KADW200002702022

IN THE COURT OF II ADDL. SENIOR CIVIL JUDGE AND ADDL. MACT., HUBBALLI

PRESENT:- SMT. DEEPA G. MANERKAR,
B. Com., LL.B. (Spl.)

II ADDL. SENIOR CIVIL JUDGE AND
Addl. MACT., HUBBALLI

DATED THIS 19th DAY OF JUNE 2026

MVC No.94/2022 TO 96/2022

MVC No.94/2022

PETITIONER : 1. Saba D/o Abdul Kadar Makandar
Age: 10 yrs, Occ: Student
Since minor represented by
natural guardian elder sister
Smt. Nazeema D/o Abdul Kadar
Makandar,
Age: 33 yrs, Occ: Private service,
R/o:Hosa Road Junction,
Basapur Main Road,
Near Brightway School Near
Gauthami Comforts Dead End
Building No.4, Bengaluru-560100

(By Sri. M.M.Mysore, Adv.)

MVC No.95/2022

PETITIONER : 1. Nizba D/o Abdul Kadar Makandar
Age: 13 yrs, Occ: Student
Since minor represented by

natural guardian elder sister
Smt. Nazeema D/o Abdul Kadar Makandar,
Age: 33 yrs, Occ: Private service,
R/o:Hosa Road Junction,
Basapur Main Road,
Near Brightway School Near Gauthami Comforts Dead End Building No.4, Bengaluru-560100

(By Sri. M.M.Mysore, Adv.)

MVC No.96/2022

PETITIONER :

1. Smt. Nazeema D/o Abdul Kadar Makandar
   Age: 33 yrs, Occ: Private service,
   R/o:Hosa Road Junction,
   Basapur Main Road,
   Near Brightway School near Gauthami Comforts Dead end Building No.4, Bengaluru-560100

2. Nizba D/o Abdul Kadar Makandar
   Age: 13 yrs, Occ: Student

3. Saba S/o Abdulkadar Makandar
   Age: 10 yrs, Occ: Student

   Petitioner No.2 and 3 being minor they are represented by natural guardian elder sister petitioner No.1 and all are
   R/o: Hosa Road Junction,
   Basapur Main Road,

Near Brightway School, Near
Gauthami Comforts Dead End
Building No.4, Bengaluru-560100

(By Sri. M.M.Mysore, Adv.)

V/S.

RESPONDENTS

1. Mr. Mahammad Afrid S/o K.H. Hameed
Age: Major, Occ: Owner of LMV Car Vehicle bearing No.KA-51/ MB-6006
R/o: 2-121, Ismayil Nagar,
At & Po: Bhantwal-574222,
Kanara South Mangalore,
Karnataka State.

2. United India Insurance Company Ltd,
by its Divisional Manager,
Divisional Office No.1 and 2
Enkay Complex, Keshwapur,
Hubballi.
Policy issued by Moodi Complex Hospet Road Branch,
Sirsi North Kanara, Karnataka,
Kanara North 581401,
Karnataka
(Policy No. 2413013120P104740406 Valid from 08.08.2020 to 07.08.2021)

3. Mr. Abdulkhadar S/o
Jamaluddinsha Makandar
Age: 63 years, Occ: Nil,
R/o: 8/3, Bahadawan Chal,
Diddi Oni, Asarhonda,
Old Hubballi,
Hubballi-580021, Tq: Hubballi,
Dist: Dharwad.

(R-1 Ex-parte,
R-2 by Smt. Chetana Kulkarni, Adv.
R-3 by Sri. A.V. Honnalli, Adv.)

1. Nature of the proceedings	:	Grant of compensation on account of death and injuries caused in the Motor Vehicle accident.
2. Date of institution of the petition in MVC No.94/2022 to 96/2022	:	09-02-2022
3. Date of recording of the evidence	:	22-06-2024
4. Date pronouncement of judgment	:	19-06-2026
5. Total duration:	:	Year/s 04, month/s 04, Day/s 10

COMMON JUDGMENT

These petitions are filed U/s.166 of I.M.V. Act seeking compensation in road traffic accident.

2. The petition in MVC No.96/2022 is filed by the natural guardian of minor children of deceased Mumtaz W/o Abdulkhadar Makandar seeking compensation of Rs.24,47,000/- death of deceased Mamtaz W/o Abdul Khadar Makandar. The petition in MVC No.95/2022 and MVC No.94/2022 are filed by the petitioners therein against the respondents seeking compensation of Rs.15,00,000/- and Rs.23,14,000/- respectively on account of injuries sustained by them.

3. Vide order dated 20-06-2024 passed in MVC No.96/2022, M.V.C.No.94/2022 and 95/20221 are clubbed with MVC No.96/2022. In all cases common evidence is recorded. For the sake of brevity convenience the petitioners are referred to as, petitioner No.1 in MVC No.96/2022 by name Nazeema D/o Abdul Kadar Makandar is referred to as petitioner No.1 and other petitioners Saba D/o Abdul Kadar Makandar and Nizba D/o Abdul Kadar Makandar represented by their minor guardian are referred to as petitioner No.2 and 3 respectively, the petitioner in MVC No.94/2022 by name Saba D/o Abdul Kadar Makandar is referred to as petitioner No.2, the petitioner in MVC No.95/2022 by name Nizba D/o Abdul Kadar Makandar is referred to as petitioner No.3.

4. The case of the petitioners in all the cases in brief is:-

That on 09.10.2020 the petitioner No.2 and 3 in MVC No.96/2022 who are petitioners in MVC No.94/2022 and MVC No.95/2022 along with her mother by name Smt. Mumtaz Makandar were going to Bengaluru in a car bearing Regn. No. KA-51/MB-6006. The said car was driven by the father of petitioners and husband of Smt. Mumtaz Makandar by name Abdulkhadar S/o Jamauddinsha Makandar i.e., respondent No.3. The Respondent No. 3 drove the car in very high speed and in rash and negligent manner and when around 01:20 a.m. on 09.10.2020 they reached near Ambuja Cement factory Haveri Road, in the limits of Tadas P.S. the respondent No. 3 without noticing the diversion of the road and without due diligence took the vehicle to his left and dashed to a roadside cement seater as an impact the car turned turtle. Due to which the deceased Mamtaz sustained severe grievous injuries on head, face and multiple injuries and abrasions on her entire body. The petitioner No.2 who is petitioner in MVC No.94/2022 sustained severe injuries to her forehead, face, nose, lips and multiple injuries and abrasions on her entire face. The petitioner No.3 who is petitioner in MVC No.95/2022 sustained severe injuries to her left upper limb, head and eyes and multiple injuries and abrasions on her entire body and fracture of the upper end of left humerus.

5. Immediately after the accident all the inmates of the car were ambulated to KIMS Hospital, Hubballi, but unfortunately, the mother of petitioners Smt. Mumtaz Makandar died on the way to KIMS Hospital. After funeral of their mother the petitioner No.2 was taken to local doctor but she was not showing any response to the treatment, hence she was taken to Shreyas Orthopedics & Trauma Center on 12.10.2020, wherein she was given treatment for fracture of frontal bone on the left side with overlying frontal scalp hematoma. As she was not comfortable, she was taken to Bijapur Hospital, wherein she was given treatment for sometime, and thereafter she was taking treatment at Bengaluru.

