KAHV510006062023

IN THE COURT OF ADDL.SENIOR CIVIL JUDGE & MACT, RANEBENNUR

PRESENT: Sri. MANJUNATHA M.S., *B.A.,LL.B.*
Addl.Senior Civil Judge & MACT,
Ranebennur.

DATED THIS 4th DAY OF AUGUST, 2025

MVC NO. 174 / 2023

PETITIONERS :

1. Smt. Nagarathnamma R
W/o: Hanumanthappa @ W/o:
Kumar Swamy, Age: 54 yrs,
Occ: Nil.

2. Kum. Lekha
D/o Kumaraswamy, Age: 30 yrs,
Occ: Nil.

3. Kum. Harisha K.S.
S/o: Kumaraswamy, Age: 28 yrs,
Occ: Nil.

All are R/o: T Gopagondanahalli village, Post: Madike Chilur, Tq: Nyamati, Dist: Davangere.

Now at: Kamala Nagar, Ranebennur, Dist: Haveri.

(By Sri. V.T.K, Adv.)

V/s.

RESPONDENTS :

1. Mr. Gajendrappa D
S/o: Dharmappa, Age: Major,
Occ: Owner of the vehicle, R/o:

H.No.1 35/5, Vivek Nagar,
Panjimogaru, Kulooru, Mangalore,
Dist: Dakshina Kannada.

(Owner of the vehicle bearing Reg.No.KA. 19/MC-6526).

2. The Manager Legal Claims,
Royal Sundaram Allianz General
Insurance Co., Ltd., Shop No.11, 12,
13 & 14, 2nd Floor, SKD Hights, Main
Road, Vidya Nagar, Hubballi.

(Insurer of the vehicle bearing Reg.No.KA. 19/MC-6526).

Policy No : VPB0042999000100
Valid from: 04-07-2018 to 03-07-2019.

(R.1 by Sri. J.I.K, Advocate.
R.2 by Sri. R.S.S, Advocate).

Addl. Sr. C.J & MACT,
Ranebennur.

J U D G M E N T

This claim petition is filed by the petitioners U/Sec.166 of Motor Vehicles Act, 1988, claiming compensation of ₹.50,00,000/- with interest from the date of petition till its realization for death of Mr. Kumaraswamy S/o: Sanjivappa, in a Road Traffic Accident.

2. The petition averments in brief is that, on 26-04-2019 at about 18:15 hrs, the deceased was going on a Motor Cycle bearing Reg.No.KA.17/EC-9718 towards his native after

purchasing vegetables and ration in Holaluru market by riding the Motor Cycle in a slow manner on extremely left side of the road and when he came near T.G. Halli cross, on Honnali-Shivamogga road, at that moment the driver of one Car bearing Reg.No.KA.19/MC-6526 came from back side with high speed in a rash and negligent manner and lost control over the said Car and dashed to the Motor Cycle of the deceased, due to impact, the deceased has sustained grievous injuries to all over the body and succumbed at the spot, the dead body was shifted to Govt. Hospital Honnali, wherein the postmortem was conducted and dead body was handed over to the petitioners, for which they were spent ₹.2,00,000/- towards transportation and other funeral obsequies ceremonies. Prior to the accident, the deceased was hale and healthy and he was doing agriculture and a Cab driver and earning a sum of ₹.50,000/- per month. Due to untimely death of the deceased, petitioners life has become dark, miserable and put to great financial hardship. The accident in question has occurred due to rash and negligent act of driver of Car bearing Reg.No.KA.19/MC-6526. Hence the respondents being owner and insurer of the offending Car are jointly and severally liable to pay compensation to petitioners.

