

HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A.Nos. 240 AND 3163 OF 2007

COMMON JUDGMENT: (per HON'BLE SRI JUSTICE N. BALAYOGI)

1. These appeals can conveniently be disposed of by this common judgment inasmuch as they arise out of one and the same accident.

2. These appeals are preferred aggrieved by the Award and decree dated 26.10.2006 in MVOP.No.207 of 2002 passed by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Ongole, Prakasam District.

3. The claimants preferred MACMA No. 240 of 2007 being aggrieved by inadequacy or otherwise of the compensation awarded by the Tribunal, whereas the United India Insurance Company Limited preferred M.A.C.M.A.No.3163 of 2007 being aggrieved by the quantum of compensation.

4. **MACMA No. 240 OF 2007:**

The appellants/Claimants contended that the opinion of the Tribunal that the appellants/claimants are not the dependants on the deceased and so they are not entitled to loss of dependency and future loss of earnings and that their daughter do not contribute any thing to earning parents is incorrect and is without any basis. Further contended that the Tribunal ought to have granted Rs.2.00 lakhs for

intermediate course and Rs.25.00 lakhs for MBBS course spent by them for the deceased which amounts the deceased should have contributed to their estate had she been alive. Further contended that the Tribunal failed to see that daughters have equal rights and duties on par with sons and the contrary view is obsolete and contrary to the existing statutes.

5. MACMA.No.3163 OF 2007:

The appellant/Insurance Company contended that the Tribunal grossly erred in holding that the Insurance Company is also liable to pay the compensation with interest at 7.5% per annum and proportionate costs. The Tribunal having observed that the accident took place due to negligence on the part of the third respondent/KSRTC and charge sheet is filed against the driver of KSRTC bus, erred in holding that both the drivers of the KSRTC bus and the Santro car contributed to the accident and fastened the liability equally at 50% each against Respondents 3 and 4. Further contended that the Tribunal having observed that the deceased would contribute money to Respondents 1 and 2/claimants and they are not dependants on the deceased grossly erred in awarding lumpsum amount of Rs.10,00,000/- towards loss caused to the estate of the deceased without specifying the manner in which it (Tribunal) arrived at the figure. The Tribunal further erred in awarding Rs.5,00,000/- towards loss of affection.

6. The case of the appellants in MACMA.No.240 of 2007 is as follows: The appellants/claimants are the parents of the

deceased. P.W.1/first appellant/first claimant was running an Eye Hospital in the name and style of Sri Venkateswara Eye Hospital, near RTC Bus Stand, Ongole. The second appellant/second claimant being a post-graduate was actively assisting her husband in maintaining hospital.

7. The deceased was born on 9.6.1979. The appellants/claimants spent Rs.50,000/- per year for her studies in intermediate course. For her MBBS course, the appellants/claimants paid capitation fee of Rs.17,00,000/- and paid Rs.96,000/- per year towards college fee, tuition fee, hostel charges, clothing etc,. She was getting an allowance of Rs.1,500/- per month as house surgeon. She had high ambition to become one of the eminent doctors in Ophthalmology .

8. While so, the deceased started from Chennai on 10.12.2001 and reached Bangalore on the same night. The son of the second respondent received her at Bangalore Railway Station and all of them were going in Santro car of the second respondent on the National Highway No.4 and when the said car reached near H.Kalpanahalli in Devanagaram Taluk in Karnataka State at about 4.30 AM, the bus bearing No.KA.29/F 484 belonging to Karnataka State Road Transport Corporation came in opposite direction, with high speed, in rash and negligent manner, due to which, there was a head on collision and the santro car rammed into the bus.

9. In the said accident, the deceased-Smitha received head injury, her skull was fractured into pieces, brain matter

came out and she died on the spot. A case in Crime No. 373 of 2001 was registered on the file of SHO, Devanagore Police Station. Had Smitha-deceased been alive, she would have earned Rs.15 to 20 lakhs per annum. The appellants/claimants were having high hopes about the future of the deceased and they were expecting to depend upon the deceased during their old age. On account of the accident and sudden death of their daughter, their ambitions and hopes have been crumbled down.

10. The Santro car of the second respondent was insured with the third respondent. The first respondent-KSRTC is the owner of the bus bearing No.KA 29/F 484 and they are jointly and severally liable to pay the compensation to the appellants/claimants.

