

KAMS080001282023



**IN THE COURT OF PRINCIPAL SMALL CAUSES &
SENIOR CIVIL JUDGE & M.A.C.T. AT MYSURU.**

Presided Over by SRI AFTHAB.K

M.V.C./72/2023

Dated on this the 2nd day of April, 2026

Petitioners :

- 1) Sri. V.N. Parashivamurthy
S/o. Sri. Nagarajappa, Age: 41 years,
- 2) Sri. Nagendra S/o. V.N.Parashivamurthy,
Age: 8 years,
- 3) Sri. Shashank S/o. V.N.Parashivamurthy,
Age: 1 years,

since petitioner No. 2 and 3 are minors, Rep by
their natural guardian Father Sri. V.N.
Parashivamurthy i.e., Petitioner No.1

All are r/at Vaddarahundi village,
Bilikere hobli, Nanjanagud taluk,
Mysuru district.

(By – Sri. Shivaramu A.S., Advocate)

Vs.

Respondents :

1) Sri. Rakshith P.R S/o. Rangaswamy,
Age: 31 years, R/at D.No.13/1, Shivayogi
swamy, 2nd main road, Gandhinagar, Mysuru.
Driver of the car bearing No.KA-09/ME-5510

2) Sri. Ashwinkumar G. S/o. Gavisiddaiah,
R/at No.16, 3rd cross, 1st main, Alanahalli,
Giridarshini layout, Mysuru.
Owner of the car bearing No.KA-09/ME-5510

3) Magma HDI Insurance Co. Ltd.,
IInd floor, No.2916, Kantharaja Urs road,
Mysuru.
Insurer of the car bearing No.KA-09/ME-5510
Policy No.P0020300050/4111/100010
valid from 29.06.2019 to 28.06.2022

(R1 & 2 – Sri. M. Mahesh, Advocate)

(R3 – Smt. K.L. Sugandhi, Advocate)

* * * * *

JUDGMENT

The petitioners have filed the petition under Section 166 of Motor Vehicles Act, 1988, seeking compensation of ₹.85,65,000/- along with interest for the death of Smt. Madhu W/o. V. N. Parashivamurthy who demised due to the injuries sustained by her in the road traffic accident which occurred on 27.08.2021.

2. The factual matrix of case as per the pleadings of the petitioners, in brief, is as under:

On 27.08.2021 at around 5.10 p.m., near Nerale gate, Nanjanagudu

– Chamarajanagara main road, Nerale village, Mysuru district, when the deceased Smt. Madhu accompanied by her husband i.e., petitioner No.1 were returning to their village on the scooter bearing No.KA-09/HM-4174 from Nanjanagudu on the left side of the road by following all the traffic rules with the deceased being pillion rider and petitioner No.1 being rider of the scooter, the driver of the car bearing No.KA-09/ME-5510 belonging to respondent No.1 drove the same at a high speed, in a rash or negligent manner and dashed against the motorcycle from the rear side, thereby resulting in the accident.

2.1. Further in the said accident, the said Smt. Madhu sustained grievous injuries on both bones of her right leg with dislocation at their lower 1/3rd with extravasation of blood, Laceration over right inguinal region, right pelvic bone fracture, fracture of pubic symphysis at its middle and the blood is extravasated into the pelvic cavity apart from other injuries all over the body.

2.2. Further immediately after the accident, the deceased Smt. Madhu was admitted to JSS Hospital, Mysuru, where she underwent treatment as an inpatient on 27.08.2021 and 28.08.2021, however, on 28.08.2021 she succumbed to the injuries while undergoing treatment. Further after the demise of Smt. Madhu, her body was subjected to PME at K.R.Hospital, Mysuru and was handed over to the petitioners for further rituals.

