

The Manager National Vs. Balabhim And Ors

The Manager National Vs. Balabhim And Ors

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Court : Karnataka Kalaburagi

Decided On : Aug-11-2023

Judge : Mohammad Nawaz and Rajesh Rai K

Appeal No. : MFA 200184/2018

Appellant : The Manager National

Respondent : Balabhim And Ors

Judgement :

- 1 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 R C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH DATED THIS THE11H DAY OF AUGUST, 2023 PRESENT THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ AND THE HON'BLE MR JUSTICE RAJESH RAI K MISCL. FIRST APPEAL NO.202001 OF2018(MV-D) C/W MISCL. FIRST APPEAL NO.200184 OF2018(MV-D) MISCL. FIRST APPEAL NO.200186 OF2018(MV-D) MISCL. FIRST APPEAL NO.200187 OF2018(MV-D) MFA CROSS OBJ NO.200068 OF2018(MV-D) & MFA CROSS OBJ NO.200069 OF2018(MV-D) IN MFA NO.202001/2018 BETWEEN: MALLANNA S/O AMBRAPPA MANIGER, AGE:33 YEARS, OCC:AGRICULTURE NOW NIL, R/O DEVAPUR, TQ.SHORAPUR, DIST.YADGIRI-585101.

APPELLANT (BY SRI. BABU H. METAGUDDA, ADVOCATE) AND:

1. MAHADEVAPPA S/O SHIVAMURTHEPPA SAHUKAR, AGE:42 YEARS, OCC: OWNER OF VEHICLE JEEP, R/O MALAGATTI, TQ.SHORAPUR, DIST.YADGIRI-585101.-. 2 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 2. THE MANAGER, NATIONAL INSURANCE CO. LTD. P.B.ROAD BELAGUNDI COMPLEX, OPP:VIDHAN SOUDHA, KALABURAGI-585101. RESPONDENTS (BY SRI. BASAVARAJ R.MATH, ADVOCATE FOR R1; SHARANABASAPPA M.PATIL, ADVOCATE FOR R2) THIS APPEAL IS FILED U/S1731) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THIS APPEAL AND MODIFY THE

JUDGMENT

AND AWARD DATED1710.2017 PASSED IN MVC NO.213/2016 BY SENIOR CIVIL JUDGE AND ADDL. MACT AT SHORAPUR AND ENHANCING THE COMPENSATION FROM RS.14,62,000/- WITH6 INTEREST TO RS.16,00,000/- WITH12 INTEREST AND ETC. IN MFA NO.200184/2018 BETWEEN: THE MANAGER, NATIONAL INSURANCE CO. LTD., P.B.ROAD, BELGUNDI COMPLEX, OPP. VIDHANA SOUDHA, KALABURAGI. NOW REPRESENTED BY ITS DEPUTY MANAGER & AUTHORIZED SIGNATORY, DIVISIONAL OFFICE, KALABURAGI. APPELLANT (BY SRI. SHARANABASAPPA M.PATIL, ADVOCATE) - 3 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 AND:

1. BALABHIM S/O MALLANNA MANIGER, AGE:

07. YEARS MINOR, 2. SRIDEVI D/O MALLANNA, AGED:

5. YEARS MINOR, RESPONDENT NO.1 & 2 ARE MINORS U/G OF THEIR REAL FATHER MALLANNA S/O AMBRAPPA I.E. RESPONDENT NO.3.

3. MALLANNA S/O AMBRAPPA MANIGER, AGE:

33. YEARS, OCC: COOLIE, NOW NIL, ALL R/O DEVAPUR, TQ. SHORAPUR, DIST: YADGIR-585224.

4. MAHADEVAPPA S/O SHIVAMURTHEPPA SAHUKAR, AGE:

42. YEARS, OCC: OWNER OF VEHICLE JEEP, R/O MALGATTI, TQ. SHORAPUR, DIST: YADGIR-585224. RESPONDENTS (BY SRI. BABU H.METAGUDDA,, ADVOCATE FOR R1 TO R3; V/O DTD. 19.03.2018 NOTICE TO R4 IS DISPENSED WITH) THIS APPEAL IS FILED U/S1731) OF THE MOTOR VEHICLES ACT, PRAYING TO CALL FOR THE RECORDS IN MVC NO.211 OF 2016 ON THE FILE OF SENIOR CIVIL JUDGE AND ADDL., MACT AT SHORAPUR AND SET ASIDE AND MODIFY THE

