

Smt. S. Sunila Kumari vs Reliance General Insurance Co. Ltd on 4 June, 2015

Before the Motor Accident Claims Tribunal at Bangalore (SCCH-8)

Present: Shri P.J. Somashekhar B.A., LL.B.,
XII Additional Small Causes Judge
and Member, M.A.C.T., Bangalore.

Dated this the 04th day of June 2015

M.V.C.No.5743/2013

Petitioners

1. Smt. S. Sunila Kumari,
W/o Late Dr. Praveen Kumar S.,
Aged about 42 years,
2. Master S. Sathwik Abraham,
S/o Late Dr. Praveen Kumar S.,
Aged about 8 years,
3. Sri S. Bhaskar Rao,
S/o Late Venkataswamy Sillay,
Aged about 65 years,
4. Smt. Shantha B. Rao,
W/o S. Bhaskar Rao,
Aged about 60 years,

All are residing at No.21,
5th 'C' Cross, 16th Main,
MCHS Colony, BTM 2nd Stage,
Bangalore - 560 076.

Since 2nd petitioner is minor
Rep. by his mother i.e.,
The petitioner No.1.
(Sri S.S. Hugar, Advocate)

Vs.

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M.V.C.No.5743/2013

(Policy No.1207432334000406, valid from 11-01-2013 to 10-01-2014.

(Sri H.N. Keshava Prashanth, Advocate)

2. Sri Ramesh R.,
S/o Ramaswamy,
No.209, A.S.P. Pudur Main Road,
Namakkal - 637 001.
Tamil Nadu State.

(RC owner of the Cantainer Lorry
bearing Reg. No.TN-28-AE-8348).
(Ex parte)

3. Sri Kangatharan K.,
S/o Kuppanna,
No.46A, Ganeshapuram,
Madha Kovil Street,
Namakkal District.
Tamil Nadu.

(Driver of the Cantainer Lorry bearing
Reg. No.TN-28-AE-8348).
(Ex parte)

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.1,50,00,000/- for the death of Praveen Kumar S., Son of S. Bhaskar Rao in a road traffic accident.

2. The brief facts of the claim petition are as under; The petitioners said to be the legal heirs and financial dependents of the deceased Praveen Kumar S., in their claim petition, were alleged that, on 17-05-2013 at about 8.45 a.m., 3 (SCCH-8) M.V.C.No.5743/2013 Praveen Kumar S., was proceeding in a Hyundai I-20 car bearing No.KA-51-MC-8365 carefully and cautiously by observing all traffic rules and regulations on the extreme left side of the Krishnagiri- Hosur NH-7 road, when he was reached Medupalli bus stop, the driver of the lorry bearing No.TN-28-AE-8348 which was moving ahead of the said car and the driver of the said lorry has suddenly applied the brakes without giving any indicator nor signal and Praveen Kumar had no time and space to maneuver his way, thereby the accident was took place, due to which Praveen Kumar has sustained grievous injuries and succumbed on the spot. So, immediately he was shifted to Government Hospital, Hosur, Krishnagiri District, Tamil Nadu, after postmortem the body was handing over to them and they shifted the body to their residence in BTM Layout, Bangalore and performed the religious rites and traditional formalities by spending an amount of Rs.1,00,000/-.

3. Prior to the accident the deceased was hale and healthy working as Assistant Professor in the department of Anesthesiology in the Sapthagiri Institute of Medical Science and Research Center by getting monthly salary of Rs.50,070/-, due to the untimely death, they became put into deep mental shock and agony and they lost the love and affection. The first petitioner is none other than the wife,

second petitioner is none other than the son and third and fourth petitioners are none other than the 4 (SCCH-8) M.V.C.No.5743/2013 parents of the deceased. The accident in question was taken place on the rash and negligent driving of the lorry driver. Thereby, Sholagiri Police have registered the case against the lorry driver in their police station crime No.319/2013 for the offences punishable u/s 279 and 304(A) of IPC. The respondent No.1 is the insurer and respondent No.2 and 3 are the owner and driver of the offending vehicle 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.2 and 3 did not appear nor file their written statement, as they were placed ex parte. The respondent No.1 has appeared through its counsel and filed the 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 denied the averments of the petition in toto and further alleged that the petitioners have to strict proof of the same, but he has admitted about the issuance of the policy in respect of the lorry bearing No.TN-28-AE-8348 in favour of the second respondent 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 to drive the same. The respondent No.2 being the owner knowing fully well that the driver was not holding valid and effective driving licence has entrusted the offending 5 (SCCH-8) M.V.C.No.5743/2013 vehicle to the person who was not holding valid and effective driving. Thereby, he has violated the terms and conditions of the policy. Thus, he is not liable to pay any compensation to the petitioners and as on the date of the alleged accident the offending vehicle was not having valid permit and fitness certificate. So, the second respondent has violated the terms and conditions of the policy 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 he has denied that the driver of the lorry has drove the same in a rash and negligent manner and suddenly applied the break, without giving any indication nor signal, as a result the accident was occurred and the Praveen Kumar has sustained grievous injuries and succumbed due to the said injuries and prior to the accident the deceased was hale and healthy working as a Assistant Professor by getting monthly income of Rs.50,070/- and he has also denied that the petitioners are the legal heirs and the financial dependents of the deceased and further he has alleged that the lorry driver has drove the same slowly, carefully and cautiously on the correct side of the road, but the deceased has drove the car in a rash and negligent manner, without maintaining the proper distance on his own negligence the accident was occurred and the petitioners were suppressed the said facts and filed the false 6 (SCCH-8) M.V.C.No.5743/2013 instant claim petition in order to get the compensation and prays for reject the claim petition.

