

KADK310021142023



Presented on : 24-11-2023  
Registered on : 25-11-2023  
Decided on : 06-07-2026  
Duration : 02Years 07Months 12Days

**IN THE COURT OF THE PRINCIPAL SENIOR  
CIVIL JUDGE AND A.C.J.M., AT PUTTUR, D.K.**

**Smt. Prakriti Kalyanpur, B.A(L). L.L.B, L.L.M,  
Principal Senior Civil Judge & ACJM.,  
PUTTUR, D.K.**

**DATED THIS THE 06<sup>TH</sup> DAY OF JULY 2026**

**M.V.C./1803/2023**

PETITIONER/S:

**Smt. Girija.,(dead)**

V/S

**1(a). A Bhaskara Gowda,**  
Aged about 72 years,  
S/o Deranna Gowda,  
Husband of Late Smt. Girija,  
R/at Enaje House, 2-167,  
Perabe Post and Village,  
Puttur Taluk, D.K. District.

**(By Sri. G.J.R., Adv.,)**

RESPONDENT/S

**1. Manoj R.K,**  
Aged about 32 years,  
S/o Ramanna Naik,  
R/at Kodi House, Nelyady Post,  
Kadaba Taluk, D.K. District.

2. The New India Assurance Co.

Ltd.,  
Branch Office: City BR II,  
Ram Bhavan Complex, 3<sup>rd</sup> Floor,  
Mangalore, D.K. District.  
Policy No.98000031220311950696  
valid from 11.09.2022 to 10.09.2023

**(R1 - Exparte)**  
**(R2 By Sri. S.P.K., Advocate)**

\* \* \* \* \*

### **JUDGMENT**

The Petitioner had filed this petition under Sec.166 of Indian Motor Vehicles Act seeking compensation for injury suffered by her in a road accident dated 28.05.2023.

#### **2. The case of the Petitioner is that:**

On 28.05.2023 at about 03.45 p.m., the deceased was travelling in an Autorickshaw bearing Reg.No.KA-21-C-4938 as a passenger. When she reached a place called Athoor Junction, Ramakunja Village, Kadaba Taluk, D.K. District, a Omni Car bearing Reg.No.KA-21-P-5374 came from Uppinangady side and the aforesaid Omni Car was driven by its driver in a high speed, rash, negligent and reckless

manner and dashed against the Autorickshaw. Due to the said accident deceased sustained grievous injuries. After the accident petitioner was shifted to Mahaveera Medical Hospital, Puttur Taluk, D.K., District and for emergency and better treatment she was immediately shifted to K.M.C. Hospital, Mangalore, D.K. District to save her life and in the said Hospital Duty Doctors and a team of Orthopedic Surgeons and other specialists examined the deceased and gave appropriate treatment after admitting as inpatient from 29.05.2023 to 10.06.2023 and again admitted as inpatient from 19.06.2023 to 26.06.2023. She has undergone several medical examinations, X-rays were taken, scanning was done, several operations was done, dressing done, skin grafting was done, wounds sutured and put plaster cast and costly medicines were given to the petitioner and later got discharged with a strict advice that the petitioner should take complete bed rest and to attend the Hospital for follow-up treatment and also advised to take treatment from Neurologists, Orthopedic surgeons, Physiotherapists and

other specialists. One attendant has been appointed by paying salary of Rs.500/- per day to look after the deceased. Smt. Girija died due to the accidental injury and multiple injuries on different parts of her body.

3. Prior to the date of accident she was hale and healthy and was aged about 60 years and was doing Coolie and earning more than Rs.30,000/- per month. Deceased was spending most of all her income for the livelihood and welfare of the family. Due to sudden death of Smt. Girija the husband is totally driven to street and lost the dependency and on her death there is no other person to take care of her husband. The 1<sup>st</sup> respondent being the RC owner and the 2<sup>nd</sup> respondent being the insurer of the said offending vehicle are jointly and severally liable to pay compensation to LRs/Husband. Hence this petition.

4. In response to the summons, the Respondent No.1 and 2 appeared through their counsel and filed separate written statements.