JUDGMENT

DATED 17.10.2017 AND AWARD DATED 25.10.2017 BY ALLOWING THIS APPEAL WITH COSTS AND GRANT SUCH OTHER RELIEF AND FURTHER RELIEFS, AS THIS HON'BLE COURT DEEMS FIT TO GRANT IN THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY.-. 4 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 IN MFA NO.200186/2018 BETWEEN: THE MANAGER, NATIONAL INSURANCE CO. LTD., P.B.ROAD, BELGUNDI COMPLEX, OPP. VIDHANA SOUDHA, KALABURAGI. NOW REPRESENTED BY ITS DEPUTY MANAGER & AUTHORIZED SIGNATORY, DIVISIONAL OFFICE, KALABURAGI. APPELLANT (BY SRI. SHARANABASAPPA M.PATIL, ADVOCATE) AND:

1. AMARAPPA @ AMRANNA S/O MALLANNA MANIGER, AGE:

51. YEARS, OCC: AGRICULTURE AND COOLIE, 2. LAXMI W/O AMARAPPA @ AMRANNA MANIGER, AGED:

46. YEARS, OCC: HOUSEHOLD, R/O DEVAPUR, TQ. SHORAPUR, DIST. YADGIR-585224.

3. MAHADEVAPPA S/O SHIVAMURTHEPPA SAHUKAR, AGE:

42. YEARS, OCC: OWNER OF VEHICLE JEEP, R/O MALGATTI, TQ. SHORAPUR, DIST: YADGIR-585224. RESPONDENTS (BY SRI. BABU H.METAGUDDA,, ADVOCATE FOR R1 & R2; V/O DTD. 19.03.2018 NOTICE TO R3 IS DISPENSED WITH) - 5 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 THIS APPEAL IS FILED U/S1731) OF THE MOTOR VEHICLES ACT, PRAYING TO CALL FOR THE RECORDS IN MVC NO.212 OF 2016 ON THE FILE OF SENIOR CIVIL JUDGE AND ADDL., MACT AT SHORAPUR AND SET ASIDE AND MODIFY THE

JUDGMENT

DATED1710.2017 AND AWARD DATED2510.2017 BY ALLOWING THIS APPEAL WITH COSTS AND GRANT SUCH OTHER RELIEF AND FURTHER RELIEFS, AS THIS HON'BLE COURT DEEMS FIT TO GRANT IN THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY. IN MFA NO.200187/2018 BETWEEN: THE MANAGER, NATIONAL INSURANCE CO. LTD., P.B.ROAD, BELGUNDI COMPLEX, OPP. VIDHANA SOUDHA, KALABURAGI. NOW REPRESENTED BY ITS DEPUTY MANAGER & AUTHORIZED SIGNATORY, DIVISIONAL OFFICE, KALABURAGI. APPELLANT (BY SRI. SHARANABASAPPA M.PATIL, ADVOCATE) AND:

1. MALLANNA S/O AMBRAPPA MANIGER, AGE:

33. YEARS, OCC: AGRICULTURE NOW NIL, ALL R/O DEVAPUR, TQ. SHORAPUR, DIST: YADGIR-585224.-. 6 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 2. MAHADEVAPPA S/O

SHIVAMURTHEPPA SAHUKAR, AGE:

