KAHV710017262023

IN THE COURT OF THE SENIOR CIVIL JUDGE AND ADDL.MACT, AT SHIGGAON SITTING AT SAVANUR

Present: Sri. Sunil S. Talawar
B.A.LLB., (Spl.)
Senior Civil Judge & Member
Addl. MACT, Shiggaon
Sitting at Savanur,

DATED THIS THE 4th DAY OF JULY 2026

M.V.C.2303 of 2023

Petitioners: 1. Shanaj W/o Abdulkhadarjilani Olekar, Age: 24Years, Occ: Household, R/o: Near Bus Stand, Madapur, Tq: Savanur, Dist: Haveri.

2. Sadika W/o Abdulkhadarjilani Olekar, Age: 10months, Occ: Nil, R/o: Near Bus Stand, Madapur,Tq: Savanur, Dist: Haveri.

[Since Petitioner No-2 is minor, she is represented by her natural mother i.e. petitioner No-1]

3. Davalabi W/o Rajesab Olekar, Age: 61 Years, Occ: Nil, R/o: Near Bus Stand, Madapur. Tq: Savanur, Dist: Haveri.

(By Sri.B.C.Kudal, Advocate)

V/s

Respondents: 1. Raju S/o Shankrappa Matigar, Age: Major, Occ: Business,

R/o Agasar Oni, Savanur,
Tq Savanur, Dist: Haveri,

(Owner of Tractor bearing its Reg. No: KA-27/TC-9578)

2. The Divisional Manager,
HDFC ERGO General Insurance Company Limited, 1st floor Virupaksha Krupa Opp KIMS Main gate, PB Rd, Vidya Nagar, Hubballi 580021.

(Insurer of Tractor bearing its Reg. No: KA-27/TC-9578)

Policy No.23162053 96345500000

Period from 27.04.2023 to 26.04.2024

3. Dyamanagouda
S/o Hanumanthagouda Patil,
Age: Major, Occ: Business,
R/o Savoor, Tq Savanur,
Dist Haveri,
(Owner of Trailer bearing its Reg. No: KA-27/TB-8270)

4. The Divisional Manager,
IFFCO TOKIO General Insurance Company Limited, Sudev Plaza, 3rd Floor, Opp Shri Laxmi Temple, Dajiban -peth Hubli-580029, Karnataka

(Insurer of Trailer bearing its Reg. No: KA-27/TB-8270)

Policy No 1-2JIJ15DM, P400
MQ992

Period from 01.10.2022 to
30.09.2023

(By Sri.M.S.M, Advocate for R.1 & 3)
(By Sri.V.S.A, Advocate for R.2)
(By Sri. A.S.P, Advocate for R.4)

Date of Institute of petition	:	22.12.2023
Nature of petition	:	Grant of compensation
Date of commencement of recording the evidence	:	19.04.2025
Date on which judgment was pronounced	:	04.07.2026
Total Duration	:	Yr/s Month/s Day/s 02 06 13

(Sunil S. Talawar)
Senior Civil Judge & Member
Addl.MACT, Shiggaon Sitting
At Savanur.

: JUDGMENT :

The petitioners have filed this petition **U/Sec.166 of Motor Vehicles Act, 1989** seeking compensation of Rs.71,00,000/- on account of death of

Abdulkhadarjilani Olekar, for the injuries sustained in road traffic accident on **01.07.2023** at about 17:00 hours on Panigatti-Ingalagi Road.

2. **Brief facts of petitioner case is discussed as here under:** On 01.07.2023 at about 17:00 hours, as per the direction and instruction given by the respondent No.1 and 3 as to load the fertilizer bags and unload the said bags at Yalival village, the Abdulkhadarjilani Olekar was moving in the Tractor bearing its Reg. No: KA-27/TC-9578 attached with trailer bearing its Reg. No: KA-27/TB-8270 as coolie-Hamala, from Panigatti, toward Ingalagi. The driver of said tractor was driven the same in high speed, with rash and negligent manner, without following traffic rules and regulations, so as to endanger of human life, and lost control over the vehicle and toppled down on road side canal, caused horrible accident, Due to the said accident the Abdulkhadarjilani Olekar was sustained fetal injuries to all over the body and died at spot. Then the gathered people were shifted the dead body to Government Hospital Shiggaon, wherein the doctors were confirmed the death of the said Abdulkhadarjilani Olekar. The petitioners were transported dead body in a hired vehicle and conducted funeral ceremony of the deceased by spending Rs.1,00,000/- towards travel, transportation

of the body. Due to the untimely death of deceased Abdulkhdarjilani Olekar, the petitioner No.1 being wife, she was lost her lovely husband and petitioner No.2 being daughter, was lost her lovely father at her crucial stage. The Petitioner No.3 is the mother who was lost her lovely son at her elder age.

3. At the time of accident, the deceased was aged about 24 years, prior to the accident deceased was hale and healthy and doing coolie work as Hamala under the employment of Respondent No.1 & 3 and was earning monthly income of Rs.30,000/-. The deceased having huge responsibilities on his shoulder, as the petitioners are totally depending upon the income of the deceased. Due to sudden death of deceased, petitioners have lost their estate in the society, and petitioners are lost their life stick, and their future life become dark. The accident occurred solely due to the rash and negligent driving of the driver of aforesaid Tractor bearing its Reg. No: KA-27/TC-9578 attached with trailer bearing its Reg. No: KA-27/TB-8270, The respondents No.1 and 3 being the owners and the respondent No 2 and 4 the insurers of the said offending vehicle, as such they have to jointly and severally liable, responsible to pay the compensation to the petitioners an amount of Rs.71,00,000/- as compensation along with future

interest of 18% p.a. from the date of petition till its realization.

4. After institute of this petition, notice have been issued to the respondents, reported as served. Respondents No.1 to 4 appeared through their counsel. The respondents No.1 to 4 have filed their separate objections to the main petition.