6. The petitioner No.3 was taken to local doctor but she was not showing any response then she was taken to Vision Hospital on 12.10.2020 and as the Orthopedic injuries were severe, the she was taken to Shreyas Orthopedics & Trauma Center on 12.10.2020,

wherein the she remained as an indoor patient from 12.10.2020 to 13.10.2020 wherein she was operated by closed reduction and pop pop U slab was applied. On 13.10.2020, the petitioner No.3 was discharged from hospital with an advise to come for followup treatment. The petitioner was taken to M.M. Joshi Eye Institute on 14.10.2020, wherein she was treated for Right eye Centtal retinal artery occlusion (Purtscher's retinopathy), AC paracentesis was done on 19.10.2020. Now the petitioner No.3 is under treatment with one Dr. Naveen Shetty at Bengaluru and even as on this day, the petitioner No.3 is under treatment for her ophthalmic injuries and also suffering due to severe pain in her left humerus.

7. So far, the petitioners No.2 and 3 have spent about Rs. 1,50,000/- towards medical treatment and they are required to spend around another Rs. 1,00,000-00 or more for their future treatment, and inspite of spending such a huge amount, the petitioner No.2 and 3 have not recovered fully. Prior to the accident, the petitioner No.2 and 3 were hale and healthy. The petitioner No.2 was studying in 4th standard and petitioner No.3 was studying in 6th Standard, at Modern English Medium High School,

Chembur, Mumbai – 400074. Because of this unfortunate accident, the petitioner No.2 and 3 have lost their mother and that too having sustained severe injuries, have lost their care taker. They are residing with their elder sister petitioner No.1 at Bengaluru and during this period, they have lost one precious year of their career because of the severity of the injuries sustained by them. The petitioner No.2 and 3 have become permanently partially disabled, as they are unable to concentrate themselves in their studies which is affecting their career.

8. Prior to the accident deceased Smt. Mumtaz Makandar was hale and healthy and was looking after the entire affairs of the family of the petitioners and respondent No.3 and taking care and was guiding the petitioners in their studies for their better future. But due to sudden and shocking death of Smt. Mumtaz Makandar, the petitioner No. 1 to 3 have lost, care, love, affection and guidance of their beloved mother and the family of the petitioners is separated as such the petitioner No. 1 along with her two younger sisters has left the house of her father and has gone to their maternal uncle's house and as the respondent No.3 also having sustained injuries he is not earning

anything and unable to contribute for the welfare and bringing up of petitioner No.1 to 3. The petitioner No. 2 & 3 having witnessed the accident, sustained personal grevious injuries and seen the death of their mother are very much scared of and are not in good terms with respondent No.3.

9. The accident has taken place solely due to the rash and negligent driving of the car bearing Regn. No. KA-51/MB-6006 by Respondent No.3. The said vehicle is owned by Respondent No. 1 and same is insured with Respondent No. 2, hence, all the respondents are jointly and severally liable to pay compensation to the petitioners. Hence the above petitions.

10. Despite of service of notice in all petitions respondent No.1 has not appeared and hence placed exparte. After service of notice in all the cases the respondent No.2 has appeared through counsel and filed objections. Since the objections filed in all the above petitions is one and the same in order to avoid repetition the objections filed is commonly mentioned as under:-

11. The respondent No.2 has filed objections to main petition contending that the owner of the said car bearing Reg. No.KA-51/MB-6006 has not informed about the alleged accident in the stipulated time as per the terms and conditions of the policy, if any. Respondent No.2 is not aware of the accident. It is submitted that respondent No.2 has issued Liability only policy means Act policy in favour of the Ist respondent relating to the said Car in question. Hence the occupants of the said Car are not covered under the said policy. That the driver of the said vehicle had no valid and effective driving license as on the date of accident. Hence respondent No.2 is not liable to pay any compensation under the said policy. Hence, prayed for dismissing the petitions.

12. On the basis of the above pleadings, the following issues have been framed:-

ISSUES

ISSUES IN MVC No.94/2022

1. Whether the petitioner proves that she had sustained injuries in the Road Traffic Accident which occurred on 09.10.2020 at 01.20 am, near Ambuja Cement Factory, Hubballi-Haveri Road by the rash

and negligent driving of the driver of Car bearing Reg. No.-KA-51/MB-6006 ?

2. Whether the petitioner is entitled for the compensation as prayed for ? If so, what is the quantum and from whom?

3. What order or award?

ISSUES IN MVC No.95/2022

1. Whether the petitioner proves that she had sustained injuries in the Road Traffic Accident which occurred on 09.10.2020 at 01.20 am, near Ambuja Cement Factory, Hubballi-Haveri Road by the rash and negligent driving of the driver of Car bearing Reg. No.-KA-51/MB-6006 ?

2. Whether the petitioner is entitled for the compensation as prayed for ? If so, what is the quantum and from whom.?

3. What order or award?

ISSUES IN MVC No.96/2022

1. Whether the petitioner proves that Smt. Mumtaz W/o Abdul Khadar Makandar was

succumbed/died in the Road Traffic Accident which occurred on 09.10.2020 at 01.20 am, near Ambuja Cement Factory, Hubballi-Haveri Road by the rash and negligent driving of the driver of Car bearing Reg. No.-KA-51/MB-6006 ?

2. Whether the petitioner is entitled for the compensation as prayed for ? If so, what is the quantum and from whom.?

3. What order or award?

13. To prove the case of the petitioners in all the cases, the petitioner No.1 in MVC No.96/2022 is examined as PW-1 and got marked Ex.P.1 to 11 documents, the petitioner in MVC No.95/2022 got examined two doctors by name Dr. Ravin and Dr. Makhsud as P.W.2 and 3 respectively and got marked Ex.P.12 and 13 documents. The respondent No.2 company got examined its Administrative Officer as R.W.1 and got marked Ex.R.1 to 3 documents.

14. Heard arguments from petitioners and respondent No.2 side counsels. Perused the records.

15. My findings on the above issues is as under:

MVC No.94/2022 to 96/2022

Issue No.1 : In the affirmative.

Issue No.2 : Partly in the affirmative.

Issue No.3 : As per the final order, for the following :-

~:: R E A S O N S ::~

16. **ISSUE No.1 IN M.V.C.No.94/2022 to 96/2022**:- Since these issues are interlinked, they are taken up together for common discussion to avoid repetition of facts and reasoning.

It is specific case of the petitioners that on 09.10.2020 the petitioner No.2 and 3 along with their mother Smt. Mumtaz Makandar were going to Bengaluru in a car bearing Regn. No. KA-51/MB-6006. The said car was driven by the father of petitioners and husband of Smt. Mumtaz Makandar by name Abdulkhadar S/o Jamauddinsha Makandar i.e., respondent No.3 at a very high speed and in rash and negligent manner and when around 01:20 a.m. on 09.10.2020 they reached near Ambuja Cement factory Haveri Road, the respondent No. 3 without noticing the diversion of the road and without due diligence took the vehicle to his left and dashed to roadside cement seater in high speed as an impact, the car turned turtle. Due to which the deceased Mamtaz sustained severe grievous injuries head, face and multiple injuries and abrasions on her entire body. The petitioner No.2 and 3 also sustained severe injuries. Immediately after the accident all the inmates of the car were ambulated to KIMS Hospital, Hubballi, but unfortunately, the mother of petitioners Smt. Mumtaz Makandar died on the way to KIMS Hospital. The accident occurred solely due to rash and negligent driving of respondent No.3.