11. Before the Tribunal, the first respondent-KSRTC filed written statement contending that on 10.12.2001 the bus bearing No. KA.29/F 484 was proceeding slowly and cautiously on the left side of the road by applying horn, observing the vehicular traffic with due care and caution and when it reached near H.Kalpanahalli in Devanagaram Taluk, the Santro car bearing No.AP 16 AC 1778 came in opposite direction, with high speed, in rash and negligent manner without observing the vehicular traffic and hit the bus of KSRTC. The accident occurred purely due to the rash and negligent act of the person driving the Santro car and there was no fault on the part of the driver of the first respondent-KSRTC bus and hence the first respondent is not liable to pay any compensation to the appellants/claimants. The driver of the car was in sleeping mood and he could not control the car at the time of the accident.

Consequently he caused the accident. The claim is very excessive and exorbitant and is without any basis. The appellants/claimants are not entitled to any compensation.

12. The second respondent/owner of the Santro car filed counter affidavit contending that the accident did not take place due to the rash and negligent act of the driver of the car; in fact, the accident took place due to the rash and negligent driving of the driver of the bus. The first respondent-KSRTC alone is liable to pay the compensation. The police registered the case and after investigation, filed charge sheet against the driver of the bus belonging to first respondent-KSRTC and therefore the first respondent alone is liable to pay the compensation. It was further contended that the second respondent is not a necessary and proper party to the proceedings. The car was insured with the third respondent and policy is a comprehensive policy. Therefore the second respondent is not liable to pay any compensation. The third respondent has to make good the same. The driver of the car was having valid driving licence and the policy was in force. Therefore the second respondent is not liable to pay any compensation and it is third respondent who is alone liable.

13. The third respondent/Insurance Company filed written statement contending that the accident occurred due to the rash and negligent driving of the driver of KSRTC bus. The bus came with high speed, in rash and negligent manner and hit the car; due to the impact, the car was damaged heavily and Smitha-deceased died on the spot and other two injured passengers were taken to the

hospital, whereat, one of the injured died. FIR was registered based on the report given by one Ramesh who witnessed the accident. The accident occurred due to the rash and negligent driving of the driver of the bus belonging to KSRTC. Third respondent is not a proper and necessary party.

14. It was further contended that the compensation has to be arrived at basing on the age and income of the deceased and not on the basis of status or the amounts spent on the deceased to educate her. The appellants/claimants did not sustain any pecuniary loss due to the death of the deceased, who was doing house surgeon with the stipend of Rs.1,500/- per month at the time of accident. Hence the compensation has to be calculated on the above aspects only. The claim is excessive and exorbitant.

15. The third respondent/Insurance Company filed additional written statement contending that the driver of the car was not having valid driving licence and so it is only the first respondent who has to pay the compensation to the claimants. Generally the conventional figures of Rs.10,000/- to Rs.15,000/- is being granted and not in lakhs of rupees. There is no loss of estate to the deceased due to her death and therefore the claim is unsustainable.

16. The third respondent further contended that the appellants/claimants are not dependants of the deceased and therefore they are not entitled for Rs.20.00 lakhs towards loss of dependency. Since the deceased was not earning, the claim towards future loss cannot be maintainable. The amount of

Rs.50,000/- claimed towards transport charges cannot be granted.

The claim of Rs.5.00 lakhs towards loss of business is not maintainable.

17. Basing on the rival contentions, the Tribunal framed the following issues for trial:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the vehicle bus bearing No.KA 29F 484 of KSRTC and the car bearing No.AP 16/AC 1778 or both ?
2. Whether the petitioners are entitled to claim any compensation ? If so, to what extent and from whom?
3. To what relief ?

18. In order to prove respective claims, the appellants/claimants examined P.Ws.1 to 5 and got marked Exs.A.1 to A.29 on their behalf. On behalf of respondents, R.W.1 was examined and Exs.B.1 to B.3 were got marked.

19. POINT:

Now the point that arises for determination is:

“ whether the findings, conclusions and Award of the Tribunal is legal, valid or suffer from any legal infirmities warranting interference.”

20. For the sake of convenience and better understanding, it is better to refer the parties as arrayed in MVOP.

21. Learned Counsel for the Insurance Company/third respondent in MVOP contended that the accident occurred due to

rash and negligent driving of the driver of the KSRTC bus bearing No. KA.29/F 484 and hence the Insurance company is not liable and that it is not a proper and necessary party. Further contended that the driver of the car bearing AP 16 AC 1778 was not having valid and effective driving licence as on the date of accident and therefore the second respondent-owner alone is liable to pay the compensation. Further contended that the claimants are not dependants of the deceased.

22. Per contra, learned Counsel for the claimants contended that they are the parents and dependants on the income of the deceased at their old age; that the accident occurred due to rash and negligent driving of the driver of the KSRTC bus and that there was no head on collusion between the KSRTC bus and Santro car of the second respondent-Owner.