2.3. Further prior to the accident, the deceased Smt. Madhu was hale and healthy and was aged 29 years. Further she was into milk vending and vegetable business and was earning ₹.30,000/- per month and from the

said income, she was maintaining her family. Further now due to untimely demise of Smt. Madhu, the petitioner No.1 has lost love, care and affection of his wife in his middle age. Further the petitioner No.2 and 3 being minor children of the deceased have lost the love, care, affection and guidance of their mother. Further the deceased was the sole bread earning member of her family. Further now due to untimely demise of Smt. Madhu, the petitioners are finding it difficult to maintain themselves, as they have no source of income. Further, the petitioners have incurred huge expenses towards funeral and obsequies ceremonies, as such, the petitioners have not only suffered economically but also mentally and psychologically.

2.4. Further, the accident occurred due to rash or negligent and high speed driving of the car bearing No.KA-09/ME-5510 belonging to respondent No.1 by its driver, as such, the jurisdictional police i.e., Kowlande Police have registered a case in Crime No.143/2021 against the driver of the car. Further the respondent No.1 being the rider of the car, the respondent No.2 being the owner of the car and respondent No.3 being the insurer are jointly and severally liable to pay compensation to the petitioners. On these, amongst other grounds, it is prayed that the petition be allowed as prayed for.

3. In response to the notice issued by this court, the respondents appeared before the court through their counsel. Further the respondent No.1 and 2 have filed common objection to the main petition and respondent No.3 filed its separate objection to the main petition.

4. The gist of the objection raised by respondent No.1 and 2 is as follows:

The petition is neither maintainable under law nor facts and hence is liable to be dismissed *in limine*. Further, the petition averments are denied *in toto*, more particularly, the averments regarding age, occupation and income of the deceased. Further the accident occurred due to negligence of the rider of the scooter bearing No.KA-09/HM-4174 and yet a false complaint is lodged against driver of the car at the behest of the family members of the deceased. Further the compensation and interest claimed are high and exorbitant. Further the car was duly insured at the time of accident and the insurance policy was in force. Further even the driver of the car possessed a valid and effective DL and he has not violated the policy conditions, as such, the respondent No.1 and 2 are not personally liable to pay compensation to the petitioners.

4.1. Further in the event of this tribunal coming to the conclusion that the petitioners are entitled for compensation, the respondent No.3 company be directed to pay the compensation to the petitioners and petition as against respondent No.1 and 2 are liable to be dismissed. On these amongst other grounds, it is prayed that the petition as against respondent No.1 and 2 be dismissed.

5. The gist of the objection raised by respondent No.3 is as follows:

The petition is neither maintainable under law nor facts and hence is liable to be dismissed *in limine*. Further, the petition averments are denied *in toto*, more particularly the averments regarding age, address, occupation and income of the deceased. Further the accident occurred on

27.08.2021 whereas the petition is filed after lapse 6 months, hence the petition is barred by law of limitation and even for this reason, the petition is liable to be dismissed.

5.1. Further though it is admitted that the car bearing No.KA-09/ME-5510 belonging to respondent No.2 was duly insured with respondent No.3 company at the time of accident under the policy bearing No.P0020300050/4111/100010 which was in force from 29.06.2019 to 28.06.2022 but the policy was subject to terms and conditions. Further the driver of the car did not possess a DL at the time of accident and yet the respondent No.2 allowed an unauthorized person to drive the said car and has thereby violated the policy conditions as well as the provisions of M.V. Act and even for this reason, respondent No.3 company cannot be held liable to pay compensation to the petitioners.

5.2. Further, the accident occurred due to negligence on the part of the rider of the scooter bearing No.KA-09/HM-4174 and not due to negligence on the part of the driver of the car bearing No.KA-09/ME-5510. Further the compensation and interest claimed are high and exorbitant. On these amongst other grounds, it is prayed that the petition as against respondent No.3 be dismissed.

6. On the basis of pleadings, documents and other materials available on record, this tribunal framed the following issues :

1. *Whether the petitioners prove that the deceased Smt. Madhu succumbed to injuries sustained in a Road Traffic Accident that occurred on 27.08.2021 at 5.10*

P.M. While she was going with her husband as pillion rider in Scooter bearing reg.No.KA-09/HM-4174 near Nerale gate, Nanjangud – Chamarajanagara main road, near Nerale village, Mysuru, due to rash and negligent driving of the car bearing reg.No. KA-09/ME-5510 by its driver?