42. YEARS, OCC: OWNER OF VEHICLE JEEP, R/O MALGATTI, TQ. SHORAPUR, DIST: YADGIR-585224. RESPONDENTS (BY SRI. BABU H.METAGUDDA,, ADVOCATE FOR R1; V/O DTD. 11.08.2023 NOTICE TO R2 IS DISPENSED WITH) THIS APPEAL IS FILED U/S1731) OF THE MOTOR VEHICLES ACT, PRAYING TO CALL FOR THE RECORDS IN MVC NO.213 OF 2016 ON THE FILE OF SENIOR CIVIL JUDGE AND ADDL. MACT AT SHORAPUR AND SET ASIDE AND MODIFY THE

JUDGMENT

DATED1710.2017 AND AWARD DATED2510.2017 BY ALLOWING THIS APPEAL WITH COSTS AND GRANT SUCH OTHER RELIEF AND FURTHER RELIEFS, AS THIS HON'BLE COURT DEEMS FIT TO GRANT IN THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY. IN MFA CROB NO.200068/2018 BETWEEN:

1. BALABHIM S/O MALLANNA MANIGER, AGE:

7. YEARS MINOR, 2. SRIDEVI D/O MALLANNA MANIGER, AGE:

5. YEARS MINOR, APPELLANT NO.1 & 2 ARE MINORS U/G OF THEIR REAL FATHER MALLANNA S/O AMBRAPPA I.E. APPELLANT NO.3.

3. MALLANNA S/O AMBRAPPA MANIGER, AGE:

33. YEARS, OCC: COOLIE NOW NIL, ALL R/O. DEVAPUR, TQ: SHORAPUR, DIST: YADAGIRI-585101. CROSS OBJECTORS (BY SRI. BABU H.METAGUDDA, ADVOCATE) - 7 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 AND:

1. MAHADEVAPPA S/O SHIVAMURTHEPPA SAHUKAR, AGE:

42. YEARS, OCC: OWNER OF VEHICLE JEEP, R/O. MALAGATTI, TQ. SHORAPUR, DIST: YADAGIRI-585101.

2. THE MANAGER, NATIONAL INSURANCE CO. LTD. P.B. ROAD BELAGUNDI COMPLEX, OPP: VIDHAN SOUDHA, KALABURAGI-585101. RESPONDENTS (BY SRI. SHARANABASAPPA M.PATIL, ADVOCATE FOR R2; V/O DTD. 11.08.2023 NOTICE TO R1 IS DISPENSED WITH) THIS MFA CROB IS FILED U/O41RULE22OF CPC, PRAYING TO ALLOW THIS CROSS OBJECTION AND MODIFY THE

JUDGMENT

AND AWARD DATED 17.10.2017 PASSED IN MVC NO.211/2016 BY THE SENIOR CIVIL JUDGE AND ADDL. MACT AT SHORAPUR. AND ENHANCING THE COMPENSATION FROM RS.10,49,000/- WITH 6% INTEREST TO RS.24,30,000/- WITH 12% INTEREST AND ETC. IN MFA CROB NO.200069/2018 BETWEEN:

1. AMARAPPA @ AMRANNA S/O MALLANNA MANIGER, AGE:

51. YEARS, OCC: AGRICULTURE & COOLIE, 2. LAXMI W/O AMARAPPA @ AMRANNA MANIGER, AGE:

46. YEARS, OCC: HOUSEHOLD, R/O. DEVAPUR, TQ: SHORAPUR, DIST: YADAGIRI-585101. CROSS OBJECTORS (BY SRI. BABU H.METAGUDDA, ADVOCATE) - 8 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 AND:

1. MAHADEVAPPA S/O SHIVAMURTHEPPA SAHUKAR, AGE:

42. YEARS, OCC: OWNER OF VEHICLE JEEP, R/O. MALAGATTI, TQ. SHORAPUR, DIST: YADAGIRI-585101.

2. THE MANAGER, NATIONAL INSURANCE CO. LTD. P.B. ROAD BELAGUNDI COMPLEX, OPP: VIDHAN SOUDHA, KALABURAGI-585101. RESPONDENTS

