification.

This petition is dismissed against the respondent No.2 and 3.

Advocate's fee is fixed at Rs.2,000/-.

Draw an award accordingly.

(Dictated to the stenographer, directly on computer, typed by him, corrected and then pronounced in the open court this the 31st day of January 2024) (Ganapati Bhat) Member, MACT, Bengaluru.

ANNEXURE Witnesses examined on behalf of petitioners:

PW1 Smt. Lolakshi

PW2
35

Sri Vijay G.
(SCCH-16)

MVC 5160/2019

Documents marked 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 Spot Mahazar
- Ex.P5 True copy of Sketch
- Ex.P6 True copy of Postmortem Report
- Ex.P7 True copy of Inquest
- Ex.P8 True copy of IMV Report

Ex.P9 to Notarized copy of Aadhar Card of the Ex.P11 petitioner No.1, 2 and deceased
Witnesses examined on behalf of respondents:

- RW1 Sri Puttappa
- RW2 Sri Shreyas Bhat

Documents marked on behalf of the respondents:

- Ex.R1 Authorization Letter
- Ex.R2 Receipt
- Ex.R3 Authorization Letter
- Ex.R4 True copy of Insurance Policy

(Ganapati Bhat)
Member, MACT, Bengaluru.