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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19<sup>TH</sup> DAY OF JULY, 2011

PRESENT

THE HON'BLE MR. JUSTICE K.L.MANJUNATH

AND

THE HON'BLE MR.JUSTICE H.S.KEMPANNA

M.F.A.NO. 13604/2007 (MV)

BETWEEN:

1. GIRIJESH VYAS  
S/O LATE SHIVANANDAN VYAS,  
AGED ABOUT 54 YEARS.
2. SMT. SMITHA VYAS  
W/O GIRIJESH VYAS,  
AGED ABOUT 50 YEARS,  
BOTH ARE R/AT HX - 33,  
NEW LAKSHMINAGAR,  
HOUSING BOARD COLONY,  
UJJAINI,  
M.P - 456 010.

... APPELLANTS

(BY SRI A DHANANJAYA, ADV.)

AND:

1. G. VISHNUVARDHAN,  
S/O GOPALAKRISHNA,  
MAJOR,  
R/AT NO. 32, OLD RACE COURSE ROAD,  
VIVEKNAGAR,  
BANGLAORE - 560 047.



2. M/S TATA AIG GEN. INS. CO. LTD.  
5<sup>TH</sup> FLOOR, WEST ENTRANCE,  
KHANIJA BHAVAN,  
RACE COURSE ROAD,  
BANGALORE.
3. SUBRAMANI,  
S/O KRISHNAPPA,  
MAJOR, R/AT NO. 92,  
DODDA THIMMASANDRA,  
ANEKAL TALUK,  
BANGALORE.

... RESPONDENTS

(BY SRI O MAHESH, ADV. FOR R2,  
R1 - SERVED,  
R3 - SERVICE HELD SUFFICIENT)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST  
THE JUDGMENT AND AWARD DATED: 19.06.2007 PASSED  
IN MVC NO. 2768/2006 ON THE FILE OF THE XIII ADDL.  
JUDGE, COURT OF SMALL CAUSES, MEMBER, MOTOR  
ACCIDENT CLAIMS TRIBUNAL, METROPOLITAIN AREA,  
BANGALORE, (SCCH. NO. 15), DISMISSING THE CLAIM  
PETITION FOR COMPENSATION.

THIS APPEAL COMING ON FOR FINAL HEARING THIS  
DAY, MANJUNATH J., DELIVERED THE FOLLOWING:-



J U D G M E N T

The claimants have preferred this appeal being aggrieved by the dismissal of their claim petition by the Motor Accident Claims Tribunal, Bangalore (hereinafter called as 'Tribunal' for brevity) dt. 19.06.2007 passed in MVC No.2768/06.

2. The admitted facts are as hereunder:

The appellants who were the claimants before the Tribunal, lodged the claim petition claiming compensation on account of death of their son Manas Vyas in a road traffic accident occurred on 18.09.2005 at 11.55 p.m. On the unfortunate day the deceased was riding his motor cycle near Air View Point, inner Ring road, Ashoka nagar. The motor cycle of the deceased touched the road median as a result of which he lost control over the motor cycle and he fell on the other side of the road crossing the road median. On the opposite side, the Toyota Qualis van bearing No.KA-05-C-5660 was coming. On seeing the deceased falling on the

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road, the driver of the Toyota Qualis van stopped his vehicle, but unfortunately another Maruti car bearing No.KA-03-MA-4190 which was coming in the same direction behind the Toyota Qualis van and dashed against the Toyota Qualis van. On account of the impact, the van ran over the claimants' son and he succumbed to the injuries on the spot. Therefore, the claim petition was lodged. The deceased was getting a sum of Rs.2,50,000/- per annum as a Software Engineer working in IBM Global Services India Pvt. Ltd., The claim petition has been dismissed on the ground that the accident occurred on account of the negligence of the deceased. Challenging the same, the present petition is filed.

3. We have heard the learned counsel appearing for the parties.

4. It is not in dispute that on account of the motor cycle touching the road median the deceased fell on the other side of the road and that the Toyota Qualis

vehicle which was coming from the opposite direction though was brought to halt by its driver, on account of the car bearing No.KA-03-MA-4190 which was coming behind the Toyota Qualis van dashing against the Toyota Qualis, the Qualis ran over the deceased resulting in the death of the claimants' son.

5. We have perused the entire records.

6. On considering the entire records, this Court cannot find fault with the driver of the Toyota Qualis, because he has brought the vehicle to halt. The driver of the Maruthi Car has been examined before the Court as PW.2. In his evidence he has not stated as to what was the distance maintained by him between his vehicle and Toyota Qualis. When the Toyota Qualis has been brought to halt, if the driver of the Maruthi Car had maintained the distance, he could have also brought the car to a halt by applying brakes and in such circumstances, the Toyota Qualis could not have ran over the deceased. Maruti 800 is a very light vehicle



when compared to Qualis Van. When a light vehicle dashes against a heavy and sturdy vehicle which is brought to a halt will not move forward. But in the instant case, on account of the impact the Qualis Van which was stationed moved further and ran over the deceased, which only shows the velocity with which Maruti 800 car has dashed against the Qualis van. Ex.P4 is the Motor Vehicles Inspector's report which reveals the damages caused to Maruti 800 car. The brakes were in order. Considering the extent of damages caused to the cars, we are of the opinion, the car was at a great speed and its driver didn't make any attempt to stop the vehicle. Therefore, we are of the view that there is contributory negligence on the part of the driver of the Maruti Car which can be assessed at 25%. Accordingly, we hold that the driver of the Maruti Car was also responsible in causing the accident and his contribution is assessed at 25%.

7. So far as the compensation payable to the claimants are concerned, admittedly the deceased was

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unmarried. His income was Rs.2,00,000/- per annum. If he was getting an income of Rs.2,00,000/- per annum, 50% of his income has to be deducted towards personal expenditure. Therefore, the annual dependency has to be assessed at Rs.1,00,000/- per annum. Out of which 75% has to be deducted towards contributory negligence of the deceased. Therefore, the loss of dependency per annum has to be assessed at Rs.25,000/-. Considering the age of the mother of the deceased, we have to apply the multiplier of 13. Then the loss of dependency has to be assessed at Rs.3,25,000/-. In addition, the claimants would be entitled to a sum of Rs.30,000/-. Thus, the claimants are entitled to total compensation of Rs.3,55,000/- which shall be payable by the owner of the Maruti Car who is respondent No.1 and its insurer -- respondent No.2.

§. In the result, the appeal is allowed in part. The judgement and decree passed by the Motor Accident Claims Tribunal, Bangalore in MVC No.2768/06 passed



on 19<sup>th</sup> June 2007 is hereby modified holding that the appellants are entitled for a total compensation of Rs.3,55,000/- with interest at 6% p.a. from the date of petition till the date of payment. The same shall be paid by respondent Nos. 1 and 2 jointly and severally. Out of the compensation payable to the claimants, a sum of Rs.2,00,000/- with proportionate interest shall be invested in the name of the mother of the deceased for a period of five years in any nationalised/schedule bank. Rest of the amount is ordered to be released to the claimants.

Sd/-  
JUDGE

Sd/-  
JUDGE

BNS