5. On the basis of the pleadings of the parties the following issues are framed.

1. Whether the petitioners prove that deceased Praveen Kumar S., died in a road traffic accident on 17-05-2013 at about 8.45 a.m., near Medupalli bus stop, on Krishnagiri-Hosur (NH-7) road, due to the rash and negligent driving of the driver of the Container Lorry bearing registration No.TN-28-AE-8348?

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

3. What Order or Award?

6. The petitioners in order to prove their claim petition, the petitioner No.1 has examined herself as PW1 and got marked the documents as Ex.P1 to Ex.P26 and Ex.P33 and the petitioner No.3 has examined himself as PW2 and got marked the document as Ex.27 and they have examined one witness on their behalf as PW3 and got marked the documents as Ex.P28 to Ex.P32. The respondent No.1 has examined its Legal Manager as RW1 and got marked the document as Ex.R1.

7. Heard arguments on both side.

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

7 (SCCH-8) M.V.C.No.5743/2013 Issue No.1: Affirmative Issue No.2: Partly affirmative Issue No.3: As per the final order for the following.

REASONS

9. Issue No.1:

The petitioners being said to be the legal heirs and financial dependents of the deceased were approached the court on the ground that on 17-05-2013 at about 8.45 a.m., deceased Praveen Kumar S., was proceeding in a Hyundai I-20 car carefully and cautiously by observing all traffic rules and regulations on the extreme left side of the Krishnagiri-Hosur NH-7 road, when he was reached Medupalli bus stop, the driver of the lorry bearing No.TN- 28-AE-8348 which was moving ahead of the said car has suddenly applied the brakes without giving any indicator nor signal, due to which the accident was occurred and Praveen Kumar has sustained grievous injuries and succumbed on the spot. Thereby, the petitioners said to be the legal heirs and financial dependants of the deceased were filed the instant claim petition against the respondents.

10. The petitioners in order to prove their claim petition, the petitioner No.1 has filed her affidavit as her chief-examination as PW1, in which she has stated that on 17-05-2013 at about 8.45 a.m., her husband was proceeding in a Hyundai I-20 car bearing 8 (SCCH-8) M.V.C.No.5743/2013 No.KA-51-MC-8365 carefully and cautiously by observing all traffic rules and regulations on the extreme left side of the Krishnagiri-Hosur NH-7 road, when he was reached Medupalli bus stop, the driver of the lorry bearing No.TN-28-AE-8348 which was moving ahead of the said car has suddenly applied the brakes without giving any indicator nor signal, due to which the said container lorry came to a sudden halt, as a result her husband Praveen Kumar apparently had no time and space to maneuver his way and met with an accident, as consequences of the terrific impact her husband was sustained fatal injuries and succumbed on the spot. So, immediately the body was shifted to Government Hospital, Hosur, after postmortem the body was handing over to them and they shifted the dead body to their residence in BTM Layout, Bangalore and performed the religious rites and traditional formalities by spending huge amount. The accident in question was taken place on the

rash and negligent driving of the lorry driver. Thereby, Sholagiri Police have registered the case against the lorry driver in their police station crime No.319/2013 for the offences punishable u/s 279 and 304(A) of IPC. The PW1 in her cross examination has denied that the accident in question was taken place on the negligence of her husband, as her husband had not maintained the distance. So, on his own negligence the accident was occurred and as on the date of the 9 (SCCH-8) M.V.C.No.5743/2013 alleged accident her husband had driven the car with high speed, when he was in intoxication on his own negligence the accident was occurred.

11. The PW2 being said to be the father of the deceased in his evidence has stated that his son was proceeding in a Hyundai I-20 car bearing No.KA-51-MC-8365 carefully and cautiously by observing all traffic rules and regulations on the extreme left side of the Krishnagiri-Hosur NH-7 road, when he was reached Medupalli bus stop, the driver of the lorry bearing No.TN-28-AE- 8348 which was moving ahead of the said car has suddenly applied the brakes without giving any indicator nor signal, as a result the accident was occurred and his son has sustained grievous injuries and died on the spot. The accident in question was taken place on the rash and negligent driving of the lorry driver. The PW2 in his cross examination has denied that the accident in question was taken place on the negligence of his son only and he being the retired IPS officer has influenced the police officials and got registered the false case against the lorry driver.

