



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

MISCELLANEOUS FIRST APPEAL NO.3355 OF 2019 (MV-D)

BETWEEN:

1. SRI THIMMAPPA @ POOLA
THIMMAPPA
S/O RAMANJANAPPA
AGED ABOUT 46 YEARS
2. SMT. SUJATHAMMA @ POOLA
RAMANJANAPPAGARI SUJATHAMMA
W/O THIMMAPPA @ POOLA THIMMAPPA
AGED ABOUT 43 YEARS

BOTH ARE R/AT SOMASUNDER PALYA
HSR LAYOUT
NEAR GURUMURTHY TEMPLE
BENGALURU 560 103

PERMANENT R/AT
ECHALADDI VILLAGE
C. RANGAPURAM,
MADAKASIRA TALUK,
ANANTHAPURA DIST 515303.
ANDRAPRADESH.

...APPELLANTS

(BY MS. NITYA, ADVOCATE FOR
SRI PRAKASH M.H., ADVOCATE)

AND:

1. SHRIRAM GEN INS. LTD.,
OFFICE AT NO.S-45, 3RD FLOOR,
MONARCH CHAMBERS,
INFANTRY ROAD,

BENGALURU 560 001.
REP. BY ITS MANAGER.

2. SRI. SAKTHIVEL
S/O ARMUGA NADAR
MAJOR,
R/AT NO.31, VOC NAGAR,
RS PURAM
COIMBATORE 641001
TAMILNADU STATE.

...RESPONDENTS

(BY SRI. ANUP SEETHARAM RAO, ADVOCATE FOR R-1;
V/O DTD:06.01.2023 NOTICE TO R2 IS D/W)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S 173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO CALL FOR RECORDS ON THE FILE OF COURT OF SMALL CAUSES AND THE MOTOR ACCIDENT CLAIMS TRIBUNAL, AT BENGALURU (SCCH-16), IN MVC NO.4245/2017 AND TO MODIFY THE JUDGMENT & AWARD DATED 31.12.2018 AND TO ENHANCE THE COMPENSATION SUITABLY IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 11.12.2025 AND COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

This appeal is filed by the appellants/claimants under section 173(1) of the Motor Vehicles Act, 1988 ('the MV Act' for short) to modify the judgment and award dated

31.12.2018, in MVC No.4245/2017 on the file of the Small Causes and Motor Accident Claims Tribunal, at Bengaluru ('the tribunal' for short) and to enhance the compensation amount.

2. The appellants/respondents herein are the claimants/respondents before the tribunal. Respondent No.1 is the Insurance Company and Respondent No.2 is the owner of the Canter-offending vehicle.

3. The petitioners/claimants filed claim petition under section 166 of the MV Act, seeking compensation of Rs.50,00,000/- from the respondents jointly and severally on account of death of Anil Kumar P. @ Poola Thimmappagari Anilkumar in road traffic accident.

4. The brief facts of the case are as under:-

On 11.07.2017 at about 6:30 p.m., while the deceased was traveling towards Bengaluru from Kanakapura. He was riding the car bearing registration No.KA-01-AF-7190, slowly and consciously on the left side of the road. Near HP Petrol bunk at Thoppaganahalli, the

driver of the canter bearing No.TN-66-C-4487 (insured vehicle), drove in a rash and negligent manner and dashed against the deceased car, due to which deceased sustained fatal injury and died on the spot. The postmortem examination was done and the last rite of the deceased was performed by the claimants. The claimants submitted that prior to the accident the deceased was working as drive and earning Rs.40,000/- per month. It is pleaded that the accident occurred solely due to the rash and negligent driving of the driver of the insured vehicle. Therefore, respondents are jointly and severally liable to pay compensation.