5. The respondent No.1 in his objections has denied the manner of accident stated in the petition and called for strict proof of the same including the age of deceased. It is specifically contended by the respondent No.1 that, at the time of accident the deceased was employed as coolie and Hamala by this respondent and was getting salary of Rs.20,000/-. The deceased was working in the said tractor bearing its No.KA-27/TC-9578 and the driver was having valid effective driving license and the said vehicle was insured with respondent No.2 under its policy No.2316205396345500000 which was valid from 27.04.2023 to 26.04.2024. Therefore, this respondent is not having liability to pay compensation to the petitioners. Hence prayed to dismiss the petition as against respondent No.1.

6. The respondent No.3 has also filed objections to the main petition wherein, he has taken

similar contention as taken by the respondent No.1. the respondent No.3 has admitted that, he is owner of the trailer bearing its registration No.KA-27/TB-8270 and the deceased was doing coolie and hamala in the said trailer. It is also stated that, the said trailer was insured with respondent No.4 under its policy No.1-2JIJ15DM, P400MQ992 which was valid from 01.10.2022 to 30.09.2023. It is also the contention of the respondent No.3 that in case of liability fixed on respondent No.3 then the liability may be on respondent No.4 as the trailer was insured with respondent No.4.

7. The respondent No.2, the insurance company has filed objections to the main petition wherein it is contended that, the petitioners are not legal heirs and dependents of deceased Abdulkhadarjeelani S/o Rajesab Olekar. It is also contended that, as per the complaint registered by the Hulagur Police in Crime No.50/2023 and the charge sheet filed by said police and as per the documents available on record the alleged accident was occurred when the deceased Abdulkhadarjeelani was traveling in the trailer bearing its registration No. KA-27/TB-8270. Therefore, the alleged accident was not occurred arising out and use of the said tractor bearing its registration No. KA-27/TC-9538. It is also contended in

the objections that, no person is allowed to travel in the tractor except driver. The said tractor is not designed or constructed to carry any person except driver. But the deceased Abdulkhadarjeelani was traveling in the trailer which is not insured with this respondent. It is also contended that, the respondent No.1 has intentionally permitted a person to drive the said tractor who is not possessing the valid and effective driving license to drive the said tractor. Therefore, the respondent No.1 has violated the terms and conditions of the insurance policy. Therefore, there is no liability fixed on the respondent No.2. Hence, prayed to dismiss the petition as against respondent No.2.

8. The respondent No.4 has also filed his objections to the main petition wherein it is specifically contended that, the very occurrence of the accident and the involvement of trailer bearing Reg. No. KA-27/ TB-8270 is not within the knowledge of respondent No.4. The driver of the trailer bearing No.KA-27/TB-8270 alleged to have involved in the accident was not holding driving license. Therefore, the driver of charge sheeted vehicle driver has violated the terms and conditions of the insurance policy. It is also contended that, the respondent No.4 liability can be fixed only on the basis of the valid documents at the time of road accident. It is also contended that, the respondent No.1

has not obtained the permission from RTO for to attach the trailer bearing No.KA-27/TB-8270. It is also contended that, the accident in question was occurred due to rash and negligent driving of the driver of tractor. Hence, prayed to dismiss the petition with cost.

9. Based on the above pleadings, following Issues were framed by my predecessor in office.

<u>I S S U E S</u>

1) Whether the petitioners prove that Sri. Abdulkhadarjeelani S/o Rajesab Olekar had sustained injury in the road accident on 01 01/07/2023 at about 17.00 hours on Panigatti Ingalagi Road toward 5 k.m. west away from Hulagur Police Station and sustained injuries died on spot due to the actionable negligence of the driver of Tractor Trailer No. KA-27/TC-9578, Trailer No.KA-27/TB-8270?

2) Whether the Respondent No.1 proves that the liability is with respondent No.2 as vehicle insured under policy from 27-04-2023 to 26-04-2024?

3) Whether the Respondent No.3 proves that the liability is with respondent No.4 as vehicle insured under policy

from 01-10-2022 to 30-09-2023?

4) ***Whether the Petitioners are entitled for the compensation? If yes, to what quantum and from whom?***

5) ***What Order or award?***

ADDITIONAL ISSUES

1) ***Whether the petitioners prove that they are dependent of deceased Abdulkhadar jilani?***

2) ***Whether respondent No.2 proves that the respondent No.1 has violated the terms and conditions of the insurance policy as contended in objections para No.7.8.9?***

10. In order to prove their case the petitioner No.1 herself has stepped into witness box and examined as PW.1. She has got marked 19 documents as Ex.P.1 to P.19. On the other hand witness by name Akshay Kumar T Sankannavar the FDA, Divisional Transport Office, Haveri has been examined as R.W.1. He has got marked Ex.R.1 to R.3 documents. Senior manager of respondent No.2 company has also stepped into witness box and examined himself as R.W.2. He has got marked Ex.R.4 document. The respondent No.4 representative Mr. Aslesh Govindaray the law officer

has been stepped into witness box and examined as R.W.3. Ex.R.5 and 6 are marked.

11. I have heard the arguments on both sides and perused entire records.

12. The petitioner counsel has relied upon the following decision as a part of his argument in *2025 ACJ 1002 Royal Sundaram Alliance Insurance company Ltd., Vs. Honnamma and Others and also placed reliance on IMT 29.*

13. The respondent No.2 counsel has relied upon the following judgments ;

1. 2014 ACJ 1583, New India Assurance Co. Ltd V/s Sohan Lal and others,

2. 2021 ACJ 2588, Gadhilingappa and another V/s K. Guleppa and Others

3. 2017 ACJ 741, Bajaj Allianz General Insurance Co. Ltd V/s Prashanth and Others

4. 2012 ACJ 2297, Oriental Insurance Co. Ltd V/s Shoba and Others.

