



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No.....of 2025
(@Special Leave Petition (C) No.4875 of 2019)**

SMT. M. SABITHA & ORS.

APPELLANT(S)

VERSUS

BRAHMA SWAMULU & ANR.

RESPONDENT(S)

J U D G E M E N T

K. VINOD CHANDRAN, J.

1. Leave granted.
2. The appeal is by the claimants from an order of the High Court, determining the contributory negligence of the deceased driver of the car, whose death is sought to be compensated, at 70%. The accident was a head-on collision of a car driven by the husband of the claimant, with a lorry, resulting in the instant death of the car driver. The Tribunal found that the accident occurred due to the negligence of the deceased driver, mainly relying on the

FIR which was registered against the deceased driver and the final report filed, closing the case, as the accused was no more. The claimants were awarded only an amount of Rs.50,000/- under Section 140 of the Motor Vehicles Act, 1988¹.

3. The High Court, however, found on a reading of the rough sketch produced and marked as Exhibit B-5 that both the drivers were negligent and while the deceased was overtaking a vehicle, the lorry coming from the opposite side was also driven in a rash and negligent manner. The High Court, hence, found contributory negligence and fixed the liability of negligence on the driver of the lorry at 30%.

4. True the crime was registered against the deceased driver of the car, but on the first information supplied by the driver of the lorry. Obviously, no reliance can be placed on such FIR to find negligence on the driver of the car. The police also carried out no investigation and closed

¹ the MV Act

the case as one in which the accused is no more. We notice that the High Court has found negligence on both drivers. In fact, the High Court had referred to the statement under Section 161, Cr. PC of PW-1 wherein she stated that the accident occurred while her husband was driving the car, trying to overtake a lorry and thus it dashed against the lorry coming from the opposite side. PW-1 was neither present at the scene of occurrence, nor travelling in the car along with her husband. The statement of PW-1 was based on an information given to her by an eyewitness. In addition, to the fact that no reliance can be placed on a statement under Section 161, Cr.PC, the eyewitness who gave such information to PW-1 was also not examined.

5. Negligence in the present case can only be found from the attendant circumstances. The High Court has noticed that the sketch prepared would indicate that the car driven by the deceased was overtaking a lorry. It is also to be noticed that after the collision, the car was

dragged to a distance of 20 feet, making it clear that the lorry was driven at a high speed.

6. The fact remains that there was a collision, and that the car was dragged to a distance of 20 feet after the collision, clearly indicating rash and negligent driving on the part of the lorry driver. We are hence inclined to find that the contributory negligence on the drivers will be equal, since there is fault on the part of the car driver in not taking sufficient care when overtaking, while the impact could have been avoided or gravity lessened, if the lorry had been driven in normal speed. Hence, apportionment of liability can be fixed at 50% for each.

7. Based on the Income Tax Returns, the High Court adopted an annual income of Rs.4,50,000/- and considering the age of the deceased, 38 years, there must be an addition of 40% for future prospects. Because the dependent family of the deceased, has five members, there shall be a deduction of 1/4th for personal expenses. The multiplier for a person of 38 years is 15. This Court

held in *New India Assurance Company v. Somwati and Ors.*² that apart from spousal consortium, filial and parental consortium also has to be granted at the rate of 40%. The wife, the two minor children and the mother who are the claimants and dependents of the deceased are to be granted Rs.40,000/- each for loss of consortium. Under the conventional head of loss of estate and funeral expenses, a further sum of Rs.15,000/- each is to be granted. The total compensation, hence, would be: -

Sr. No.	Heads of Claim	Amount
1.	Loss of dependency Rs.4,50,000 x 15 x 140% x 3/4	Rs.70,87,500/-
2.	Loss of consortium Rs.40,000 x 4	Rs.1,60,000/-
3.	Loss of estate Rs.15,000	Rs.15,000/-
4.	Funeral expenses Rs.15,000	Rs.15,000/-
	Total amount	Rs.72,77,500/-

8. Considering the fact that 50% negligence is found on the deceased, the claimants will be entitled to half of the compensation computed which will be Rs.36,38,750/-.

² (2020) 9 SCC 644

The same shall be paid with interest at the rate of 7% per annum and proportionate cost from the date of the claim petition and the interim compensation paid under Section 140 of the MV Act will stand deducted.

9. The appeal stands allowed with the above modification.

10. Pending applications, if any, shall stand disposed of.

..... J.
(SUDHANSHU DHULIA)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
APRIL 30, 2025.**