

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 30TH DAY OF SEPTEMBER, 2020

PRESENT

THE HON'BLE MR.JUSTICE P.S.DINESH KUMAR

AND

THE HON'BLE MR.JUSTICE S.VISHWAJITH SHETTY

M.F.A.NO.25004 OF 2012 CLUBED WITH  
M.F.A.CROB.NO.764 OF 2013, M.F.A.NO.25003 OF 2012,  
M.F.A.CROB.NO.100045 OF 2014 AND  
M.F.A.CROB.NO.100046 OF 2014.

IN M.F.A.NO.25004 OF 2012  
BETWEEN :

RELIANCE GEN.INS.CO.LTD.  
REPRESENTED BY ITS  
DEPUTY MANAGER LEGAL CLAIMS,  
CTS.472-474, V.A.KALBURGI SQUARE,  
DESAI CIRCLE, DESHAPANDE NAGAR,  
HUBLI.

... APPELLANT

(BY SHRI NAGARAJ C. KOLLOORI, ADVOCATE)

AND :

1. SHRI HONNAMMA D/O BOMMAYYA GAONKAR  
W/O HAMMANNA VENKATRAMAN NAYAK,  
AGE: 45 YEARS, OCC: TEACHER,  
R/O.SURVE, BASGOD, TQ: ANKOLA,  
NOW AT NEAR KUNTI MAHAMAYA TEMPLE,  
KARWAR.
2. SAMPRITI D/O HAMMANNA NAYAK,  
AGE: 15 YEARS, OCC: STUDENT,

SINCE MINOR REPRESENTED BY HER MOTHER  
HONNAMMA D/O BOMMAYYA GAONKAR  
W/O.HAMMANNA VENKATRAMAN NAYAK,  
R/O.SURVE, BASGOD, TQ: ANKOLA,  
NOW AT NEAR KUNTI MAHAMAYA TEMPLE,  
KARWAR.

3. SHREYA D/O HAMMANNA NAYAK,  
AGE: 13 YEARS, OCC: STUDENT  
SINCE MINOR REPRESENTED BY HER MOTHER  
HONNAMMA D/O BOMMAYYA GAONKAR  
W/O.HAMMANNA VENKATRAMAN NAYAK,  
R/O.SURVE, BASGOD, TQ: ANKOLA,  
NOW AT NEAR KUNTI MAHAMAYA TEMPLE,  
KARWAR.
4. VENKATRAMAN MANI NAYAK,  
AGE: 82 YEARS, OCC: AGRICULTURE,  
R/O.SURVE, BASGOD, TQ: ANKOLA,  
DIST: KARWAR.
5. PARVATI VENKATRAMAN NAYAK,  
AGE: 78 YEARS, OCC: HOUSEHOLD WORK,  
R/O.SURVE, BASGOD, TQ: ANKOLA,  
DIST: KARWAR.
6. DIVISIONAL CONTROLLER,  
NWKRTC, SIRSI DIVISION, SIRSI,  
TQ: SIRSI, DIST: KARWAR.
7. MOHAMMADHASSAN SHEIKH M.,  
AGE: MAJOR, OCC: BUSINESS  
R/O.H.NO.153, NOORANI GALLI, MUNDAGOD,  
TQ: MUNDAGOD, DIST: BAGALKOT.

... RESPONDENTS

(BY SHRI SIDDAPPA S.SAJJAN, ADVOCATE FOR R1, R4, R5)  
(BY SHRI.M.B.KANAVI, ADVOCATE FOR R-6)  
(RESPONDENT NOS.2 AND 3 –MINORS REPRTD. BY R-1)  
(RESPONDENT NO.7-SERVED)

THIS APPEAL IS FILED U/S 173(1) OF M.V. ACT AGAINST THE JUDGMENT AND AWARD DTD:14-08-2012 PASSED IN MVC NO.199/2009 ON THE FILE OF MEMBER, I ADDITIONAL M.A.C.T., KARWAR, AWARDED THE COMPENSATION OF RS.11,72,360/- WITH INTEREST AT THE RATE OF 6% P.A., FROM THE DATE OF PETITION TILL THE DATE OF REALIZATION.