14. My answers to the above Issues are as herein under;

Issue No.1 : In the Affirmative

Issue No.2	:	In the Affirmative
Issue No.3	:	In the Affirmative
Addl.Issue No.1	:	In the Affirmative
Addl.Issue No.2	:	In the Negative
Issue No.4	:	Yes. Petitioners entitled for compensation of Rs.30,53,736/- with interest at the rate of 6% p.a. from the date of petitioner till the realization, respondent No.2 and 4.
Issue No.5	:	As per final order for the following:

: **<u>REASONS</u>** :

15. **<u>ISSUES No.1 and Addl.Issue No.2 :-</u>** This petition is filed **under Section 166 of Motor Vehicles Act 1989** seeking compensation for the reason death who sustained injuries in alleged road accident and died. The petitioners in their petition have contended that, on 01.07.2023 at about 17:00 hours Panigatti Ingalagi road toward 5 km west away from Hulagur police station Abdulkhadarjilani Olekar died in road traffic accident due to actionable negligence of driver of

Tractor bearing its Reg. No: KA-27/TC-9578 attached with trailer bearing its Reg. No: KA-27/TB-8270. Per contra, the respondent No.2 by filing objections has contended that, the respondent No.1 has violated the terms and conditions of the insurance policy and the accident was occurred when the deceased was traveling in trailer which was not insured with respondent No.2. Therefore, the liability cannot be fixed upon the respondent No.2. On the basis of these rival contention in relation to road traffic accident this court has framed **Issue No.1 and Addl. Issue No.2** as to decide the real dispute. Hence, since the rival contentions are closely related to the road accident hence, they are inter linked with each other. Therefore, to avoid repetition of facts these issues are taken together for common discussion.

16. It is the peculiar circumstances of the matter that, the petitioners claims that, Sri. Abdulkhadar jilani Olekar has sustained injury in the road accident on 01.07.2023 at about 17-00 hours on Panigatti- Ingalagi road towards 5 Km west away from Hulagur Police Station and sustained injuries died on spot due to the actionable negligence of the driver of the tractor KA No.27/TC-9578, Trailer No. KA-27/TB-8270. It is also peculiar circumstances of the matter that, both tractor and trailer insured with respondent

No.2 and 4 insurance company respectively. It is the case of petitioners that, the trailer is attached with tractor hence, the driver of tractor is a main tort feasure. In order to prove their case, the petitioner No.1 has stepped into the witness box and got examined as PW1. She has filed affidavit in lieu of examination in chief by reiterating the entire petition statement of fact. Therefore, it is not necessary to reproduce the contents of affidavit of PW 1 since the facts of the case already discussed in the matter.

17. In evidence, the petitioner has produced FIR and complaint in Hulagur P.S Crime No. 50/2023 those have been marked as Ex.P.1 and 2. Ex.P.4 is the certified copy of spot panchanama, Ex.P.5 is the certified copy of map of incident place, Ex.P.6 is the certified copy of vehicle seizure panchanama, Ex.P.7 is the certified copy of IMV report and Ex.P.11 is the certified copy of charge sheet filed in Hulagur P.S Crime No.50/2023. The petitioners in order to prove the road accident, the involvement of vehicles and the rash, negligent driving of the tractor driver, are referring or relying the above said documents apart from their oral evidence. Therefore, it is required to go into the said documents in detail. Upon perusal of the Ex.P1 and 2 documents it appears that, in relation to road accident, the criminal law in motion is made out

to the concerned police station by filing information. On the basis of Ex.P1 and 2 documents, the investigation officer has carried out investigation and filed charge sheet. Ex.P11 is the certified copy of charge sheet wherein, it appears that the driver of tractor by name Gundappa Tippanna Kilare alleged to have been driven the tractor Chassis No. MBNAP49AEPTD54976 with trailer No. KA-27/TB-8270 having the fertilizer bags on it and driven the same in rash, negligent manner. It is also allegation on the accused that, he lost control over the tractor and taken the said tractor towards left side and made fall on canal. It is pertinent to note that, the deceased was traveling in trailer on sitting over the fertilizer bags and sustained injuries. Therefore, as per relied police paper it appears that, on the date of accident the deceased was traveling on trailer which was attached to the tractor and same was driven by the accused. Therefore, when the petitioners are relying the police paper in order to prove the road accident and involvement of both tractor and trailer, the rash, negligent driving of the driver of the tractor they are consistant with these facts and they cannot go beyond the police paper.

18. The police paper produced by the petitioners reveals that, deceased Sri. Abdulkhadar jilani Olekar was traveling in trailer which attached to

the tractor. As in regard to the road accident and accident injuries, involvement of both vehicles are not in dispute. The disputed aspect is that, the tractor driver was not possessed driving license at the time of accident. Further the disputed aspect is that, the deceased Sri. Abdulkhadar Jilani Olekar is a unauthorized passenger who was traveling in trailer which was not covered with terms of insurance policy. However, the respondent No.2 has also taken contention that, if at all it is considered that, the deceased was traveling in tractor then also there is no provision to travel in tractor except the driver. The respondent No.4 has also taken contention that, the trailer which attached to the tractor having no valid permission to attach it. Therefore, the owner of both vehicles only are having liability to pay compensation to the petitioners.

19. It is the case of petitioners that, the deceased was doing coolie work as per instructions of the owner of tractor the respondent No.1 and owner of trailer the respondent No.3. It is undisputed fact that, the deceased was sustained injuries in an road accident when he was traveling in trailer which loaded with fertilizer bags. It is also undisputed fact that, the trailer was attached to the tractor and on the incident date both vehicles are involved in loading and

unloading the fertilizer bags. It is admitted by the owner of tractor and trailer ,the respondent No.1 and 3 that, the deceased was working as coolie on the date of incident as per instructions given by them. Now, it is the turn of respondent No.2 and 4 that, on the incident date and time the deceased was not at all working as coolie and he was traveling as unauthorized passenger. In this regard the learned Advocate for respondent No.2 and 4 have extensively cross examined the PW1 but nothing has been elicited from the mouth of PW1 in regard to coolie work of the deceased which all go against the case of petitioners. However, the respondent No.4 has much relied on the Ex.P13 the postmortem report by stating that it has not been mentioned the cause of death due to fall from the tractor trailer. It is also suggested to the PW1 that, the deceased was traveling as unauthorized passenger and the tractor, trailer being used unauthorizedly for the commercial purpose. The PW1 denied the same. Therefore, it is clear from the said evidence that, the deceased was a coolie and doing work on tractor and trailer as per instruction of the respondent No 1 and 3. Hence, there is a master and servant relation in between deceased and the respondent No 1 and 3.

