

**KABK020012382022**

**BEFORE PRIL.SENIOR CIVIL JUDGE AND MACT-II,  
BAGALKOT**

Present: **Smt.Hema Pastapur**,B.A., LL.B.  
**Pril.Senior Civil Judge and MACT,**  
**II, Bagalkot.**

**MVC.No.407/2022**

**Dated this 11<sup>th</sup> day of September -2024**

**Petitioners :-**

- 1) Ramanagouda S/o Ninganagouda Patil, Age: 32 years,  
Occ: Agriculture.
- 2) Sangavva W/o Ramanagouda Patil,  
Age: 23 years, Occ: Household work,  
Both R/o: Honaralli,  
Tq: Dist: Bagalkot.

**(By Sri. S.B.K., Advocate.)**

Versus

**Respondents:-**

- 1) Rangappa S/o Shankrappa Managuli, Age: 45 years,  
Occ: Business, R/o: Anagawadi,  
Tq: Bilagi, Dist: Bagalkot-587116.
- 2) The Divisional Manager,  
National Insurance Co. Ltd,  
Bagalkot Division,  
Plot No.D-38, Sector No.25,  
Near HESCOM office,  
Navanagar-Bagalkot 587103  
(Policy/Certificate No.

610800312110004511,  
Valid from 18/10/2021 to 17/10/2022.  
**(Respondent No.2 by Sri.S.S.P.,  
Advocate and Respondent No.1 -  
Exparte.)**

### **J U D G M E N T**

That, the petitioners have filed the claim petition under Section 166 of the Indian Motor Vehicles Act, claiming the compensation of Rs.25,00,000/- with interest at the rate of 18% per annum from the date of petition till realization.

#### **Facts of the case are as under :-**

1. That, the petitioner No.1 is the father and petitioner No.2 is the mother of the deceased Vinayak Patil. That, the respondent No.1 is the owner of the Trax Toofan ( Cruiser ) bearing No.KA:48:M:4527 and the respondent No.2 is the insurer of the said vehicle.
2. That, on 24/04/2022 at about 16:30 hours, the deceased Vinayak was standing on the left side of the road, which leads from Kadampur to Anagwadi and at that time

the driver of the said Cruiser vehicle by driving the same came from old Kadampur in high speed and in a rash and negligent manner and dashed against the said Vinayak and caused the accident.

3. That, immediately after the alleged accident the said Vinayak was shifted to Kerudi Hospital, Bagalkot and in said hospital the doctors have declared him as dead. That, thereafter, the Postmortem was conducted in the District Government Hospital, Bagalkot. That, the petitioners have spent Rs. 40,000/- for funeral ceremony and Rs. 10,000/- for transportation of dead body.

4. That, on alleged date of accident the said Vinayak was aged about 03 years 08 months and he was only the son of the petitioners. That, due to the death of said Vinayak the petitioners have suffered lot of mental agony and pain. Hence, this petition.

5. That, on notice being served, the respondent No.1 has remained absent and he is placed as exparte and

respondent No.2 has appeared before this Tribunal through his learned counsel.

6. That, the respondent No.2 refuting all the contentions of the petitioners has submitted his objections to the main petition and has pleaded that on alleged date of accident the driver of the vehicle bearing No. KA: 48:M:4527 was not holding the valid and effective driving licence and was not qualified for holding or obtaining such driving licence. That, the respondent No.1 fully knowing that the said driver was not holding the driving licence had handed over him his said vehicle. Hence, this respondent No.2 is not liable to indemnify the petitioners.

7. That, the respondent No.1 and the concerned police have failed to comply with the mandatory provisions of the Indian Motor Vehicles Act. That, the claim putforth by the petitioners is high and exorbitant. Hence, the respondent No.2 prayed for dismissing the claim petition against him.

8. That, on the basis of the pleadings of both the parties, the following issues were struck :-

1. Whether the petitioners prove that the deceased Vinayak S/o Ramagouda Patil, died in the Road Traffic Accident that occurred on 24/04/2022 at about 04:30 p.m. on Old Kadampur-Anagawadi PWD road, due to actionable rash and negligent driving of vehicle bearing Reg.No.KA: 48:M:4527 by it's driver as contended in the petition ?
2. Whether the petitioners are entitled for the compensation as sought for ?
3. What order or award ?

9. That, the petitioner No.1 has deposed himself as PW.1 and got marked the documents at Exs.P.1 to 7 and closed his side.

