



**IN THE COURT OF X ADDL. DISTRICT AND
SESSIONS JUDGE AND MEMBER ADDL.MACT,
AT : BELAGAVI.**

Dated this, the 24th day of November, 2021

PRESENT:

**SHRI. VENKATESH,
B.Com. LL.B.,
X Addl. District & Sessions Judge and
Member Addl. MACT, Belagavi.**

MVC.Nos.2332 to 2338 OF 2018

Petitioners in MVC No.2332/2018

1. Tammaraya S/o Ishwarappa Bagali,
Age: 50 years, Occ: Agriculture,
2. Suresh S/o Tammaraya Bagali,
Age: 25 years, Occ: Nil,
3. Mahesh S/o Tammaraya Bagali,
Age: 22 years, Occ: Nil,

All are residents of Ganesh Nagar, Belagavi.

(By Shri. H.B. Shirol, Advocate)

Petitioner in MVC No.2333/2014:

1. Mashambi W/o Mula Nadaf,
Age: 55 years, Occ: Agriculture,
R/o Ganesh Nagar, Belagavi.

(By Shri. H.B. Shirol, Advocate)

Petitioner in MVC No.2334/2014:

1. Malhari S/o Krishna Kulal,
Age: 55 years, Occ: Agriculture,
R/o Ganesh Nagar, Belagavi.

(By Shri. H.B. Shirol, Advocate)

Petitioner in MVC No.2335/2014:

1. Somaling S/o Siddappa Ankalagi,
Age: 35 years, Occ: Driver,
R/o Ganesh Nagar, Belagavi.

(By Shri. H.B. Shirol, Advocate)

Petitioner in MVC No.2336/2014:

1. Gopabai @ Gopakka W/o Somanna Pareet,
Age: 35 years, Occ: Agriculture,
R/o Ganesh Nagar, Belagavi.

(By Shri. H.B. Shirol, Advocate)

Petitioner in MVC No.2337/2014:

1. Sindhubai W/o Beera Kulal,
Age: 25 years, Occ: Agriculture,
R/o Ganesh Nagar, Belagavi.

(By Shri. H.B. Shirol, Advocate)

Petitioner in MVC No.2338/2014:

1. Mainoddin @ Aainoddin S/o Dastagir Nadaf,
Age: 52 years, Occ: Business,
R/o Ganesh Nagar, Belagavi.

(By Shri. H.B. Shirol, Advocate)

VERSUS**Common Respondents in all the petitions:**

1. Nandu S/o Tukaram Gaikwad,
Age: 40 years, Occ: Business,
R/o Mangalmurty Colony, Kupwad,
Taluk: Miraj, District: Sangli- 416 416.
2. The Branch Manager,
United India Insurance Company Limited,
Belagavi.

(R1- By Shri.P.H. Joshi, Advocate in
all petitions except MVC No.2332 & 2333/2018),
R1-by Shri. A.C. Patil in MVC No.2333/2018),
& R1 Ex parte in MVC No.2332/2018) &
(R2- By Shri. V.B. Malannavar, Advocate)

COMMON JUDGMENT

The petitioners in all the above petitions have filed the petitions under Section 166 of Motor Vehicles Act seeking compensation for the injuries sustained by them in a road traffic accident and for the death of one Kasturi in MVC 2332/2018.

In brief the case of the petitioners in all the above cases are as follows:

2. On 17.11.2016 at about 13.30 hrs, the petitioners were traveling in a Max Jeep bearing

No.MH-10/K-9707. They were going towards Hospet from Kulageri side. Though, the driver was driving the vehicle in a slow manner and cautiously, an Innova car bearing Reg. No.MH-12/DE-6943 came from opposite side on Kulageri to Hospet road near Kulageri village, in a high speed, in a rash and negligent manner, the driver being unable to control it, dashed to the Max Jeep. Due to this impact, the inmates had suffered grievous injuries and the wife of petitioner No.1 in MVC No.2332/2018 namely Kasturi died. The accident is wholly due to rash and negligent driving of the Innova car by its driver.

3. The petitioners in MVC No.2332/2018 have contended that, in the said accident the wife of petitioner No.1 Kasturi died. Before the accident the deceased was hale and healthy woman of 45 years, she was an agriculturist, earning more than Rs. 25,000/- by pomegranate cultivation. The petitioner has lost the company in his young age, Petitioner Nos.2 and 3 have lost their loving mother. Hence, prayed for granting compensation of Rs. 50,00,000/-. Petitioners have

suffered untold hardship due to sudden death of Kasturi.