IN M.F.A.CROB.NO.764/2013  
BETWEEN

1. SMT.HONNAMMA W/O HAMMANNA NAYAK,  
AGE: 49 YEARS, R/AT: SURVE, BASGOD,  
TQ: ANKOLA, NOW AT NEAR  
KUNTI MAHAMAYA TEMPLE, KARWAR.
2. SAMPRITI D/O HAMMANNA NAYAK,  
AGE: 16 YEARS, OCC: STUDENT,  
R/AT: SURVE, BASGOD,  
TQ: ANKOLA, NOW AT NEAR  
KUNTI MAHAMAYA TEMPLE, KARWAR.
3. KUMARI SHREYA D/O HAMMANNA NAYAK,  
AGE: 14 YEARS, OCC: STUDENT,  
R/AT: SURVE, BASGOD,  
TQ: ANKOLA, NOW AT NEAR  
KUNTI MAHAMAYA TEMPLE, KARWAR.
4. VENKATRAMAN MANI NAYAK,  
AGE: 83 YEARS, R/AT: SURVE, BASGOD,  
TQ: ANKOLA, NOW AT NEAR  
KUNTI MAHAMAYA TEMPLE, KARWAR.

5. SMT.PARVATI VENKATRAMAN NAYAK,  
AGE: 79 YEARS, R/AT: SURVE, BASGOD,  
TQ: ANKOLA, NOW AT NEAR  
KUNTI MAHAMAYA TEMPLE, KARWAR.  
... CROSS OBJECTORS

(BY SHRI SIDDAPPA SAJJAN, ADVOCATE)

AND :

1. DIVISIONAL CONTROLLER,  
NWKRTC, SIRSI DIVISION,  
SIRSI.
2. MR.MOHAMMAD HASSAN SHEIKH M,  
AGE: MAJOR,  
R/AT: H.NO.153, NOORANI GALLI,  
MUNDAGOD, NORTH KANARA.
3. RELIANCE GENERAL INSURANCE  
BRANCH CTS 472-474,  
VA BALBURGI SQUARE,  
DESAI CROSS, DESHPANDE NAGAR,  
HUBLI-29. ... RESPONDENTS

(BY SHRI M.B.KANAVI, ADVOCATE FOR R-1)

(BY SHRI NAGARAJ C.KOLLOORI, ADVOCATE FOR R-3)

(NOTICE TO R-2 DISPENSED WITH)

THIS M.F.A. CROSS-OBJECTION IN M.F.A.NO.25004/  
2012 IS FILED U/O.41 RULE 22 OF CPC., AGAINST  
JUDGMENT AND AWARD DTD:14-08-2012, PASSED IN  
MVC.NO.199/2009 ON THE FILE OF THE MEMBER, I  
ADDITIONAL M.A.C.T, KARWAR, PARTLY ALLOWING THE  
CLAIM PETITION FOR COMPENSATION AND SEEKING  
ENHANCEMENT OF COMPENSATION.

IN M.F.A.NO.25003 OF 2012  
BETWEEN :

RELIANCE GEN.INS.CO.LTD.  
REPRESENTED BY ITS  
DEPUTY MANAGER LEGAL CLAIMS,  
CTS.472-474, V.A.KALBURGI SQUARE,  
DESAI CROSS, DESHAPANDE NAGAR,  
HUBLI-580 029.

... APPELLANT

(BY SHRI NAGARAJ C. KOLLOORI, ADVOCATE)

AND :

1. SMT.LAXMI W/O. MANESHWAR NAIK,  
AGE : 45 YEARS, OCC : COOLIE,  
R/O.AGSOOR, ANKOLA,  
NOW AT KODIBAG, KARWAR,  
TQ AND DIST. KARWAR.
2. DIVISIONAL CONTROLLER,  
NWKRTC, SIRSI DIVISION, SIRSI,  
TQ: SIRSI, DIST: KARWAR.
3. SRI.MOHAMMADHASSAN SHEIKH M.,  
AGE: MAJOR, OCC: BUSINESS  
R/O.H.NO.153, NOORANI GALLI, MUNDAGOD,  
TQ: MUNDAGOD, DIST: BAGALKOT.

... RESPONDENTS

(BY SHRI T.M.NADAF, ADVOCATE FOR R1)  
(BY SHRI.M.B.KANAVI, ADVOCATE FOR R-2)  
(RESPONDENT NO.3-SERVED)

THIS APPEAL IS FILED U/S 173(1) OF M.V. ACT AND  
PRAYED TO SET ASIDE THE JUDGMENT AND AWARD DATED  
14.08.2012 PASSED BY THE I ADDITIONAL M.A.C.T. KARWAR

IN M.V.C.NO.169 OF 2009 ON THE FOLLOWING FACTS AND  
AMONG OTHER GROUNDS AND TO PASS SUCH OTHER  
ORDER OR ORDERS AS THIS COURT DEEMS FIT UNDER THE  
FACTS AND CIRCUMSTANCE OF THE CASE INCLUDING THE  
COSTS IN THE INTEREST OF JUSTICE AND EQUITY.