That, the respondent No.2 has not led either oral or documentary evidence on his behalf.

10. That, I have heard the arguments and perused the materials placed on record. That, My answer to the aforesaid issues are as under:-

Issue No.1 :- In the **AFFIRMATIVE**.

Issue No.2 :- **PARTLY** in the **AFFIRMATIVE**.

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

**REASONS**

11. **Issue No.1**:- It is specific case of the petitioners that, on 24/04/2022 at about 16:30 hours, their minor son Vinayak was standing on the left side of the road, which leads from Kadampur to Anagwadi and at that time the driver of the said Cruiser by driving the same came from old Kadampur in high speed and in a rash and negligent manner and dashed against the said Vinayak and caused the accident. That, immediately after the alleged accident they have shifted the said Vinayak to Kerudi Hospital, Bagalkot but, the doctors have declared him as dead. That, the PW.1 in his chief affidavit has reiterated the said facts and got marked the documents at Exs.P.1 to 7. That, the Ex.P.1 is the certified copy of the Complaint. That, the PW.1 had lodged the said complaint against one Sri. Khajesab @ Irfan S/o Hussainsab Choudri -driver of the Cruiser vehicle bearing No. KA: 48:M:4527 in Bagalkot Rural Police Station. That, the Ex.P.2 is the certified copy of FIR. That, in pursuance of Ex.P.1 the said Police have

registered the case against the driver in Crime No.75/2022 for the offences punishable under Sections 279 and 304(A) of Indian Penal Code. That, the Ex.P.3 is the certified copy of Crime details form. That, the contents of said document reveals that the alleged accident was occurred on Kadampur-Anagawadi road, near the Farmhouse of PW.1 and the said road is facing towards East-West and 10 ft in width. That, the Ex.P.4 is the certified copy of Postmortem report. That, in said document the cause of death of said Vinayak has been mentioned as due to hemorrhage shock as a result of injuries sustained over the head due to alleged Road Traffic Accident. That, the Ex.P.5 is the certified copy of Motor Vehicles Accident Report. That, the Motor Vehicles Inspector in column No.10 has mentioned that the alleged accident was not occurred due to any mechanical defect in Motor Vehicle bearing No. KA: 48:M:4527. That, the Ex.P.6 is the certified copy of Inquest panchanama. That, the Ex.P.7 is the certified copy of Final report. That, the Investigating Officer has charge sheeted

against the said driver for the offences punishable under Sections 279 and 304(A) of Indian Penal Code.

12 That, the respondent No.2 in his pleadings has simply denied the occurrence of alleged accident. That, nothing is culled out in the cross examination of PW.1 to disbelieve the accident. That, the Investigating Officer has submitted the Final report against the said driver Kajesab Irfan Choudri as he has committed the offences under Sections 279 and 304(A) of Indian Penal Code. That, further nothing is brought out to hold that the Investigating Officer has filed the false case only to help the petitioner.

13. It is settled principle of law that, in case of accident it is not mandatory to prove the guilt of the accused beyond all reasonable doubt. That, for the purpose of claim petition mere proof of accident due to negligence is sufficient. That, in **National Insurance Company Versus Pushpa Rama and others**, reported **2009 ACJ 287** it has held that, **the certified copy of the Criminal Court records such as**

**FIR, Recovery memo and Mechanical Inspection report of Vehicle documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under Motor Vehicles Act are not akin to proceedings in a Civil Suit and hence, strict rules of evidence are not required to be followed in this regard.**

14. That, in present case from police records coupled with ocular evidence of PW.1 it clearly appears that the alleged accident was occurred due to the negligent act of the said driver-Khajesab Choudri. Hence, without much discussion, issue No.1 is answered in the **AFFIRMATIVE**.

15. **Issue No.2:-**That, the learned counsel for the petitioner has placed his reliance on the following decision :-

**2014 Kant MAC 506 ( Kant)**

**Sagar ( Deceased) by LRs**

**Versus**

**Suresh and others**

**wherein it has held that, Motor Vehicles Act, 1988, Section 173(1)-Appeal -Enhancement of**

**compensation -Just compensation  
-Deceased, a minor boy aged 6  
years died in accident -Claimants:  
mother and sister of deceased-  
Tribunal awarded Rs. 2,83,000/-  
as compensation -Age of deceased  
and accident not disputed-  
Compensation as well as future  
prospects cannot be decided on  
basis of gender-Relying on  
Judgment of Apex Court in case  
of Kishan Gopal 2013 AIR SCW  
5037 total compensation of  
Rs.5,95,000/- awarded-Impugned  
Judgment and award dated:  
19/2/2011 of Tribunal modified  
by awarding additional  
compensation of Rs. 3,12,000/-  
with interest @ 6% p.a -  
compensation of Rs. 2,83,000/-  
as awarded by Tribunal enhanced  
to Rs. 5,95,000/- -Appeal partly  
allowed.**

16. It is to be noted here that, in Ex.P.4 -Postmortem report it has been mentioned that cause of death of said minor Vinayak was due to hemorrhagic shock as a result of injury sustained over head due to Road Traffic Accident.

