

KADW200001922024



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE AND ADDITIONAL M.A.C.T., AT: HUBBALLI.**

PRESENT : Yamanappa Karehanumanthappa,
Prl. Senior Civil Judge,
& Member Addl. MACT., Hubballi.

M.V.C. No.79/2024

Dated this the 30th day of July - 2026

- PETITIONERS**
- 1: Smt. Aliya W/o. Ashpak Balaparavase,
Age: 36 years, Occ: Housewife,
R/o. #G957, S.M. Krishna Nagar,
Old-Hubballi.
 - 2: Kumari Jannatul Pirdosh D/o. Ashpak
Balaparavase, Age: 11 years,
Occ: Student, R/o. #G957, S.M. Krishna
Nagar, Old-Hubballi.
 - 3: Kumar Malikrehan S/o. Ashpak
Balaparavase, Age: 09 years,
Occ: Student, R/o. #G957, S.M. Krishna
Nagar, Old-Hubballi.

(Since petitioners No.2 and 3 are
minors, represented by natural guardian
mother – petitioner No.1)

[By Sri. S.K. Patil, Advocate]

-V/S-

- RESPONDENTS**
1. Manteshagouda S/o. Ishwargouda
Nilappagoudra, Age: 45 years,
Occ: Business, R/o. Anchikatti Oni,
Adargunchi, Hubballi.

2. ICICI Lombard General Insurance Co. Ltd., Branch Office 27, Third Floor, Sir Tower, Bannerghatta Main Road, 3rd Phase, J.P. Nagar, Bangalore-580078.

**[R.1 - By G.F.H., Advocate,
R.2 - By S.R.G., Advocate]**

1. Nature of the proceedings	Grant of compensation on account of death caused in the Motor Vehicle accident.		
2. Date of institution of the petition	25.01.2024		
3. Date of filing of statement of objections	30.03.2024		
4. Date of recording of the evidence	24-09-2024		
5. Date of pronouncement of judgment	30-07-2026		
6. Total duration:	Year/s	Month/s	Day/s
	02	06	05

JUDGMENT

This petition is filed U/s.166 of M.V. Act by the petitioners on account of death of Fakrusab S/o. Ashpak Balaparavase seeking compensation of ₹35 lakhs as against respondent No.1 and 2 owner and insurer of the truck.

2. The case of the petitioners in brief is as under:

On 03.12.2023 at about 16-00 hours when the deceased Fakrusab S/o. Ashpak Balaparavase was going on a motor cycle bearing No.KA-63/R-2306 from Pale towards Hubballi, at that time the driver of the lorry bearing No.KA-25/AB-6633 drove the same in great speed, rash and negligent manner and dashed to the motor cycle of the deceased and caused accident, due to which rider and pillion rider fell down and deceased died on the spot. The P.M. was conducted at KIMS Hospital. The petitioners have spent ₹1 lakhs for transportation and funeral expenses.

3. It is further case of the petitioners that prior to accident the deceased was hale and healthy person, aged about 15 years, was doing coolie work and earning ₹15,000/- p.m. and maintaining his family consisting of his mother, sister and brother. Due to his sudden death they have became orphans and they lost their earning member of the family. They suffered mental agony and shock. The said accident occurred due to negligent driving of the lorry belonging to respondent No.1 and it was insured with respondent No.2. Hence, respondents No.1 and 2 are jointly and severally liable to pay the compensation. So, they prayed to award compensation of ₹35 lakhs with interest at the rate of 18% p.a.

4. On issuance of notice the respondent No.1 has appeared through his counsel and filed objection to main

petition. He has denied the contents of the petition in parawise. He has denied that the accident was caused due to rash and negligent driving of the lorry. He has contended that his vehicle was insured with respondent No.2 and respondent No.2 is liable to pay the compensation if the court comes to the conclusion to pay the compensation to the petitioners. Hence, prayed to dismiss the petition.