23. The contention of the second respondent-Owner of the Santro car bearing No. AP 16 AC 1778 is that the car was insured with the third respondent-Insurance Company and therefore if there is any liability, it is for the third respondent to pay. Further contended that there was no negligence on the part of the driver of the said car.

24. P.W.1 is none other than the husband of second claimant and father of the deceased-Smitha. He is not the direct eye witness to the accident. P.W.2, Dr. P.Laskhmana Rao, who is an Ophthalmologist and practicing Doctor in the name and style of

Modern Eye Hospital and Research Centre, Poga Thopta, Nellore.

PW.2 is not the eye witness to the accident.

25. Coming to the evidence of P.W.3—Damacherla Anjaneyulu who spoke about the expenditure incurred towards admission of MBBS course of his grand son and the deceased Smitha. He deposed that he paid Rs.15.00 lakhs as donation for admission of his grand son in the college and that the father of the deceased also paid Rs.17.00 lakhs in the college as donation for the admission of his deceased daughter. From his evidence, it is clear that he is not the eye witness to the accident.

26. P.W.4 was a commission agent and doing business in cotton. He came to know over telephone from one Sambasivarao, a Chartered Accountant that one of his relatives sustained injuries in the motor vehicle accident near H.Kapanahalli and requested him to go and verify the facts. The accident occurred 4 or 5 hours prior to the time of reaching the place of accident. Accordingly he is also not the eye witness to the accident. Therefore there is only evidence of PW.5-Ramesh and R.W.1, the driver of the offending KSRTC bus at the time of accident.

27. The consistent evidence of P.W.5 is that he was working as Carpenter. The accident occurred about five years back from the date of his deposition. The accident occurred at about 5.00 AM near his village H.Kalpanahalli on National Highway No.4, near Government Primary and Middle School. He was residing in the house at a distance of 200 feet from the place of accident. At the

time of accident, he was going to attend the calls of nature and witnessed the accident from a distance of 50 feet. He observed the car was proceeding from Bangalore towards Devanagiri and meanwhile KSRTC bus was coming from Devanagiri towards Bangalore side. At that time, the car was proceeding on the left side of the road and the driver of the KSRTC was driving the bus at high speed on wrong side and dashed against the car. After hitting the car, the bus further proceeded about 100 feet and touching the branches of tree, stopped there. The car was damaged and was stopped at the place of accident itself and it was trembled. The police visited the scene of accident at about 6.30 or 7.00AM and that he did not present any report to the police. The police examined him and recorded his statement at the place of accident, wherein he signed and identified his signature. Ex.A.2 is his statement recorded by the Police.

28. A perusal of Ex.A.2 goes to suggest that P.W.5 specifically asserted in his statement recorded by the police that on 11.12.2001 at about 4.14 AM himself and one Ashwini Gouda were at the bus stop at H.Kalpanahalli rural circle and observed the Maruthi/Santro car which was on the way from Bangalore to Devangiri side and at the same time, from Dawangiri to Bangalore side, one KSRTC bus came recklessly, in rash and negligent manner and hit the Santro car. The bus driver carelessly drove the bus and hit the car bearing AP 16AC 1778. The car was damaged at the accident spot and it was trembled whereas after hitting the car, the KSRTC bus bearing No.KA.29F 484 went 100 feet ahead and

touching the branches of tree, it was stopped there. The Dawangiri rural police based on the statement of P.W.5 registered a case in Crime No. 373 of 2001 under Ex.A.1 for the offences punishable under Sections 279, 337, 304(A) IPC against the driver of offending KSRTC bus bearing No. KA.29F.484.

29. PW.5 was cross examined at length. He correctly stated the directions at the accident spot that Devangiri is towards North, Bangalore is towards South, and width of back tar road is about 25 feet at the place of accident. At the time of accident, he was proceeding towards south from his house to attend the calls of nature and from there he has to cross the road to go to school. There are six houses in between his house and the road. NH.4 is a very traffic road. The bus stop was near the place of accident. There were tamarind trees on either side of the road. The moment he heard the sound, he turned his face and witnesses the accident. He further deposed that the front portion of the bus was damaged to some extent. The only suggestion put to him was that he did not witness the accident.

30. Now coming to the evidence of RW.1. His evidence is that on 11.12.2001 at about 4.15 AM to 5.00 AM the accident occurred at Kalpanahalli. His evidence is corroborated by the evidence of P.W.5 and supported by Exs.A1-FIR and Ex.A.2-statement of PW.5 recorded by Police. It is therefore clear that the accident occurred in between 4.15 AM and 5.00 AM of 11.12.2001

involving the KSRTC bus bearing No. KA.29F 484 and Santro car bearing No.AP 16AC 1778.