(a) The petitioner in MVC No.2333/2018 has contended that, she has suffered grievous injuries in this accident. She has suffered fracture injuries. She was shifted to Rural Hospital Jath and Miraj for treatment. She has spent more than Rs.2,00,000/- towards medical expenses. Before the accident she used to get income of Rs. 15,000/- p.m. by doing the agricultural work. Now, she is unable to do any work. She has become permanently disabled. Hence prays for granting compensation of Rs. 10,00,000/-.

(b) The petitioner in MVC 2334/2018 claims that, he has suffered grievous injuries in this accident. He has suffered fracture injuries. He was shifted to Rural Hospital Jath and Miraj for treatment. He has spent more than Rs.2,00,000/- towards medical expenses. Before the accident he used to get income of Rs.15,000/-p.m. by doing the agriculture work. Now, he is unable to do any work. He has become

permanently disabled. Hence, prays for granting compensation of Rs. 10,00,000/-.

(c) The petitioner in MVC No.2335/2018 claims that, he has suffered grievous injuries in this accident. He has suffered fracture injuries. He was shifted to Dr.Sudhir Shaha Hospital, Miraj for treatment. He has spent more than Rs. 2,00,000/- towards medical expenses. Before the accident he used to get income of Rs. 15,000/- p.m. by doing the driving work. Now, he is unable to do any work. He has become permanently disabled. Hence prays for granting compensation of Rs.10,00,000/-

(d) The petitioner in MVC No.2336/2018 claims that, she has suffered grievous injuries in this accident. She has suffered fracture injuries. She was shifted to Rural Hospital Jat and then, shifted to Civil Hospital Miraj for treatment. She has spent more than Rs.2,00,000/- towards medical expenses. Before the accident she used to get income of Rs. 15,000/-p.m. by doing the agriculture work. Now, she is unable to do any work. She has become permanently disabled.

Hence, prays for granting compensation of Rs.10,00,000/-

(e) The petitioner in MVC No.2337/2018 claims that, she has suffered grievous injuries in this accident. she has suffered fracture injuries. She was shifted to Rural Hospital Jat and then, shifted to Civil Hospital Miraj for treatment. She has spent more than Rs.2,00,000/- towards medical expenses. Before the accident, she used to get income of Rs.15,000/-p.m. by doing the agriculture work. Now, she is unable to do any work. She has become permanently disabled. Hence, prays for granting compensation of Rs.10,00,000/-.

(f) The petitioner in MVC No.2338/2018 claims that, he has suffered grievous injuries in this accident. He has suffered fracture injuries. He was shifted to Rural hospital Jat and then to Civil Hospital Miraj for treatment. He has spent more than Rs.2,00,000/- towards medical expenses. Before the accident, he used to get income of Rs.15,000/- p.m. by doing the driving

work. Now, he is unable to do any work. He has become permanently disabled. Hence prays for granting compensation of Rs.10,00,000/-.

4. In all the claim petitions it is contended that, the accident took place due to rash and negligent driving of the Innova car by its driver. The respondent No.1 is the owner and respondent No.2 is the Insurer of the Car. Both of them, are jointly and severally liable to answer the claim of the claimants.

5. After issuance of notice to the respondents, respondent Nos.1 and 2 have appeared through their respective counsels in MVC Nos.2333/2018 to 2338/2018 and respondent No.1 in MVC No.2332/2018 did not appear before the Court in spite of service of summons. Hence, respondent No.1 in MVC No.2332/2018 is placed ex parte. The respondent Nos.1 and 2 in MVC No.2333/2018 to MVC No.2338/2018 have filed their separate objections to the main petitions in all these cases in common. Wherein the respondent No.1 in his objection has denied the entire

case of the petitioners as false. Further denied with regard to the age, income and occupation of the petitioners in both the cases and also manner of the accident. Further contended that, at the material time of the accident the vehicle Innova Car Bearing Reg. No. MH 12 DE 6943 belonging to the respondent No.1 is insured with the respondent no.2. The driver had a valid license. The accident took place due to negligent driving of the max jeep driver. Hence prays for dismissing claim petitions.