5. The respondent No.2 has appeared through its counsel and filed objection to main petition. In said objection it denied contents of the petition in parawise. It has denied the relationship between the petitioners and deceased. Further denied the income of the deceased. It has contended that the driver of the lorry has not possessed valid driving licence at the time of accident. The accident took place due to negligent riding of the motor cycle who was 15 years old and was a minor. The chargesheet is also filed against owner of the motor cycle. Hence, it is not liable to pay any compensation to the petitioners and prayed to dismiss the petition.

6. On the basis of above pleadings, my predecessor in office has framed the following issues:

ISSUES

1. Whether the petitioners proves that on 03.12.2023 at about 4-00 p.m. on Hubballi-Haveri, NH-48, when deceased Fakrusab was

proceeding on motor cycle No.KA-63/R-2306 from Pale village towards Hubballi then the driver of the Canter vehicle bearing No.KA-25/AB-6633 belonging to R.1 and insured with R.2 came from Noolvi towards Haveri in high speed, rash and negligent manner and caused accident to the motor cycle/deceased and deceased sustained grievous injuries to head etc., and succumbed to the said injuries?

2. Whether the petitioners proves that they are the legal representatives of the deceased and entitle for compensation? If so at what rate and from whom?

3. What order or award?

ADDITIONAL ISSUE

1. Whether the respondent No.2 proves that the rider of the motor cycle bearing No.KA-63/R-2306 has not possessed the valid and effect driving licence at the time of accident?

7. In order to prove the case, the petitioner No.1 got examined herself as PW.1 and got marked Ex.P.1 to 12. The legal manager of respondent No.2 has got examined himself as RW.1 and got marked Ex.R.1 and 2 and Law Officer of IFFCO Tokio GIC has got examined himself as RW.2 and got marked Ex.R.3.

8. I have heard learned counsel for petitioners and learned counsel for respondent No.1 and 2. Perused the pleadings, evidence oral and documentary and materials on record.

9. My findings on the above issues are as under.

Issue No.1 : In the Affirmative.

Issue No.2 : Partly Affirmative.

***Addl. Issue : In the Affirmative.
No.1***

***Issue No.3 : As per final order
For the following:***

:REASONS:

10. **Issue No.1 and addl. Issue No.1:** Respondent No.1 and 2 being the owner and insurer of the lorry have not disputed the accident. According to petitioner the said accident occurred due to negligence act of driver of the lorry. Since the petition is U/s.166 of M.V. Act, the petitioners have to prove that the said accident occurred due to negligence act of the driver of the lorry. In order to prove the same the petitioner No.1 has got examined herself as PW.1 and she relied upon her own oral evidence and police documents Ex.P.1 to 7. During cross-examination by the learned counsel for respondent No.2 suggested that the himself was responsible for the accident, but she denied it. Ex.P.1 is the

complaint filed by the father of the deceased. Ex.P.2 is the FIR, which discloses that accident has occurred on 03.12.2023 at 4-00 p.m. and complaint was filed on the same at 6-00 p.m. Ex.P.3 is the spot panchanama. Ex.P.4 is the inquest panchanama. Ex.P.5 is the P.M. report, the cause of death is due to shock and hemorrhage coupled with respiratory failure as a result of injuries sustained. Ex.P.6 is final report, which discloses that police have filed chargesheet against driver of the lorry by alleging that he was driving the same in rash or negligent manner. He was chargesheeted for the offences U/s.279, 338 and 304(A) of IPC. The counsel for respondent No.2 has argued that the driver of the lorry has not possessed valid and effective driving licence at the time of accident, hence it is not liable to pay the compensation. I have perused the chargesheet. There is no any mention about not holding the driving licence by the driver of the lorry and the drover of the lorry has not chargesheeted for the offence for not holding the driving licence. Hence, I hold that the driver of the lorry has possessed valid driving licence at the time of accident.