2. *Whether the petition is barred by law of limitation as per Section 166(3) of MV Act 1988?*
3. *Whether the petitioners are entitled for the compensation? If so, from whom; and what is the quantum ?*
4. *What order or award?*

7. In order to discharge the burden cast on them, the petitioner No.1 examined as PW.1 through whom Ex.P1 to Ex.P11 documents got exhibited and petitioners' evidence stage was closed. Further, the respondent No.2 though examined PW.1 at length, it did not prefer to lead any evidence, hence the respondents' evidence is taken as nil and matter stood posted for arguments.

8. Heard arguments canvassed by the learned counsel for petitioners and respondents on main.

9. After giving its anxious consideration to arguments canvassed

and after meticulously going through the oral and documentary evidence adduced by the petitioners, the aforesaid issues are answered as under;

<i>Issue No.1</i>	:	<i>In the affirmative</i>
<i>Issue No.2</i>	:	<i>In the Negative</i>
<i>Issue No.3</i>	:	<i>Partly in the affirmative</i>
<i>Issue No.4</i>	:	<i>As per the final order</i>

for the following reasons

REASONS

10. ISSUE No.II :

Though it may turn out that the issues were not dealt with in order, since the issue No.II pertains to point of limitation, this tribunal deemed it fit to consider the issue No.II ahead of other issues. Perhaps, if the tribunal comes to the conclusion that the petition is barred by law of limitation, the question of considering and answering issue No.I, III and IV would not arise as the said issues would not survive for consideration. With this prelude, when the pleadings are revisited, it becomes clear that this issue is raised in view of specific contention taken by the respondent No.3 at para No.1 of its objections to main petition. So it would be bounden duty of this tribunal to consider the aspect of the limitation in the light of provisions of M.V. Act as they stood as on the date of accident.

11. it is the case of the respondent No.3 company that as the accident occurred on 28.10.2020 and as the Motor Vehicle Act came to be

amended whereby the period of limitation was fixed as 6 months from the date of accident if the accident had occurred subsequent to 01.04.2022 and in case of accidents which have occurred prior to 01.04.2022 the period of limitation would be 6 months from 01.04.2022; and since the petition should have been filed on or before 01.10.2022 whereas it is filed on 28.11.2022, i.e., much after lapse of the said period of limitation, the petition should be dismissed as being barred by limitation.

12. In this regard, though this tribunal has already rejected the application seeking rejection of petition on the ground of limitation, as a contention is raised in the pleadings and issue is raised in that regard, it is incumbent upon this tribunal to touch upon the said aspect. The very provision under which the respondent No.3 is taking shelter makes it clear that no application for compensation with respect to an accident which has occurred after coming into force of amended section 166 of M.V. Act which came into effect from 01.04.2022, can be entertained unless it is made within 6 months of occurrence of the accident.

13. However, in this regard the main aspect of the matter is the date of accident and it is depending on the date of accident that this court should analyse the applicability or otherwise of the amended provisions of M.V. Act to the present said facts. Since the accident leading to the present case occurred prior to 01.04.2022, the amended provision of M.V. Act would not be applicable to this case. The view taken by this tribunal

is fortified by the decision of the Hon'ble High Court of Karnataka in *The Divisional Manager vs Sangamma and others* rendered in MFA No.102089/2022 (MV) rendered on 18.08.2023 where it was held thus;