20. Now, from the above said evidence it is clear that, the road accident was occurred due to rash and

negligent driving of the tractor which was attached to the trailer. Because the respondent No. 1 to 4 have not at all denied the fact of incident accident. The respondent No.2 has taken stand that, at the time of accident the respondent No.1 has violated the terms and conditions of insurance policy. Their prime contention in this regard is that, the certificate of registration of tractor bearing No. KA-27/TC-9538 reveals that, the seating capacity of the tractor is one the driver only. The said tractor is not designed or constructed to carry persons except driver. Therefore, the said policy of insurance issued to the tractor bearing its registration No. KA-27/TC-9538 does not cover the risk of inmates of said tractor except the driver. In this regard, the prime contention of respondent No.2 is looked into the factual matrix of the matter, the petitioners never ever stated that, the deceased was traveling in tractor bearing Reg. No. KA-27/TC-9538. The petitioners put into their hands pertaining to the fact that, the deceased was moving in the tractor which attached with trailer. Any single word is not appears in the petition in regard to the fact that, either the deceased was traveling in trailer or tractor. However, the investigation papers produced by the petitioners clearly goes to show that, the deceased was sustained injuries while he was traveling in trailer as per Ex.P1 and P2 and he was traveling in trailer as per

Ex.P11 charge sheet. When this aspect is taken into consideration then Ex.P11 is a reliable document pertaining to the fact that, the deceased was traveling in trailer and sustained injuries on the fact of both vehicles being toppled. Therefore, the contention pertaining to the fact that, the deceased was an unauthorized passenger in tractor does not arise for the consideration. Meaning thereby it can be said that by referring Ex.P11 charge sheet that, the accident occurred when the deceased was in trailer. Now, it is undisputed fact that, the said trailer is attached to the tractor. The substance of accusation on the driver of tractor trailer for very purpose is that, 'ದಿನಾಂಕ: 01.07.2023 ರಂದು ಸಾಯಂಕಾಲ 05-00 ಗಂಟೆಯ ಸುಮಾರಿಗೆ ಆಪಾದನಾ ಪತ್ರದ ಕಾಲಂ ನಂ. 12 ರಲ್ಲಿ ನಮೂದ ಮಾಡಿದ ಆರೋಪಿತನು ಪಿರ್ಯಾದಿದಾರಳ ಗಂಡನಾದ ಮೃತ ಅಬ್ದುಲಖಾದರಜಿಲಾನಿ ರಾಜೇಸಾಬ ಓಲೇಕಾರ ವಯಾ: 29 ವರ್ಷ, ಸಾ: ಮಾದಾಪುರ ಈತನಿಗೆ ಕರೆದುಕೊಂಡು ಸ್ವರಾಜ ಕಂಪನಿಯ ಚೆಸ್ಸಿ ನಂ. MBNAP49AEPTD54976 ENGINE NO.391358/SFD04961 ಮತ್ತು ಟೇಲರ ನಂ. ಕೆಎ-27/ಟಿಬಿ-8270 ಚೆಸ್ಸಿ ನಂ. ಡಿಎವಾಯ್‌ಎ 845 ನೇದ್ದರಲ್ಲಿ ಗೊಬ್ಬರದ ಚೀಲಗಳನ್ನು ಹೇರಿಕೊಂಡು ಸವಣೂರಿದಿಂದ ಯಲಿವಾಳಕ್ಕೆ ಹೋಗುತ್ತಿದ್ದಾಗ, ಹುಲಗೂರ-ಇಂಗಳಗಿ ರಸ್ತೆ ಮೇಲೆ ಟ್ರ್ಯಾಕ್ಟರನ್ನು ಜೋರಾಗಿ ವ ನಿರ್ಲಕ್ಷತನದಿಂದ ಮಾನವೀಯ ಪ್ರಾಣಕ್ಕೆ ಆಪಾಯವಾಗುವಂತೆ ನಡೆಸಿಕೊಂಡು ಬಂದು ಶಿಗ್ಗಾಂವ ತಾಲೂಕಿನ ಗಡಿ ಸಮೀಪ ಟ್ರ್ಯಾಕ್ಟರ ಮೇಲಿನ ನಿಯಂತ್ರಣ ಕಳೆದುಕೊಂಡು ಟ್ರ್ಯಾಕ್ಟರನ್ನು ರಸ್ತೆಯ ಎಡಬದಿಯ ಕಾಲುವೆಯಲ್ಲಿ ಕೆಡವಿ ಅಪಘಾತ ಪಡಿಸಿದ್ದರಿಂದ ಟೇಲರದಲ್ಲಿ ಕುಳಿತಿದ್ದ ಪಿರ್ಯಾದುದಾರಳ ಗಂಡನ ಮೇಲೆ ಟೇಲರ ಬಿದ್ದು ಎದೆಗೆಬಲವಾದ ಗಾಯಗೊಂಡು ಮರಣಹೊಂದುವಂತೆ ಮಾಡಿದ ಅಪರಾಧ'. It is noticeable point that, the trailer cannot move on the road without a supporting vehicle and it has no mechanical engine to move on road either from petrol or diesel or electricity engine. It is a stable vehicle. Now it is clear that the said trailer was moving on road with the help of attached tractor. Therefore, for the purpose of present petition, there are sufficient evidence that on 01.07.2023 at about 17-00 hours on Panigatti Ingalagi road towards 5 Km west away from Hulagur Police Station the deceased Sri. Abdulkhadarjilani Olekar has sustained injuries and died on spot due to actionable negligence of the driver of tractor No. KA-27/TC-9578, trailer No. KA-27/TB-8270. Since there is no evidence pertaining to the aspect of the deceased was traveling in tractor as unauthorized person, there is no such legal strength on the aspect of violation of terms and conditions of insurance policy pertaining to tractor No KA-27/TC-9578 and the coverage of insurance policy is subjected to the reasoning of this court on the aspect of shifting liability to pay compensation on respondent No.1 to 4.