3. In pursuance of service of notice, respondent Nos.1 and 2 have appeared through their counsels and filed their objections to the said petition. The respondent No.1 in his objection statement has contended that, the claim petition is false and

they have no right to claim compensation from the respondent No.1, hence, petition is not maintainable under law. He denied the averments made in the claim petition specifically and categorically which are those specifically admitted by him. He denied that, driver of his Car was rash and negligent and accident caused. He was driving the same in a cautious manner, but the deceased suddenly turn his Motor Cycle near T.G. Halli cross. Hence, to avoid the accident, he has suddenly applied break, despite of the same, the accident had occurred and deceased died. Therefore the said accident had not occurred due to his negligence. Knowing this fact, this false petition is filed. He has denied the expenses incurred towards the funeral ceremonies. He further stated that, as on the date of the accident, he has possessed valid and effective driving license and he has insured his vehicle with the respondent No.2 company in this regard, he is having all valid documents. Hence, the respondent No.2 is liable to pay compensation to the petitioners. Hence, prays to dismiss the petition with cost against him.

4. The respondent No.2 in his objection statement has contended that, the petition is false, frivolous and vexatious and as such, it is neither tenable under law nor on facts. Hence, same is liable to be dismissed as against them. It is further submitted that, as per Sec.166(3) of MV Act (Amendment 2019) the present petition is barred by limitation as this case is filed beyond six months from the date of the accident. Hence,

this petition may kindly be dismissed as against this respondent. It is further submitted that, as on the date of the accident, the driver of the respondent No.1 was not possessed valid and effective driving license and knowingly, the respondent No.1 has violated the terms and conditions of the policy. It is further denied the entire averments made in the said petition that, the age, occupation and income of the deceased. It is further denied the jurisdiction of this court to try the petition, since the petitioners are not the residents of this court jurisdiction. Further contended that, the petition is bad for non-joinder of necessary parties, since the owner of the Motor Cycle is not made as party to this petition. It has further denied the date, time and manner of accident. Further it is submitted that, the accident was not occurred due to rash and negligent driving of driver of offending Car. In fact, the alleged accident occurred due to the gross negligence on the part of the deceased and the deceased rode his Motor Cycle without having any driving license and insurance coverage. Further it is admitted that, the offending Car was insured with them. The liability of this respondent if any is subject to the terms, conditions, limitations and exceptions of the policy. Further liability of this respondent if any is also subject to provisions of MV Act and Rules framed under validity of RC, FC, permit and DL of the driver. It is further submitted that, in case of any award against this respondent, the rate of interest may kindly be awarded at the rate of 6% p.a. only. Further denied that, the compensation claimed by the petitioners is highly exorbitant and excessive. Hence, prayed for dismissal of the petition against them.

5. On the basis of the above pleadings, this Tribunal has framed the following :

ISSUES

1. Whether the petitioners prove that, deceased Kumaraswamy died due to the injuries sustained by him in road traffic accident near T.G. Halli cross on Honnali - Shivamogga road which occurred on 26-04-2019 at about 18:15 hours, due to rash and negligent driving of the Car bearing Reg. No.KA.19/MC-6526 ?

2. Whether the respondent No.1 prove his discharge from the liability for the grounds urged in his objection statements ?

3. Whether the petitioners are entitled for compensation? If so, how much and from whom and what rate of interest ?

4. What order or Award?

6. The petitioners in support of their case, petitioner No.1 examined herself as PW.1 and got marked 13 documents at Ex.P.1 to P.13 and closed their side of evidence. The respondent No.1 examined himself as RW.1 and got marked two documents at Ex.R.1 and R.2. The learned counsel for the respondent No.2 has submitted no oral evidence on their behalf.

7. Heard arguments of both side and perused the materials available on records.

8. My answer to the above issues are as under:

Issue No.1 : In the Affirmative.
Issue No.2 : In the Negative
Issue No.3 : Partly in the Affirmative.
Issue No.4 : As per final order, for the following:

REASONS

9. **ISSUE NOs.1 AND 2 :** Since these issues are interlinked with each other based on the common facts, therefore, these issues are taken together for common discussion.

10. In this case the petitioners contend that, on 26-04-2019 at about 18:15 hrs, the deceased was going on a Motor Cycle bearing Reg.No.KA.17/EC-9718 towards his native after purchasing vegetables and ration in Holaluru market by riding the Motor Cycle in a slow manner on extremely left side of the road and when he came near T.G. Halli cross, on Honnali-Shivamogga road, at that moment the driver of one Car bearing Reg.No.KA.19/MC-6526 came from back side with high speed in a rash and negligent manner and lost control over the said Car and dashed to the Motor Cycle of the deceased. Due to impact, he has sustained grievous injuries and succumbed at the spot.