17. To prove the case of the petitioners, the petitioner No.1 is examined as PW-1. In the affidavit filed in lieu of chief examination she has reiterated the manner of accident. The relevant documents with regard to this issue are Ex.P.1 to 11. Ex.P.1 is certified copy of FIR in crime No.0053/2020 of Tadas PS, as per which case has been registered against the driver of Car bearing Reg. No.KA-51/MB-6006 for the offences punishable U/Sec.279, 337, 338 and 304(A) of IPC, Ex.P-2 is the certified copy of FIS as per which one Faruq S/o Karimsab Hubballi has lodged FIS alleging that on 09.10.2020 at midnight 12.30 a.m., he along

with his relatives Abdulkadar Mukandar and wife of Abdlukhar by name Mumtaz Makandar and their children by name Saba and Nizba were going to Darga near Bengaluru in a car bearing registration No.KA-51/ MB6006 belonging to the respondent No.1. When they reached near Ambuja factory on NH-4 road work was going on and dividers were kept at that time the driver drove the said car in a rash and negligent manner and without noticing the dividers suddenly took the car to the left side and lost control over it and dashed against cement seater because of which the said car toppled. As a result of said accident the said Faruq sustained injuries on his right shoulder and waist. The other inmates of said car also sustained injuries. The said Smt. Mumtaz sustained grievous injuries on her head and as such she was taken for treatment to hospital but she succumbed to injuries on the way to hospital. The accident occurred due to rash and negligent driving of car bearing Reg.No.KA-51/MB6006 by its driver i.e. the respondent No.3 herein. Ex.P-3 is certified copy of crime details Form as per which the accident has taken place at Hubballi-Haveri, NH-4 Road, near Ambuja Cement Factory, Ex.P-4 is the certified copy of hand sketch map, Ex.P.5 is the certified copy of photographs, Ex.P.6 is the certified copy of MVA Report of vehicle No.KA-51/MB-6006 as per which front wind screen glass was broken, and it's frame was bent and damaged, both headlights and front both indicators assembly was damaged, front bumper and front registration number plate assembly damaged and dismantled, Radiator assembly, front left side rear view mirror assembly were damaged, front both wheel fenders dented and damaged, front left side wheel assembly was damaged, top roof panel was bent and damaged, fresh scratched and dented marks on left side both front and rear door rear left side quarter panel dented and damaged, rear left side wheel found blown out, left side portion of the rear bumper out its fixture, rear wind screen glass broken were damaged. Ex.P.7 is certified copy of PM Report as per which the death of deceased Smt. Mumtaz Abdulkhar Makandar is due to shock and hemorrhage as a result of injuries sustained. Ex.P.9 is the certified copy of wound certificate of petitioner No.2, as per which she sustained laceration 3 X 1 cm over forehead, fracture frontal bone on left side with overlying frontal scalp hematoma. Ex.P.10 is the certified copy of wound certificate of petitioner No.3, as per which she sustained abrasion of size 1 x 1 cm over left side of forehead and 1 X 1 cm over left hand.

18. Admittedly, Ex.P-11 charge sheet has been filed against driver of car bearing Reg. No.KA-51/MB-6006 by name Abdulkhadar Jamaluddin Makandar i.e., respondent No.3 for the offences punishable U/Sec.279, 337, 338 and 304(A) of IPC. In the cross-examination of P.W.1 she denied the suggestion that she falsely deposing that the accident occurred due to rash and negligent driving of her father, she also denied the suggestion that she deposing falsely stating that accident occurred due to rash and negligent driving of respondent No.1. The respondent No.2 company has not led any contra evidence to show that the accident was not due to rash and negligent driving of respondent No.3.

19. It is settled law that in a claim petition, the claimant need not prove the happening of events beyond reasonable doubt and the rule of preponderance of probability would apply in such cases. **In the decision reported in AIR-2009-SC-2819 13-SCC Transport Corporation and others.)** “it has been observed that in a road accident, the strict

principles of proof as in a criminal case are not attracted. Relevant portion of the said decision is reproduced as follows: **“**In a situation of this nature, the tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus, in a particular manner, may not be possible to be done by the claimants. The claimants were merely to establish their case on the basis of touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties”.

20. The Hon'ble Supreme Court in the decision in **AIR-1980- SC-1354 (NKV Brothers (P). Ltd.V/s M.Karumai Ammal and others)** has observed that court/ Tribunal tribunal should not succumb to niceties technicalities and mystic. Special care must be taken to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or obscurity, there. Except in some cases, culpability must be inferred from circumstances where it is reasonable. It is

pertinent to make note that the degree of proof required for proving negligence on the part of the driver in the present proceeding is not similar as that of accused in criminal trial. The intent of present legislation is benevolent and the entire purpose of the legislation is likely to be defeated if in each case the petitioner is asked to prove beyond reasonable doubt the involvement and negligence on the part of driver.

21. In the present case also by applying the said principles it can be safely held that the accident occurred due to rash and negligent driving of driver of car bearing Reg.No.KA-51/MB-6006. As the petitioners in above cases proved the above issues, same are answered in the **affirmative**.

22. **ISSUE NO.2 IN MVC No.94/22 and 95/22 :**

The petitioner No.2 and 3 have claimed total compensation of Rs.15,00,000/- and Rs.23,14,000/- respectively under different heads.

Now the question is to see the just and reasonable compensation to which the petitioner No.2 and 3 are entitled. In this regard it is necessary to refer to the decision of Hon'ble Apex court reported **in 2011(1)**

SCC 343 (Rajkumar Vs.Ajay Kumar), The Hon'ble Apex Court has mentioned the following heads under which the compensation is to be awarded in personal injury cases.

A. Pecuniary damages(Special damages)

I. Expenses relating to treatment, hospitalization, medicines, transportation, nourishing, food and miscellaneous expenditure.

II. Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

a) Loss of earnings during the period of treatment;

b) Loss of future earnings on account of permanent disability.

III. Future medical expenses.

B. Non-pecuniary damages(General damages)

IV. Damages for pain,suffering and trauma as a consequence of the injuries.

V. Loss of amenities (and/or loss of prospects of marriage)

VI. Loss of expectation of life (shortening of normal longevity).

Now it is necessary to examine under which heads the petitioners are entitled for compensation.

23. THE HEAD OF EXPENSES RELATING TO TREATMENT, HOSPITALIZATION, MEDICINES, TRANSPORTATION, NOURISHING FOOD AND MISCELLANEOUS EXPENDITURE.

As per the petitioner No.2 after the accident she was taken to local doctor but as she was not showing any response to the treatment, hence she was taken to Shreyas Orthopedics & Trauma Center on 12.10.2020, wherein she was treated for fracture of frontal bone on the left side with overlying frontal scalp hematoma. As she was not comfortable, she was taken to Bijapur Hospital, wherein she took treatment for sometime and thereafter she was taking treatment at Bengaluru.