IN M.F.A.CROB.NO.100045/2014  
BETWEEN :

THE DIVISIONAL CONTROLLER (MANAGER),  
NORTH WEST KARNATAKA ROAD  
TRANSPORT CORPORATION,  
NWKRTC, SIRSI DIVISION, SIRSI,  
(BUS BEARING NO. KA-31/F-988).

... CROSS-OBJECTOR

(BY SHRI M.B.KANAVI, ADVOCATE)

AND :

1. HONNAMAA D/O BOMAYYA GAONKAR,  
W/O HAMMANNA VENKTRAMAN NAYAK,  
AGE: 45 YEARS, OCC: TEACHER,  
R/O SURVE, BASGOD, TQ: ANKOLA,  
NOW AT NEAR KUNTI MAHAMAYA TEMPLE  
TQ: KARWAR.
2. SAMPRITI D/O HAMMANNA NAYAK,  
AGE: 12 YEARS, STUDENT,  
R/O: SURVE, BASGOD, TQ: ANKOLA,  
NOW AT NEAR KUNTI MAHAMAYA TEMPLE,  
TQ: KARWAR.
3. SHREYA D/O HAMMANNA NAYAK,  
AGE: 10 YEARS, STUDENT,  
R/O: SURVE, BASGOD, TQ: ANKOLA,  
NOW AT NEAR KUNTI MAHAMAYA TEMPLE,  
TQ: KARWAR

4. VENKATRAMAN MANI NAYAK,  
AGE: 79 YEARS, AGRICULTURE,  
R/O: SURVE, BASGOD, TQ: ANKOLA,
5. PARVATI VENKATRAMAN NAYAK,  
AGE: 75 YEARS, HOUSEHOLD,  
R/O: SURVE, BASGOD, TQ: ANKOLA.
6. MR.MOHAMMAD HASSAN SHEIKH M.  
AGE: MAJOR, LORRY BEARING  
REG. NO. KA-31/5490,  
R/O. H.NO. 153, NOORANI GALLI,  
MUNDGOD, NORTH KANARA.
7. RELIANCE GENERAL INSURANCE,  
BRANCH CTS. 472-474, VA KALBURGI SQUARE,  
DESAI CROSS, DESHPANDE NAGAR,  
HUBLI - 580 029,  
REPRESENTED BY BRANCH MANAGER,  
(POLICY/CERTIFICATE NO. 1402/8233400413).

... RESPONDENTS

(BY SHRI SIDDAPPA S.SAJJAN, ADVOCATE FOR R-1 TO 5)  
(BY SHRI NAGARAJ C.KOLLOORI, ADVOCATE FOR R-7)  
(NOTICE TO RESPONDENT NO.6-DISPENSED WITH)

THIS M.F.A.CROB IN M.F.A.NO.25004/2012 FILED  
UNDER ORDER 41 RULE 22 OF CPC., AND PRAYED TO SET  
ASIDE THE JUDGMENT AND AWARD DATED 14.08.2012 IN  
M.V.C.NO.199 OF 2009 PASSED BY THE I ADDITIONAL  
M.A.C.T., KARWAR PRODUCED AT ANNEXURE A AND B AND  
CONSEQUENTLY DISMISS THE CLAIM PETITION IN THE  
INTEREST OF JUSTICE AND EQUITY AND ETC.,

IN M.F.A.CROB.NO.100046/2014  
BETWEEN :

THE DIVISIONAL CONTROLLER (MANAGER),  
NORTH WEST KARNATAKA ROAD  
TRANSPORT CORPORATION,  
NWKRTC, SIRSI DIVISION, SIRSI,  
(BUS BEARING NO. KA-31/F-988).