12. The petitioners in support of the oral evidence have produced the documents marked as Ex.P1 to Ex.P33. Ex.P23 is the information filed by one Vijay Kumar S., in which he has stated that his brother was proceeding towards Bangalore after attending the conference at Salem, Tamil Nadu through his car Hyundai I20 10 (SCCH-8) M.V.C.No.5743/2013 bearing No.KA-51-MC-8365, the driver of the lorry bearing No.TN- 28-AE-8348 was moving towards Hosur has suddenly applied the breaks without giving any indication nor signal, as a result the accident was occurred on the negligence of the lorry driver and his brother has suffered severe head injuries and died on the spot. So based on the information Sholagiri Police have registered the case against the lorry driver in their police station crime No.319/2013 for the offences punishable u/s 279 and 304(A) of IPC. The learned counsel for the respondent has cross examined the PW1 and PW2, but nothing is elicited to disbelieve their evidence. Though, he has suggested the PW1 and PW2 that the accident in question was taken place on the rash and negligent driving of the deceased, as he was not maintained the distance for which they have denied the same. The learned counsel for the respondent has suggested the PW1 who is said to be the wife of the deceased that as on the date of the alleged accident her husband had drove the car in high speed, as he was an intoxication as on the date of the alleged accident for which she has denied the same. If at all the accident in question was taken place on the negligence of the deceased nothing is prevented to the respondents to establish through oral and documentary evidence that the accident in question was taken place on the rash and negligent driving of the deceased, if that is so, the matter would have different. Even he has not placed any 11 (SCCH-8) M.V.C.No.5743/2013 materials on record to show that the accident in question was taken place on the rash and negligent driving of the deceased. In the absence of the materials on record, it is very difficult to believe that the accident in question was taken place on the rash and negligent driving of the deceased. On the other hand oral and documentary evidence on record clearly reflects that the accident in question was taken place on the rash and negligent driving of the lorry driver. Even the respondent has not challenged the complaint lodged against the offending vehicle driver

nor challenged the final report filed by the I.O. So, Ex.P23 and Ex.P24 are remained unchallenged. Ex.P2 is the sketch drawn by the I.O., clearly reflects that the accident in question was taken place on the rash and negligent driving of the lorry driver. If at all the accident was not taken place on the rash and negligent driving of the lorry driver nothing is prevented to the respondent to examine the I.O., to show that the accident was not taken place on the rash and negligent driving of the lorry driver. In the absence of the materials on record, it is clear that the accident was taken place on the rash and negligent driving of the lorry driver. Ex.P3 to Ex.P15 are clearly reflects that the accident in question was taken place on the rash and negligent driving of the lorry driver. Ex.P19 is the final report clearly reflects that the I.O., after investigation has found that the accident in question was taken place on the rash 12 (SCCH-8) M.V.C.No.5743/2013 and negligent driving of the lorry driver, that is the reason why, has charge sheeted against the offending vehicle driver on the ground that the accident in question was taken place on the rash and negligent driving of the lorry driver. So, the documents marked as Ex.P1 to Ex.P33 are coupled with the oral evidence of the PW1 and PW2.

13. The learned counsel for the respondent while canvassing his arguments has submitted that the I.O., has cited number of witnesses in which has not shown any eye witness and the petitioners have not examined any eye witness to show that the accident was taken place on the rash and negligent driving of the lorry driver. In the absence of the materials on record, it is clear that the deceased had not maintained the distance in between the 2 vehicles on his own negligence the accident was occurred and the sketch prepared by the I.O., is also clear that the accident was occurred on the rash and negligent driving of the deceased, but the petitioners were suppressed the true facts and filed the false complaint against the lorry driver on the ground that the accident in question was taken place on the rash and negligent driving of the lorry driver. The PW1 and PW2 are not the eye witnesses of the accident, that itself goes to show that the accident was not taken place on the rash and negligent driving of the lorry driver. 13 (SCCH-8) M.V.C.No.5743/2013

14. Per contra the learned counsel for the petitioners has submitted that the accident in question was taken place on the rash and negligent driving of the lorry driver, as the lorry driver without giving any indication nor signal has suddenly applied the break, that is the reason why, the accident was occurred and the deceased was sustained grievous injuries and died on the spot. The police papers placed on record reflects that the accident in question was taken place on the rash and negligent driving of the lorry driver. If at all the accident was not taken place on the rash and negligent driving of the lorry driver, the respondent would have placed the materials to substantiate its defence, but nothing is placed to substantiate its defence, except examination of the RW1 and his evidence will not help the respondent to prove its defence. On the other hand the petitioners have established through oral and documentary evidence that the accident in question was taken place on the rash and negligent driving of the lorry driver.

15. It is an admitted fact that the respondent No.1 being the insurer has taken up the contention that the deceased had not maintained distance, on his own negligence the accident was occurred, but nothing is placed on record to show that the deceased had not maintained the distance while proceeding in a Hyundai I20 car on his own negligence the accident was occurred. 14 (SCCH-8) M.V.C.No.5743/2013 In the absence of the materials on record, the police papers and the oral evidence of the PW1 and PW2 are clear that the accident in question was taken place on the rash and

negligent driving of the lorry driver. Hence, I am of the opinion that the issue No.1 is answered as affirmative.