6. On the other hand, the respondent No.2 has filed its objection to the main petitions in all the cases in common, by denying the entire case of the petitioners in all the cases. Further denied with regard to the age, income and occupation of the petitioners in all these case and also manner of the accident. Further contended that in the petition two vehicles are involved and hence the owners and insurers of both the vehicles are necessary parties in this proceedings, which amounts to non-joinder of necessary parties which is bad in law and therefore this petitions deserve

to be dismissed on this count alone. Further contended that the respondent No.2 subject to proving of insurance of vehicle and the liability of the respondent No.2 if there is any, is subject to validity or legality of the road permit, R.C. and fitness of the vehicle, valid and effective driving licence of the driver of said vehicle and other vehicular documents and also as per the terms and conditions, limitations and exceptions of the policy of insurance and as per the mandatory provisions of M.V. Act and rules thereunder and prayed to dismiss the petition against the respondent No.2.

7. On the basis of the above said rival contentions, my learned predecessor has framed the following issues;

Issues in MVC No.2332 of 2018:

- 1) Whether the petitioners prove that, Smt. Kasturi, wife of petitioner No.1 and mother of petitioner Nos.2 and 3 died in a road traffic accident occurred on 17.11.2016 at 01.30 p.m., near Kulageri village on Kulageri-Hospet Road, within the limits of Jath, due to

actionable negligence of the driver of Innova Car bearing Reg.No.MH-12/DE-6943?

- 2) Whether the petitioners are entitled for compensation? If so, to what extent and from whom?
- 3) To what award or order?

Issues in MVC No.2333 of 2018:

- 1) Whether the petitioner proves that, he suffered injuries as mentioned in column No.11 of the claim petition in a road traffic accident occurred on 17.11.2016 at 01.30 p.m., near Kulageri village on Kulageri-Hospet Road, within the limits of Jath, due to actionable negligence of the driver of Innova Car bearing Reg.No.MH-12/DE-6943?
- 2) Whether the petitioner is entitled for compensation? If so, to what extent and from whom?
- 3) To what award or order?

Issues in MVC No.2334 of 2018:

1. Whether the petitioner proves that, he suffered injuries as mentioned in column No.11 of the claim petition in a road traffic accident occurred on 17.11.2016 at 01.30 p.m., near Kulageri village on Kulageri-Hospet Road, within the limits of Jath, due to actionable negligence of the driver of Innova Car bearing Reg.No.MH-12/DE-6943?
2. Whether the petitioner is entitled for compensation? If so, to what extent and from whom?

3. To what award or order?

Issues in MVC No.2335 of 2018:

- 1) Whether the petitioner proves that, he suffered injuries as mentioned in column No.11 of the claim petition in a road traffic accident occurred on 17.11.2016 at 01.30 p.m., near Kulageri village on Kulageri-Hospet Road, within the limits of Jath, due to actionable negligence of the driver of Innova Car bearing Reg.No.MH-12/DE-6943?
- 2) Whether the petitioner is entitled for compensation? If so, to what extent and from whom?
- 3) To what award or order?

Issues in MVC No.2336 of 2018:

- 1) Whether the petitioner proves that, she suffered injuries as mentioned in column No.11 of the claim petition in a road traffic accident occurred on 17.11.2016 at 01.30 p.m., near Kulageri village on Kulageri-Hospet Road, within the limits of Jath, due to actionable negligence of the driver of Innova Car bearing Reg.No.MH-12/DE-6943?
- 2) Whether the petitioner is entitled for compensation? If so, to what extent and from whom?
- 3) To what award or order?

Issues in MVC No.2337 of 2018:

- 1) Whether the petitioner proves that, she suffered injuries as mentioned in column No.11 of the claim petition in a road traffic

accident occurred on 17.11.2016 at 01.30 p.m., near Kulageri village on Kulageri-Hospet Road, within the limits of Jath, due to actionable negligence of the driver of Innova Car bearing Reg.No.MH-12/DE-6943?

- 2) Whether the petitioner is entitled for compensation? If so, to what extent and from whom?
- 3) To what award or order?

Issues in MVC No.2338 of 2018:

- 1) Whether the petitioner proves that, he suffered injuries as mentioned in column No.11 of the claim petition in a road traffic accident occurred on 17.11.2016 at 01.30 p.m., near Kulageri village on Kulageri-Hospet Road, within the limits of Jath, due to actionable negligence of the driver of Innova Car bearing Reg.No.MH-12/DE-6943?
- 2) Whether the petitioner is entitled for compensation? If so, to what extent and from whom?
- 3) To what award or order?

8. In support of the petitioners' case in all the petitions, the petitioners have been examined as PWs.1 to PW7 and one witness Dr.S.R.Angadi has been examined as PW.8 and got marked 53 documents at Ex.P1 to P53. Respondents did not lead any defence evidence orally. The insurance policy is produced at

Ex.R1, it is got marked by consent and closed their side.