24. Whereas, the petitioner No.3 was taken to local doctor and as she was not showing any response, then she was taken to Vision Hospital on 12.10.2020 and as the Orthopaedic injuries were severe, the petitioner No.3 was taken to Shreyas Orthopedics & Trauma Center on 12.10.2020, wherein she remained as an indoor patient from 12.10.2020 to 13.10.2020 wherein she was operated by closed reduction and pop pop U slab was applied. On 13.10.2020, the petitioner No.3 was discharged from hospital with an advise for followup treatment after one week the petitioner No.3 was taken to M.M. Joshi Eye Institute on 14.10.2020, wherein she was treated for Right eye Centtal retinal artery occlusion (Purtscher's retinopathy), AC paracentesis was done on 19.10.2020. Now the petitioner No.3 is under treatment with one Dr.

Naveen Shetty at Bengaluru, and even as on this day, the petitioner is under treatment for her ophthalmic injuries and also suffering due to severe pain in her left humerus.

25. In this regard petitioner No.1 who is minor guardian of petitioner No.2 and 3 is examined as P.W.1 by reiterating the above contention taken up in the petition and got marked Ex.P.12 out patient clinical records of MM Joshi Eye Institute Private Ltd., Hubballi produced by P.W.2. The petitioner No.3 also got examined one Dr.Maksud from Shreyas Orthopedic Chroma Centre Hubballi who has produced Ex.P.13 inpatient record in which date of admission is shown as 12-10-2008 and date of discharge is shown as 13-10-2008, meaning that petitioner No.3 was admitted only one day in hospital.

However, there are no documents placed on record to show that the petitioner No.2 took treatment as inpatient and she incurred some expenses for medicines, hospitalization etc., in the absence of same the petitioner No.2 is not entitled for any amount under this head.

Similarly, the petitioner No.3 has not produced any medical bills and prescriptions. However, considering the injuries caused to petitioner No.3 and she was in hospital for one day as inpatient, the petitioner No.3 is entitled for

Rs.5,000/- under this head.

26. <u>THE HEAD OF LOSS FUTURE EARNINGS ON ACCOUNT OF PERMANENT DISABILITY;</u>

The next question is what is the percentage of permanent physical disability caused to the petitioner No.2 and 3. So far as petitioner No.2 is concerned, she claims that she was taken to local doctor and as was not showing any response to the treatment, she was taken to Shreyas Orthopedics & Trauma Center on 12.10.2020 she also took treatment at Bijapur and at Bengaluru. It is also averred in the petition that despite of spending huge amount she is not fully recovered and because of her tender age she facing problems as a consequences of injury and she unable to concentrate on her carrier and her future is affected. However, towards this end there are no materials placed on record to show disability caused to her. Therefore, petitioner No.2 is not entitled for any amount under this head.

27. As regards, the petitioner No.3 is concerned, she claims that after the accident she was taken to local doctor but she was not showing any response, as the Orthopedic injuries were severe, she was taken to Shreyas Orthopedics & Trauma Center on 12.10.2020, wherein the she remained as an indoor patient from 12.10.2020 to

13.10.2020 wherein she was operated by closed reduction and pop U slab was applied. On 13.10.2020, the petitioner No.3 was discharged from hospital with an advise for followup treatment. Thereafter the petitioner No.3 was taken to M.M. Joshi Eye Institute on 14.10.2020, wherein she was treated for Right eye Centtal retinal artery occlusion (Purtscher's retinopathy), AC paracentesis was done on 19.10.2020 and the petitioner No.3 was advised to come for followup treatment. Now she is under treatment with one Dr. Naveen Shetty at Bengaluru, and even as on this day, the petitioner No.3 is under treatment for her ophthalmic injuries and also suffering due to severe pain in her left humerus. So far petitioners No.2 and 3 have spent about Rs.1,50,000/- towards medical treatment and they are required to spend around another Rs.1,00,000/- or more for their future treatment. Inspite of spending such a huge amount, the petitioner No.3 is not recovered fully as such it is apprehended that the petitioner No.3 may not get her earlier vision that she had prior to the date of accident, due to the injuries sustained by her in the accident.

28. In order to prove the disability caused to petitioner No.3, the petitioners got examined one Dr. Ravin S/o Pravin Punamia as P.W-2. The said witness in his chief examination has deposed that as per the history given and

records produced by Kumari Nizba D/o Abdulkhadar Makandar, the petitioner No.3 had sustained fracture of left humerus and Ophthalmic injuries, initially she took treatment at Shreyas Orthopedic and Trauma Center, Hubballi for orthopedic injuries and having felt diminution in her vision in right eye she was brought to M.M. Joshi Eye Institute on 14.10.2020 and was diagnosed with right eye Central Retinal Artery occlusion (Purtscher's retinopathy). She was treated on OPD basis and sent home on the same day with medical management with oral steroids & oral AGM, AC paracentesis was done on 19.10.2020. She took followup treatment on 23/10/2020, 27/10/2020, 12/01/2021, 02/12/2022. Thereafter on 21.06.2024 she was clinically examined and diagnosed to be a case of RE Reperfused CRAO status post trauma. He also opined that her best corrected Visual Acuity in the right eye is 1/36 and 6/6 in the left eye. He further stated that she falls under 30% Visual Disability Criteria. He has issued disability certificate at Ex.P.8 and he further stated that her condition at present is same as last seen.

29. In the cross-examination of said witness it was suggested to him that the disability caused to petitioner No.3 at 30% to right eye if compare to whole body it will be the 1/3rd of 30% for which the witness stated that no such

deduction can be done in case of visual disability. Admittedly, the disability caused to the petitioner No.3 is low vision which is not locomotor disability. As such same cannot be taken as 1/3rd to whole body. The petitioner No.3 being school going student who requires good eye sight for her future studies and at present it cannot be predicated whether she would become doctor, engineer or she do some other profession. Since the petitioner No.3 being student and considering the injuries caused to her the disability assessed by P.W.2 appears to be proper and correct. Hence, same is hereby accepted.

30. As regards determining the income of minor petitioner No.3 is concerned, the counsel for petitioners has relied upon decisions reported in

1) **2020 ACJ 1042 in the Supreme Court of India at New delhi in CA No.735/2020 dt:05-02-2020 in between Kajal Vs. Jagdish Chand and others** wherein it is held that, Quantum-Injury-Principles of assessment-Income-Determination of -Girl aged 12, studying in school, became totally disabled due to head

injury- Whether it was justified to assess loss of earning capacity taking notional income of Rs.15,000 p.a.- Held: no; after completing her education she would have earned much more; assessment made taking minimum wages of Rs.4,846 p.m. payable to a skilled workman.