11. The petitioner No.1 examined as PW1 and produced Ex.P1 to 13 documents. Out of that, Ex.P.1 is the FIR, Ex.P.2

is the complaint, Ex.P.3 is the spot panchanama, Ex.P.4 is the IMV report, Ex.P.5 is the inquest panchanama, Ex.P.6 is the PM report and Ex.P.7 is the charge sheet. On perusal of Ex.P.1 and P.2, it appears that, the petitioner No.3 gave first information to the Nyamati police station on 26-04-2019 regarding the accident. On the basis of Ex.P.2, Nyamati police have registered a case in Cr.No.57/2019 as per Ex.P1 for the offences punishable U/Secs.279 and 304(A) of IPC and Sec.187 of IMV Act. The Petitioner No.3 in his complaint has stated that, on 26-04-2019, his sister-in-law by name Nagarathna has telephoned him and informed that, his father was returning to his native in a Motor Cycle bearing Reg.No.KA.17/EC-9718 after purchasing grocery in Holaluru market by riding the said Motor Cycle in a slow manner on extremely left side of the road and when he came near T.G. Halli cross, on Honnali-Shivamogga road, at that moment the driver of one Car bearing Reg.No.KA.19/MC-6526 came from back side with high speed in a rash and negligent manner and lost control over the said Car and dashed to the Motor Cycle of his father. Due to impact, his father has sustained grievous injuries to his head and other parts of the body and died in the spot. Immediately he went to the spot and found that, his father was died in the spot and the Motor Cycle was fully damaged. The offending Car was also parked at the spot and the front portion of the said Car was damaged. The driver of the said Car was fled away from the spot. The said accident was occurred solely on the rash and negligent driving of the driver of the Car. Hence, prays to taken necessary legal action against the driver of the Car. Ex.P6 PM report which clearly discloses that, the death may be due to neurogenic and hypovolmic shock due to vital fracture on brain and multiple fracture. After investigation the Nyamati Police have filed charge sheet as per Ex.P7 against the driver of the Car i.e., respondent No.1 for the offences punishable U/Sec.279 and 304(A) of IPC and Sec.134(A & B) R/w Sec. 187 of IMV Act alleging that, the accident was occurred solely due to rash and negligent driving of the driver of the Car/ respondent No.1. The said charge sheet has not been challenged by the respondents in any forum and even they have not examined any eye witnesses. However the respondent No.1 himself examined as RW.1 by reiterating the contention taken by him in the objection statement. But during the cross-examination he has admitted that, the Nyamati police have filed charge-sheet against him stating that, the accident was occurred due to his fault and he has not challenged the said charge-sheet. He has admitted that, Ex.R.1 insurance policy was valid as on the date of the accident and he had valid driving license to drive the Car. Under these circumstances, relying upon the oral evidence of PW.1 coupled with the documents produced as per Exs.P1 to P7, this tribunal is of the opinion that, the accident has occurred due to rash and negligent driving of driver of the offending Car and the deceased succumbed to the injuries sustained in the said accident.

12. The respondent No.2 in its objection statement contended that, this tribunal has no jurisdiction to try the case, since the accident was occurred within the jurisdiction of Nyamati police station and the petitioners are permanent residents of Nyamati, Davangere district.

13. On perusal of the charge-sheet materials it appears that, the accident was occurred within the jurisdiction of Nyamati police station. The cause title of the petition discloses that, the petitioners are the permanent residents of Nyamati, Davangere Distrit and it is also further stated that, presently they are residing at Kamala Nagar, Ranebennur. The address of respondent No.1 is shown as Vivek Nagar, Panjimagaru, Kulooru, Mangalore, D.K. District and the address of respondent No.2 is shown as Vidya Nagar, Hubballi.

14. Section 166 of M.V Act deals with application for compensation. Sub Section (2) of Section 166 deals with jurisdiction. As per the provisions of sub-section (2) of Section 166, every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant

resides, and shall be in such form and contain such particulars as may be prescribed.