11. Further the respondent No.2 has contended that the deceased was 15 year old aged and was a minor and was not having driving licence at he time accident. The accident took place due to his own negligent act. Hence, it is not liable to pay any compensation. In this regard the legal manager of respondent No.2 has got examined herself as

RW.1 and got marked Ex.R.1 and 2. During her cross-examination she has stated as under:

“ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿ ಕೆಎ-25 ಎಬಿ-6633 ಮೇಲೆ ಇದೆ ಅಂದರೆ ಸರಿಯಲ್ಲ. ಅಪಘಾತ ದ ಕಾಲಕ್ಕೆ ಡಿ ಎಲ್ ಹಾಗೂ ವಿಮೆ ಚಾಲ್ತಿಯಲ್ಲಿತ್ತು ಅಂದರೆ ಸರಿಯಲ್ಲ. ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿ ಯಲ್ಲಿ ವಿಮೆ ಹಾಗೂ ಡಿ ಎಲ್ ಇಲ್ಲವೆಂದು ನಮೂದು ಮಾಡಿಲ್ಲ ಅಂದರೆ, ತಪ್ಪಾಗಿ ನಮೂದು ಮಾಡಿಲ್ಲವೆಂದು ಹೇಳುತ್ತಾರೆ. ಅಪಘಾತ ದ ಕಾಲಕ್ಕೆ 2 ನೇ ಎದುರುದಾರರ ಕಂಪನಿಯಲ್ಲಿ ವಿಮೆ ಚಾಲ್ತಿಯಲ್ಲಿತ್ತು ಅಂದರೆ ಸರಿಯಲ್ಲ. ಅಪಘಾತವು ದಿ: 3.12.2023 ರಂದು ಆಗಿದೆ. ಸಾಕ್ಷಿಗೆ ಈಗ ಒಂದು ಜರಾಕ್ಸ್ ಪ್ರತಿ ತೋರಿಸಲಾಗಿ, ಅದನ್ನು ಒಪ್ಪಿಕೊಳ್ಳುವುದಿಲ್ಲವೆಂದು ಹೇಳುತ್ತಾರೆ. ವಿಮೆ ಪ್ರತಿ ಎರಡನೇ ಎದುರುದಾರರ ಕಂಪನಿಯಲ್ಲಿ ನಮೂದು ಇಲ್ಲವೆಂದು ಹಾಗೂ ಅದು ಖೋಟಾ ಇದೆ ಅಂತಾ ದೂರು ನೀಡಿಲ್ಲ.”

I have perused the chargesheet. It is also filed on the owner of the motor cycle for the offence punishable U/s.5 r/w. Section 180 and 199 of M.V. Act for giving his vehicle to the minor who has not possessed valid driving licence and hence, on perusal of the evidence and chargesheet, I hold that though there is no negligence riding on the part of deceased, but the deceased ride the motor cycle without valid driving licence. Hence, I hold that the petitioners are entitle for the compensation only to the extent of 80%.

12. Further the respondent No.2 has contended that as on the date of accident the lorry was not insured with respondent No.2 and hence, it is not liable to pay

compensation and it has produced the insurance policy as per Ex.R.2. In this regard the counsel for respondent No.2 has relied the judgment of Hon'ble High Court of Karnataka in MFA No.24249/2012, Mallamma -vs- Narayanswamy and others, wherein the Hon'ble High Court in para No.14 held as under:

“14. Therefore, when the claimant is asserting that there is existence of insurance policy and insurance company has issued insurance policy to the owner in respect of the offending vehicle, then, it is burden on the owner or on the claimant to prove the existence of the said insurance policy. As per Section 3 of the Indian Evidence Act, negative evidence could not be led. The party who asserts the existence of facts, then it is burden on him to prove existence of the said fact. But in this case, neither the owner nor the claimant has discharged their burden to prove existence of insurance policy.”