9. Heard the arguments of both sides.

10. My findings on the above said issues are as follows;

Issue No.1 in common In the Affirmative, except in MVC No.2336/2018.

Issue No.2 in common Partly in the Affirmative, except in MVC No.2336/2018.

Issue No.3 in common As per final order

For the following:

REASONS:

Issue No.1 in common in all the petitions:-

11. In support of the petitioners case, the petitioners in all these petitions have been examined as PW.1 to 7, who have reiterated the petition averments in their oral evidence. Further in support of their oral evidence they got marked 53 documents at Ex.P1 to P53. Ex.P1 is the certified copy of FIR, Ex.P1(a) is true translation. Ex.P2 is the certified copy of complaint, Ex.P2(a) is the true translation. Ex.P3 is the

certified copy of Wardi Jawab in Marathi and Ex. P3(a) is the true translation, Ex.P4 is spot panchanama, Ex.P4(a) is its true translation. Ex.P5 is the certified copy of charge sheet. Ex.P5(a) is its true translation. These are documents in common. PW.2 to 7 are injured witnesses as well as eyewitnesses to the incident. They have stated in their evidence that, on Kulgeri to Hospet road, from the opposite side Innova car came and dashed to their vehicle and the accident took place due to the rash and negligent driving of the innova car driver.

12. On going through the documents, it reveal that the complaint with the FIR is given by one Shivaji Janardhan Kengale, Asst.Police Inspector of Jath Police Station, that on 17.11.2016, at about 10.00 a.m. the police station Marshal duty Head Constable intimated that there is a phone call from Police Control Room that there is an accident on Kolageri-Hospet road, they immediately went to the spot, a Max vehicle No.MH-10/K-9707 was standing on the left side of the road, facing east. On the left side, at a distance of 10

feet in the drainage an Innova Car bearing No.MH-12/DE-6943 was standing. The Innova car tyre marks are visible from left side of the road to right side. Both the vehicles had damaged. He conducted the spot panchanama and prepared a map. Both the vehicles are brought to the police station. A notice is issued to the owners of both the vehicles under Section 209 of M.V.Act. The details of conducting the inquest mahazar are written in the complaint itself and primary conclusion is drawn that the Innova Car driver, named Ganesh has caused the accident. The person travelling in that car, named Zuber died at home. The complaint is given on 18.11.2016 at 9.00 p.m. However, this waradi jawab mentions that on 17.11.2016 itself, they had gone to the spot and conducted the panchanama. Normally in the cases of Maharashtra State we will see this type of details given by the police head constable. On the basis of such waradi jawab the case will proceed further. The translator has not correctly mentioned the date and time of registering the case. But, they are Hindi Alphabets and it can be noted. The

spot panchanama is conducted on 17.11.2016 itself as per Ex.P.4 which has a kachha sketch map with it. It shows that the Innova car is standing at a distance from Max vehicle. The tyre marks are shown on the road. At a crossing, it appears that Innova vehicle was going from East to West. But, went on to the wrong side. The police have filed the charge sheet against the drive of Innova car driver Ganesh. There are no documents to show that the charge sheet is challenged before any court nor any rebuttal evidence is led by the respondents. On the other hand, in the cross-examination of all the witnesses, it is elicited that one Somalinga was driving the Max jeep, the road runs east to west. Jath is towards west and Sonnihalla is towards east. The jeep was moving from west to east. Innova car came from east to west. It is denied that car was coming on its correct side. PW.1 is not an eyewitness, therefore, it can be accepted that he has not seen the accident. All the other witnesses also stated that they have not seen the accident. However, an accident takes place in the time of a hoodwink. Therefore, in a

motor vehicle cases, the court can apply the principles of res-ipsa-loquitor. The things explains if for themselves, that tyre marks of Innova car are visible on the road. The car has gone on the wrong side of the road to the extreme right end. Therefore, it can be concluded that the car driver was rash and negligent in driving the vehicle.

13. The Asst. Police Inspector has formed opinion that due to sudden applying brake the Innova car must have went on wrong side of the road. There is another waradi jawab of Mahadev Ankalagi, which is stated to be translation of Ex.P3. But, Ex.P.3 is in one page and it is given by Shivaji Janardhan Kengale and not Maahadev Ankalagi. Therefore, Ex.P3(a) cannot be accepted as the translation of Ex.P.3. Even if these documents are taken out, the panchanama is on record. The charge sheet is on record. The FIR is sent to the court on 18.11.2016. Applying principles of res-ipsa-loquitor, it can be concluded that the claimants have proved that the driver of Innova car was rash and

negligent in driving the vehicle and therefore, issue No.1 in all the case is answered in the affirmative.