31. Further the evidence of RW.1 is that at the time of accident, he was driving the bus on the left side of the road which is NH.4. At that time, he observed a car was coming in the opposite direction at high speed i.e. 100 KMs per hour and the car dashed against the bus. He swerved the bus to the right side and halted after the accident. The bus was on the left side of the road at the time of accident and after hitting, it was proceeded towards right side. The accident occurred due to the negligence and rash driving of the driver of the car. Though he submitted a report, the police did not take it and on the other hand, the police filed a case against him. However, the case ended in acquittal as per the judgment of Criminal Court vide Ex.B.1 dated 3.11.2003 and Ex.B.2, which is the translated copy of Ex.B.1. R.W.1 denied the suggestion that at the time of accident, he was proceeding on wrong side of the road, with high speed and that car was not coming at high speed at 100 KMs per hour. RW.1 admitted that there are no mechanical defects to the bus at the time of accident. During the cross examination, RW.1 admitted that he saw the car from a short distance and it is a straight road at the accident spot. During the cross examination he stated that the bus had been suddenly over taken by a lorry and came to wrong side. The bus was stopped at a distance of 75 feet from the place of accident whereas the car was stopped at the accident spot. The bus was damaged in the accident and the damages were noted in the Panchanama.

32. Ex.A.4 is the panchanama recorded at the accident spot, wherein it is specifically mentioned that the accident spot is on NH.4 in front of H.Kalpana Halli bus stop. NH.4 road is running from East to West direction which was a damber road. The accident is in front of Kalpana Halli rural bus stand. It was noted therein that *“the car bearing No.AP 16 AC 1778 was damaged; front show glasses damaged; both door glasses damaged; glass pieces dropped on the road here and there; back side found Hyundai letters on the car; front side number plate damaged; engine damaged; steering damaged. From there, at 100 feets distance, East: dambur road, South: Kutcha road, North: one bus is there. The bus bumper was damaged, its head lights, indicators damaged; its back side mudguard damaged; its front wheel damaged, its upper floor top damaged and that the bus was facing to south. Bus number front and back side having plates with No.KA 29 F 484. The occurrence place is situated in 4 dimensions–East-West: NH.Road No.4, South: Bus stop, North:Kallajana Banavyya Society.”*

33. Ex.A.5/A.26 is the investigation report wherein it was specifically mentioned that all the injured were in wet pool of blood in the heavy hit of the accident. A case in Crime No. 373 of 2001 was registered for the offences punishable under Sections 279, 337 and 304(A) IPC for taking legal action against the bus driver who has caused the accident.

34. Ex.A.6 is the copy of Motor Vehicle Inspector who inspected offending KSRTC bus bearing No. KA.29F 484 and

Santro Car bearing No. AP 16 AC 1778. He noted in the report that *“the KSRTC bus body was pressed in side due to impact, right side head light was broken due to impact, right side front indicator broken due to impact, steering gear box damaged and front bumper pressed inside. Whereas in respect of Santro car, he noted that front portion of the body damaged, wind screen glass brokened, front bumper damaged, engine damaged, radiator damaged, chain is twisted, four doors damaged, seats damaged, front right side rim and wheel twisted, body damaged and head light assembly damaged due to impact.”* He opined that the accident was not due to any mechanical defect of the bus and santro car.

35. The Tribunal having discussed the evidence of PW.5, R.W.1 and documentary evidence Exs. A.1 to A.5 came to the conclusion that the accident occurred due to the contributory negligence of both the drivers of KSRTC bus and Santro car in which the deceased was travelling. From the documentary evidence Exs. A.1 to A.5, it is clear that the bus came in high speed and in rash and negligent manner and hit the car. It is also the admission of RW.1 that the top of the bus was damaged. It is evident from the evidence of PW.5 and scene of observance report—Ex.A.5 that there are Tamarind trees on either side of the road. After hitting the car, the KSRTC bus proceeded 100 feet ahead and touching the branches of the tree, it stopped there. That is why, there was damage to the bus. It is also clear from the evidence of RW.1 that the bus was on the right side of the road whereas the car was stationed at the accident spot which clearly shows that the KSRTC bus went extreme wrong

side of its right side and hit the car bearing No. AP 16 AC 1778 and caused the accident.

The initial report, FIR at Ex.A.1 and statement of PW.5 recorded by the police at Ex.A.2 clearly suggest that the accident occurred due to rash and negligent driving of the driver of the KSRTC bus. The report of the Motor Vehicle Inspector, Ex.A.6/A.29 clearly reveals that the accident was not due to the mechanical defect of both the vehicles. R.W.1 admits that the accident was not due to any mechanical defect of the bus, which clinches the issue that the accident was due to the rash and negligent driving of the driver of the KSRTC bus.