17. That, regarding enhancement of the compensation the petitioners are claiming to be the father and mother of the deceased Vinayak. That, as already pointed out the said Vinayak died due to the impact of the injuries sustained in the accident. That, the petitioners being the father and mother of the deceased are entitled for compensation.

18. That, in the instant case the deceased is an infant of 03 years 08 months. That, the petitioners definitely have suffered mental agony which cannot be equated with money. That, admittedly, there was no income from the deceased. That, I have gone through the decisions rendered by the Hon'ble Supreme Court in **Kishan Gopal and another Versus Lala and others, reported in 2013 AIR SCW 5037 and also in Lata Wadhwa Versus State of Bihar, reported in LAWS(SC) 2001 (8) 44.** That, in Lata Wadhwa Versus State of Bihar the Hon'ble Apex Court dealt with the children between the age group of 5 to 15 years which was divided into two groups, the one group

between the age group of 5 to 10 years and the other group between the age group of 10 to 15 years.

19. That, as per the principles laid down in the said decisions the petitioners are entitled for the compensation as under :-

1) **Loss of dependency**:- Taking notional income of Rs. 15,000/- per annum and employing multiplier of 15, the loss of dependency amounts to Rs.2,25,000/-.

2) Towards **Non Pecuniary damages**, the petitioners are entitled for Rs.75,000/-.

3) Towards **Loss of Future Prospects** Rs.75,000/- is awarded.

20. Hence, the petitioners are entitled for total compensation of Rs.3,75,000/-.That, the compensation shall be awarded to the petitioners in the ratio of 50:50 each.

21. **Interest:-** That, the petitioners are entitled the interest at the rate of 6% per annum from the date of petition its realization.

22. **Liability:-** That, the respondent No.2 being the owner of the offending vehicle Trax Toofan (Cruiser) bearing No.KA: 48:M:4527 is liable to indemnify the petitioners. Hence, without much, issue No.2 is answered **PARTLY** in the **AFFIRMATIVE**.

23. **Issue No.3:-** That, as discussed on issues No.1 and 2, I proceed to pass the following :-

### **ORDER**

That, the claim petition filed by the petitioners under Section 166 of the Indian Motor Vehicles Act, is partly allowed with costs.

That, the petitioners are entitled to recover from the respondent No.2 the compensation amount of Rs.3,75,000/- with interest at the rate 6% per annum from the date of petition till realization.

That, the respondent No.2 is hereby directed to deposit the said compensation amount within 30 days from the date of passing of award.

That, on deposit of total compensation amount by the respondent No.2, amount apportioned in favour of the petitioner No.1 and 2, shall be released in their favour forthwith through e-banking on due identification.

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

That, draw the award accordingly.

(Directly dictated to the stenographer, typed by her, corrected and then signed and pronounced by me in the open Court on this 11<sup>th</sup> day of September 2024)

**(Hema Pastapur)**  
**Pril.Senior Civil Judge & MACT-II,**  
**Bagalkot.**

**ANNEXURE**

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

PW.1            Ramanagouda S/o Ninganagouda Patil.

**List of documents marked on behalf of petitioners:-**

Ex.P.1            Certified copy of Complaint.

Ex.P.2            Certified copy of FIR.

Ex.P.3            Certified copy of Crime Details Form.

|        |                                                  |
|--------|--------------------------------------------------|
| Ex.P.4 | Postmortem report of Vinayak.                    |
| Ex.P.5 | Certified copy of Motor Vehicls Accident Report. |
| Ex.P.6 | Certified copy of Inquest panchanama.            |
| Ex.P.7 | Certified copy of Final report                   |

**List of witnesses examined on behalf of the Respondents :-**

NIL

**List of witnesses examined on behalf of the Respondents :-**

NIL

**(Hema Pastapur)  
Pril. Senior Civil Judge & MACT-II,  
Bagalkot.**