Therefore, considering all these material aspects I am having no hesitation to answer **Issue No.1 in the Affirmative and Additional. Issue No. 2 is in the Negative.**

21. **Issue No.2 and 3:** The respondent No.1 and 2 have clearly admitted the road accident, the

involvement of both vehicles in question and also the rash, negligent driving of the driver of the tractor No. KA-27/TC9578. It is stated by the respondent No.1 that, his tractor is insured with respondent No.2 hence, the liability to pay the compensation is with respondent No.2. On the other hand, the respondent No.3 also stated that, his trailer is insured with respondent No.4 and hence, the liability to pay the compensation is with respondent No.4. Here, there is no dispute pertaining to the aspect of insurance policy to the both tractor and trailer. The respondent No.2 has taken contention that, though there is a term of insurance to the tractor bearing No. KA-27/TC-9578 but there is no such provision being involved that, the driver of the tractor authorized any person to travel in the vehicle. This aspect is very well discussed while dealing with Additional. Issue No.2 in the matter. It appears that, the deceased was not at all traveling in the tractor as passenger or coolie as case may be. Under the circumstances, no question of unauthorized travel by the deceased and the violation of terms and conditions of insurance policy. But here, as per evidence of petitioner and the investigation papers pertaining to accident reveals that, the deceased was traveling in trailer No. KA-27/TB-8270. It also appears that, the said trailer was attached to the tractor No. KA-27/TC-9578. On the basis of material aspect pertaining to road accident the respondent No.2 has got examined as RW2. He has reiterated entire facts in his evidence affidavit. It is pertinent to note that, though there is no such statement of fact in the petition pertaining to the aspect that, the accident was occurred when deceased was traveling in trailer or tractor but it has been suggested to the RW2 that the accident was occurred when the deceased was traveling in trailer and the RW2 has admitted the same. Therefore, the contentions pertaining to the aspect of traveling in tractor by the deceased was accepted by the respondent No.2. Therefore, as per version of petitioners and respondent No.2 one thing is very clear that on the date of incident the deceased was alleged to have been traveling in trailer and not in tractor. But here, it is pertinent to note that, when it is suggested to the RW2 about the fact that the police have submitted charge sheet alleging that, the driver of tractor has driven the same in rash and negligent manner and on his fault or negligent accident was occurred and surprisingly the RW2 has admitted the same. Now it is clear that, on the incident date and time the driver of tractor has driven the same in rash and negligent manner and who is responsible for road accident.

22. As to substantiate the stand of respondent No.2, the official of Divisional Transport Officer has

been examined as RW1. It is stated by the RW1 that, as per records the sitting capacity of tractor is only the driver. It is also stated by the RW1 that, there is no such sitting capacity to the trailer. In this regard, the RW1 has produced the RC particulars of tractor No. KA-27/TC-9538 and trailer No. KA-27/TB-8270 those have been marked as Ex.R2 and R3. Upon clear reading of Ex.R2 and R3 documents it appears that, whatever the RW1 has orally stated pertaining to the sitting capacity of vehicle is corroborative and consistant evidence to the documentary evidence Ex.R2 and R3. The Ex.R2 and R3 documents speaks truth other than the oral evidence of petitioners. Therefore the petitioners in the present petition cannot go beyond the documents Ex.R2 and 3. On the basis of this aspect it is the petitioners who have to prove the fact that, the deceased was traveling in trailer on the incident date and time having capacity to travel. In this regard, the advocate for petitioners has cross examined the RW1 wherein, it is questioned about the legality, reliability and acceptably of evidence of RW1 as he is only the first Divisional Assistant of Transport Department. Here, this stand of petitioners are not acceptable for the simple reason that, the RW1 has got marked Ex.R1 document which is the authorization memo given by his higher official pertaining to depose the evidence in relation to the every aspect of vehicles.

Therefore, on the basis of Ex.R2 and R3 documents the RW1 has given evidence and apart from it nothing has been stated by the RW1. Therefore, the RW1 is a competent person to speak about the sitting capacity of the vehicle and he has rightly deposed evidence in accordance with Ex.R2 and R3 documents. Therefore, it is proved by the respondent No.2 that, the sitting capacity of tractor No. KA-27/TC-9538 is one that is driver only and there is no such sitting capacity as related to the trailer No. KA-27/TB-8270.

23. The two aspect pertaining to road accident that are the accident occurred due to involvement of vehicle and rash, negligent driving of the driver of tractor is being established by the petitioners. It is also established by the respondent No.2 that, there is no such provision to indemnify the unauthorized passenger as the Ex.P4 the insurance policy pertaining to the tractor reveals the same. Now it is the turn of respondent No.4 to prove that, the accident was occurred when the deceased was traveling as unauthorized passenger and there is no such provision to indemnify the deceased family by the respondent No.4. In this regard as already discussed as per evidence of RW1 which is supported by documentary evidence Ex.R2 and R3 documents there is no such provision in relation to the sitting capacity in the

trailer. Under the circumstances as to discuss the fact of actual tort feasure it is necessary to discuss the relevant aspect of road accident.

24. It is admitted fact that, the trailer in question is attached with tractor at the time of accident. It is also admitted fact that, the tractor when it was moving with trailer toppled to road side, thereby went into canal and the road accident was occurred. It is also undisputed fact that, the deceased sustained injuries and died on spot. The death event of the deceased was very horrible as he was doing coolie work as per instructions of respondent No.1 and 3. He was attending the work of loading and unloading the fertilizers bags as per instruction of respondent No.1 and 3. It is admitted by the respondent No.1 and 3 that, they are paying coolie to the deceased. The material aspect before this court is in relation to who is having liability to compensate the deceased family. The respondent No.2 and 4 are disputing the liability of paying compensation to the petitioners. Both have referred their different rival contention those are related to fact and law. Therefore, this court need to appreciate the matter carefully as the petitioners after loosing their earning member of the family came on road by unavoidable accident caused in the matter.