(BY SRI. SHARANABASAPPA M.PATIL, ADVOCATE FOR R2; V/O DTD. 30.07.2019 NOTICE TO R1 IS DISPENSED WITH) THIS MFA CROB IS FILED U/O41RULE22OF CPC, PRAYING TO ALLOW THIS CROSS OBJECTION AND MODIFY THE

JUDGMENT

AND AWARD DATED 17.10.2017 PASSED IN MVC NO.212/2016 BY THE SENIOR CIVIL JUDGE AND ADDL. MACT AT SHORAPUR. AND ENHANCING THE COMPENSATION FROM RS.7,83,000/- WITH 6% INTEREST TO RS.14,99,000/- WITH 12% INTEREST AND ETC. THESE MFAs AND MFA CROBs, COMING ON FOR ADMISSION, THIS DAY, MOHAMMAD NAWAZ J., DELIVERED THE FOLLOWING: - 9 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018

JUDGMENT

These appeals arise out of a common judgment and award dated 17.10.2017 passed by the Court of Senior Civil Judge & Addl. MACT at Shorapur (Tribunal for short) in MVC No.211/2016, MVC No.212/2016 and MVC No.213/2016.

2. MFA No.200184/2018, MFA No.200186/2018 and MFA No.200187/2018 are preferred by the Insurance company.

3. MFA No.202001/2018 is preferred by the claimant / injured in MVC No.213/2016. MFA CROB No.200068/2018 and MFA CROB No.200069/2018 are preferred by the respective claimants in MVC No.211/2016 and MVC No.212/2016.

4. Heard and perused the trial Court records.

5. In a road traffic accident, which took place on 13.02.2015 at about 8.40 p.m. near the land of R.L. Nayak - 10 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 on Lingasugur-Shorapur main road, involving a tempo trax jeep bearing Reg.No.KA-33/M-2458 and a motorcycle bearing Reg.No.KA-33-J-3820, two persons namely Anusuya and Maremma died and one Mallanna sustained grievous injuries. The legal heirs of deceased Anusuya preferred MVC No.211/2016, legal heirs of deceased Mariyamma preferred MVC No.212/2016 and the injured Mallanna preferred MVC No.213/2016, claiming compensation before the Tribunal. The said claim petitions were resisted by the insurer of the offending vehicle namely, tempo trax jeep bearing Reg.No.KA-33/M-2458, on the ground that the rider of the motorcycle bearing Reg.No.KA-33-J-3820 himself was negligent in causing the accident as there were three persons traveling in the said motorcycle and further that both the drivers of the vehicles were not possessing a valid driving licence as on the date of accident.-. 11 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 6. The Tribunal framed the following points:

1. Whether petitioners of all the cases prove that, the accident on 13.02.2015 at about 8.40 PM occurred due to rash and negligent act of driver of tempo trax No.KA- 33/M-2458 due to which the deceased Anusuya and Maremma of MVC Nos.211/2016 & 213/2016 died due to accidental injuries and petitioner of MVC No.213/2016 sustained grievous injuries in the said accident?. 2 Whether the 2nd respondent proves that, the driver of tempo trax No.KA-33-M-2458 and rider of motor cycle No.KA-33-J-3820 did not possess valid and effective Driving Licence on the date of accident?. 3 Whether the petitioners of all the cases are entitled for compensation?. If so, how much and from whom?. 4 What order or award?.

7. After appreciating the oral and documentary evidence and answering the above points, the Tribunal - 12 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of

2018, MFA.CROB No.200069 of 2018 was pleased to award a total compensation of Rs.10,49,000/- to the claimants in MVC No.211/2016, Rs.7,83,000/- to the claimants in MVC No.212/2016 and Rs.14,62,000/- to the claimant in MVC No.213/2016, with 6% interest per annum from the date of petition till realization. The insurer of the offending vehicle namely tempo trax jeep bearing Reg.No.KA-33/M-2458 was held liable to pay the compensation.