ISSUE No.2 in MVC No.2332/2018:

14. The claimants/petitioners in this case are husband and two major sons. It is claimed that the deceased Kasturi was an agriculturist, she used to grow pomegranate and used to earn Rs.25,000/- per month. Ex.P.6 is the PM report. It shows that P.M was conducted on the dead body of Smt.Kasturi Thamaraya Bagali. The doctor has not written the age of the corpse. Though it was brought at 3.45 p.m for post mortem, approximate age is not mentioned. Petitioner states that his wife was aged 45 years. When we look at the age of petitioner Nos.2 and 3, they are aged 25 and 22 years respectively. It cannot be expected that Kasturi became a mother in her 15 age. Therefore, the age of deceased must be above 45 and below 50 years. The multiplier applicable is 14 as per decision of Hon'ble Supreme Court in the case of ***Sarala Verma Versus Delhi Transport Corporation***. The petitioners have not produced any age proof nor the income proof.

In the cross-examination PW.1 admitted that his wife was a housewife. The income of a housewife is to be considered in this case.

15. The advocate for petitioners has not argued on the income, but, submits that notional income may be taken into consideration. The advocate for respondent No.2 has relied upon ***2010 (9) SCC 218 Arunkumar Agarwal & another Versus National Insurance Co.*** In this case, the income of a housewife is taken at Rs.5000/- per month. The Hon'ble Supreme Court has also held that there should not be gender based discrimination between man and a woman. The household work done by a woman cannot be quantified. However, there were minors in this case. Therefore, unit is taken as 7 units. The income of husband was held as Rs.15,000/- p.m and 1/3rd of it is taken as income of the wife, which is saved by her. The date of accident in this case is during 2016. As per NALSA Guidelines in urban areas Rs.8000/- per month, notional income is to be taken and in Semi-urban area is Rs.7500/- per month. The place Jath is taken as Semi

Urban Area, the income of the petitioner is taken as Rs.7500/- p.m. Unnecessarily, it is suggested in the cross-examination of PW.1 that, in the land, when they grow pomegranate, they will get net income of Rs.20,00,000/- to Rs.25,00,000/-. It was not required. Because, petitioner No.1 has not produced any documents to show that he had agricultural land. Out of the income of Rs.7500/- per month, half of it is to be deducted towards personal income. It will be Rs.3750/- X 12 X 14 = Rs.6,30,000/-. This amount is to be granted towards loss of dependency.

16. Now, it is settled position of law that, the sons are entitled to parental consortium, the husband is entitled to spousal consortium quantified at Rs.40,000/- for the husband and Rs.20,000/- each to petitioner Nos.2 and 3. Rs.15,000/- may be granted towards funeral and transportation expenses. Therefore, if a total a compensation of Rs.7,25,000/- is granted the ends of justice will be met.

ISSUE No.2 IN MVC No.2333/2018

17. The claimant in this case is one Mashambi. She states that she suffered fracture injuries and grievous injuries. But, when we go through Ex.P.8 to P14 produced by her, they reveal that she had suffered four simple injuries as mentioned in Ex.P8. Exs.P9, 10 and 11, do not pertain to medical expenses of these four injuries. On the other hand, the eye surgery details and expenses are produced which are dated 11.07.2017, 27.08.2018. The bills pertaining to 07.11.2017 are irrelevant. Therefore, the Ophthalmology and Laser Center bills cannot be considered by the Court. For four simple injuries as per NALSA guidelines Rs.5000/- for one simple injury plus Rs.3000/- for every additional simple injuries may be considered. It will be Rs.14,000/-. (Note: The co-claimant named Malahari has produced medical bills of Rs.13,690/- from a private hospital for treatment of one simple injury). Even, when petitioner in this case did not produce any medical bills, Rs.10,000/- may be granted towards medical expenses for four injuries. Thus, if a total compensation of Rs.24,000/- is granted, the ends of justice will be met.

ISSUE No.2 IN MVC No.2334/2018:

18. The claimant in this case one Malahari S/o Krishna Kulal. He states that he has suffered fracture and grievous injuries in the accident. But, when we go through the documents produced by him at Ex.P15 to 23, it reveal that the claimant has suffered one simple injury on occipital parietal area of the skull. He has produced certificate to the effect that for one day he was in the hospital and all the tests are done. The medical expenses of Rs.13,690/- may be granted with Rs.5000/- for one simple injury. Thus, if a total compensation of Rs.18,690/- rounded off to Rs.19,000/- is granted, the ends of justice will be met.