... CROSS-OBJECTOR

(BY SHRI M.B.KANAVI, ADVOCATE)

AND :

1. SMT.LAXMI MANESHWAR NAIK,  
AGE : 50 YEARS, OCC : COOLIE,  
R/O.AGSOOR, ANKOLA,  
NOW AT KODIBG, KARWAR.
2. MR.MOHAMMAD HASSAN SHEIKH M.,  
MAJOR, LORRY BEARING REG.  
NO.KA-31/5490,  
R/O.H.NO.153, NOORANI GALLI,  
MUNDGOD, NORTH KANARA.
3. RELIANCE GENERAL INSURANCE,  
BRANCH CTS. 472-474, VA KALBURGI SQUARE,  
DESAI CROSS, DESHPANDE NAGAR,  
HUBLI - 580 029,  
REPRESENTED BY BRANCH MANAGER,  
(POLICY/CERTIFICATE NO. 1402/8233400413)

... RESPONDENTS

(BY SHRI NAGARAJ C.KOLLOORI, ADVOCATE FOR R-3)

(BY SHRI T.M.NADAF, ADVOCATE FOR R-1)

(NOTICE TO RESPONDENT NO.2- DISPENSED WITH)

THIS M.F.A.CROB IN M.F.A.NO.25003/2012 FILED  
UNDER ORDER 41 RULE 22 OF CPC., AND PRAYED TO SET  
ASIDE THE JUDGMENT AND AWARD DATED 14.08.2012 IN



M.V.C.NO.169 OF 2009 PASSED BY THE I ADDITIONAL M.A.C.T., KARWAR AND CONSEQUENTLY DISMISS THE CLAIM PETITION IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,

THESE APPEALS AND CROSS-OBJECTIONS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, THIS DAY, S. VISHWAJITH SHETTY, J., PRONOUNCED THE FOLLOWING:-

### JUDGMENT

These appeals and cross-objections arise from the Judgment and Award dated 14.08.2012 made in M.V.C. Nos.169 and 199 of 2009 by the Court of I Additional M.A.C.T., Karwar.

2. M.F.A.No.25003 of 2012 and M.F.A.No.25004 of 2012 have been filed by the insurer of the lorry bearing No.KA-31/549 challenging the liability and quantum in M.V.C.Nos.169 and 199 of 2009 respectively. M.F.A. Cross-Objection Nos.100045 and 100046 of 2014 are filed by NWKRTC who is the owner of the bus bearing No.KA-31/F-988 challenging its liability and also the quantum of compensation. M.F.A. Cross-Objection No.764 of 2013 has

been filed by the claimants in M.F.A.No.25004 of 2012 seeking enhancement of the compensation.

3. We have heard the learned counsel Shri.Nagaraj C.Kolloori for the insurer, Shri M.B.Kanavi, for NWKRTC and Shri Siddappa Sajjan, for the claimants.

4. The brief facts of the case are, on 30.04.2009 the claimant in M.V.C.No.169 of 2009-Smt.Laxmi Maneshwar Naik and the husband of the first claimant Smt.Honnamma Gaonkar in M.V.C.No.199 of 2009, were traveling in NWKRTC bus bearing No.KA-31/F-988 and Smt.Honnamma's husband Shri Hammanna Venkatraman Nayak was the conductor in the said bus. The said bus was allegedly driven in a rash and negligent manner by its driver and as a result he lost control and dashed against the parked Lorry bearing No.KA-31/549 at a place called Bogribail. The said lorry was parked opposite to the office of Mines and Geology check post. In the said accident, Smt.Laxmi Maneshwar Naik and other inmates of the NWKRTC bus suffered grievous injuries and the conductor

of the said bus Shri Hammanna Venkatraman Nayak who suffered grievous injuries succumbed to the same on the way to hospital at Manipal in Udupi. Injured-Smt.Laxmi Manehswar Naik filed M.V.C.No.169 of 2009 claiming compensation of Rs.5,00,000/- with interest and the wife, children and parents of the deceased Shri Hammanna V. Naik filed M.V.C.No.199 of 2009 claiming compensation of Rs.40,00,000/- with interest. The owner of the NWKRTC bus and also owner and insurer of the lorry were arrayed as respondent Nos.1 to 3 in the said claim petitions filed under Section 166 of the Motor Vehicles Act.

5. The learned counsel for the insurer and the learned counsel for the NWKRTC both submitted that the Tribunal has erred in saddling 50% contributory negligence on the driver of the lorry and the driver of the bus. It is the contention of the insurer that the lorry was parked on the side of road and therefore there was no negligence on the part of the driver of the said vehicle.

6. On the other hand, the learned counsel for the NWKRTC submitted that the lorry which was moving stopped all of a sudden and as a result the accident had taken place. Therefore, there was no negligence on the part of the driver of bus. The learned counsel appearing for the insurer, NWKRTC and the claimants have also addressed arguments questioning the quantum of compensation awarded by the Tribunal.