5. After service of notice, the Insurance Company appeared before the Tribunal through its advocate and filed its written statement opposing the claim. It admitted that it had issued a valid insurance policy for the offending vehicle and also admitted the accident and the death of the deceased due to injuries. However, it denied that the accident occurred due to sole negligence of the driver of the insured vehicle. It is also contended that the deceased

himself was negligent as he was allegedly driving in a zigzag manner under the influence of alcohol. It further claimed that the driver of the offending vehicle did not possess a valid driving licence, which amounted to a violation of the policy conditions and therefore, sought dismissal of the petition.

6. Based on the pleadings the tribunal framed issues and got marked the documents. The tribunal partly allowed with cost and 50% of the amount has been reduced in view of the contributory negligence on the part of the claimants and awarded the compensation of Rs.9,22,200/- with interest of 9% per annum. The respondents were jointly and severally made liable to pay the compensation amount. However, the primary liability to pay compensation was fastened on the respondent No.2/Insurance Company.

7. The learned counsel for the appellants/claimants would contend that The appellants challenge the finding of the Tribunal fastening 50%

contributory negligence on the deceased, contending that such a finding is unsupported by proper pleadings, evidence, or records. The owner of the offending vehicle did not appear, and the insurer failed to specifically plead contributory negligence against the deceased, which is a mandatory requirement in law. In the absence of such specific pleading, the Tribunal erred in accepting the defence and in relying upon the evidence of the driver of the insured vehicle.

8. The learned counsel placed reliance on the Full Bench judgment of this Court in the case of ***North East Karnataka State Transport Road Corporation v. Smt. Vijaya Lakshmi and Others*** reported in ***ILR 2011 KAR 4845***, wherein at paragraph 24 it is held that contributory negligence must be specifically pleaded by the defendant. Further, PW-2, the eyewitness, clearly deposed regarding the negligence of the driver of the insured canter, but the Tribunal wrongly recorded that PW-2 reached the spot after a crowd had gathered, which is a misreading of evidence. Hence, the finding on negligence deserves to be

set aside and the driver of the insured truck held wholly liable.

9. It is contended on the question of quantum of compensation that the deceased was the owner of the car involved in the accident and the appellants had claimed his income at Rs.40,000/- per month. A bank passbook-Ex.P12, was produced before the tribunal to support the claim. Even on a conservative assessment, the income of the deceased could not have been less than Rs.30,000/- per month. However, the tribunal has arbitrarily assessed the income at only Rs.12,000/- per month, which is on the lower side. Therefore, the appellants seek appropriate enhancement and modification of the compensation awarded.

10. In support of his contentions the learned counsel for the appellants has placed reliance on the judgment of this Court in ***North East Karnataka State Transport Road Corporation v. Smt. Vijayalakshmi and Others*** reported in ***ILR 2011 KAR 4845***.

- **North East Karnataka State Transport Road Corporation v. Smt. Vijayalakshmi and Others** reported in **ILR 2011 KAR 4845**

11. *Negligence is conduct, not a state of mind - conduct which involves an unreasonably great risk of causing damage. Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. In strict legal analysis, negligence means more than heedless or careless conduct, whether in omission or commission. It properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing. It is a question of law whether in any particular circumstances a duty of care exists. The question is was the defendant under any duty of care at all, and, if so, did he observe the standard required in the circumstances of the case? Foresight is the test for duty and remoteness. It is a characteristic of the definition of the tort of negligence that it does not refer to the scope of the protection it affords to the plaintiff but rather to the qualities of blameworthiness or fault to be attributed to the conduct of the defendant. There is no liability for negligence unless there is in the particular case a legal duty to take care, and this duty must be one which is owed to the plaintiff himself and not merely to others. This duty of*

carefulness is not universal; it does not extend to all occasions and all persons and all modes of activity. The harm to the plaintiff's interest which has in fact occurred must be of a kind against which it was the duty of the defendant to take precautions. In the absence of some existing duty the general principle is that there is no liability for a mere omission to act. The fundamental notion appears to be that the imposition of an obligation to take positive steps for the benefit of another requires that other should furnish something by way of consideration. The standard of conduct required by the common law is that of the reasonable man. The reasonable man is presumed to be free both from over-apprehension and from over-confidence. A reasonable man does not mean a paragon of circumspection. But he is also cool and collected and remembers to take precautions for his own safety even in emergency. So, while on the one hand an error of Judgment may not amount to negligence, on the other hand the fact that it might happen to him is not necessarily a defence - even the most careful are sometimes careless.