ISSUE No.2 IN MVC No.2335/2018:

19. The claimant in this case one Somaling Siddappa Ankalagi, He states that he was travelling in the vehicle Max Jeep No.MH-10/K-9707. It was driven in a slow and cautious manner, but, from the opposite side Innova Car No.MH-12/DE-6943 came in a high

sped, the driver being unable to control it, dashed to Max Jeep. By this accident, the petitioner sustained fractural injuries. He was taken to Dr. Sudhir Shah Hospital, Miraj. In the cross-examination dated 03.10.2019, he admitted that he was driving Max jeep. It is light motor vehicle of seating capacity of 6 +1. there were six persons in the jeep. He has DL to drive the vehicle. He has given licence No.2744/94 obtained from DRTTO Sangli. This petitioner has produced Ex.P24 to P27 documents. It is suggested that, he was shifted to Jath Govt. Hospital after accident. The witness admits it. After making suggestions that, he was driver of jeep and he was shifted to Jath Govt. Hospital. Subsequently, witness was recalled in order to ascertain the details of Ex.P25 and P27. In this discharge card and treatment details, it is mentioned that, it is a history of fall from a motor cycle. According to PW.4, he does not know what is written by the medical officer. One Chidanand Jamakhandi accompanied him and he has stated the details to the Doctor. He admits that, there is no mention in medical

certificate. He admits that in Ex.P.27, it is mentioned that he has fallen from the bike. The witness goes to the extent of saying that he will get the corrections made in the medical certificate. By no stretch of imagination it can be done. Because, first of all Chidanand Jamakhandi is not examined as witness in order to prove that he had given the medical history.

20. Secondly, there is basic misunderstanding that Ex.P.3 Tapasa tippan is translated and Ex.P.3(a) is the Kannada translation. In fact, it is not so. The Tapasa Tippan is given by Shivaji Kengale, Asst. Police Inspector. It is like 162 statement. Ex.P3(a) states that, it is translation of waradi jawab of one Mahaadev Ankalagi. Without producing any certified copy of this waradi jawab or complaint, the contents cannot be considered. There is no evidence to hold that the person named Somaling was driving the vehicle and he has suffered injuries in the accident that took place on 17.11.2016. The translation without certified copy of complaint is not admissible in evidence. In other words, there is no evidence to hold

that this person Somaling was travelling on the alleged date of accident or driving the Max Jeep. On the other hand, if the original complaint given by Mahadev Ankalagi, is produced, there will be some evidence to connect the injured with the incident. There is no such evidence on record. Therefore, it is to be held that Somaling was neither traveling in the jeep nor he was a driver. On the other hand, without producing any documents, he wishes to say that he was traveling in the Max Jeep. What is elicited in the cross-examination is not important. What the petitioner wants to contend in his evidence. In the claim petition as well as evidence, petitioner wants to prove that he was traveling in the Max Jeep. On the other hand, respondent No.2 wants to contend that he was driver of the jeep. He has admitted it, in the cross-examination. The history is given as fall from the bike. Only because the history is mentioned as fall from the bike, the court should not dismiss the petition. However, if the petitioner wants to depose against the contents of charge sheet, it cannot be accepted. At least the

certified copy of statement recorded by the police is not produced. The petitioner is shown as Cw.11 in the charge sheet. What is his statement before the police is relevant. But, copy of his statement is not produced in this case. In the charge sheet no doubt it is shown that Somaling Ankalagi is an injured in this accident and he is shown as CW.11 and occupation is driver. The doctor cannot make material alterations in their documents. When the contents of charge sheet shows that CW13 is Somaling and he has suffered injuries, without admitting that he is a driver, compensation may be granted like that of other travellers. The age of PW.4 is shown as 35 years in his evidence. In the injury certificate his age is shown as 40 years. The age of Somaling may be taken as 40 years, the multiplier applicable is 15. The notional income of Rs.8000/- for the accident of the year 2016, may be considered.