It is not known as to how the Tribunal came to the conclusion that the accident was due to the negligence of drivers of both the vehicles. When particularly the driver of KSRTC bus stated that he swerved the bus to right side, it is clear that the right side of the bus on the road is left side of the car whereas the car was stationed at the same place even after the accident. Therefore the finding of the Tribunal that the accident was due to the contributory negligence of drivers of both the KSRTC bus and Santro car is without any convincing rebuttal evidence and more so, when RW.1 admits that the KSRTC bus after the hitting the car was went 100 feet ahead and touching the branches of the trees, it was stopped and the bus was damaged. It is thus clear that after hitting the car, the bus went 100 feet ahead and due to touching of branches of trees, it was stopped. The Panchanama Ex.A.4 also suggests that the there was a bus on the right side of the road at 75 feet from the accident spot whereas the car was stopped at the accident spot which thus fortified

that the accident was due to the rash and negligent driving of the driver of the KSRTC bus bearing No.KA 29 F 484 and there is no negligence on the part of the driver of the Santro car bearing No.AP 16 AC 1778.

In view thereof, the finding of the Tribunal that both the drivers of KSRTC bus and Santro car contributed the negligence for the accident is illegal and accordingly set aside by holding that the accident was purely due to rash and negligent driving of the driver of the KSRTC bus bearing No. KA 29F 484.

36. With regard to the assessment of compensation, the claimants have to prove the age, occupation and income of the deceased at the time of accident/death. No doubt the claimants being the parents, they are the legal heirs of the deceased Smitha. During their old age, certainly they would depend on their deceased daughter Smitha who died in the motor vehicle accident. The same is the settled legal proposition of law.

37. P.W.1/first claimant is the father and second claimant is the mother of the deceased, Smitha. P.W.1 was aged 53 years and as per the averments, second claimant/mother was aged 49 years as on the date of the accident. Father is a reputed doctor in Ongole while mother is a post-graduate. It is clear from the evidence of P.W.1 that the deceased daughter Smitha was 22 years as on the date of her death and was doing House Surgeon. On the date of accident, she was going to Belgum to enquire about her further study in Ophthalmology. From the evidence of P.W.2, it is evident

that the deceased Smitha, asked her father P.W.1 about the good institution to prosecute Post graduation in Ophthalmology as he did MS (Ophthalmology) in Gulbarga, Karnataka State while his father-in-law, Dr. H.Sriranghanath was working as Head of the Department of Ophthalmology at Belgum. P.W.1 suggested to go to Belgam and consult his father-in-law. P.W.1 also informed the same to his father-in-law and requested him to give guidance to her. After three or four months, the deceased Smitha informed him (PW.1) that she was going to Belgam within a week, on which, P.W.1 informed that she can contact him after reaching Belgam. Within four or five days, he was informed by his cousin who was studying MBBS at Davanagiri that Smitha died in the accident while proceeding to Belgam and he informed the same to PW.1 and also to his father-in-law when he enquired him about Smitha. During cross examination, he admitted that for admission in Post Graduation in M.S., the candidate must appear for the entrance examination and qualify for the admission. In case of Management quota, it is left to the discretion of the management. Accordingly the evidence of P.W.1 corroborates the evidence of P.W.2 and establish that as on the date of accident, the deceased and the second respondent started from Bangalore Railway station in Santro car to go Belgam to enquire about Post Graduation in Ophthalmology and while proceeding on NH.4, met with the accident at Kalpanahalli and died on the spot. This fact is supported by documentary evidence at Exs.A.1, A.2, A.4 to A.6 and A.26 apart from the evidence of PW.5.

38. PW.3 is Damacharla Anjaneyulu whose evidence is that he knows about P.W.1 and his family members. PW.1 is his family doctor. He knows the deceased Smitha. His grand son, namely, Sreemanarayana, S/o Venkata Krishna Rao was a doctor and he studied in Rama Chandra Medical College and Research Institute, Chennai. Smitha also studied in the same college. His grandson and Smita joined the college in one and the same time. He paid Rs.15.00 lakhs as donation for the admission in the college. P.W.1 also paid Rs.17.00 lakhs to the college for admission of his daughter, Smitha as donation. It was a reputed college, P.W.2 was a Minister in A.P. Government for two times as Endowment Minister and Marketing Minister. He also worked as Chairman for the Prakasam District Cooperative Central Bank, Ongole. During the cross examination, he stated that there is document showing that P.W.1 had paid Rs.17.00 lakhs as donation inasmuch as the institution would not give any receipt. The only suggestion is that P.W.1 did not pay any donation and he is speaking false.