2) **The Hon'ble High Court of Karnataka, Dharwad Bench in MFA No.25028/2010 dt:28-06-2022 in between Miss Priyanka Pradeep Gavade Vs. The Divisional Manager, The New India Assurance Co. Ltd.,**

3) **2025 ACJ 1986 in the Hon'ble Supreme Court of India at New Delhi in CA No.10278/2025 dt:08-08-2025 in between Hitesh Nagjibhai Patel Vs. Bababhai Nagjibhai Rabari and another** wherein it is held that "Quantum-Injury-Principles of assessment -Income-Determination of-Minor-Injured a boy aged 8-Tribunal

and High Court did not assess income and failed to award compensation for loss of earnings- Apex Court reiterated that a minor child cannot be placed in the same category as a non-earning person and income must be taken at least as the minimum wages of a skilled worker prevailing in the State at the relevant time-Apex Court relying on minimum wages of a skilled worker in Gujarat during 2012 fixed income at Rs. 6,836 p.m.

4. **The Hon'ble High Court of Karnataka, Dharwad bench in Misc. First Appeal No.102868/2014(MV-D) dt:04-08-2022 in between Reliance General Insurance Co. Ltd., Vs. Gangappa S/o Chinnappa Saunshi and others**

31. In the above decisions while determining the age of minors minimum wages payable to skilled worker is considered. Therefore, in the present case also the income of the minor petitioner No.3 has to be

determined on the basis of minimum wages prescribed by the government of Karanataka. As per circular issued by Central Government, dated 31st May 2010, the monthly wages to be considered is Rs.8,000/- per month. Later it is amended as Rs.15,000/- per month with effect from 3rd January 2020. In this case the accident has occurred on 09-10-2020 which is subsequent to 03.01.2020. Hence, as per the above gazette notification the wages of the petitioner No.3 is taken as Rs.15,000/- per month.

32. Now the question is about the multiplier which is to be applied. In the petition the age of the petitioner No.3 is mentioned as 13 years. **(2020) 4 Supreme Court Cases 413 in between Kajal Vs. Jagdish Chand and others** the multiplier of 18 has to be applied in case of minor aged about 12 years. In the present case also the age of petitioner No.3 is 13 years hence, multiplier of 18 taken into consideration and As already discussed above, the income of the petitioner No.3 is calculated at Rs.15,000/- per month.

33. The monthly income is calculated with multiplication by 12 months then the same comes to

Rs.15,000/- X 12= Rs.1,80,000/-. Therefore, if income of Rs.1,80,000/-, is multiplied by the multiplier 18 then it comes to Rs.32,40,000/-. This is the total loss of future income. But disability of petitioner No.3 is concerned, it is taken at 30% only. Thus the future loss of income has to be proportionate to 30% only. Then it comes to Rs.15,000 X 12 X 30 X 18(multiplier)/100 = 9,72,000/-. The petitioner No.3 is entitled for **Rs.9,72,000** /- under this head.

34. THE HEAD OF FUTURE MEDICAL EXPENSES ;

So far as future medical expenses is concerned, the petitioner No.2 and 3 have not placed any materials on record to show that they need some amount for future medical expenses. In the absence of same they are not entitled for any amount under this head.

35. THE HEAD OF PAIN AND SUFFERINGS:

The petitioners have produced wound certificate of petitioner No.2 at Ex.P.9 as per which she sustained laceration 3 X 1 cm over forehead, fracture frontal bone on left side with overlying frontal scalp hematoma. Ex.P.10 is the wound certificate of petitioner No.3, as per which she sustained abrasion of size 1 x 1 cm over left side of forehead and 1 X 1 cm over left hand. The said injuries caused to petitioner No.2 and 3 are grievous in nature. Therefore if an amount of Rs.10,000/- each is awarded under this head to meet ends of justice hence, they are entitled for Rs.10,000/- each towards same.

36. <u>HEAD OF LOSS OF AMENITIES</u>:

There is nothing on record placed by the petitioners to show that due to the accident the petitioner No.2 and 3 they have lost amenities in life. Therefore, in the absence of any evidence on record they are not entitled for any amount under this head.

37. <u>HEAD LOSS OF EXPECTATION OF LIFE (SHORTENING OF NORMAL LONGEVITY).</u>

The medical records do not disclose that the injuries which are sustained by the petitioner No.2 and 3 have shortened the normal longevity of them. Therefore in the absence of any evidence on record they are not entitled for any amount under this head.

38. **<u>Issue No.2 in MVC No.96/2022</u>:** So far as entitlement of compensation is concerned, the petitioners have claimed Rs.24,47,000/- as compensation under different heads.

39. Basically, only three factors needs to be established by the claimant for assessing compensation in case of death: a) age of the deceased, b) income of the deceased and c) the number of Dependents. The other issues to be determined by the tribunal to arrive at the loss of dependency are: i) additions/deductions to be made for arriving at the income, ii) The deduction to be made towards the personal leaving expenses of the deceased, and iii) The multiplier to be applied with reference to the age of the deceased.

40. Before ascertaining the income of the deceased, it is necessary to determine the age of the deceased. In the petition the age of the deceased at the time of accident is shown as 55 years, in the P.M report at Ex.P-7 the age of the deceased is shown as 52 years. Since the age of the deceased in the petition itself is mentioned as 55 and same is the same is considered. Therefore, it can be safely concluded that at the time of accident the deceased was aged 55 years.

41. As regards to income of deceased Mamtaz is concerned admittedly she was housewife. In the decision of Hon'ble Apex court in **Kirti Vs. Oriental Insurance Company reported in (2021) 2 SCC 166 : The Supreme**

Court of India explicitly ruled that the gratuitous services of a housewife are invaluable and must be compensated. The court stated that the financial contribution of a homemaker is as vital as that of a salaried earning member. Similarly, in the decision relied upon by the counsel for petitioners reported in **2025 ACJ 2794 in FAO Nos.2781 and 4181/2019 dt:04-03-2025 in between Patel Infrastructure Pvt. Ltd., Vs. Dev Raj and others.**

42. Therefore, in view of the above decisions and in the absence of any materials to determine the income of deceased, her income has to be ascertained by following the guidelines issued by KALSA. Admittedly the accident in question occurred on 09-10-2020. Therefore the notional income fixed by KALSA for the year 2021 has to be taken into consideration to determine monthly of deceased. As per KALSA guidelines the monthly notional income for the year 2020 is Rs.13,750/-. Therefore the monthly income of the deceased is taken as Rs.13,750/- it would meet ends of justice.

43. **The next question is about multiplier. In Sarla Varma case, at paragraph-19 a two-judge Bench of Hon'ble Supreme Court dealt with this aspect in step 2. To quote:**

Step 2 (Ascertaining the multiplier)

"Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multiplier with reference to the age has been identified by this court. The multiplier should be chosen from the said table with reference to the age of the deceased". Keeping in mind the dictum stated above, multiplier 11 has to be applied in case of persons aged between 51 to 55 years.

44. So far as loss of dependency is concerned, the counsel for the petitioners argued that the petitioner No.2 and 3 are the minor daughters of deceased. The petitioner No.1 is major unmarried daughter. They were dependent on their mother, due to untimely death of deceased they have lost care, love and affection of their mother. Though petitioner No.1 is major daughter she is also entitled for compensation under the head of loss of dependency.

45. On the other hand the counsel for respondent No.2 argued that the petitioner No.1 being married daughter is not entitled for compensation under the head of loss of dependency. In this regard she relied upon decision

reported in **Hon'ble Supreme Court of India in Spl. Leave Ptn. (Civil) No.22265-22266/2018 in between Deep Shikha and another Vs. National Insurance Co. Ltd., and others**.