8. As per the claimants, injured Mallanna was riding the motorcycle bearing Reg.No.KA-33-J-3820 at the time of accident and the two deceased were the pillion riders. Hence, it is not in dispute that three persons were traveling in the motorcycle at the time of accident. It is the contention raised by the insurance company that admittedly three persons were on the motorcycle and therefore, the rider of the motorcycle himself was negligent in causing the accident. It is contended that - 13 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 there is violation of policy conditions and therefore, the insurer is not liable to pay any compensation.

9. Admittedly, the FIR and charge sheet is filed against the driver of the tempo trax jeep bearing Reg.No.KA-33/M-2458. The claimants have got marked Ex.P1 to Ex.P3 namely the certified copy of the FIR, Charge sheet and the spot panchanama. There is no case registered against the rider of the motorcycle for causing the accident. Based on the documentary evidence, supported by the oral evidence of PW1 examined by the claimants in the respective cases, the Tribunal has held that no worthwhile evidence has been elicited during their cross examination to disbelieve their versions regarding the negligence of the driver of the tempo trax jeep in causing the accident. Hence, merely because three persons were traveling in the motorcycle at the time of accident, that itself is not sufficient to hold that the accident was either caused due to the negligence of the - 14 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 rider of the said motorcycle or that there is

contributory negligence.

10. This Court in the case of *Bharma Kallappa Murashetti and Others vs. Karamjeet Kaur and Another* reported in ILR 2016 KAR5098 has held at para-8 as under:

"8. A careful perusal of these judgments makes it clear that the very violation of a statutory provision would not lead to negligence causing the accident. A concrete evidence is necessary to establish the violation of the statutory provision, resulting in the negligence causing the accident. Only in such circumstances, proportionate contributory negligence could be attributable. No doubt three passengers were travelling in a motorcycle in violation of Section 128 of the Act, but no evidence is led by the insurer to establish that the said violation of the statutory provision itself was the cause for the accident to attribute contributory negligence on the part of the deceased. Mere taking a defence in the written statement would not suffice to establish the factum of contributory negligence, it has to be supported by direct and corroborative evidence, - 15 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 which is admittedly missing in the present case, since the insurer has not made any attempt to adduce evidence to establish the contributory negligence on the part of the deceased. It is well settled principle that, for the insurer to avoid its liability, the breach of the policy must be so fundamental in nature that it brings contract to an end. The burden of proving rests on the shoulder of the insurer to establish this breach of the policy, which was fundamental in nature. That having not been done by the insurer, no contributory negligence can be attributed on the part of the deceased. On the other hand, the Police records very well establish that the negligence on the part of the driver of the truck was the cause for the accident. This vital material evidence was lost sight of by the Tribunal while fixing contributory negligence to the extent of 50% on the deceased. Thus, this Court is of the considered opinion that the Tribunal fixing 50% contributory negligence on the part of the deceased is not fit to be sustained. Accordingly, the entire negligence is fixed on the driver of the truck (offending

vehicle) and the insurer of the offending vehicle-respondent No.2 shall be liable to satisfy the award."

- 16 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 11. No doubt, in the present case, three persons were traveling in the motor cycle which will be violation of Section 128 of the Motor Vehicles Act, 1988. But there is no evidence led by the Insurer to establish that the violation of the statutory provision itself was the cause for the accident to attribute contributory negligence. In the above decision, this Court has held that mere taking a defence in the written statement would not be suffice to establish the factum of contributory negligence, but it has to be supported by direct and corroborative evidence. In the present case, no such evidence or material is forthcoming.

12. The second contention raised by the Insurance Company is that the driver of the vehicle was not possessing any valid or effective driving license as on the date of accident. In this regard, no oral or documentary evidence are placed to show that there was no valid or effective driving license possessed by the driver of either

- 17 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 of the vehicle as on the date of accident. The Tribunal has held after perusal of the driving license at Ex.R-1 got marked by the Insurance Company, that the driver of the vehicle had possessed valid and effective driving license on the date of the accident. Hence, the contention raised in this behalf is not tenable.