CONTRIBUTORY NEGLIGENCE

12. The doctrine that, if the plaintiffs act was the proximate cause of the damage the plaintiff could not recover damage was a well-established principle of medieval law. In the sixteenth and seventeenth centuries the conception of negligence as a ground of liability worked its way into the common law. With the recognition of negligence as

a ground of liability a practice grew up of alleging that a plaintiff could not recover because he was debarred by his own negligence. The Rule of law is that if there is blame causing the accident on both sides, however small that blame may be on one side, the loss lies where it falls. When any person suffers damage as the result partly of his own fault and partly on the fault of any other person or persons, the claim in respect of that damage shall not be defeated by reason of the fault of the person suffered damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

13. The question of contributory negligence does not depend upon any breach of duty as between the plaintiff and the defendant. All that the defendant is obliged to prove is that the plaintiff failed to take reasonable precautions for his own safety in respect of the particular danger which in fact occurred, so that he thereby contributed to his own injury. This however is not to say that in all cases the plaintiff who is guilty of contributory negligence owes to the defendant no duty to act carefully. The governing principle is; that the defendant must show that the plaintiff has failed to take reasonable care for his own safety in respect to the particular danger which has in fact occurred. The question whether the principle applies in any particular case is, as always, one of fact. Firstly, the

law does not, in general, require any man to be careful of his own safety. What it does say is that a man who has negligently created a danger whereby another person is injured may plead as a way of avoiding liability that the injured person by his negligence contributed to create the danger. Secondly, no question of operative contributory negligence arises in a case where the defendant proves that the plaintiff has failed to take precautions against a foreseeable danger which has not occurred and that those precautions, if taken, would have been effective to protect him against the unforeseeable danger which in fact occurred. The statement that the plaintiff must be shown to have failed to take proper precautions for his own safety against the particular danger which in fact occurred does not mean that the particular form in which the danger manifested itself should actually have occurred to his mind. It is sufficient if it is a danger of a particular class whose occurrence he should anticipate and take reasonable precautions to guard against him. It is necessary to consider not only the causative potency of a particular act, but also its blameworthiness, though culpability here, as elsewhere in the law of torts, means not so much moral blameworthiness as a departure from the standard of care of the reasonable man. The Court must also consider a third factor - namely, what is just and equitable. Hence the precise percentage by which the award is reduced is a question of fact in each case. The Court should find and record the total damages which would have

been awarded if the claimant had not been at fault. It is inappropriate to apply this principle when the responsibility of one of the parties is properly to be assessed at 100 per cent. The Court cannot deal with minute percentages. It is a question of fact in each case whether the conduct of the plaintiff amounts to contributory negligence. The burden of proving the negligence of the plaintiff that contributed to the damage in such a way as to exonerate the defendant wholly or partially lies upon the defendant. The defendant must always establish such contributory negligence as will amount to a defence. When the Court has to decide, that the case is one in which it is proper to apportion the loss between the parties, the result is that the plaintiffs damages are reduced to such extent as the Court thinks just and equitable having regard to the plaintiffs share in the responsibility for the damage.

14. The contributory negligence has two facets. One in which two or more vehicles and drivers are involved in the accident. It is their driving which is the cause of accident. In such a case the question is who drove the vehicle in a rash and negligent manner. If all of them drove the vehicle in a negligent manner, who contributed to what extent in causing the accident. It is on the basis of such factual finding apportioning the blameworthiness on the drivers, the contributory negligence has to be assessed. To the extent of the percentage of negligence attributed to each driver,

the owner of the vehicle and consequently if the vehicle is insured, the insurer would be liable to pay the compensation. If the driver himself is claiming compensation as third party, if his negligent act is also the cause of the accident, then the compensation payable to him would get reduced to the extent of the percentage of negligence attributed to him.