39. Further the evidence of P.W.1 is that himself and his wife are income-tax assesses and he has paid income tax of Rs.52.00 to 60.00 lakhs. P.W.1 acquired properties in the name of deceased daughter and there were fixed deposits of Rs.5,00,000/- in her name in the Union Bank of India, Ongole. She was also doing business in Netra Opticals. Further the evidence of P.W.1 is that he had spent Rs.2.00 lakhs for her intermediate course in a corporate college. In general, even parents of students have been spending one or two lakhs per year for their children to prosecute intermediate

course. Private colleges generally collect lakhs of rupees while admitting in MBBS course.

40. The evidence of P.W.1 is that he being a propertied person and having a reputed hospital, spent Rs.2.00 lakhs for educating his daughter Smitha in Intermediate course and had paid Rs.17.00 lakhs as capitation fee for admission into MBBS course, apart from spending huge amount for college fee, hostel fee etc., to her. The various amounts spent by him (PW.1) for charitable purpose could be reflected from Ex.A.18 paper publications and donations paid in the name of his daughter Smitha.

41. The evidence of P.W.1 supported by Ex.A.8 goes to suggest that he (PW.1) has been paying income tax and running Venkateswara Eye Hospital. As per Ex.A.10, P.W.1 deposited Rs.5.00 lakhs in the name of his deceased daughter Smitha which was received by the second claimant after the death of the deceased. Further the evidence of P.W.1 would establish that after the death of Smitha, P.W.1 donated Rs.5.00 lakhs to Sri Satya Sai Dharmika Seva Samsthan on 23.12.2005 and also donated Rs.7,515/- to Shirdi Sai Cultural Mission, Ongole on 3.6.2000. Ex.A.10 is the pass book in the name of the deceased with Union Bank of India, Ongole which shows certain amounts in the name of Smitha. As per the evidence of P.W.1, after death of the deceased, he made donations of thousands of rupees as per Exs.A.11 and A.12. He also purchased property in the name of the deceased under Ex.A.13 and as per Ex.A.14, he created a trust in the memory of the deceased daughter.

42. Ex.A.17 discloses that P.W.1 has made donations in the name of the deceased Smitha. He was doing free service for patients having eye problems and also conducting free eye camps as per Ex.A.18, in the memory of his deceased daughter. Further the evidence of P.W.1 supported by Exs.A.20 and A.24 establish that he spent huge amount for educating the deceased both intermediate and also medical course.

43. The above referred documents and oral evidence of PW.1 would suggest that P.W.1 established a trust on 28.11.2003 in the name of Smitha known as Smitha Sriman Memorial Ideal Theorentric Chumine Academy, Ongole. Ex.A.15 is the certificate of Registration dated 4.8.1999 issued by the Commercial Tax Department in the name of the deceased for doing Netra Opticals business. P.W.1 admitted that business was started in the name of deceased i.e. Netra Opticals. Ex.A.6 also shows that there is a passport in the name of the deceased. Ex.A.18 newspaper clippings 15 in number and Ex.A.19 receipt for Rs.5,00,000/- given by the Secretary of Satya Sai Dharmika Seva Samsthan dated 23.12.2005. Ex.A.20 is the two receipts issued by the Principal, Vignan Cooperative Junior College, Guntur for Rs.50,000/- representing fee for her intermediate course. Ex.A.21 is the provisional certificate of the deceased for MBBS degree and Exs.A.22 is the certificate of provisional registration as Doctor issued by the Registrar, Tamilnadu Medical Council, Chennai. Ex.A.23 is the study certificate of the deceased relating to MBBS course issued by Dean of Faculty, Sri Ramachandra Medical College and Research Institute, Chennai.

Ex.A.24 is the fee particulars of MBBS course of the deceased totalling to Rs.1,57,300/-. Ex.A.25 is the stipend particulars during the internship of the deceased for the year 2001. The above facts clinchingly prove that P.W.1 is a well settled family, rich and gave donations after the death of his daughter and spent heavy amounts to get her daughter educated in MBBS Ophthalmology. Yet the clinching issue is whether P.W.1 father of the deceased has got capacity to spend huge money.

There is no evidence that the deceased was having any independent income. Generally the parents provide properties to their children. P.W.1 was running spectacles shop attached to the Eye Hospital by obtaining licence. However, the income derived there from cannot be attributed to the deceased. The above facts coupled with Exs.A.11 to A.24 clinches the issue that the claimants are so much affectionate towards the deceased and that P.W.1 has spend lakhs of rupees for her studies and even after her death, he is extending all sorts of service to the humanity. He gave thousands of rupees as donations and also conducting free health camps to serve the poor, which indicates that P.W.1 has charity to serve the human in the name of his deceased daughter.