In the present case the accident has occurred on 03.12.2023 at about 4-00 p.m. According to evidence of RW.1 stated that IFFCO Tokyo insurance company has issued the policy to the offending vehicle bearing No.KA25/AB-6633 on 03.12.2023 at about 20.36 hours. The owner of the vehicle who is respondent No.1 though he has taken plea in his objection to main petition stating that there is a policy issued by respondent No.2 to the offending

vehicle, but the respondent No.1 has not entered the witness box and given evidence about issuing of policy by the respondent No.2 and got marked the policy. Therefore, considering all these facts it is proved that the offending vehicle as on the date of accident did not have insurance policy. Therefore, the insurance company is not liable to indemnify the owner and pay the compensation. Hence, the respondent No.1 is liable to pay the compensation. Advocate for petitioners has relied the judgment of Hon'ble High Court of Karnataka in WP No.24449/2024 and 23821/2024. I have perused said judgments. The facts and circumstances of the said case are not applicable to the facts and circumstances of the present case. Hence, I hold that the petitioners have proved issue No.1 and respondent No.2 has proved addl. Issue No.1. Hence, I answer **issue No.1 and addl. Issue No.1 in Affirmative.**

13. **Issue No.2:** As per P.M. report- Ex.P.5 the age of the deceased is shown as 15 years. Hence, As per the **judgment of Apex Court in Sarala Verma**, the multiplier applicable is '18'. Further the petitioners have contended that the deceased was doing coolie work and earning ₹15,000/- per month. Further stated that they have lost their future earning and future prospects of life. But the petitioners have not produced any documents. Hence, as regards to monthly income of the deceased, I have relied the judgment of Hon'ble Supreme Court passed in Civil Appeal No.10278/2025, wherein it is held as under:

“It is now a well-entrenched and consistently reiterated principal of law that a minor child who suffers death or permanent disability in a motor vehicle accident, cannot be placed in the same category as a non-earning individual for the purposes of assessing the amount of compensation because the child was not engaged in gainful employment at the time of the accident. In such a case, the computation of compensation under the head of loss of income ought to be made by adopting, at the very least, the minimum wages payable to a skilled workman as notified for the relevant period in the respective State wherein the cause of action arises.”

Hence, in view of above exposition of law, I took the minimum wages, which for the skilled ones, as in the year of accident i.e. 2023 is ₹494/- per day. Hence, the income of deceased per month would be ₹14,820/-. In order to prove the relationship between the petitioners and deceased, the petitioners have produced Aadhar cards as per Ex.P.9 to 12. Hence, I hold that the petitioners are entitle for compensation on the ground of dependents under following heads:

I) Compensation towards funeral and loss of estate:

In view of the decision of Hon'ble Apex Court in **Pranay Sethi**, the petitioners are entitle for ₹15,000/- for funeral expenses and ₹15,000/- for loss of estate. Plus they are entitle for 10% increase i.e Rs 3,000/- as per guidelines given in above said Pranay Sethi Case. So, they are entitle for compensation of ₹33,000/- under this head.

II) Compensation towards consortium:

As per judgment of Hon'ble Apex Court reported in **AIR 2020 SC 3076, between United India Insurance Company Ltd. -vs- Satinder Kaur @ Satwinder Kaur and others, dated 30.06.2020**, the Hon'ble Apex Court by considering judgment of **Pranay Sethi and Magma General Insurance Co. Ltd. -vs- Nanuram @ Choruram**, held that the petitioner No.1 being mother is entitle for filial consortium and petitioners No.2 and 3 being brother and sister of the deceased are entitle for parental consortium. Hence, they are entitle for ₹40,000/- each, plus they are entitle for 10% increase i.e Rs.4,000/- each as per guidelines given in above said Pranay Sethi Case. Hence, the petitioners No.1 to 3 are entitle for ₹44,000/- each i.e. ₹1,32,000/- under this head.

III) Compensation towards loss of dependency:

As above said, the age of the deceased was 15 years, income was taken at ₹14,820/- p.m., as the deceased was having 3 dependents, 1/3rd deduction is to be made. So, as per the **judgment of Apex Court in Pranay Sethi and**

judgment of Hon'ble Apex in Jagdish -vs- Mohan and others and Munnuswamy and others -vs- The Managing Director, Tamilnadu State, which are delivered subsequent to Pranay Sethi judgment and by considering the law laid down in Pranay Sethi judgment, held that 40% income has to be taken for future prospects. So, the income of the deceased is taken at ₹14,820/- + 40% ₹5,928/- = 20,748/-. So, the total loss of dependency and future prospects comes to ₹20,748 x 12 x 18 x 1/3 = ₹29,48,832/- (the 1/3rd deduction comes to **₹14,74,416/-**). Hence, the petitioners No.1 to 3 are entitle for said compensation under this head.