16. 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 Assistant Professor in the department of Anesthesiology in the Sapthagiri Institute of Medical Science and Research Center by getting monthly salary of Rs.50,070/-, due to the untimely death of her husband, they became put into deep mental shock and agony and they lost the love and affection and earning member of the family and they were also put to financial hardship because of untimely death of her husband. Herself and the other petitioners are the financial dependents of the deceased, as she is the beloved wife of the deceased and the second petitioner is none other than their minor son and petitioner No.3 and 4 are the parents of the deceased. The PW1 in her cross examination has admitted that in the year 2010 she joined Bishop Cotton College as part time lecturer and later on she left the college and again in the year 2014 she joined the Bishop Cotton College as a part time lecturer. Now, the college is paying salary of Rs.20,000/- per 15 (SCCH-8) M.V.C.No.5743/2013 month, initially she has received the monthly salary of Rs.15,000/-

and her husband was born on 17-02-1970 and she has denied that herself and other petitioners are not the financial dependents of the deceased.

17. The PW2 being the father of the deceased in his evidence has stated that prior to the accident his son was hale and healthy working as Assistant Professor in the department of Anesthesiology in the Sapthagiri Institute of Medical Science and Research Center by getting monthly salary of Rs.50,070/. The PW2 in his cross examination has admitted that he is the retired IPS Officer and getting pension, himself and his wife are not depending the income of the deceased and he has having 3 male children. Though, his son was working as a Assistant Professor, he use to receiving money from him and he was drawing monthly salary of Rs.40,000/- to Rs.45,000/-. The learned counsel for the respondent though, he has cross examined the PW1 and PW2, but he has not disputed the relationship of the petitioners with the deceased. Ex.P25 to Ex.P27 and Ex.P33 are clearly reflects that the petitioners are none other than the wife, son and parents of the deceased. Even the respondent has not disputed the relationship of the petitioners with the deceased. So, one thing is clear that the petitioners are none other than the wife, son and parents of the deceased.

16 (SCCH-8) M.V.C.No.5743/2013

18. The learned counsel for the respondent while canvassing his arguments has submitted that the first petitioner is none other than the wife of the deceased is working as a lecturer by getting monthly salary of Rs.20,000/-. So, she is not the financial dependant of the deceased at the most she is entitled only loss of estate. But on the other hand the learned counsel for the petitioners has submitted that the first petitioner though she has psychology post graduate, working as a lecturer is

only a part time lecturer that too she has joined after the death of her husband for her livelihood and the livelihood of the second petitioner who is none other than the minor son of the deceased and the first petitioner, merely on the ground that the first petitioner has joined as lecturer at Bishop Cotton College by getting monthly salary of Rs.20,000/- after 2014 it does not mean that the first petitioner is not the financial dependent of the deceased, as the petitioner in her evidence has denied that she is not the financial dependent of the deceased that itself is clear that the petitioners are the financial dependents of the deceased and if the deceased is alive question of joining as a part time lecturer by the first petitioner would not arise.

19. It is an admitted fact the PW1 in her cross examination has admitted that she is the psychology post graduate working as a part time lecturer from 2014, as the accident was occurred on 17 (SCCH-8) M.V.C.No.5743/2013 17-05-2013, that itself is clear that the petitioner No.1 for her livelihood and the livelihood of the second petitioner, might have joined the Bishop Cotton College as part time lecturer, but it does not mean that the first petitioner is not the financial dependent of the deceased. If the deceased alive question of joining as a part time lecturer nor earning money for her livelihood does not arise, as it is not the case of the respondent during the life time of the deceased she was working as a part time lecturer and she was not depending on the income of the deceased, if that is so, the matter would have different. Even the respondent has not elicited from the mouth of the PW1 that the amount which was drawing by the petitioner No.1 is sufficient for their livelihood and they have not sustained any financial loss due to the death of her husband, if that is the matter would have different, but nothing is elicited to disbelieve her evidence that she is not the financial dependent of the deceased. Therefore, the arguments advanced by the learned counsel for the respondent No.1 on this aspect holds no water. So, the petitioner No.1 and 2 are the financial dependents of the deceased.

20. It is true that the PW2 being the father of the deceased in his cross examination has categorically admitted that himself and his wife are not depending on the income of the deceased. So, the admission of the PW2 is binding on the petitioners. Even by virtue 18 (SCCH-8) M.V.C.No.5743/2013 of the decision relied by the very petitioners reported in AIR 2009 SC 3104 (1) in between Smt. Sarla Verma and others vs. Delhi Transport Corporation and another. In the said decision their lordship held that the father is not the financial dependent and mother only the financial dependent of the deceased. So by virtue of the decision relied by the learned counsel for the petitioners reflects that the father is likely to have his own income and will not considered as a dependent and the mother alone will be considered as a dependent. So, in the instant case the PW2 who is the father of the deceased in his cross examination has categorically admitted that himself and his wife are not financial dependents of the deceased. So, the petitioner No.1 and 2 are only the financial dependents of the deceased, but the petitioners No.3 and 4 being the parents of the deceased have lost the love and affection as well as the care taker during their old age.