13. The respective claimants have sought for enhancement of compensation awarded to them by the Tribunal. MFA No.202001/2018 (MVC No.213/2016):

14. The appellant/claimant is an injured. He has sought compensation of `66,00,000/- before the Tribunal. It is contended that he suffered permanent disability to an extent of 90% to the whole body. According to the appellant he was working as a coolie and earning about `500/- per day and also `2,00,000/- from agriculture. The Tribunal has taken the notional income at `6,000/- and - 18 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 further relying on Ex.P-5 wound certificate and Ex.P-9 disability certificate and the evidence of doctor-PW.2, held that he has sustained 90% permanent disability to the whole body. The appellant being aged about 30 years at the time of accident, adopting '17' as multiplier, the Tribunal has awarded `11,16,000/- towards loss of future income on account of permanent disability. Further, awarded a sum of `50,000/- towards loss of amenities, `33,000/- towards pain and suffering, `6,000/- towards food and nourishment, `3,000/- towards attendant charges and a sum of `2,54,200/- towards medical bills and hence, a total compensation of `14,62,200/- was awarded which was rounded off to `14,62,000/-.

15. We have perused the wound certificate - Ex.P- 5, Disability Certificate Ex.P-9 as well as the evidence of doctor [PW-2].. From Ex.P-9 - Disability Certificate, it can be noticed that initially, injured took treatment at GGH, Shorapur and then he was referred to higher centre and - 19 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 got admitted in one Swasthiyog Prathistan Kendra and Fracture and Orthopaedic Hospital, Miraj with the history of trauma to the right upper and lower limb. He was diagnosed as compound grade 3crt tibia and fibula segmental type with crush injury and both bone forearm fracture right side with 5th metacarpal fracture right hand and treated surgically and later above knee amputation done on 16.02.2015 for right lower limb and ORIF done with bone grafting for both bone fracture right forearm and discharged on 17.02.2015 and 26.03.2015 respectively. The doctor who is examined as PW-2 has stated that

on examination for the disability purpose, before issuing Disability Certificate, he has studied the wound certificate issued by GGH, Shorapur dated 30.05.2015 and admission and discharge card issued by Swasthiyog Prathistan Kendra and Fracture and Orthopaedic Hospital, Miraj on 17.02.2015 and - 20 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 26.03.2015. The whole body permanent disability is assessed at 90%.

16. The material on record clearly reveal that due to the accident, the appellant has suffered loss of right lower limb at the thigh region and he is unable to attend the normal activities like running, writing, squatting, crisscross leg properly, including difficulty in attending the call of nature, unable to walk without support, etc. Considering the nature of injuries and disability suffered by the appellant, the percentage of disability taken by the Tribunal is just and proper.

17. The appellant was aged about 30 years at the time of accident and he was working as a coolie. Though he claims to be an agriculturist, however, he has not produced any document to prove his income or to show that he was earning a sum of `2,00,000/- from agricultural activities. Considering the year of accident, it is just and - 21 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 proper to take the income of the appellant at `8,000/- per month as against `6,000/- taken by the Tribunal.

18. It is contended by the learned counsel for the appellant that in view of the permanent disability suffered by the appellant to an extent of 90% to the whole body, the Tribunal was not justified in not adding future prospects. He has relied on a decision of the Honble Apex Court in the case of Jithendran vs. The New India Assurance Company Limited and Another reported in 2021 SCC Online SC983 Para-16 of the said judgment is extracted hereunder for ready reference:

"16. As noted earlier, the impact on the earning capacity for the claimant by virtue of his 69% disability must not be measured as a proportionate loss of his earning capacity. The earning life for the appellant is over and as such his incomeloss has to be quantified as 100%. There is no other way to assess the earning loss since the appellant is incapacitated for life and is confined to home. In such circumstances, his loss of earning capacity must be fixed at 100%. As his monthly income was - 22 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 Rs.4,500/-, adding 40% future prospect thereto, the monthly loss of earning is quantified as Rs.6,300/-. We therefore deem it appropriate to quantify Rs.13,60,800/- (Rs.6,300 x 12 x

18) as compensation for 100% loss of earning for the claimant. Accordingly, under this head, the amount awarded by the High Court is enhanced proportionately.