46. Though respondent No.2 company claims that the petitioner No.1 is married daughter but in the cross-examination of P.W.1 by the counsel for respondent No.2 she denied the suggestion that she is residing with her husband. She also denied the suggestion that the petitioners are not put to any hardship or inconvenience on account of death of their mother. In the cause title of the petition the name of petitioner No.1 is shown as Nazima D/o Abdulkhadar Makandar and her occupation is shown as private service. Respondent No.2 company has not produced any materials to show that petition No.1 is married daughter. As such the above decision relied upon by the counsel for the respective No.2 cannot be made applicable to the present facts on hand.

47. However, in the decision referred by counsel the petitioners reported in **2020 ACJ 759 Supreme Court of India at New Delhi in CA Nos.242 and 243/2020 dt:13-01-2020 in between National Insurance Co. Ltd., Vs. Birender and other,** wherein it is held that " **Motor**

Vehicles Act, 1988, section 166 (1) (c)-Claim application-Legal representative-Son-Contention that claim for loss of dependency due to death of mother who was a government servant is unavailable to sons who are married and gainfully employed; they may be entitled to compensation under conventional heads-Whether married and earning sons of the deceased being legal representatives can claim compensation for death of their mother and Tribunal was duty-bound to consider their claim application irrespective of the fact that they were fully dependent on the deceased or not-Held: yes; their claim cannot be limited to conventional heads".

Therefore, in view of the above decision even if the petitioner No.1 is major daughter and also earning member, she can be considered as dependent on deceased and entitled to compensation and her claim cannot be limited to conventional heads. Hence, it can be safely considered that there are three dependents on deceased. Hence, as per the decision of Sarla Varma Case 1/3rd has to deducted towards personal and living expenses of the deceased.

48. Admittedly in the present case the deceased was housewife, therefore when the deceased was aged

between 51 to 55 years, who is self employed 10% of established income should warrant towards future prospects as per decision reported in **(2017)16 Supreme Court Cases 680 in between National Insurance Company Limited Vs. Pranay Sethi and Others.**

49. This court has already calculated the monthly income of the deceased as Rs.13,750/- per month if 10% of same is taken, then it comes to Rs.1,375/- hence said amount has to be added towards future prospects.

Thus, the petitioners are entitled to compensation of Rs.13,30,956/- towards loss of dependency, which calculated as follows:

CALCULATION

TOTAL (IN RS.)

Rs.13,750/ (Monthly Income) add [10%of Rs.13,750/- (Future Prospects)13,750 + 1,375=15,125/--1/3rd of (Rs. 15,125/- / 3 = 5,042/-(Deductions)] 15,125/- – 5,042 = 10,083/-

[Rs.10,083 /-] multiply by [12(Annual Income)] 1,20,996/-

[Rs.1,20,996 /-]multiply by [11 (Multiplier)] 1,20,996 x11 = Rs.13,30,956/-.

50. **<u>TOWARDS CONSORTIUM</u>:- In the decision reported in (2017) 16 SCC 680 in a case between National Insurance Company Limited V/s Pranay Sethi and others,** the Hon'ble Apex court has held that reasonable figures on conventional heads namely loss of estate, loss of consortium and loss of funeral expenses should be paid as Rs.15,000/-, 40,000/- and 15,000/- respectively. Further the aforesaid amount should be enhanced at the rate of 10% in every three years. However, in this regard the counsel for petitioners argued that as per the above decision so also in view of other decisions reported in:-

1) **2026 ACJ 51 in the Supreme court of India at New Delhi in CA No.14857/2025 dt:17-11-2025 in between Kirosata Devi and others Vs. Ram Ji Lal and others**

2) **2025 ACJ 1841 in the Supreme court of India at New Delhi in CA No.9538/2025 dt:17-07-2025 in between Sunita and others Vs. United India Insurance Co. Ltd and others.**

3) 2025 ACJ 414 in the Supreme court of India at New Delhi in CA No.3763/2025 dt:24-01-2025 in between Sadhana Tomar and others Vs. Ashok Kushwaha and others

The petitioners are entitled for Rs.48,400/- towards loss of consortium. I have gone through above judgment, the Hon'ble Apex Court has granted an amount of Rs.48,400/- each on account of loss of consortium as per the decision reported in 2026 ACJ 51, 2025 ACJ 1841, 2025 ACJ 414. In view of the above decision the petitioner No.1 to 3 are entitled to Rs.48,400/- each under this head.

51. **Towards loss of Estate and Funeral and transportation of dead body of deceased:** In the above decisions itself an amount of Rs.18,500/- is ordered to be paid towards loss of estate and Rs.18,150/- is ordered to be paid towards funeral expenses by increasing the said amount at 10% for every 3 years from 2017. Hence, considering above decisions if conventional amount of Rs.18,500/- is awarded under the head of loss of estate and

Rs.18,150/- is awarded under the head of funeral expenses it would be reasonable. Hence, petitioners are entitled for Rs.18,500/- and Rs.18,150/- under above heads.

52. As already discussed above, the petitioners in MVC No.94/2022 and 95/2022 are entitled for compensation under following heads:-

1.	Expenses relating to medical treatment, hospitalization, transportation and laid up period Petitioner No.2 Petitioner No.3	 -NIL- 5,000/-
2.	Loss of future earning on account of permanent disability Petitioner No.2 Petitioner No.3	 -NIL- 9,72,000/-
3.	The head of pain and sufferings: Petitioner No.2 Petitioner No.3	 10,000/- 10,000/-
4.	Head of loss of amenities	-NIL-
	Total amount of compensation Petitioner No.2 (MVC 94/2022) Petitioner No.3 (MVC 95/2022)	 **Rs. 10,000/-** **Rs. 9,87,000/-**

53. The petitioners in MVC No.96/2022 are entitled for compensation under following heads:-

1	Loss dependency	Rs.13,30,956/-
2	Loss of estate	Rs. 18,150/-
3	Transportation of dead body & funeral expenses	Rs. 18,500/-
4	Loss of consortium	Rs. 1,45,200/-
	Total	**Rs.15,12,806/-**

54. Pertaining to interest on the award amount, in the decision between **Vijay Ishwar Jadhav and others V/s Ulrich Belchior Fernandes and another in MFA No.100090/2014 dated: 07-03-2018,** the Hon'ble High Court of Karnataka, Dharwad Bench has held that " In the absence of any other law relating to interest on judgments, the MACT has to follow the provisions of Sec.34 of CPC. Thus, in the given circumstances of the case, interest at the rate of more than 6% could not have been awarded". Thus it is clear that interest at the rate of 6% can only be awarded on the compensation amount as per the above ruling.

55. **<u>LIABILITY TO PAY COMPENSATION:-</u>** The next question is who has to pay the compensation to the petitioners. As regards liability of payment of compensation is concerned, the respondent No.2 company in its objections has taken up contention that the policy issued is liability only policy and it is an act policy, the owner of the said car has not paid extra premium, hence the occupants of the car are not covered under the said policy and there is no driving licence held by driver of same said car at the time of accident as such the respondent No.2 company is not liable to pay compensation.