21. Petitioner has examined PW.8 Dr.S.R.Angadi. He states in his evidence that he is retired orthopedic surgeon, on examining the witness, he has noted a fracture of right patella bone lower

1/3rd. For one fracture injury he has assessed the disability of 30% for right lower limb. On perusing Ex.P51 to P53 and comparing it with injury certificate Ex.P24, it reveals that there was one fracture injury. The petitioner was inpatient from 17.11.2016 to 28.11.2016. The petitioner has produced the medical bills worth Rs.36,010/-. This amount may be granted towards medical expenses.

Considering the nature of injuries, 1/3rd of the percentage is to be taken as disability for the whole body. The equation will be as follows:

$$\text{Rs.8000/-} \times 12 \times 15 \times 10\% = \text{Rs.1,44,000/-}.$$

This amount is to be granted for loss future earning capacity.

22. The petitioner was almost advised rest for one month. The expenses of one attendant may be given at Rs.250/- per day, it will be Rs.7500/-. For one fracture injury Rs.10,000/- may be granted towards pain and suffering. Thus, if a total compensation of

Rs.1,97,510/- rounded of to Rs.1,97,600/- is granted, the ends of justice will be met.

ISSUE No.2 IN MVC No.2336/2018

23. The claimant in this case one Gopabai @ Gopakka W/o Somanna Parit. She has reiterated the contents of her petition. Ex.P.28 is the case paper. Ex.P29 is the short case record, it shows that on 17.11.2016, Gopabai has taken treatment in Civil Hospital, Miraj as per reference in PHC Jath, MLC No.1034. There is no mention that she came to the hospital with the history of RTA in these documents. In Ex.P.33, it is written that she came with the history of RTA near Uhaspet, Jath Taluk. On going through the entire records produced she is not cited as witness. One Sainabai W/o Kasinath Parit, aged 50 years is shown in the list of witnesses. In the cross-examination of this witness, it is suggested that, she has not given any complaint. Witness admits it and states that she was unconscious. The witness did not say that her name is Sainabai Kasinath Parit. We can understand that, if the husband name is correct and the

police have recorded the wrong name. On the other hand, the name of witness is Sainabai Kasinath Parit mentioned as CW.12 in the charge sheet. Even the husband name does not tally. Therefore, it is to be held that there is no connection of PW.5 with this incident. Therefore, no compensation can be awarded to the claimant. Hence, issue No.2 is answered in the Negative.

ISSUE No.2 IN MVC No.2337/2018:

24. The claimant in this case one Shindubai W/o Beera Kulal states in her evidence that, she has suffered fracture and grievous injuries. Ex.P.34 to P43 records are produced. In Ex.P34 it is mentioned that she had no external injuries. She was referred to Miraj hospital for Ultra Sonography as she was pregnant for approximately 32 weeks. Therefore, she has taken treatment for two days on 18th and 19th as there was hip joint pain. The petitioner has produced medical bills of Rs.10,650/-. Sonography charges of Rs.3,600/-. Therefore, amount spent towards medical expenses of Rs.14,250/- may be granted. Rs.5000/- may be granted

towards pain and sufferings. Thus, if a total compensation of Rs.19,250/- is granted, ends of justice will met.

ISSUE No.2 IN MVC No.2338/2018

25. The claimant in this case one Mainoddin @ Aainoddin S/o Dastagor Nadaf. He states that, he has suffered fracture and grievous injuries in this accident. But, when we go through the documents produced at Ex.P.42 to P49, it reveals that the claimant has suffered two simple injuries and CT scan shows that nasal bone is fractured and 6th rib of right side is fractured. That means there are two simple and two grievous injuries. The treatment is given conservatively. For Rib fracture there cannot be disability. Therefore, guidelines of NALSA may be followed. For two simple injuries Rs.5000/- plus Rs.3000/- = Rs.8000/- may be granted. For two fracture injuries Rs.25,000/- each may be granted towards pain and sufferings. The claimant has not produced any medical expenses bills. Therefore, if a

total compensation of Rs.58,000/- rounded of Rs.60,000/-be granted.

26. The next question is from whom it is recoverable. There is no dispute that insurance policy was in force on the date of accident. There is no dispute that respondent No.1 is the owner and respondent No.2 is the insurer of the vehicle. Therefore, primarily respondent No.2 is liable to answer the claim of the petitioners in all the petitions except petitioner in MVC No.2336/2018. Hence, respondent Nos.1 and 2 are jointly and severally liable to pay the compensation. Accordingly, issue No.2 in all the petitions except in MVC No.2336/2018 is answered partly in the affirmative.

Issue No.3 in common in all the petitions:-

27. In view of above said findings and discussion, I proceed to pass the following;

ORDER

The petition in MVC No.2336/2018 filed under Section 166 of Motor Vehicles Act, 1988 is hereby dismissed.