19. Further reliance is placed on the judgment of the Honble Apex Court in Jagdish vs. Mohan and others reported in (2018) 4 SCC571 Para-8 of the said judgment is extracted hereunder:

"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects: (i) Pain, suffering and trauma resulting from the accident; (ii) Loss of income including future income; - 23 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 (iii) The inability of the victim to lead a normal life together with its amenities; (iv) Medical expenses including those that the victim may be required to undertake in future; and (v) Loss of expectation of life.

20. In the light of the above, the appellant is entitled for future prospects and considering his age and occupation 40% of his income has to be added towards future prospects. The income of the appellant having been assessed at `8,000/- per month, another `3,200/- i.e., 40% of the income has to be added towards future prospects. The appellant was aged 30 years at the time of accident and therefore, the proper multiplier is 17. Having suffered permanent disability to an extent of 90%, he is entitled for a compensation of `20,56,320/- ( $\text{`8,000} + \text{`3,200} = \text{`11,200} \times 12 \times 17 \times 90\%$), towards loss of future income due to permanent disability.

21. Considering the nature of injuries, we hereby award a sum of `1,00,000/- for pain and suffering, - 24 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 `10,000/- towards food and nourishment, `10,000/- towards attendant charges and a sum of `75,000/- towards loss of amenities. A sum of `25,000/- is awarded towards loss of income during laid up period. A sum of `2,54,000/- awarded by the Tribunal towards medical bills is not disturbed. Hence, the appellant is entitled for a total compensation of `25,30,320/- as against a sum of `14,62,000/- awarded by the Tribunal. MFA Crob. No.200068/2018 in MFA No.200184/2018 (MVC No.211/2016):

22. The appellants/claimants are the minor children and husband of deceased Anusuya, who died in the accident. A total compensation of Rs.24,30,000/- was claimed before the tribunal. According to the claimants, the deceased was working as a coolie and she was aged about 24 years and earning Rs.400/- per day at the time of accident. Considering the age mentioned in the post - 25 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 mortem report-Ex.P5, her age was taken as 24 years. The tribunal has taken the notional income of Rs.3,000/- per month and deducted 1/3rd of the income towards her personal and living expenses. Applying 18 multiplier, a sum of Rs.8,64,000/- towards loss of dependency was awarded.

Further, awarded a sum of Rs.1,00,000/- towards loss of estate, Rs.50,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards transportation of dead body and hence, a total compensation of Rs.10,49,000/- was awarded by the tribunal.

23. The accident is of the year 2015. Considering the year of accident, the income of Rs.6,000/- taken by the tribunal is on the lower side. It is just and proper to take the income of deceased at Rs.8,000/- per month. The tribunal has not added any amount towards future prospects. The deceased being aged 24 years, 40% of the income shall be added towards future prospects. 1/ rd of 3 - 26 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 the income has to be deducted towards personal and living expenses. Therefore, the claimants are entitled for a sum of Rs.16,12,872/- (Rs.8,000/- + Rs.3,200 = Rs.11,200/- x 2/ = Rs.7467 x 12 x