15. In the judgment in **M.F.A Nos.101861/2016(MV) C/w 101862/2016,** in the case of **Sri. Mukund Vs. The Divisional Controller, MSRTC,** the Hon'ble High Court of Karnataka has held in para No.13 that; the word used in Section 166 (2) of the M.V Act is not where ‘claimant permanently resides', but, the word is 'claimant resides'. Therefore, the said place need not be a permanent residential place of the claimant.

16. In the said judgment **Hon'ble High Court** has by relying on a decision of **Hon'ble Supreme Court of India** in **Mantoo Sarkar Vs. Oriental Insurance Co.Ltd., and others** reported in **2009 ACJ 564** held in para No.14 that; Therefore, on the question of jurisdiction, Hon'ble Supreme Court has held that where the Tribunal or Court has got jurisdiction over the subject matter though it has no territorial or pecuniary jurisdiction, the judgment could not be a nullity. Therefore, in the case on hand, it is not a case where the Tribunal had no jurisdiction in relation to the subject matter of the same. Therefore, if the Tribunal had jurisdiction to entertain a claim petition under the M.V Act, as observed by the Hon'ble Supreme Court, in the absence of any finding of sufferance of any prejudice on the part of the respondent, the claim petition would have been disposed of on merits.

17. In this case the respondent No.2 has contended that the accident occurred and the petitioners resides within the limits of Nyamati, Davangere District and hence, this Tribunal has no jurisdiction. It is nowhere mentioned in the objection that the respondent No.2 will be put to loss or hardship if the petition is entertain by this Tribunal. It is not a contention of the respondent No.2 that, a prejudice will be caused to him in conducting or defending the petition before this tribunal. The petitioners claimed that, they are temporarily residing at Kamala Nagar, Ranebennur. Hence, by relying on the above decision, I am of the opinion that, this Tribunal has got jurisdiction to entertain the petition as the petitioners were temporarily residing within the jurisdiction of this court as on the date of filing of the petition. The respondent No.2 will not be put to any prejudice if the petition is entertain by this Tribunal.

18. The respondent No.2 also contended that, the petition filed by the petitioners is hit by Sec. 166(3) of MV Act since the same was filed after expiry of six months from the date of the accident. In the light of the above contention, it is appropriate to refer the judgment of Hon'ble High Court of Karnataka in **WP No.201961 of 2023 (MV)** in the case of **The Divisional Manager United India Insurance Co. Ltd, V/s Ramu @ Ramesh S/o: Yallappa**, the Hon'ble High Court of Karnataka has observed that, Sub Section 3 of Section 166 of MV Act, is required to be applied prospectively from the date

on which the Amendment came into effect and cannot be allied retrospectively. In the instant case, admittedly, the accident has occurred on 26-04-2019 i.e., prior to coming into force of Amendment Act. Therefore, the limitation provided U/Sec. 166(3) of Motor Vehicles (Amendment) Act-2019 is not applicable to the present case.

19. Admittedly the insurance policy issued to the offending Car by the respondent No.2 was valid as on the date of the accident. As such, the respondent No.1 being the owner and respondent No.2 being the insurer of the said vehicle are jointly and severally liable to pay compensation to the petitioners. Hence, I answered **Issue No.1 in the Affirmative** and **issue No.2 in the Negative.**

20. **<u>ISSUE NO.3</u> :-** The learned counsel for the respondent No.2 has contended that, petitioner Nos.2 and 3 are the major children of the deceased cannot be considered as dependents of the deceased, because they are independent earnings. In this aspect, it is appropriate to refer the judgment of **Hon'ble Supreme Court** in the case of **Seema Rani and others V/s The Oriental Insurance Co. and others** in **Civil Appeal No.2323/2025 arising out of SLP (C) No.444 of 2025**, the Hon’ble Supreme Court has observed that, we are unable to agree with the view taken by the tribunal on the dependents of the deceased by this court in **National Insurance Co. ltd., Vs Birender and others** had expounded that major married and

earnings sons of the deceased, being legal representatives, have a right to apply for compensation and the tribunal must consider the application, irrespective of weather the representatives are fully dependent on the deceased or not. In view of the said law laid down by the Hon'ble Supreme Court, the petitioner Nos.2 and 3 are entitle for compensation along with the petitioner No.1 who is the wife of the deceased as the legal representatives of the deceased.