**5. The objections of the Respondent No.1:**

The petition is false, frivolous, vexatious and unsustainable at law or on facts of the case. The Omni Car belonging to this respondent is not at all involved in alleged accident and injuries might have been caused to the petitioner otherwise and it is not due to the driving of the respondent vehicle Omni Car bearing Reg.No.KA-21-P-5374. The driver of the Omni Car bearing Reg.No.KA-21-P-5374 had valid driving license at the time of accident. If any award is passed it may be passed against the 2<sup>nd</sup> respondent since he was the insurer of the vehicle Omni Car bearing Reg.No.KA-21-P-5374 at the time of accident. Hence prays to dismiss the petition.

**6. The objections of the Respondent No.2:**

The petition is false, frivolous, vexatious and unsustainable under law and on facts and the same is liable to be dismissed in limine. The accident occurred only due to total negligence on the part of the driver of Autorickshaw

bearing Reg.No.KA-21-C-4938. The driver of Autorickshaw bearing Reg.No.KA-21-C-4938 drove his vehicle in a high speed, rash and negligent manner and also on the wrong side of the road by violating traffic rules and caused the accident. The petition is bad for non-joinder of owner and insurer of Autorickshaw bearing Reg.No.KA-21-C-4938 who are joint tort feasons. The autorickshaw driver did not possess valid DL. There is no nexus between the accident and death of the victim. Hence prays to dismiss the petition.

7. On the above rival contentions of the parties, this court has framed the following issues:

1. Whether the petitioner proves that, on 28.05.2023 at about 03.45 p.m., she met with an accident near Athoor Junction, Ramakunja Village, Kadaba Taluk, D.K. District and sustained grievous injuries, due to the rash and negligent driving of the driver of the Omni Car bearing Reg.No.KA-21-P-5374 belongs to the respondent No.1?
2. Whether the respondent No.1 proves that the respondent No.2 is the insurer of the above said Omni Car at the time of alleged accident?

3. Whether the respondent No.2 proves that the accident occurred only due to total negligence on the part of the driver of Autorickshaw bearing Reg.No.KA-21-C-4938 and he is guilty of contributory negligence?

4. Whether the respondent No.2 further proves that the petition is bad for non-joinder of owner and insurer of above said autorickshaw?

5. Whether the respondent No.2 further proves that the drivers of the above said Autorickshaw and Car did not possess valid and effective D.L., at the time of accident?

6. Whether the LRS of petitioner are entitled on 06.11.2025 for compensation? If so, to what extent? Recoverable from whom?

7. What order or Award?

**ADDITIONAL ISSUES framed on**

**06.11.2025.**

1. Whether the LR's of petitioner prove that the petitioner died due to the injuries suffered in RTA dated 28.05.2023?

8. The LR's/husband has got examined as PW.1 and got marked 16 documents as per Exs.P.1 to P.16. On the

other hand the respondent has not examined any witness and got marked one document as Ex.R1.

9. On hearing both sides and perusal of evidence on record this Tribunal answers the above issues as follows:-

|                          |                                                        |
|--------------------------|--------------------------------------------------------|
| <b>Issue No.1:</b>       | <b>In the Affirmative,</b>                             |
| <b>Issue No.2:</b>       | <b>In the Affirmative,</b>                             |
| <b>Issue No.3:</b>       | <b>In the Negative,</b>                                |
| <b>Issue No.4:</b>       | <b>In the Negative,</b>                                |
| <b>Issue No.5:</b>       | <b>In the Negative</b>                                 |
| <b>Issue No.6:</b>       | <b>In the Affirmative</b>                              |
| <b>Addl. Issue No.1:</b> | <b>In the Negative</b>                                 |
| <b>Issue No.7:</b>       | <b>As per the final order,<br/>for the following:-</b> |

### **REASONS**

#### **10. Issue No.1 and 3:-**

In order to prove that the Lr 1(a) is the legal heir of the deceased petitioner, he got examined himself as PW.1 and has reiterated about the relationship in his affidavit in chief. In addition he got marked Aadhar Card and Voter Id

Card, death certificate, residence certificate as per Ex.P3 to Ex.P6. These documents show that the Lr 1(a) is the Husband of Smt. Girija. This shows that he is the legal representative of the deceased.

11. The Lr 1(a), to prove that the accident occurred due to the actionable negligence on the part of the driver of the Omni got examined as PW.1 and got marked Exs.P.1 to 16. PW.1 has reiterated the averments of the petition in his affidavit filed in lieu of his chief examination.