25. The insurance policy pertaining to tractor and trailer is not in dispute. The disputed aspect is pertaining to the terms and conditions of insurance policy in order to indemnify the petitioners. Here, both the respondent No.1 and 3 being owner of tractor and trailer have wanted to fix the liability on the insurance company the respondent No.2 and 4. No doubt that, the trailer in question is not having fixed passenger to travel or allow a person other than driver. But here, the deceased was working as coolie which mean to say he is related to the both vehicles. Because the accident was occurred due to rash and negligent driving of the tractor which was attached to the trailer. Under the circumstances, to the tractor the deceased became third party whereas same is also related to the trailer. Because, the petitioners have successful established that of accident and the involvement of both vehicles. Therefore, it can be said that the death is caused due to negligent driving of the driver of tractor. The respondent No.2 insurance company would argue the matter by relying decision reported in **2014 ACJ 1583 New India Assurance Co. Ltd V/s Sohan Lal and Others** wherein the Hon'ble court held that, '**Motor Vehicles Act. 1988, section 147 (1)** – *Motor Insurance – Liability of insurance company – Collision between trolley attached to tractor and jeep resulting in death of person of a passenger and driver of jeep due to*

equal negligence of both the drivers – Tractor was insured but no the trolley – Impact of accident was only against trolley and not against tractor – Insurance company of tractor disputes its liability on the ground that accident was the result of collision between jeep and trolley and not jeep and tractor and it could not be held responsible for the consequence of accident – Whether insurance company of tractor is liable in the absence of insurance cover for trolley-NO, and also relied upon the decision reported in **2021 ACJ 2588 Gadhilingappa and Another V/s K Guleppa and Others** wherein the Hon'ble Court held that, '***Motor Vehicles Act, 1988, section 147 (1) read with Rules of the Road Regulations, 1989, regulation 28*** *– Motor Insurance – Tractor – Passenger risk – Liability of insurance company – Whether a person travelling on mudguard of tractor can be construed as an authorised passenger and his risk is covered by a policy as contemplated under section 147 (1) – Held: no; by virtue of regulation 28 driver of tractor is not permitted to carry or allow any person to be carried on tractor including on its mudguard'.* With due respect to the above said decision, the factual matrix of the present case is related to the fact that, the deceased was traveling in trailer and hence the said decisions are not applicable to the present case on hand.

26. The learned Advocate for respondent No.2 would also argue the matter by relying upon the

decision reported in **2017 ACJ 741 Bajaja Alliance General Insurance Co. Ltd V/s Prashant and Others** wherein the Hon'ble High Court held that, '***Motor Vehicles Act. 1988, section 147 (1)*** *– Motor Insurance – Tractor- trailer – Passenger risk – Liability of insurance company – Claimant travelling on a tractor – trailer sustained injuries when it turned turtle due to rash and negligent driving – Tribunal fastened liability on the insurance company – Contention that claimant was travelling on the tractor and since seating capacity of tractor is only one, claimant was sitting either on mudguard or engine of the tractor and policy does not cover the risk – Claimant admitted that he was travelling on the tractor – Seating capacity of tractor is only and no person can sit next to the driver – Whether person travelling in the tractor sitting on the mudguard or engine is not covered by the insurance policy and insurance company is exempted from liability'*. Further, the learned Advocate for respondent No.2 has also made reliance on the decision reported in **2012 ACJ 2297 Oriental Insurance Co. Ltd V/s Shobha and Others** wherein the Hon'ble High Court held that, '***Motor Vehicles Act. 1988, section 147 (1)*** *- Motor insurance – Tractor – Passenger risk – Liability of insurance company – Death of an employee traveling on tractor when tractor met with accident – Tribunal fastened liability on the insurance company – Insurance company disputed its liability on the ground that policy does not cover the risk of an employee who is traveling on the tractor and only the risk* *of driver is covered – Contention that insurance company collected Rs.25 under the head employee/driver and even company is liable – Policy is in respect of tractor which has got only one seating capacity provided for driving – Whether Tribunal was justified in fastening liability on the insurance company'*. The said decisions are also related to the death of an employee traveling on tractor when tractor met with accident. Therefore, the said decision also not applicable to the present case on hand for the simple reason that, the accident was occurred when the deceased was traveling in trailer as coolie and not as an unauthorized passenger. The factual matrix are very different as the trailer is attached with tractor and the accident was occurred due to actionable negligence of driver of tractor only.

27. On the other hand, learned Advocate for petitioners has also argued the matter by relying upon the factual circumstance of the matter and the death of deceased in road accident. The learned Advocate for petitioners would rely upon the decision reported in **2025 ACJ 1002 Royal Sundram Alliance Insurance Co. Ltd V/s Honnamma and Others** wherein the Hon'ble Apex Court held that, '***Motor Vehicles Act, 1988, section 147 (1)*** *– Motor insurance – Tractor – trailer – Passenger risk – Tractor alone is insured and trailer not insured – Liability of insurance company – Deceased traveling as coolie in trailer attached to tractor died when*

trailer overturned due to negligent driving – Tribunal held that policy does not cover trailer or persons traveling therein, noted that risk of such employee was not statutorily covered under section 147 (1) and fastened liability on owner and driver – In appeal High Court fastened liability on insurance company – Contention that policy excluded coverage to trailer and persons traveling therein and that liability could not exceed contractual limit – Held: accident occurred when trailer was being pulled by the tractor therefore tractor was the root cause of accident and insurance company cannot escape from liability merely due to absence of separate insurance for trailer; it is nobody's case that accident occurred solely due to fault on the part of trailer; insurance company directed to pay full compensation and recover any excess amount, beyond policy or statutory limit, from tractor owner'. With due respect to the decision cited by Advocate for petitioners. The Hon'ble Apex Court held that, the insurance company cannot escape from liability merely due to absence of separate insurance for trailer, it is nobody case that accident occurred solely due to fault on the part of trailer. Therefore, the both insurance company are equally liable to pay the compensation to the petitioners. This view of mine is also supported by the relevant provision of law as given in Section 147 of the Motor Vehicles Act. For the purpose of present petition the Section 147 of Motor Vehicles Act is reproduced which reads thus:

Requirement of policies and limits of liability. *- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--*

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)--

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.