18) towards loss of dependency . 3

24. Considering the number of dependants and their relationship with the deceased, we award a total sum of Rs.1,20,000/- towards loss of consortium/love and affection. A sum of Rs.30,000/- is awarded towards funeral expenses transportation of dead body and loss of estate. Hence, the claimants are entitled for a total sum of Rs.17,42,872/- as against Rs.10,49,000/- awarded by the tribunal. MFA CROB No.200069/2018 in MFANo.200186/2018 (MVC No.212/2016) 25. The appellants/claimants are the parents of deceased Maremma. A total compensation of Rs.24,30,000/- was claimed before the tribunal under various heads. It is contended that the deceased was aged - 27 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 about 24 years and she was working as teacher and earning Rs.10,000/- per month. The tribunal has taken the notional income of the deceased at Rs.6,000/- per month. Her age being 24 years, applying 18 multiplier, a sum of Rs.6,48,000/- was awarded towards loss of

dependency. Further, a sum of Rs.1,00,000/- was awarded towards loss of love and affection. In addition, a sum of Rs.25,000/- towards funeral expenses and Rs.10,000/- towards transportation of dead body was awarded. Hence, a total compensation of Rs.7,83,000/- was awarded by the tribunal.

26. The claimants have not placed any material which is worthy of acceptance to prove the definite income and avocation of the deceased. Hence, they have failed to prove that the deceased was working as a teacher and earning a sum of Rs.10,000/- per month. However, the notional income of Rs.6,000/- per month taken by the tribunal is on the lower side. Considering the year of - 28 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 accident, we compute the income of deceased at Rs.8,000/- per month. Age of the deceased is mentioned as 24 years in Ex.P5/Post mortem report. The tribunal has not awarded any amount towards future prospects. Considering the age of the deceased, 40% of the income has to be added towards future prospects. The deceased was not married. The claimants are the parents of the deceased. Hence, 50% of the income of the deceased has to be deducted towards personal and living expenses. Hence, the claimants are entitled for a total compensation of Rs.12,09,600/- towards loss of dependency ($\text{Rs.8,000} + 3,200 = 11200 \times 50\% = \text{Rs.5,600} \times 12 \times 18$).

27. The claimants are entitled for a sum of Rs.80,000/- towards loss of consortium and a sum of Rs.30,000/- towards funeral and transportation of dead body etc. Hence, the claimants are entitled for a total compensation of Rs.13,19,600/- as against Rs.7,83,000/- awarded by the tribunal.-. 29 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 28. For the foregoing reasons, we proceed to pass the following;

ORDER

a. MFA Nos.200184/2018, 200186/2018 and MFA No.200187/2018 are dismissed. b. MFA No.202001/2018, MFA Crob. No.200068/2018 in MFA No.200184/2018 and MFA Crob.No.200069/2018 in MFA No.200186/2018 are allowed in part. c. The impugned judgment and award dated 17.10.2017 passed in MVC Nos.211, 212 and 213 of 2016 by the Senior Civil Judge & Addl. MACT, Shorapur, is modified. d. The appellant/claimant in MFA No.202001/2018 (MVC No.213/2016) is entitled for a total compensation of `25,30,320/- as against a sum of `14,62,000/- - 30 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 awarded by the tribunal, with 6% interest p.a. from the date of petition till its realization. e. The appellants/claimants in MFA Crob.No.200068/2018 (MVC No.211/2016) are entitled for a total compensation of Rs.17,42,872/- as against a sum of Rs.10,49,000/- awarded by the tribunal, with 6% interest p.a. from the date of petition till its realization. f. The appellants/claimants in MFA Crob.No.200069/2018 (MVC No.212/2016) are entitled for a total compensation of Rs.13,19,600/- as against Rs.7,83,000/- awarded by the tribunal, with 6% interest p.a. from the date of petition till its realization. g. Rest of the order passed by the tribunal is not disturbed.-. 31 - NC:

2023. KHC-K:6406-DB MFA No.202001 of 2018 C/W MFA No.200184 of 2018, MFA No.200186 of 2018, MFA No.200187 of 2018, MFA.CROB No.200068 of 2018, MFA.CROB No.200069 of 2018 h. The registry is directed to send back the TCR to the concerned tribunal, forthwith. i. The amount in deposit before this Court shall be transmitted to the tribunal. Sd/- JUDGE Sd/- JUDGE SMP,SWK,MSR List No.:

1. SI No.:

2.