7. We have carefully considered the rival contentions urged by all parties and also perused the material evidence available on record.

8. The accident in question has taken place opposite to the check post office of the Mines and Geology Department. The complainant is the official of Mines and Geology Department, who was on duty in the check post at the time of accident. He being an independent witness has stated that the lorry which came from Hubballi towards Ankola side was parked by its driver for the purpose of inspection on the left side of the road. The driver of the

NWKRTC bus who was driving the vehicle in a rash and negligent manner, lost control of the vehicle and dashed against the parked lorry from behind. Though, the learned Advocate appearing for NWKRTC contended that the lorry was moving and all of a sudden it had stopped and therefore the accident had taken place, the said contention cannot be accepted in the absence of any evidence on record. In addition to the complaint averments, we have also noticed in the spot panchanama Ex.P.2 it is mentioned that the left hand side tyres of the lorry were on the mud road and right hand side tyres were on the tar road. The width of the road is about 24 feet. Therefore, it is very clear that though the lorry was parked on the left side of the road, a portion of the lorry was occupying the tar road and therefore it can be said that the lorry driver had not taken sufficient care to park the lorry in such a manner that it does not obstruct the vehicles moving on the road. However, the fact remains that the driver of the bus had dashed against the parked lorry. In the facts and circumstances of the case, we find force in the contention of

the insurer that the Tribunal was not justified in fastening the contributory negligence at 50% each on the driver of the lorry and bus. Though, the lorry had occupied a portion of the tar road, the bus driver could have avoided the accident, if he was carefully driving the vehicle. Therefore, we are of the view if the contributory negligence is apportioned as 75% on the driver of the NWKRTC bus and 25% on the driver of the lorry it would meet the ends of justice.

9. The deceased was a conductor and he was drawing a salary of Rs.11,790/- at the time of accident. After deducting the Tax component the Tribunal has taken the monthly income of the deceased at Rs.11,640/-. The deceased was aged 50 years at the time of accident and therefore 30% of his income is required to be added towards his future prospects. Having regard to the number of claimants after deducting  $\frac{1}{4}$ <sup>th</sup> of his total income is required to be deducted towards his personal expenses. Having regard to the age of the deceased the proper

multiplier applicable would be '13'. Towards loss of dependency, the claimants are entitled for Rs.17,70,444/- ( $Rs.11,640/- + 30\% - 1/4^{th} = Rs.11,349/- \times 12 \times 13$ ). Claimant No.1 being the wife is entitled for a sum of Rs.40,000/- under the head loss of consortium and Rs.30,000/- towards funeral and other expenses. Claimant Nos.2 to 5 being the children and parents of the deceased are entitled for a sum of Rs.40,000/- each towards loss of love and affection. The compensation recomputed by us totally amounts to Rs.20,00,444 as follows :

Sl. No.	Heads	Amount
1.	Towards loss of dependency.	Rs.17,70,444/-
2.	Towards loss of consortium and funeral expenses to claimant No.1 (Rs.40,000/- + Rs.30,000/-).	Rs.70,000/-
3.	Towards loss of love and affection to claimant Nos.2 to 5 (Rs.40,000/- X 4).	Rs.1,60,000/-
<b>Total</b>		<b>Rs.20,00,444/-</b>
Less : compensation awarded by the Tribunal		Rs.11,72,360/-
<b>Net enhancement</b>		<b>Rs.8,28,084/-</b>

10. Hence, the following:

ORDER

- (i) M.F.A.Nos.25003 and 25004 of 2012 and M.F.A. Cross-Objection No.764 of 2013 are partly allowed.
- (ii) M.F.A. Cross-Objection Nos.100045 and 100046 of 2014 filed by the NWKRTC are dismissed.
- (iii) The claimants are entitled for enhanced compensation amount of Rs.8,28,084/-with interest at the rate of 6% p.a. from the date of petition till realization;
- (iv) The insurer of the lorry and owner of the bus i.e., NWKRTC shall deposit the compensation amount with interest within a period of two months from the date of receipt of a copy of this order.



- (v) The terms of apportionment, disbursement and deposit shall be as per the orders of the Tribunal.

In view of disposal of the appeals and cross-objections, pending applications, if any, stand disposed of.

Amount in deposit in M.F.A.Nos.25003 and 25004 of 2012 and in M.F.A. Cross-Objection Nos.100045 and 100046 of 2014 shall be transmitted to the concerned Tribunal forthwith.

Sd/-  
JUDGE

Sd/-  
JUDGE

ckk