56. In this regard the Administrative officer of respondent No.2 company is examined as RW1 and he placed reliance on Ex.R1 to 3 documents. Ex.R1 is the authorization letter, Ex.R2 is the policy of insurance and Ex.R3 is the proposal from. The counsel for petitioners has cross examined RW-1 in the said cross examination he admits that based on the proposal form insurance policy has been issued. The said witness has stated that though third parties are covered under act only policy, the inmates are not the third parties, as the policy is liability only policy, they are not covered.

57. The counsel for respondent No.2 argued that since the policy issued to respondent No.1 at Ex.P2 is

liability only policy and no additional premium is paid in order to cover the risk of inmates of the car, the insurance company is not liable to pay compensation. She also argued that the petitioners were traveling in the said car as inmates and not third party and there is no coverage for occupants of the car. The car being a private car which was taken by the respondent No.3, the respondent No.2 company has to be exhonerated from paying compensation to the petitioners. In support of her arguments she relied upon decisions reported in :-

1) The Hon'ble High Court of Karnataka, Dharwad bench in MFA No.24854/2010 (MV) dt:02-01-2017 in between The New India Assurance Company Ltd., Vs. Sri. Javed S/o Ismail Beediwale and others

2) 2022 latest Case Law 8320 Mad dt: 20-04-2022 in between the New India Assurance Company Vs. Sandhya.

3) In MAC App 4/2020 dt: 20-12-2021 in between the Branch Manager, New India Assurance Co. Ltd., Vs. Smt. Januka Sharma and others by the Hon'ble High Court of Sikkim

4) 2008 Law Suits (SC) 954 dt:16-05-2008 in between Oriental Insurance Co. Ltd., Vs. Sudhakaran KV.

5) 2022 (1) T.A.C. 588 (Raj) in Civil Misc. Appeal No.658/2021 dt:15-11-2021 in between United India Insurance Co. Ltd., Vs. Narsingh Tanwar and another.

6) The Hon'ble High Court of Madras in C.M.A No.2163/2017 dt:17-06-2022 in between S. Vijayalakshmi and others Vs. Ashok Brothers Implex Ltd and another.

7) 2022(3) T.A.C. 349 (Mad.) in C.M.A. No.846/2015 dt:03-11-2020 in between Manager, Oriental Insurance Co. Ltd., Vs. Aasaithambi and another

8) The Hon'ble High Court of Judicature at Madras in CMA No.3567/2013 dt: 10-12-2014 in between the New Indian Assurance Co. Ltd Vs. S. Krishnasamy.

9) The Motor Vehicle Accident Claims Tribunal, Bengaluru in MVC No.385/2020 in between Smt. Nandini H.S. W/o Mahadeva Prasad Vs. The Branch Manager, United India Insurance Co. and others

58. On the contrary the counsel for the petitioners argued that even if the policy of insurance is act only policy, it covers the risk of inmates of the car. Hence the respondent No.2 company is liable to pay compensation to the petitioners. He also arguded that even if no extra premium is paid company is still liable to pay compensation to the ptitioner as they are third party and recover the same from the owner of the vehicle. In support of his arguments he relied upon decisions reported in Serial No. 15 to 21.

1) **2017 ACJ 1031 in the Supreme court of India at New Delhi in CA No.3047 and 3065/2017 arising out of SLP (C) No.5805 and 791/2013 dt:21-02-2017 in between Manuara Khatun and others Vs. Rajesh Kumar Singh and others**
2) **2025 ACJ 1841 in the Supreme court of India at New Delhi in CA No.9538/2025 dt:17-07-2025 in between Sunita and others Vs. United India Insurance Co. Ltd., and others**
3) **2013 ACJ 554 in the Supreme court**

of India at New Delhi in CA No.5/2013 arising out of SLP(C) No.20127/2011 dt:03-01-2013 in between Manager, National Insurance Co. Ltd., Vs. Saju P. Paul and another

4) **2024 ACJ 2145 in the High court of Sikkim at Gangtok in MAC Appeal No.7/2023 dt:14-05-2024 in between Passi Lamu Sherpa and another Vs. Branch Manager, New India Assurance Co. Ltd.,**
5) **2022 ACJ 2590 in the High Court of Rajasthan, Jaipur Branch in SB CMA No.2854 and 2582/2007 dt:02-03-2022 in between Priti Vs. Amar Singh and others**
6) **2020 ACJ 462 in the High court of Punjab and Haryana at Chandigarh in FAO No.333/2017 (O & M) dt:28-05-2019 in between New India Assurance Co. Ltd Vs. Seema Devi and others**

59. I have gone through the decisions relied upon by the counsel for the petitioners and counsel for respondent No.2 company. In the decision of **Hon’ble High Court of Madras in C.M.A No.2163/2017 dt:17-06-2022 in between S. Vijayalakshmi and others Vs. Ashok Brothers Implex Ltd and another** it is observed that unless additional premium is paid injured claimants or legal heirs of deceased occupants are not entitled to claim compensation in case of act only policy. The **Hon'ble High Court of Madras in decision in 2020 Latesh Caselaw 8320 Mad in between The New India Assurance Company Vs. Sandhya** has taken similar view. It is also observed in the judgment of **Hon'ble High Court of Karnataka, Dharwad bench in MFA No.24854/2010 (MV) dt:02-01-2017 in between The New India Assurance Company Ltd., Vs. Sri. Javed S/o Ismail Beediwale and others** that in case of act only policy where no additional premium is paid liability on insurance company cannot be fastened. In the decision reported in Respondent No.2 company in **2008 Law Suits (SC) 954 dt:16-05-2008 in between Oriental Insurance Co. Ltd., Vs. Sudhakaran KV** it is observed that:

"B) Insurance contract Words and Phrases Third Party vis-a-vis Pillion rider on a scooter There is distinction between a contract on insurance with regards to a third party an the owner or the driver of the vehicle Contract covered third party risk, not that of the owner or the pillion rider. As an exception the driver was covered deceased was not the driver of the vehicle she was traveling as a passenger, stricto senso, may not be a gratuitous passenger as in a given case she may not be a family member, a friend or other relative – In common parlance connotation she may not be even a passenger. In terms of the insurance contract, she was not covered thereby. Impugned judgment found unsustainable, thus set aside. Appeal allowed.

60. However, in the above decisions itself is held that pillion rider cannot be considered as gracious passenger and liability was fixed on the owner of the vehicle to pay compensation. In the said decision following observation is made in para No.19.

19] The law which emerges from the said decisions, is:

(i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk

(ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider:

(iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle.

But in the present case the petitioners are not the pillion riders but they are the inmates of the car. Therefore, the above said decisions cannot be made applicable to the present facts on hand.