Explanation.--For the removal of doubts, it is hereby clarified that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place, notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Notwithstanding anything contained under any other law for the time being in force, for the purposes of third party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under sub-section (1) in consultation with the Insurance Regulatory and Development Authority.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected, a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Notwithstanding anything contained in this Act, a policy of Insurance issued before the commencement of the Motor Vehicles (Amendment) Act, 2019 shall be continued on the existing terms under the contract and the provisions of this Act shall apply as if this Act had not been amended by the said Act.

(5) Where a cover note issued by the insurer under the provisions of this Chapter or the rules or regulations made thereunder is not followed by a policy of insurance within the specified time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority or to such other authority as the State Government may prescribe.

(6) Notwithstanding anything contained in any other law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

28. Therefore, by applying these provision of law in the considered opinion of this court the respondent No. 2 and 4 are equally liable to pay the compensation to the petitioners as because the petitioners have clearly established the three basic elements of compensation the road accident,

involvement of both tractor and trailer, and rash, negligent driving of the driver of tractor.

29. In conclusion, it is proved by the petitioners that, the accident was occurred due to negligent driving of the tractor. It is also proved by the petitioners that, the accident was occurred when the trailer is attached to the tractor. However, there is no such sitting capacity to the trailer in question but the same trailer was carrying fertilizer bags on the date of accident. The deceased was travelling in trailer as coolie to load and unload fertilizer bags. Therefore, though there is no such sitting capacity to travel on the trailer but the deceased for the simple reason not became unauthorized person. As the materials of the petition goes to show that, he was coolie working under the instructions of respondent No.1 and 3. Therefore, since the involvement of vehicle in the road accident is successfully proved by the petitioners then the liability to pay the compensation shift on the respondent No.1 and 3. The said respondent No.1 and 3 had insured the both vehicles with respondent No.2 and 4. Under the circumstances any injury or death caused due to the actionable negligence of the driver of tractor then the liability shift on the insurance company and they cannot escape from it for the simple reason of the sitting capacity of the vehicles. Therefore, the negligent

driving of the accused is proved by the petitioners then the respondent No.1 and 3 are having liability to pay the compensation. The said liability shifted to the insurance company and the petitioners are entitled to get compensation from the respondent No.2 and 4 who are equally liable to pay compensation.

Therefore, considering all these aspects I answer **Issue No.2 and 3 in the Affirmative.**

30. **<u>Addl. Issue No.1:</u>** The respondent No.2 has taken specific contentions that, the petitioners are not the legal heirs and defendants of deceased Abdulkhadarjeelani. As to substantiate there pleadings accept the oral evidence nothing has been placed by the respondent. In this regard the petitioners have stated that they are wife, daughter and mother of deceased. The petitioner No.1 having examined herself as PW.1 has deposed that she is the wife and petitioners No.2 is the daughter and petitioner No.3 is the mother of deceased Abdulkhadarjeelani. The petitioners have produced notarized copies of Adhaar cards of petitioners No.1 to 3 those have been marked as Ex.P.15 to 17, attested copy of birth certificate of petitioner No.2 which is marked as Ex.P.18, and attested copy of ration card at Ex.P.19. On perusal of Ex.P.15, 17 and 18 the name of husband of petitioner

No.1 and name of father of petitioner No.2 as mentioned as Abdulkhadarjeelani. Therefore, the petitioners No.1 and 2 are the wife and daughter of said deceased. But here the deceased has also left his mother who is the petitioner No.3 in the matter. Therefore, she also became legal heir and dependant of deceased Abdulkhadarjeelani. Hence, Addl. Issue No.1 is answered in the **Affirmative**.

31. **ISSUE NO.4**: Admitted age of deceased Abdulkhadarjeelani is 29 years at the time of accident. In this regard the P.W.1 has produced Aadhaar card of deceased Abdulkhadarjeelani which is marked as Ex.P.14. In Ex.P.14 the date of birth of deceased is mentioned as 29.05.1994. As per Ex.P.14 the Age of deceased Abdulkhadarjeelani is 29 years at the time of accident and same is determined for the purpose of present petition.

32. The petitioners have stated that deceased was doing coolie work and was earning Rs.30,000/- per month. In this regard there is no documents produced by the petitioners as to show the deceased income and he was earning Rs.30,000/- per month. In the absence of proof of actual income, notional income is required to be considered. **The Karnataka State Legal Services Authority** has given a slab of income

for considering in the MVC cases when there is no proof of actual income. As per the said slab, the notional income for the year **2022** is **Rs.14,750/-and it shall be enhanced Rs.500 every year. Therefore, income of deceased would be Rs.15,250/-.** Therefore considering the same the deceased was spending his 1/3rd income to his family. And remaining 2/3rd for his livelihood hence when it deducted in his notional income it is equal to **Rs.10,167/- (Rs.15,250-5,083= 10,167/-).** As per **Sarala Varma case report in 2009 ACJ 1298 SC** the multiplier applicable to the Age group of **26 to 30** is **'17'**. As per decision report in **2017 SCC On line SC 1270 Pranay Sethi** case the future prospectus in case of self employed for the age group of below **40 years** is **40%.** Hence, the deceased income would be **10,187/- plus 10,187 X 40% = 4,067 in total 14,234/-**.

33. Therefore considering all above aspects in relation to notional income, deduction, multiplier the petitioners are entitled to get compensation in the head of loss of dependency in the manner that **Rs. 14,234 X 12 X 17 = 29,03,736**/-. The petitioners are entitled for the compensation of **Rs.29,03,736/-** in the head of loss of dependency.