15. The second facet where the claimant is not involved in the accident in any manner, i.e., in driving the vehicle but arises out of breach of duty, resulting in injury on account of the accident. Failure to take reasonable care or precaution for his own safety while travelling in a Motor Vehicle, in respect of the particular danger, which in fact occurred, so that he thereby contributed to his own injury. It is this second aspect which is dealt with under Section 123 of the Act.

11. *Per Contra*, learned counsel for the respondent No.1/Insurance Company would contend that the tribunal has rightly held that the accident occurred due to contributory negligence of both the drivers. The records clearly show that the accident took place at the centre of a 22-feet-wide road, exactly on the centre white line, which is evident from the spot sketch and the police charge sheet (Ex.P13). Though the FIR was initially registered

against the driver of the canter based on a witness complaint, after proper investigation the police filed a charge sheet against both the canter driver and the deceased, the charge against the deceased being shown as abated. It is contended that the police investigation and reasoning clearly establish that if both the drivers had been diligent, the accident could have been avoided, thereby proving that both drivers equally contributed to the accident and the spot sketch specifically indicates a head-on collision at the centre of the road on the white line divider.

12. It is further contended that RW-1, the driver of the insured canter, was examined and he deposed that he was driving on his left side of the road and that due to the narrow road and the rash and negligent driving of the deceased, the accident occurred. The judgment relied upon by the appellant in **NWKSTRC's** case (*supra*) is not applicable to the present case, as it dealt with the issue of a passenger's contribution to the accident. In the present case, the issue is of negligence by drivers of both the

vehicle, which is clearly established through the records, spot sketch, and charge sheet. It is contended that in the absence of any material to disprove these official investigation records, the same cannot be ignored.

13. It is also contended that the tribunal had clearly discussed regarding contributory negligence. Further, on the issue of enhancement, the tribunal clearly records the income of the deceased. The very document produced by the claimants shows an income of Rs.12,000/- per month, and therefore, the tribunal rightly rejected the alleged income of Rs.40,000/- per month, which was not supported by any evidence. The tribunal has further granted the benefit of 40% future prospects, thereby assessing the monthly income at Rs.16,800/-, which is just, proper, and in accordance with law.

14. In support of his contentions, learned counsel appearing for the Insurance Company relied upon the following Judgment with regard to 50:50 contributory negligence:

- ***Raj rani and others v. Oriental Insurance Company Limited and others* reported in (2009) 13 SCC 654**

17. So far as the issue of "contributory negligence" is concerned, we may notice that the Tribunal has deducted 1/3rd from the total compensation on the ground that deceased had contributed to the accident. The same, we find, has been upheld by the High Court. This Court in *Usha Rajkhowa v. Paramount Industries* [(2009) 14 SCC 71] discussed the issue of contributory negligence noticing, inter alia, earlier decisions on the same topic. It was held that: (SCC p. 75, para 20)

"20. The question of contributory negligence on the part of the driver in case of collision was considered by this Court in *Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak* [(2002) 6 SCC 455 : 2002 SCC (Cri) 1355]. That was also a case of collision between a car and a truck. It was observed in SCC p. 458, para 8:

'8. ... The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as "negligence". Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence" it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of

either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong".'

18. The principle of 50:50 in cases of contributory negligence has been discussed and applied in many cases before this Court. In Krishna Vishweshwar Hede v. Karnataka SRTC [(2008) 15 SCC 771 : 2008 ACJ 1617] this Court upheld the judgment of the Tribunal assessing the ratio of liability at 50:50 in view of the fact that there was contributory negligence on the part of the appellant and fixed the responsibility for the accident in the ratio of 50:50 on the driver of the bus and the appellant.

19. In this case, the truck was stationary. Some amount of negligence on the part of the deceased cannot be ruled out. Hence in the instant case, we find that there was contributory negligence on the part of the deceased and accordingly the claimant was entitled to only 50% of the total amount of loss of dependency.