12. During the cross-examination of PW.1, he has admitted that he was an eye witness to the accident and he was inside the autorickshaw.

13. The FIR at Ex.P.1 was registered on the same day i.e., on 28.05.2023, on the complaint of one Yatish. Ex.P2 is the P.M. Report, Ex.P7 is the Wound certificate, Ex.P11 is the Spot mahazar which shows that the Police conducted mahazar i.e., on 28.05.2023, Ex.P12 is the sketch which shows that the spot of the accident. It also shows that the Omni Car coming from Uppinangady came

to the wrong side of the Road. Ex.P13 is the IMV report, Ex.P14 is the charge sheet which shows that the accident was caused due to the rash and negligent driving by Omni Car driver.

14. On perusal of all the Police documents and the evidence of PW.1, it is clear that the accident occurred due to the negligence of the driver of Omni Car. The respondent No.2 has not led any evidence to prove otherwise.

**Accordingly, I answer Issue No.1 in the Affirmative Issue No.3 in the Negative.**

15. **ISSUE No.2:-**

The respondent No.1 had contended that the Omni Car was insured with respondent No.2. The respondent No.2 has got marked the Insurance Policy at Ex.R1.

**Accordingly, I answer Issue No.2 in the Affirmative.**

16. **ISSUE No.4 and 5:**

The respondent No.2 contended that the petition is bad for non-joinder of owner and insurer of Autorickshaw, that the driver of the Omni Car and Autorickshaw were not

having D.L. However the respondent No.2 has not led any evidence to prove the same. Moreover, the petitioner has proved that the accident occurred due to the negligence of Omni Car driver. Such being the case there is no question of impleading the owner and insurer of Autorickshaw as parties to this case. **Accordingly, issue No.4 and 5 are held in the Negative.**

**17. Additional Issue No.1:-**

The husband of the petitioner submits that his wife died due to the injuries suffered in the accident dated 28.05.2023. In support of the same, he has produced the P.M. report at Ex.P2, Wound certificate at Ex.P7, Medical bills, Medical prescriptions and discharge summary at Ex.P8 to Ex.P10. The P.M. report mentions that the patient died in the morning hours with history of sudden ill-health(difficulty in breathing). The opinion as to the cause of death is Cardiac arrest due to myocardial infraction i.e., Heart attack due to blockage in the Arteries. The wound certificate shows that the petitioner had suffered fracture

of humerus, radius and ulna of right arm. However, there is nothing on record to show that the said fracture humerus, radius and ulna could cause heart attack. The Medicals bill at Ex.P8 of KMC Hospital relate to May to September 2023 and Puttur City Hospital from January and February 2024. The prescriptions at Ex.P9 correspond to the same period. The discharge summary at Ex.P10 also does not mention that the fracture is fatal. The petitioner was aged about 60 years as per the petition, 64 years as per the P.M. report, 71 years as per the inpatient bill of KMC Hospital. PW.1 has admitted in his cross examination that she was suffering from B.P. and Sugar. Therefore, from a reading of Ex.P7 to Ex.P10 and Ex.P2, it becomes clear that the cause of death of the petitioner was not related to the injuries suffered in the accident but was age related. **Accordingly, Addl. issue No.1 is held in the Negative.**

18. **ISSUE NO.6:-**

Since the petitioner has died her Lrs will be entitled only to Medical Expenses, Attendant charges and Loss of Estate, which are connected to the property and they are not entitled to Pain and Suffering, Loss of amenity, Loss of Income, since they are connected to the person. In this case the Husband of the deceased petitioner is entitled to following compensation.

i) **MEDICAL EXPENSES:-**

PW.1 has pleaded that the deceased had spent a sum of Rs.20,00,000/- towards hospitalization, medical expenses, extra nourishment, conveyance and other miscellaneous expenses etc., In this regard, he has produced medical bills as per Ex.P.8 for a sum of Rs.2,88,173/-. At Serial No.3, the inpatient bill shows that the petitioner was covered by Sampoorna Suraksha Programme and Rs.80,000/- was reimbursed. It is admitted by PW.1 in his cross examination.