The petitions in MVC Nos.2332/2018 to 2335/2018 & MVC Nos.2337/2018 & 2338/2018 filed under section 166 of Motor Vehicles Act, 1988 are partly allowed with costs in the following terms:

The respondent Nos.1 and 2 are jointly and severally liable to pay the awarded compensation amount to the petitioner/s in all the petitions.

It is hereby ordered that, the respondent No.2 shall pay the award amount as per the following table.

MVC No.2332/2018	Rs.7,25,000/-
MVC No.2333/2018	Rs.24,000/-
MVC No.2334/2018	Rs.19,000/-
MVC No.2335/2018	Rs.1,97,600/-
MVC No.2337/2018	Rs.19,250/-
MVC No.2338/2018	Rs.58,000/-

The above award amount shall carry interest at the rate of 6% per annum from the date of claim petitions till realization of the entire award amount.

The respondent No.2 is hereby directed to deposit the aforesaid award amount together with

interest within one month from the date of this order.

On deposit of the award amount together with interest in MVC No.2332/2018, the petitioner No.1 is entitled to 70% of the award amount and petitioner Nos.2 and 3 being major sons are held as entitled to 15% each. In case of deposit, the entire share amount of petitioner Nos.2 and 3 is ordered to be released in their favour. Out of the compensation amount of petitioner No.1, 50% amount is ordered to be released in his favour after due identification and 50% is ordered to be kept as FD for 3 years in any of the nationalized or scheduled bank of his choice.

The entire compensation amount of petitioner in MVC No.2333/2018, 2334/2018, 2337/2018 and 2338/2018 is ordered to be released in favour of the respective claimants.

On deposit of the awarded compensation amount with interest in MVC No.2335/2018, 50% of the compensation is ordered to be kept as FD for a period of 3 years and 50% shall be released to the petitioner.

The Advocate fee is fixed at Rs.5000/- each in all the cases.

Draw up award accordingly.

Original judgment be kept in MVC No.2332/2018 and copies of the same in all other cases.

(Dictated to the Judgment Writer directly on computer, corrected by me, then pronounced in the open court, on this the day of 24th day of November, 2021)

(VENKATESH)
X Addl.District & Sessions Judge
and Member Addl. MACT,
Belagavi.

ANNEXURE:

I) List of witnesses examined by the Petitioners:

PW.1: Tammaraya I. Bagali
PW.2: Mashambi Nadaf
PW.3: Malhari K. Kulal
PW.4: Somaling S. Ankalagi
PW.5: Gopabhai S. Pareet
PW.6: Sindhubai B. Kulal
PW.7: Mainoddin D. Nadaf
PW.8: Dr. S.R. Angadi

II) List of documents marked by the Petitioner:

P- Series:

1. Copy of FIR

- 1(a). Translation copy of FIR
2. Complaint
- 2(a). Translation copy of FIR
3. Varadi Jawab
- 3(a). Translation copy of Varadi
4. Spot Mahazar
- 4(a). Translation of Spot mahazar
5. Charge sheet
- 5(a). Translation of charge sheet
- 6 P.M report
7. M.V.I report
8. Injury certificate of PW.2
9. Case paper c
10. CT Scan report
11. Medical bills
12. Prescription
13. MLC letter
14. Referral card
15. Injury certificate of PW.3
16. Discharge card
17. Medical certificate
18. Hospital bill
19. Case paper
20. CT scan reports
21. Prescription
22. MLC letter
23. Referral letter
24. Medical certificate of PW.4
25. Discharge card
26. Medical bills (6 in nos.)
27. Shah Hospital records

28. Case paper of PW5.
29. Miraj Govt. Hospital record
30. CT scan report
31. Prescriptions
32. MLC letter
33. Referral card
34. Injury certificate of PW.6
35. Discharge card
36. Medical certificate
37. Medical bills
38. Case paper
39. Govt. Hospital, Miraj record
40. Sonography report
41. Prescription
42. MLC letter
43. Referral letter
44. Injury certificate of PW.7
45. Case paper
46. CT Scan report
47. CT scan report
48. MLC letter
49. Referral card
50. Disability certificate
51. X-ray report
52. Receipt
53. Receipt

III) List of witness examined by the Respondents: NIL

IV) List of document marked by the Respondents:

Ex.R1: Copy of insurance policy is marked with consent.

X Addl.District & Sessions Judge and
Member Addl. MACT, Belagavi.