34. In addition to the compensation amount as above discussed the petitioners are also entitled to the compensation under conventional head. The petitioners are entitled to the compensation of **Rs.15,000/-** on account of loss of estate and compensation of **Rs.15,000/-** on account of funeral expenses. In view of the law laid down by the Hon'ble Supreme Court reporting ***2018 ACJ 2782 Magma General Insurance Company Ltd., Vs. Nanu Ram*** the petitioners No.1 to 3 are also entitled for compensation of **Rs.40,000/-X 3 1,20,000/-** each under the head of loss of filial consortium under the head of love and affection.

35. In view of the above discussions, the petitioner is entitled for the compensation as discussed supra under the following heads:

Sl. No.	**Heads**	**Compensation**
1.	**Loss of dependency**	**Rs. 29,03,736-00**
2.	**Funeral expenses**	**Rs. 15,000-00**
3.	**Loss of Estate**	**Rs. 15,000-00**
4.	**Filial consortium**	**Rs. 1,20,000-00**
	Total	**Rs. 30,53,736 -00**

36. Thus, the petitioners No.1 being the wife, petitioners No.2 being daughter and petitioner No 3 being mother of deceased Abdulkhadarjeelani are entitled for above determined compensation in the ratio of 50:25:25.

37. In view of the above discussion, it is proved that the accident was taken place due to the negligence of driver of respondent No.1 and 3. The respondent No.1 and 3 had insured their vehicle with respondent No.2 and 4 and same was valid on the date of accident. Hence, the respondent No 2 and 4 are require to pay the determined compensation to the petitioners in the ratio of 50:50.

38. The petitioner has claimed the compensation with interest at the rate of 18% P.A. from the date of accident till its realization. Considering the circumstances in the present case, the petitioner is entitled for interest of 6% P.A. from the date of the petition till its realization. Therefore, for the aforesaid reasons, Issue No.4 is answered as petitioner is entitled for above determined compensation with simple interest at the rate of 6% P.A. from the date of petition till realization, from respondent No.2 and 4.

39. **ISSUE No.5:** For the aforesaid reasons and findings on Issues No.1 to 4, I proceed to pass the following:

ORDER

*The petition filed by the petitioners for the relief of compensation under **Section 166 of Motor Vehicles Act** is hereby partly allowed.*

*The petitioners No.1 to 3 are entitled for compensation of Rs. **30,53,736**/- in the ratio of **50:25:25** with simple interest at the rate of **6%** P.A. from the date of petition till realization of entire compensation amount from respondent No 2 and 4.*

The respondent No.2 and 4 are directed to deposit the compensation amount with interest in the ratio of 50:50 within 3 months from the date of drawing the award.

If the compensation amount is deposited, the amount awarded in favour of ***petitioner No.1*** *in the ratio* ***50*** *out of which the 50% of award amount shall be kept in F.D. for a period of 5 years in any nationalized or scheduled bank at the choice of petitioner No.1 and balance in ratio* ***50*** *out of which* ***50%*** *award amount shall be released and credited to the account of* ***petitioner No.1.***

If the compensation amount is deposited, the amount awarded in favour of ***petitioners No.2*** *in the ratio* ***25*** *entire award amount shall be kept in F.D. in any nationalized or scheduled bank at the choice of* ***petitioner No.1 for a period of 5 years****, with a liberty to draw accrued interest by* ***petitioner No.1****, if required once in 6 months for the welfare of the minors.*

If the compensation amount is deposited, the amount awarded in *favour of **petitioner No 3** in the ratio of **25** out of which 25% of award amount shall be kept in F.D in any nationalized bank for a period of 5 years and balance in ratio 25 out of which 50% award amount shall be released and credited to the account.*

Advocate fee is fixed at Rs.1,000/-.

Draw award accordingly.

(Dictated to the stenographer, directly typed and print out taken by her and then corrected, signed and then pronounced by me in the open court on this the 4th day of July 2026).

(Sunil S Talawar)
Senior Civil Judge & Member
Addl. MACT, Shiggaon, Sitting
At Savanur.

ANNEXURE

List of Witnesses examined on behalf of the Petitioners:

P.W.1 : Shanaj W/o Abdulkhadarjilani Olekar

List of Documents marked on behalf of the Petitioners:

Ex.P.1 : Certified copy of FIR

Ex.P.2 : Certified copy of Complaint

Ex.P.3 : Certified copy of statement of PW1

Ex.P.4 : Certified copy of spot panchanama

Ex.P.5 : Certified copy of hand sketch map of accident spot

Ex.P.6 : Certified copy of seizure panchanama

Ex.P.7 : Certified copy of Motor vehicle accident report

Ex.P.8 : Certified copy of statement Mehabubbasha

Ex.P.9 : Certified copy of statement Raju

Ex.P.10 : Certified copy of statement Dyamanagouda

Ex.P.11 : Certified copy of charge sheet

Ex.P.12 : Certified copy of inquest panchanama

Ex.P.13 : Certified copy of Post-mortem report

Ex.P.14 : Attested copy of Aadhaar card of deceased

Ex.P.15 to 17: Attested copies of Aadhaar cards

Ex.P.18 : Attested copy of birth certificate

Ex.P.19 : Attested copy of ration card

List of Witnesses examined on behalf of the Respondents:

R.W.1 : Akshay Kumar T Sankannavar
RW.2 : Muttappa Basappa Murabatti
RW.3 : Mr. Aslesh

List of Documents marked on behalf of the Respondents:

Ex.R.1	: Memorandum
Ex.R.2	: Certified copy of RC
Ex.R.3	: Certified copy of RC
Ex.R.4	: Certified copy of insurance policy
Ex.R.5	; Authorization Letter
Ex.R.6	: Copy of Insurance policy

Senior Civil Judge & Member
Addl. MACT, Shiggaon Sitting
At Savanur.