21. The petitioners in their claim petition as well as in their evidence have stated that prior to the accident the deceased was working as a Assistant Professor in the department of Anesthesiology in the Sapthagiri Institute of Medical Science and Research Center by getting monthly salary of Rs.50,070/-. The PW3 being the principal of Sapthagiri Institute of Medical Sciences and Research Centre in his evidence has stated that the deceased was working as a Assistant Professor in the

department of 19 (SCCH-8) M.V.C.No.5743/2013 Anesthesiology since 06-01-2011 and drawing monthly salary of Rs.50,070/- and he was very young unfortunately he was died on the spot in a road traffic accident on 17-05-2013. The PW3 in his cross examination has admitted that he has not produced any document to show that how much amount has been deducted as income tax out of the salary of the deceased and the college has not provided any appointment to the deceased family on compassionate ground and they used to remit the salary of the deceased in the account maintained in the State Bank of India and Rs.200/- only has been deducted out of his salary and he used to receive salary of Rs.49,870/- every month and he has denied that he is not the competent person to say about the salary which was drawn by the deceased during his life time. So one thing is clear from the evidence of the PW3 that the deceased during his life time was working as a Assistant Professor by getting monthly salary of Rs.50,070/-, out of the said salary Rs.200/- has been deducted in every month and deceased used to receive Rs.49,870/- per month as salary. Ex.P30 is the appointment order issued by the Sri Srinivasa Educational and Charitable Trust in which it is clear that the deceased was appointed as Assistant Professor in the department of Anesthesiology and his salary has been fixed as Rs.50,070/- per month. Ex.P31 is clear that the deceased by virtue of Ex.P30 has been reported the duty on 06-01-2011 since then till 20 (SCCH-8) M.V.C.No.5743/2013 his death, he was working as a Assistant Professor at Sapthagiri Institute of Medical Sciences and Research Centre. Ex.P32 is the salary certificate issued by the Sapthagiri Institute of Medical Sciences and Research Centre in which total salary has been shown as Rs.50,070/- and Rs.200/- has been deducted as professional tax and net pay of Rs.49,870/-. So, the documents marked as Ex.P30 to Ex.P32 are coupled with the oral evidence of the PW3. So one thing is clear that the deceased prior to the accident was working as a Assistant Professor at Sapthagiri Institute of Medical Sciences and Research Centre by getting net salary of Rs.49,870/- per month. Though, the respondent has disputed the salary as alleged in the claim petition, but nothing is placed on record to show that Ex.P30 to Ex.P32 are created documents in order to claim more compensation. In the absence of the materials on record from the respondent, it is clear that the deceased prior to his death in a road traffic accident was working as a Assistant Professor at Sapthagiri Institute of Medical Sciences and Research Centre by getting net salary of Rs.49,870/- per month.

22. The learned counsel for the petitioners while canvassing his arguments has submitted that the deceased having permanent job as Assistant Professor at Sapthagiri Institute of Medical Sciences and Research Centre and the PW3 being the principal of 21 (SCCH-8) M.V.C.No.5743/2013 the said college has clearly stated about the salary which was drawn by the deceased prior to his death in a road traffic accident. The learned counsel for the respondent has cross examined the PW3, but nothing is elicited to show that the deceased was not working as a Assistant Professor at Sapthagiri Institute of Medical Sciences and Research Centre. So, it is just and necessary to addition to income for future prospects, as the deceased was having a permanent job by virtue of the decision reported in AIR 2009 SC 3104 and 2013 ACJ 1403. So, this Court drawn its attention on the decision reported in AIR 2009 SC 3104 in between Smt. Sarla Verma and others vs. Delhi Transport Corporation and another reads like thus;

(B) Motor Vehicles Act (59 of 1988), S.168 -

Compensation - Determination - Addition to income for future prospects - Deceased having permanent job and was below 40 years - Addition of 50% of actual salary should be made to income of deceased towards future prospects.

23. On careful perusal of the above said decision, in the said decision their lordship held that 50% of actual salary should be added to the actual salary income of the deceased towards future prospects. Where the deceased had a permanent job and was below 40 years, the addition should be only 30% if the age of the 22 (SCCH-8) M.V.C.No.5743/2013 deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years.