14. Thus, the petitioners No.1 to 3 are entitle for compensation amount under the above heads as stated below:-

SI No	Nature of the heads	Compensation
1.	Towards funeral expenses	₹33,000/-
2.	Towards loss of estate and consortium	₹1,32,000/-
3.	Towards loss of dependency	₹29,48,832/-
	Total	₹31,13,832/-

15. Thus, the petitioners No.1 to 3 are entitle for total compensation of **₹31,13,832/-**. Since the petitioners are entitle for 80% of the compensation as discussed above, the petitioners No.1 to 3 are entitle for total compensation of

₹24,91,066/- together with interest at the rate of 6% p.a. from the date of petition till its realization.

16. **Liability**: It is not in dispute that the tipper lorry was not insured with insurance company. Hence, the respondent No.1 being the owner of the offending vehicle is liable to pay the above said compensation. Hence, the respondent No.2 is not liable to pay the compensation amount. The respondent No.1 being the owner of the tipper lorry is responsible for the compensation amount. Hence, I answer issue No.2 in **partly Affirmative**.

17. **Issue No.3**: In view of my answer to issues No.1 and 2 and addl. Issue No.1 as stated above, I proceed to pass the following:-

: ORDER :

The claim petition filed by the petitioner U/s. 166 of Motor Vehicles Act, is hereby allowed in part with costs as against respondent No.1.

The petition against respondent No.2 is dismissed.

*The petitioners are entitle for compensation of **₹24,91,066/-** (Rupees twenty four lakhs ninety one thousand and sixty six only) with interest @ 6% P.A. from the date of petition till deposit of the award amount.*

Respondent No.1 is directed to deposit it within 60 days from the date of this order failing which he is liable to pay

the same with interest at the rate of 9% P.A.

APPORTIONMENT:

The petitioner No.1 being mother of the deceased is entitle for 60% of the compensation and petitioners No.2 and 3 being sister and brother of the deceased are entitle for 20% each of the compensation.

DISBURSEMENT:

On deposit of the said amount along with interest, Account Office is directed to release 50% in favour of petitioner No.1 and remaining 50% shall be kept as FD in any nationalized or scheduled bank for the period of 3 years as per her choice.

On deposit of the said compensation along with interest, account office is directed to deposit the share of petitioners No.2 and 3 in any nationalized or scheduled bank as per their choice till they attains the age of majority.

The Advocate's Fee is fixed at ₹1,000/-.

Draw the award accordingly.

(Dictated to the Stenographer directly on computer, script corrected directly on computer and then pronounced by me in the Open Court on this the 30th day of July - 2026).

(Yamanappa Karehanumanthappa)

Prl. Senior Civil Judge and
Member Addl. MACT, Hubballi.

ANNEXURE**List of witnesses examined on behalf of petitioners:**

P.W.1 : Smt. Aliya Ashpak Balaparavase.

List of witnesses examined on behalf of respondents:

R.W.1 : Padmavati R. Pant.

R.W.2 : Ashlesh G. Moger.

List of documents exhibited on behalf of petitioners:

Ex.P.1 : C.C. of complaint.

Ex.P.2 : C.C. of FIR.

Ex.P.3 : C.C. of spot panchanama.

Ex.P.4 : C.C. of inquest panchanama.

Ex.P.5 : C.C. of P.M. report.

Ex.P.6 : C.C. of final report.

Ex.P.7 : C.C. of IMV report.

Ex.P.8 : Death certificate.

Ex.P.9 to : Aadhar cards.

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List of documents exhibited on behalf of respondents:

Ex.R.1 : Authorization letter.

Ex.R.2 : Insurance policies.

and 3

Prl. Senior Civil Judge and
Member Addl. MACT, Hubballi.
Hubballi.