21. In view of answering issue No.1 in the affirmative and issue No.2 in the Negative, the petitioners are entitled for compensation. To assess the compensation, the Tribunal has to look into several factors like age, avocation, income of deceased, conveyance charges, funeral and obsequies, towards of loss of love and affection, etc., let me discuss one by one;

(A) **Towards dependency and loss of future earnings:**

(i) In the petition the age of the deceased Kumaraswamy is shown as 55 years. In respect of determination of the age of the deceased is concerned, the petitioners have relied on Ex.P11 Adhar Card of the deceased, wherein the date of birth of the deceased is shown as 1959. Except the said document, no other documents have been produced for age proof of the deceased. Hence, the Tribunal has considered the age of the deceased as 60 years based on Ex.P.11 Adhar Card. As per dictum of Hon'ble Supreme court of India in Smt. Sarala Verma case '9' multiplier is applicable in present case.

(ii) The petitioners contended that deceased was doing agriculture and Cab driver and earning a sum of ₹.50,000/- per month. In order to prove the income of the deceased, the petitioners have not produced any document. When there is no positive evidence before this Tribunal, only on the basis of oral evidence placed by before this Tribunal, it cannot be presumed that the deceased was getting income of ₹.50,000/- per month. Hence, this tribunal will consider the notional income.

(iii) The Hon'ble Karnataka State Legal Services Authority has fixed notional income of the year 2019 at ₹.13,250/- for determination of income before Lok Adalat for the Districts coming under the Hon'ble High Court of Karnataka, Dharwad Bench. Case on hand the petitioners have not produced any relevant document to prove the income of the deceased. Accordingly, the notional income of the deceased during the year 2019 is treated as ₹.13,250/- per month.

(iv) With regard to the loss of future prospectus is concern, the Hon'ble Apex court in the decision reported in **2017 ACJ 2700 SC (**between **National Insurance Co. Ltd., V/s Pranay Sethi and others).** "In case the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years, should be regarded as the necessary method of computation. The established income means the income minus the tax component". In the case on hand, the deceased was aged about 60 years. As such 10% additional income should be added to the established income as future prospects. Admittedly deceased Sri. Kumaraswamy was a married and the petitioner No.1 is the wife and petitioner Nos.2 and 3 are the children of the deceased. So, as per dictum of Hon'ble Supreme court in Smt. Sarala Verma case, where the deceased is married and having up to three dependents, 1/3rd has to be deducted from the gross income of the deceased towards his personal expenses and remaining is to be taken as dependency. Thus, petitioners are entitled to compensation of **₹.10,49,436/-** towards loss of dependency.

Which is calculated as follows:

Calculation Total (in ₹.) ₹.13,250/- (monthly income)
₹.1,325/- add 10% of ₹. 13,250/- (future prospects)
Total monthly income is ₹.14,575/-.
1/ 3rd of ₹.14,575/- (deductions) ₹.4,858/-.

₹.9,717/- multiply by 12 ₹. 1,16,604/- annual income

₹.1,16,604/- multiply by 9 = **₹.10,49,436/-** (Multiplier).

(v). In view of Judgment of Hon'ble Supreme court of India, in between **United India Insurance Co. Ltd V/s Satinder Kaur @ Satwinder Kaur and others** in Civil Appeal No.2705 of 2020 & in between **National insurance company LTD V/s Pranay Sethi and Ors**, the petitioner No.1 is the wife and petitioner Nos.2 and 3 are the children of the deceased Sri. Kumaraswamy are entitle for a sum of

₹.40,000/- + 10% +10% = ₹.48,000/- each towards loss of consortium and petitioners are also entitled for **₹.18,150/- towards loss of estate** and **₹.18,150/- towards funeral expenses**.