44. Admittedly P.W.1 was running a reputed hospital and both claimants are income tax assesses. They spent lakhs of rupees for their daughter towards education and even after her death, they spent lakhs of rupees by way of donations. Though at present, the claimants are not dependants, but they are certainly dependants of their daughter at their old age.

45. The evidence of P.W.1 corroborating the evidence of P.Ws. 2 and 3 establishes that the deceased was expecting to compete Post Graduation in Ophthalmology and for the purpose of enquiring the studies, she went to Belgam. After completion of M.S. Ophthalmology, she intends to do research work to prevent cataract. So she has ambitions to become a great expert. However the first claimant did not file mark sheets of the deceased to establish that the deceased was brilliant in her academic carrier. They only filed Intermediate Certificate, MBBS Certificate which shows that she has completed her intermediate course and thereafter prosecuted MBBS. There is a suggestion to P.W.1 that the deceased was only an average student and that is why P.W. 1 did not file her marks sheets. Even though the deceased has good ambition, the claimants have to file documents to show that she was a clever student and that she could achieve such a goal.

46. The evidence of P.W.1 further clinches the issue that as he is a reputed doctor and his first daughter became a reputed doctor in Guntur, so also the deceased would become a reputed eye doctor. She would certainly become in life as Doctor in view of capacity and background. P.W.1 was a rich person and reputed doctor. The claimants have great love and affection towards the deceased which is clear from conducting free medical camps and paying donations in the name of the deceased.

47. It is pertinent to note, during the old age, certainly parents would depend on their children. So long as P.W.1 and his wife continue the hospital, they need not depend on their daughter.

Admittedly the deceased is an unmarried girl, aged 22 years and completed MBBS and doing House Surgeon. Therefore the finding of the Tribunal that as the claimants are very rich, contributing of money on the claimants by the deceased at this stage or for some years may not arise so long as the claimants are spending money on the deceased and therefore the claimants are not dependants on the deceased. Such finding and conclusion of the Tribunal is erroneous and accordingly liable to be set aside. As discussed supra, it can certainly be said that the claimants are dependents of their daughter at their old age. Though the claimants are not dependants so long as they are running their hospital, but as they are legal heirs of the deceased, they are entitled for compensation. It is settled legal position that though the parents are not dependants, but as they are legal heirs, they are entitled for the compensation.

48. It is on record that the deceased was earning Rs.1,500/- per month by way of stipend as on the date of her death. It is also on record that the deceased was aged 22 years as on the date of accident/death. The evidence of P.W.1 corroborating P.Ws.2 and 3 would establish that P.W.1 had paid Rs.17.00 lakhs as capitation fee for admission of the deceased Smitha into MBBS Course apart from spending huge amount for college fee, hostel fee etc., But the fact remains that for determination of compensation

under Motor Vehicles Act, the main requisite particulars are, age, occupation and income of the deceased as on the date of accident. Further, stipend can not be termed as annual income of the deceased and on its basis the compensation cannot be fairly assessed. The amounts spent by P.Ws. 1 and 2/claimants on the deceased during her study of intermediate, MBBS will not be counted and they cannot help to assess the compensation. As already discussed, the deceased Smitha was 22 years and she was an unmarried girl.

49. In the cases of *DEEPAL GIRISHBHAI SONI & OTHERS* Vs. *UNITED INDIA INSURANCE COMPANY LIMITED* {2004(3) ALD 81 (SC)} and *NIDAMANURI RAMANA KUMARI AND ANOTHER* Vs. *ERUKULA SESHARAO AND ANOTHER* {2006(4) ALD 689} the deceased was married and aged 20 years and thereby an amount of Rs.1,75,000/- was awarded as compensation with interest at 9% per annum by taking income as Rs.1500/- per annum and applying the multiplier '13' as the mother was aged 40 years. In the case of *A. VIJAYA & OTHERS* Vs. *VEGURLA RAJAIAH & OTHERS* {2005(4) ALD 725 (DB)} the principles for assessing compensation are reiterated and the dependency as '19' for awarding of compensation. Thus as already held, though the claimants are not dependants for the present, certainly they are dependants at their old age and more so, they being legal heirs are entitled for compensation.