61. In the decision relied upon by counsel for the petitioners the Hon'ble **Supreme court of India in decision reported in 2025 ACJ 1841 in CA**

No.9538/2025 dt:17-07-2025 in between Sunita and others Vs. United India Insurance Co. Ltd and others has held that,

Motor Vehicles Act, 1988, sections 147 (1) and 149 (2) (a) (ii)-Motor insurance Act policy Transport vehicle Gratuitous passenger. Driving licence liability of insurance company. Pay and recover order, passenger travelling in truck sustained fatal injuries when truck met with accident due to negligence of its driver, Tribunal exonerated insurance company from liability holding owner and driver of truck liable on the grounds that (i) truck driver was holding a licence to drive light motor vehicle without any endorsement to drive a commercial vehicle and (ii) truck was insured under Act policy covering only third party liability, High Court affirmed Tribunal's findings. Whether a person holding a licence to drive LMV is authorised to drive a commercial vehicle having gross weight less than 7,500 kg and no endorsement is required-Held: yes; and whether principle of pay and recover can be applied to the facts of the case-Held: yes; insurance company directed to pay compensation and then recover the amount from owner alone;

since driver was holding a valid licence he cannot be held liable.

62. In the decision repoted in **2013 ACJ 554 in CA No.5/2013 arising out of SLP(C) No.20127/2011 dt:03-01-2013 in between Manager, National Insurance Co. Ltd., Vs. Saju P. Paul and another** wherein the Hon'ble Apex court has held that,

Motor Vehicles Act, 1988, section 147 (1) (b) (i)-Motor insurance-Goods vehicle-Gratuitous passenger-Liability of insurance company-Pay and recover order-Driver employed by owner of truck for some other vehicle owned by him was travelling in the cabin of truck, truck capsized and driver sustained injuries-Claimant claimed that he was a spare driver in the vehicle, he was not driving the vehicle at that time but he was directed by his employer to go to worksite-Premium covering the risk of one driver and one cleaner was paid-Risk of any other employee or second or spare driver was not covered under the policy. Whether injured was a gratuitous passenger and insurance company is not liable-Held: yes; claimant directed to withdraw the amount deposited by insurance company and insurance company may recover the amount from insured by initiating proceedings before executing court.

63. In the present case also the respondent No.2 company has not placed any materials on record to show that the respondent No.3 was not having any driving license as on the date of accident. No section has been invoked in the chargesheet against respondent No.3 that he was not holding D.L. meaning that the respondent No.3 was having valid D.L. Therefore, even if the policy at Ex.R.2 is liability only policy and no extra premium is paid, in veiw of the above decisions of Hon'ble Apex court which bidning on this tribunal, the respondent No.2 company is still liable to pay compensation to the petitioners and recover the same from its owners i.e. respondent No.1. As such in view of the above decisions the respondent No.1 is liable to pay compensation to the petitioners. However, the petitioners being third party the respondent No.2 company is directed to pay compensation to petitioners and recover the same from respondent No.1.

64. **RATE OF FUTURE INTEREST**:- The petitioners have claimed future interest @ 18% p.a. from the date of petition till its realization. Pertaining to rate of interest on the award amount, in the decision between **Vijay Ishwar**

Jadhav and others V/s Ulrich Belchior Fernandes and another in MFA No.100090/2014 dated: 07.03.2018, the Hon'ble High Court of Karnataka, Dharwad Bench has held that “In the absence of any other law relating to interest on judgments, the MACT has to follow the provisions of Sec.34 of CPC. Thus, in the given circumstances of the case, interest at the rate of more than 6% could not have been awarded”. Thus it is clear that an interest at the rate of 6% can only be awarded on the compensation amount as per the above ruling. Hence, the petitioners are entitled for 6% of interest on claim amount from the date of petition till its realization.

65. In view of the above discussion, it is concluded that the petitioner No.1 to 3 (in MVC No.96/2022) are entitled for total compensation of **Rs.15,12,806/-** in the ratio of **30:35:35**. The petitioner No.2 (petitioner in MVC No.94/2022) is entitled for total compensation of **Rs.10,000/-**. The petitioner No.3 (petitioner in MVC No.95/2022) is entitled for compensation amount of **Rs.9,87,000/-**. Accordingly, issue No.2 in M.V.C. No.94/2022 to 96/2022 are answered **partly in the affirmative.**

66. <u>Issue No.3 in MVC No.94/2022 to 96/2022</u>:- In view of findings on issue No.1 and 2 in all above cases, this tribunal proceeds to pass the following:

~:: <u>ORDER</u> ::~

The petitions filed by the petitioners in MVC No.94/2022 to 96/2022 under Sec. 166 of M.V. Act claiming compensation are hereby partly allowed with costs.

The petitioner No.1 to 3 (in MVC No.96/2022) are entitled for total compensation of **Rs.15,12,806/-** with future interest at the rate of 6% p.a., from the date of petition till its realization. The award amount is to be apportioned among the petitioners in the ratio of 30:35:35.

The petitioner No.2 (petitioner in MVC No.94/2022) is entitled for **Rs.10,000/-**. The petitioner No.3 (petitioner in MVC No.95/2022) is entitled for **Rs.9,87,000/-** with future interest at the rate of 6% p.a., from the date of petitions till its realization.

The respondent No.2 is directed to deposit compensation amount within three months before this tribunal. On deposit being made 30% of the amount awarded to the share of petitioner No.1 is ordered to be released in her favour and remaining 70% is ordered to be deposited in fixed deposit in the name of petitioner No.1 in any nationalized bank of her choice for the period of 3 years.

Since petitioner No.2 and 3 are minors the entire share of amount in all the cases granted to minor petitioner No.2 and 3 is ordered to be deposited in fixed deposit in their names in any nationalized bank of choice of petitioner No.1 till petitioner No.2 and 3 attain the age of majority.

Advocate fee is fixed at Rs.500/- on each petition.

Draw award accordingly.

Keep the original copy of this judgment in MVC No.96/2022 and copies of the said judgment in MVC No.94/2022 and 95/2022.

(Dictated to the Stenographer directly on computer and typed by her, corrected by me and then pronounced in the open court on this the 19th day of June 2026.)

Sd/-
(Smt. Deepa G. Manerkar)
II Addl. Senior Civil Judge &
Addl. MACT, Hubballi.

~:: **ANNEXURE** ::~

I. **Witnesses examined for the Petitioner:**

PW.1	:	Nazeema Abdul Kadar Makandar
PW.2	:	Dr. Ravin Pravin Punamia
PW.3	:	Dr. Makhsood Iqbal Ahmad

II. Documents Ex.ed by the Petitioners :

Ex.P1	:	C.C. of F.I.R.
Ex.P2	:	C.C. of Complaint
Ex.P3	:	C.C. of Crime details Form
Ex.P4	:	C.C. of hand sketch map
Ex.P5	:	C.C. of photographs
Ex.P6	:	C.C. of MVA Report
Ex.P7	:	C.C. of post morterm report
Ex.P8	:	To whomsoever it may concern
Ex.P8(a)	:	Signature
Ex.P9 & 10	:	C.C. of wound certificates
Ex.P11	:	C.C. of Charge sheet
Ex.P12	:	Out patient clinic record
Ex.P13	:	Inpatient record

III. **Witnesses examined for the Respondents :**

RW.1	:	Sri. Avinash Gautam

IV. <u>Documents Ex.ed by the Respondents :</u>

Ex.R.1	:	Authorization letter
Ex.R.2	:	Insurance policy
Ex.R.3	:	Proposal Form

Sd/-
(Smt. Deepa G. Manerkar)
II Addl. Senior Civil Judge &
Addl. MACT, Hubballi.