The same needs to be subtracted. The respondents have not disputed the amount. Therefore, the petitioner is entitled to **Rs.2,08,173/-** under this head.

ii) **LOSS OF ESTATE:-**

As per the petition, the deceased was earning a sum of Rs.30,000/- per month from her Coolie work. Therefore, the Lrs/husband is entitled to a sum of **Rs.40,000/-** under the head of loss of estate.

iii) **ATTENDANT CHARGES:**

Since the petitioner has suffered upper arm & chest pain, swelling, tenderness and abnormal mobility ®, arm degloving crush injury of forearm, mid to mid forearm, distal forearm, radial pulse felt Rom ® shoulder, elbow wrist restricted contusion ® chest, fracture of mid third of ® humerus. Fracture of mid third of ® radius ulna mild narrowing of digital vessels probability by soft tissues edema and other grievous injuries. She has undergone surgery and was hospitalized for atleast a month, during which time, she would need the assistance of an attender.

Hence PW.1 is entitled to a sum of **Rs.60,000/-** under the head of Attendant Charges.

As such, in total, the Lrs of Petitioner is entitled to a sum of **Rs.3,08,173/-**.

**LIABILITY**

19. The respondent got marked the policy at Ex.R1. As already discussed the respondents No.1 & 2 being the RC owner and the insurer of the offending vehicle are jointly and severally liable to pay the said compensation to the husband of Petitioner. Though the Petitioner claimed compensation of Rs.20,00,000/-, LR of Petitioner is entitled only for a sum of **Rs.3,08,173/-** with interest @ 6% per annum. Therefore, the petition needs to be allowed.

**Accordingly I answer Issue No.6 in the affirmative.**

20. **Issue No.7:** For the reasons and discussions made above and finding to the above issues, this Tribunal proceeds to pass the following:-

**ORDER**

The Petition filed by the Petitioner under Section 166 of Motor Vehicles Act is hereby allowed with cost.

The Lr of Petitioner/husband is entitled for Compensation of **Rs.3,08,173/-** (Rupees Three Lakhs Eight Thousand One Hundred and Seventy Three Only) along with interest at the rate of 6% p.a., from the date of Petition till the date of deposit of the Award amount.

The Respondent No.2 is directed to deposit the Award amount and interest within 60 days from the date of this Judgement to the bank account of the Lr of petitioner/husband. The Lr of petitioner/husband is directed to furnish the account details in the office. The account details shall form part of the award.

The Advocate's fee is fixed at Rs.1000/-.

Draw Award accordingly.

(Typed to my dictation directly on the computer by the Stenographer, corrected and then pronounced by me in open court on this the **06<sup>th</sup> day of July 2026**).

**(PRAKRITI KALYANPUR)**  
**Prl. Sr. Civil Judge & ACJM**  
**Puttur**

**ANNEXURE**

**List of Witnesses examined for Petitioner:**

PW.1                      A Bhaskara Gowda

**List of Documents marked for Petitioner:**

|         |                                                            |
|---------|------------------------------------------------------------|
| Ex.P.1  | FIR with complaint                                         |
| Ex.P.2  | PM Report                                                  |
| Ex.P.3  | Notarized copy of Aadhar Card of petitioner and deceased   |
| Ex.P.4  | Notarized copy of Voter ID card of petitioner and deceased |
| Ex.P.5  | Notarized copy of Death certificate of Smt. Girija         |
| Ex.P.6  | Residence Certificate                                      |
| Ex.P.7  | Wound Certificate                                          |
| Ex.P.8  | Medical Bills                                              |
| Ex.P.9  | Medical Prescriptions                                      |
| Ex.P.10 | Discharge Summary                                          |
| Ex.P.11 | True copy of Spot Mahazar                                  |

Ex.P.12            True copy of Spot Sketch

Ex.P.13            True copy of IMV Report

Ex.P14            Charge sheet

Ex.P15 & 16    Case sheet

**List of Witnesses examined for Respondent/s:**

- Nil -

**List of documents exhibited for Respondent:**

Ex.R1            Insurance Copy

**LIST OF DOCUMENTS MARKED THROUGH COURT COMMISSIONER:**

- Nil -

**(PRAKRITI KALYANPUR)**  
**Prl. Sr. Civil Judge & ACJM**  
**Puttur**