24. In the instant case the PW1 being the wife of the deceased in her evidence has clearly stated that her husband was born on 17-02-1970. Ex.P33 is the Aadhaar card relating to the deceased reflects that the deceased was born in the year 1970. So, the admission of the PW1 and the age as shown in the Ex.P33 are taken into consideration as on the date of the alleged accident, the deceased was aged about 43 years. So, his age comes within 50 years as per the decision relied by the learned counsel for the petitioners, the addition should be only 30% to be added to the actual monthly salary of the deceased. So, this court drawn its attention on the decision of the Hon'ble Supreme Court reported in 2013 ACJ 1403 in between Rajesh and others vs. Rajbir Singh and others reads like thus;

Quantum - Fatal accident - Principles of assessment - Future prospects - Whether formula for increase of income for future prospects adopted for persons with permanent jobs in Sarla Verma's case, 2009 ACJ 1298 (SC), may also be applied to persons who were self-employed or were engaged on fixed wages - Held: yes; 50 per cent of actual income (after deduction of tax) for persons below 40 years; 30 per cent for age group of 40 to 50 23 (SCCH-8) M.V.C.No.5743/2013 years; 15 per cent for age group of 50 to 60 years; but no addition thereafter.

25. On careful perusal of the above said decision, in the said decision their lordship held that 50% of actual income for person below 40 years and 30% for the age group of 40 to 50 years and 15% for the age group of 50 to 60 years, but no addition thereafter. So, by virtue of the decision relied by the learned counsel for the petitioners 30% is to be added towards future prospects of the deceased. So, if 30% of the future prospects is taken into consideration by virtue of the above said decisions it comes to Rs.49,870/- + 30% = Rs.64,831/-. Then annual income comes to Rs.7,77,972/-.

26. So, by virtue of the admission of the PW1 and as per Ex.P33 as on the date of the alleged accident, the deceased was aged about 43 years. So, the deceased age is taken into consideration as 43 years as on the date of the alleged accident. 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 defendant family members is 2 to 3 should be 1/3rd has to be deducted towards personal and living expenses of the deceased. So, the personal and living expenses of the deceased should be deducted 1/3rd out of the yearly income of Rs.7,77,972/- 24 (SCCH-8) M.V.C.No.5743/2013 it comes to Rs.5,18,648/-. As per Sarlaverma Vs. Delhi Transportation Corporation Ltd., the multiplier applicable to the deceased is 14. So $Rs.5,18,648 \times 14 = Rs.72,61,072/-$ towards loss of dependency. So the petitioner No.1 and 2 are entitled for the said amount towards loss of dependency.

27. The learned counsel for the petitioners while canvassing his arguments has submitted that the concept of non pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world, more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss. So, it is just and necessary to award atleast Rs.1,00,000/- towards loss of consortium, as the petitioner No.1 being the wife of the deceased has lost her beloved husband in a tender age and the said counsel has submitted that the petitioner No.2 is none other than the son of the deceased has lost the care taker and guider for minor children. So atleast to 25 (SCCH-8) M.V.C.No.5743/2013 grant Rs.1,00,000/- under the head of loss of care taker and guidance for the minor children and drawn the court attention on the decision reported in 2013 ACJ 1403 in between Rajesh and others vs. Rajbir Singh and others reads like thus;

Quantum - fatal injuries deceased aged 33, clerk in government school, drawing Rs.9,520 p.m., - Claimants: widow, 3 minor children and mother - Tribunal awarded Rs.8,96,500 which was enhanced to Rs.10,17,000 in appeal - Apex Court added 50 per cent of income towards future prospects, assessed income at Rs.14,280 p.m., deducted 1/4th for personal expenses of the deceased, adopted multiplier of 16 and allowed Rs.20,56,320 plus Rs.1,00,000 for loss of consortium, Rs.1,00,000 for loss of care and guidance for minor children and Rs.25,000 for funeral expenses - Award of Rs.10,17,000 by High Court enhanced to Rs.22,81,320.

28. On careful perusal of the above said decision, in the said decision their lordship held that consortium is the right of spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. So atleast to award Rs.1,00,000/- under the head of loss of consortium and their lordship were also held that the minor children has lost care and guidance. So, it is just and necessary to grant atleast Rs.1,00,000/- under the head of loss of care and guidance for 26 (SCCH-8) M.V.C.No.5743/2013 minor children. So considering the age of the first petitioner, it is just and necessary to grant Rs.1,00,000/- under the head of loss of consortium and Rs.1,00,000/- is granted under the head of care and guidance, loss of love and affection of the petitioners No.1 and 2, by virtue of the above said decision relied by the petitioners.

29. It is an admitted fact the petitioner No.3 and 4 are not the financial dependents of the deceased. The learned counsel for the petitioner while canvassing his arguments has submitted the third and fourth petitioners are the parents of the deceased and they lost the associate of the family and the said counsel has drawn the court attention on the judgment of the Madras High Court passed in C.M.A. No.1185/2006 in between the Branch Manager, United India Insurance Company Limited, Dharapuram vs. Mrs. Kaaliathaal and others. On careful perusal of the above said judgment, in the said judgment the married daughters were filed the claim petition for seeking compensation for the death of their mother. The Tribunal awarded the compensation, though the insurance company has taken up the contention that the married daughters are not the financial dependents. So, he has filed the appeal before the Hon'ble High Court and the Hon'ble High Court dismissed the appeal filed by

the insurance company and held that separate living does not deprive 27 (SCCH-8) M.V.C.No.5743/2013 them of their right to claim compensation as legal representative to the loss of estate.