50. In the case of *SMT. SARLA VERMA AND ORS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER* (AIR 2009 SC 3104), the Apex Court observed that though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *UPSRTC Vs. TRILOK CHANDRA* {1996 (4) SCC 362} the general practice is to apply standardized deductions. It was further held that having considered several subsequent decisions of this Court, where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third ($1/3^{\text{rd}}$) where the deceased was a bachelor and the claimants are the parents, the deduction follows different principle. In regard to bachelors, normally 50% is deducted as personal and living expenses because it is assumed that a bachelor would tend to spend more on himself. Even otherwise there is also the possibility of his getting married in a short time, in which event the contribution to the parents and siblings is likely to be cut drastically. Further subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning or married or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family.

51. In *KERALA ROAD TRANSPORT CORPORATION Vs. SUSAMMA THOMAS* {1994(2) SCC 176} it was observed that in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependants, whichever is higher) goes up.

52. In the instant case, the deceased being minor and unmarried and not earning member, age of her mother has to be taken into consideration for assessing the compensation. According to the evidence of P.W.1, age of the mother of the deceased (second claimant) is mentioned as 49 years. As per the decision of the Apex Court in *TRILOK CHANDRA* case (supra), relevant multiplier '13' is applicable.

53. It is well settled that assessment of compensation though involving certain hypothetical considerations should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. In view of provisions of Section 106 of the Evidence Act, the burden of proof is on the father of the deceased/PW.1 as it is within his special knowledge regarding her income. It is the case of P.W.1 that he is running very popular and reputed hospital in the name and style of

Sri Venkateswara Eye Hospital and that the deceased also got started Netra opticals attached to the said hospital. The fact of the deceased being a Doctor cannot be brushed aside and normally it can be expected that a Doctor would be earning Rs.15000/- to Rs.20,000/- per month. Though P.W.1 could not produce relevant papers and documents before the Tribunal to prove the exact or probable income of the deceased on a consideration of evidence on record and considering that this being quasi civil proceeding, the preponderance of probabilities would be in favour of the evidence of P.W.1 that the monthly income of the deceased can be assessed not less than Rs.18,000/- per month or Rs.2,16,000/- per annum. Further, had she been alive, she would earn more. Therefore 30% of income has to be added towards her future prospects as per the decisions of the Apex Court in **SARLA VARMA** case (supra). Then it would come to Rs.23,400/-per month or 2,80,800/- per annum. Out of her total earnings, 50% of the same has to be deducted towards her personal living expenses, if that be so, Rs.11,700/- per month or 1,40,400/- per annum would be the contribution to her parents. If '13' multiplier is applied, then loss of dependency would be Rs.1,40,400/- x 13 = Rs.18,25,200/-.

54. Added to the same, in terms of the recent decision of the Apex Court in NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI and Ors. (20-17 ACJ 2700), Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses can be awarded. Further the claimants are entitled to Rs.1,00,000/- towards loss of love & affection and Rs.20,000/- towards

transportation charges. Thus in all the claimants are entitled to receive the total compensation of Rs.19,75,200/-.

55. For the foregoing discussion of the facts and circumstances, the appeal MACMA.No.3163 of 2007 preferred by the United India Insurance Company Limited is allowed, with costs while setting aside and modifying the Award and decree dated 26.10.2006 in MVOP.No.207 of 2002 passed by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Ongole, Prakasam District, insofar as it relates to holding of the Tribunal that the owner and insurer of the car i.e. third and fourth respondents herein shall bear 50% of the compensation on account of the fact that drivers of both the vehicles equally contributed to the accident, while holding that the driver of the first respondent-KSRTC bus bearing No.KA 29 F 484 is solely responsible for the cause of accident. Consequently, the claim of claimants against appellant and Respondent No.4 herein/respondents 2 and 3 in MVOP is dismissed.

Further, the appeal MACMA.No.240 of 2007 preferred by the claimants is partly allowed with proportion costs while setting aside and modifying the Award and decree dated 26.10.2006 in MVOP.No.207 of 2002 passed by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Ongole, Prakasam District and awarding total compensation of Rs.19,75,200/- against the KSRTC, first respondent, with interest at 7.5% per annum from the date of petition i.e.23.03.2002 till the date of deposit.

56. Inasmuch as it held hereinabove that the driver of the bus bearing No.KA 29 F 484 is solely responsible for the cause of accident, the first respondent-Karnataka State Road Transport Corporation, rep. by its Managing Director, Bangalore is directed to deposit the total compensation awarded hereinabove, after deducting the amount if any already paid/deposited, within a period of forty five (45) days from the date of receipt of a copy of this judgment.

57. On such deposit being made, the claimants are permitted to withdraw the compensation.

58. Advocate fee is fixed at Rs.2,500/- in each.

59. Miscellaneous petitions pending consideration if any in the appeals shall stand closed in consequence.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

Dated ----- March, 2018.
Msnr_x