15. Heard learned counsel appearing on either side and perused the records along with Judgment of the Tribunal.

16. The Judgment in **Raj rani's** case relied on by the learned counsel for the Insurance Company is not applicable to the case on hand.

17. It is observed that the elementary principle in deciding the contributory negligence is a specific pleading by the owner of offending vehicle. The owner of offending Canter has not appeared and the insurer has not taken such a stand regarding contributory negligence on the part of the deceased. The insurer, without any specific pleading and defence has directly led the evidence of the driver of the truck. In the Judgment of **NWKRTC** supra, referred by the appellants/claimants, the full Bench of this Court has held that the defendant must specifically plead the contributory negligence in support of plea. But in the present case, defendant failed to specifically plead regarding contributory negligence.

18. Further, P.W.2-eye witness to the accident has stated that he was proceeding in a motorcycle from Kanakapura towards Harohalli side, at the same time one swift car bearing Reg No.KA-01-AF-7190 proceeding ahead

of him at a distance of 40 to 50 feet, very slowly and cautiously, by observing all traffic rules and regulations, and on correct side road of Kanakapura- Bangalore main road, reached near HP petrol bunk, Thoppaganahalli village, Kasaba hobli, NH-209 road, kanakapura taluk, Ramanagara district, at the same time, driver of one Goods canter vehicle bearing Reg No.TN-66-C-4487 driven from Bengaluru side towards Kanakapura side, because of curve road, was driving the vehicle to its extreme right side with out observing any traffic rules and regulations, and in a rash negligent manner, and endangering to human life, dashed against the swift car, which was on correct side of the road, and caused the accident. As an impact of the accident all the persons traveling in the car died on spot.

19. In the light of the Judgment of **NWKRTC** supra and deposition of P.W.2-eye witness, it is crystal clear that the driver of the offending Canter was at fault. Hence, the finding of the Tribunal regarding contributory

negligence is incorrect. Hence, the entire negligence shifts upon the driver of the Canter.

REGARDING QUANTUM:

20. The Tribunal has awarded compensation as under:

Sl. No.	Heads of Compensation	Amount
1.	Loss of dependency	Rs.18,14,400-00
2	Loss of estate	Rs.15,000-00
3	Funeral and transportation expenses	Rs.15,000-00
	Total	Rs.18,44,400-00

The Tribunal has deducted 50% of the income towards contributory negligence and calculated loss of dependency, which needs to be interfered.

21. Therefore, the compensation towards loss of dependency is reworked as under:

Income of the deceased was Rs.12,000/- p.m., adding 40%, it would come to Rs.16,800/-.

Rs.16,800/- x 12 x 18 = **36,28,800/-**

Thus, the claimants would be entitled to compensation under the following heads:

Sl. No.	Heads of Compensation	Amount
1.	Loss of dependency	Rs.36,28,800-00
2	Loss of estate	Rs.15,000-00
3	Funeral and transportation expenses	Rs.15,000-00
	Total	Rs.36,58,800-00

Thus, the appellants/claimants would be entitled to compensation of **Rs.36,58,800/-** along with interest at the rate of 6% p.a., from the date of petition till realization.

22. In view of the aforesaid discussion, the following order is passed:-

(i) The appeal is ***partly allowed***.

(ii) The judgment and award dated 31.12.2018, in MVC No.4245/2017 on the file of the Small Causes and Motor Accident Claims Tribunal, at Bengaluru is hereby modified.

(iii) The appellants-claimants are entitled to compensation of **Rs.36,58,800/-** along with interest at

the rate of 6% p.a., from the date of petition till realization.

(iv) The Insurance Company shall deposit entire compensation amount within eight weeks from the date of receipt of the Judgment.

(v) The apportionment and disbursement to be done as per the impugned judgment and award passed by the Tribunal.

**Sd/-
(DR.K.MANMADHA RAO)
JUDGE**

BNV