30. In the instant case the petitioner No.3 and 4 are none other than the father and mother of the deceased. So, they lost the loss of estate, loss of love and affection and care taker during their old age. So, the principles laid down in the above said decision is applicable to the case on hand. Thus, this court drawn its attention on the decision reported in 2014 STPL (Web) 340 SC in between Anjani Singh and others vs. Salauddin and others. On careful perusal of the above said decision, in the said decision wife, sons and father of the deceased were filed the claim petition for seeking compensation and the Tribunal awarded the compensation of Rs.2,49,600/- So, the claimants were filed the appeal before the Hon'ble High Court of Punjab and Haryana and Hon'ble High Court enhanced compensation of Rs.1,20,600/- aggrieved by the said judgment, the claimants were filed the appeal before the Hon'ble Supreme Court, Hon'ble Supreme Court awarded compensation of Rs.11,20,528/- In the said judgment their lordship awarded Rs.1,00,000/- towards loss of love and affection of the children and the parents.

31. In the instant case admittedly in view of the admission of the PW2, though the petitioner Nos.3 and 4 are not the financial dependents, but they lost their son, if the deceased is alive he 28 (SCCH-8) M.V.C.No.5743/2013 would have contributed something out of his income to their parents as it is the obligation being the son. So, if the just compensation of Rs.1,00,000/- each is granted as loss of estate, love and affection and care taker during their old age, it will meet the ends of justice. So, Rs.1,00,000/- each is awarded to the petitioner No.3 and 4 under the head of loss of estate, love and affection and care taker during their old age. As the principles laid down in the above said decision is directly applicable to the case on hand.

32. It is an admitted fact that the accident was occurred within the jurisdiction of Tamil Nadu and they brought the dead body from Hosur to their house to perform funeral and obsequies. So, it is just and necessary to grant just compensation of Rs.30,000/- under the head of transportation of dead body and funeral expenses, it will meet the ends of just. So, Rs.30,000/- is granted under the head of transportation of dead body and funeral expenses.

33. The PW2 being the father in law of the first petitioner in his evidence itself has stated that the entire compensation amount to be awarded by this Tribunal may be disbursed in favour of the petitioner No.1 and 2 and they have no objection for release of the entire compensation amount to the petitioner No.1 and 2. 29 (SCCH-8) M.V.C.No.5743/2013

34. Thus, the total award stands as follows:

- 1.Loss of dependency Rs. 72,61,072-00
- 2.Loss of consortium Rs. 1,00,000-00
- 3.Loss of love and affection Rs. 1,00,000-00

4.Loss of love and affection and Rs. 2,00,000-00 care taker during their old age

5.Transportation of dead body and Rs. 30,000-00 funeral expenses Total Rs.
76,91,072-00

35. The respondent No.1 being the insurer in its written statement has admitted about the issuance of the policy in respect of the offending vehicle in favour of the second respondent. Ex.R1 is the policy copy clearly reflects that the policy was valid from 11- 01-2013 to 10-01-2014. The accident was occurred on 17-05- 2013. So one thing is clear that as on the date of the alleged accident the policy was in existence.

36. The respondent No.1 has taken up the contention that as on the date of the alleged accident the offending vehicle driver was not holding valid and effective driving licence, but the reasons best known to the respondent No.1 has not placed any materials nor examined any authority to show that as on the date of the alleged accident the offending vehicle driver was not holding valid and effective driving licence and moreover Ex.P1 is the charge sheet filed by the I.O., nowhere discloses that the offending vehicle driver was not holding valid and effective driving licence. If at all the 30 (SCCH-8) M.V.C.No.5743/2013 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 the offending vehicle 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 offending vehicle driver was holding valid and effective driving licence. So one thing is clear that as on the date of the alleged accident the policy was in existence and the offending vehicle driver was holding valid and effective driving licence.

37. The learned counsel for the petitioners while canvassing his arguments has requested the court to grant 9% interest on compensation and drawn the court attention on the decision reported in (2014) 1 SCC 244 in between Kishan Gopal and another vs. Lala and others. On careful perusal of the above said decision, in the said decision their lordship held that the insurance company has been contesting the claim of the appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the insurance company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount 31 (SCCH-8) M.V.C.No.5743/2013 could have earned five times more than what is awarded today. Thereby, interest at the rate of 9% per annum is awarded.

38. In the instant case, the petitioners have filed the instant claim petition in the year 2013. The respondent has taken sufficient time to file written statement and to lead evidence, thus there is a delay on the part of the respondent side in disposal of the instant claim petition. But, the facts and circumstances of the present case and the decision which relied by the learned counsel for the petitioners are different. Therefore, this Court drawn its attention on the decision of the Hon'ble Supreme Court reported in 2012 (5) KAR LJ 292 in between Laxman @ Laxman Mourya vs. Divisional Manager, Oriental Insurance Co. Ltd., and another reads like thus;

(F) Motor Vehicles Act, 1988:- Sec. 171 Civil Procedure Code 1908, Sec.34 Interest - Award of - Discretion of tribunal/court to prescribe rate of - Simple interest at the rate of 8% from the date of filing of petition till date of realisation on total amount of Rs.8,37,640/- awarded as compensation comprising of pecuniary and non pecuniary damage - Held is reasonable.