22. Thus, the petitioners are entitled for total compensation as follows:

Sl. No.	**Particulars**	**Amount**
a.	Towards dependency and loss of future income	₹. 10,49,436-00
b.	Towards Consortium 1. Spouse Consortium 2. Children consortium (10% increased after 3 years + 3 years)	₹. 1,44,000-00
c.	Towards loss of estate (10% increased after 3 years + 3 years)	₹. 18,150-00
d.	Towards Funeral expenses (10% increase after 3 yrs + 3 yrs)	₹. 18,150-00
	Total	**₹. 12,29,736-00**

23. Hence, the petitioners are entitled for just and reasonable compensation amount of **₹. 12,29,736/-** with interest at 6% p.a., as held by the **Hon'ble High Court of Karnataka in MFA No. 5896 of 2018 (MV) C/W 4444/2018** and **4659/2018 (MV)** in between **Mis. Joyeeta Bose and others V/s Venkateshan V and others.**

24. Admittedly, the policy issued by the respondent No.2 in respect of the offending Car was in force as on the date of the accident. As such the respondent No.1 being the owner and

respondent No.2 being the insurer of the offending Car are jointly and severally liable to pay compensation to the petitioners with interest at the rate of 6% p.a from the date of petition. Hence, **issue No.3 is answered in the partly Affirmative**.

25. **ISSUE NO.4**: For the forgoing reasons and in view of above discussion, Tribunal proceed to pass the following:

ORDER

The petition filed by the petitioners U/s.166 of Motor Vehicles Act is allowed with cost.

The petitioner Nos.1 to 3 are entitled for compensation of **₹.12,29,736/-** (Rupees Twelve Lakhs Twenty-Nine Thousand Seven Hundred and Thirty-Six only) with interest at 6% p.a., from the date of petition till the date of realization.

Respondent Nos.1 & 2 are jointly and severally liable to pay the compensation to the petitioners. Respondent No.2 being the insurer is primarily liable to deposit the said compensation amount. The respondent No.2 is directed to deposit the compensation amount directly to the account of petitioners through NEFT/RTGS within 30 days from the date of award if details are furnished. Otherwise the award amount shall be deposited to the tribunal within thirty days from the date of award.

Out of the total compensation amount, the petitioners No.1 is entitled for 60%, Petitioner Nos.2 and 3 are entitled for 20% each.

On deposit of compensation amount, the petitioner No.1 is entitle to withdraw 75% of her share and the remaining 25% of her share shall be deposit as FD in any Nationalized Bank for a period of 3 years.

Since the compensation amount of Petitioner Nos.2 and 3 is meager, the entire amount shall be released in their favour on proper identification and verification.

After expiry of period of fixed deposit the Bank Authorities are at liberty to release the amount shown in the F.D. to the concerned depositor in accordance with rules and regulations of the bank after proper identification of the depositor.

The advocate fee is fixed at ₹.1,000/-.

Draw award accordingly.

(Dictated to the stenographer directly on computer, typed by her, corrected and then pronounced by me, in the open Court on this the **4th day of August, 2025)**.

(MANJUNATHA M.S.)
Addl. Senior Civil Judge & MACT,
Ranebennur.

ANNEXURE

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PETITIONERS:-

PW.1 : Smt. Nagarathnamma R

LIST OF DOCUMENTS MARKED ON BEHALF OF THE PETITIONERS:-

Ex.P1	:	C.Copy of FIR
Ex.P2	:	C.Copy of complaint
Ex.P3	:	C.Copy of spot panchanama
Ex.P4	:	C.Copy of IMV report
Ex.P5	:	C.Copy of inquest panchanama
Ex.P6	:	C.Copy of PM report
Ex.P7	:	C.Copy of charge sheet
Ex.P.8 to 11	:	Notarized copies of Adhar cards

Ex.P12	:	Notarized copy of PAN card
Ex.P13	:	Notarized copy of Bank pass book.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE RESPONDENTS:-

RW.1 : Gajendrappa D.

LIST OF DOCUMENTS MARKED ON BEHALF OF THE RESPONDENTS:-

Ex.R.1	:	Insurance policy copy.
Ex.R.2	:	Driving license.

Add. Sr.Civil Judge & MACT,
Ranebennur.