39. On careful perusal of the above said decision, in the said decision the Tribunal has awarded the interest at the rate of 8% per annum from the date of the petition till its realization. Though, 32 (SCCH-8) M.V.C.No.5743/2013 the matter went up to the Hon'ble Supreme Court and the Hon'ble Supreme Court held that the interest awarded at the rate of 8% per annum from the date of the petition till its realization is reasonable. So, considering the decision of the Hon'ble Supreme Court as stated above and the present rate of simple interest, it is just and necessary to consider simple interest at the rate of 8% per annum from the date of the petition till its realization, it will meet the ends of justice.

40. The petitioners have filed the instant claim petition against the insurer, owner and driver of the offending vehicle, but the respondent No.3 who is the servant under the second respondent. So, vicarious liability is on the second respondent. Thus, the third respondent is not liable to pay any compensation to the petitioners. So, the claim petition is deserves for dismissal against the third respondent. Therefore, the respondent No.1 and 2 being the insurer and owner are jointly and severally liable to pay the compensation. But in view of the valid insurance policy the respondent No.1 alone is liable to pay the compensation to the petitioners with interest at 8% 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 (SCCH-8) M.V.C.No.5743/2013

41. 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 No.3 is hereby dismissed.

The petition filed by the petitioners under section 166 of M.V. Act as against the respondent No.1 and 2 is partly allowed, with costs. The petitioners are entitled for compensation of Rs. 76,91,072/- together with interest at the rate of 8% p.a. from the date of the claim petition till its realisation.

The respondent No.1 and 2 are jointly and severally liable to pay the compensation. In view of the valid insurance policy the respondent No.1 being the insurer shall pay the compensation amount with interest at the rate of 8% 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, 60% is allotted to the share of petitioner No.1 and 40% is allotted to the share of petitioner No.2 by way of

apportionment of compensation amount.

Out of the share amount of petitioner No.1, 40% of the amount shall be deposited in her name in any nationalised or 34 (SCCH-8) M.V.C.No.5743/2013 scheduled bank of her choice for a period of three years and the remaining 60% shall be released to her by means of a/c payee cheque on proper identification. However, she is at liberty to withdraw the periodical interest accrued on her 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. 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 4th day of June 2015.

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

ANNEXURE List of the witnesses examined on behalf of petitioners:

PW1	Smt. S. Sunila Kumari	
35	(SCCH-8)	M.V.C.No.5743/2013

PW2	Sri S. Bhaskar Rao
PW3	Dr. C.M. Ramesh

List of the documents exhibited on behalf of petitioners:

Ex.P1	True copy of Charge Sheet
Ex.P1(a)	English translation of Charge Sheet
Ex.P2	True copy of Spot Sketch
Ex.P2(a)	English translation of Spot Sketch
Ex.P3	True copy of Spot Mahazar
Ex.P3(a)	English translation of Spot Mahazar
Ex.P4	True copy of statement of Kuppuswamy
Ex.P4(a)	English translation of statement of Kuppuswamy
Ex.P5	True copy of statement of Murali
Ex.P5(a)	English translation of statement of Murali
Ex.P6	True copy of Inquest report

Ex.P6(a) English translation of Inquest report
Ex.P7 to True copy of statements of Dr. Bhaskar,
Ex.P20 Sudarshan, Anil Kumar, Dr. Vijayakumar,

Vijayakumar, Harish, Shami Kumar, Mahadev, Manikanth, Srinivas, Ashok Kumar, Silamarsan, Mahesh and Chandan Ex.P7(a) English translation of statements of Dr. Bhaskar, to Sudarshan, Anil Kumar, Dr. Vijayakumar, Ex.P20(a) Vijayakumar, Harish, Shami Kumar, Mahadev, Manikanth, Srinivas, Ashok Kumar, Silamarsan, Mahesh and Chandan Ex.P21 Salary certificate Ex.P22 True copy of Post mortem report Ex.P23 True copy of Complaint Ex.P24 True copy of FIR 36 (SCCH-8) M.V.C.No.5743/2013 Ex.P25 Notarised attested true copy of Aadhaar card Ex.P26 Notarised attested true copy Birth certificate Ex.P27 Notarised attested true copy of Aadhaar card Ex.P28 Authorization letter Ex.P29 Document relating to Sapthagiri Institute of Medical Science and Research Centre Ex.P30 Appointment order Ex.P31 Duty report Ex.P32 Pay slip Ex.P33 Notarised attested true copy of Aadhaar card List of the witnesses examined on behalf of respondents:

RW1 Sri H.B. Guruprasad List of the documents marked on behalf of respondents:

Ex.R1 True copy of policy

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