11. Section 6 of the General Clauses Act, 1897 therefore, saves right of parties accrued as on the date of the cause of action arises. If any enactment is repealed, then on what date the cause of action arises, the statute is prevailing on that date is made applicable to the parties. Therefore, Section 6 of the General Clauses Act, 1897 protects right of parties, even though any amendment or repeal is made. Unless the legislature having different intention, which means making the provision as retrospective effect the rights of parties are not affected. But that is not found in the Act No.32 of 2019 effective from 01.04.2022. Therefore, the claimant's right accrued to prefer the claim petition on the date of accident that is on 27.07.2010 and at that time, there was no limitation prescribed and this non-existence of limitation is saved by Section 6 of the General Clauses Act, 1897. Therefore, this Court is of view that the applicability of the Act No.32 of 2019 that is re-introduction of the old provisions of Sub Section (3) of Section 166 would have prospective effect only and the limitation period of 6 months is applicable after introduction of the amendment with effect from 01.04.2022. To make it more clear if any accident occurred prior to 01.04.2022, the provisions of amendment to the Act prescribing time limitation is not applicable. This amendment made with effect from 01.04.2022 is applicable in case where the accident occurred subsequent to 01.04.2022. Therefore, the party's right is governed by to prefer claim petition after 01.04.2022 if the accident

occurs after 01.04.2022.

22. Therefore, for the aforesaid reasons, claim petition is very well maintainable. As the accident was occurred on 27.07.2010, in the present case, the claim petition is filed on 07.02.2020 that is prior to 01.04.2022 on which date the Act i.e. Act No.32 of 2019 came into force, therefore, governing principle is that, when the cause of action arises to the parties and on that day what the law prevails that right is accrued to the parties as per Section 6 of the General Clauses Act, 1897. Therefore, the claim petition filed by the claimants, even after more than 9 years is maintainable and that is what correctly considered by the Tribunal and granted the compensation.

Hence, the contention of the respondent No.3 that the petition is barred by limitation has to fail. Accordingly, *the issue No.II is answered in the negative.*

14. ISSUE NO.I

At the very outset it is necessary to set out the facts leading to the present case, according to the petitioner, as can be seen from the petition averments, on 27.08.2021 at around 5.10 p.m., near Nerale gate, Nanjanagudu – Chamarajanagara main road, Nerale village, Mysuru district, when the deceased Smt. Madhu accompanied by her husband i.e., petitioner No.1 were returning to their village on the scooter bearing No.KA-09/HM-4174 from Nanjanagudu with the deceased being pillion rider and petitioner No.1 being rider of the scooter, the respondent No.1 being the driver of the car bearing No.KA-09/ME-5510 belonging to

respondent No.2 drove the same at a high speed, in a rash or negligent manner and dashed against the motorcycle in which the deceased was proceeding as a pillion rider from the rear side resulting in the said Smt. Madhu sustaining grievous injuries on both bones of her right leg with dislocation at their lower 1/3rd with extravasation of blood, Laceration over right inguinal region, right pelvic bone fracture, fracture of pubic symphysis at its middle and the blood is extravasated into the pelvic cavity apart from other injuries all over the body; and though immediately after the accident, the deceased Smt. Madhu was admitted to JSS Hospital, Mysuru, where she underwent treatment as an inpatient on 27.08.2021 and 28.08.2021, on 28.08.2021 she succumbed to the injuries while undergoing treatment. Since the petitioners being the husband and minor children of the deceased respectively, have filed the petition seeking compensation on the ground that they were the dependents of the deceased.

15. The petitioners in order to discharge the burden cast on them with respect to the accident, examined petitioner No.1 as PW.1, who has reiterated the averments of the petition in his chief-examination affidavit. PW.1 in his evidence has clearly deposed that the accident occurred due to sole actionable negligence on the part of driver of the car bearing No.KA-09/ME-5510. PW.1 has further deposed regarding injuries sustained by his wife Smt. Madhu and has also categorically deposed that Smt. Madhu died due to injuries sustained in the accident; and he has also deposed regarding the occupation and income of the deceased.

16. Furthermore, the petitioners in support of their evidence have exhibited the certified copies of the police records including the FIR, FIS, PME report and the charge-sheet along with annexed documents at Ex.P1 to P7 which make it unambiguously clear that after thorough investigation, the Kowlande P.S. had concluded that the accident occurred due to the reckless and negligent driving of the offending car bearing No.KA-09/ME-5510 by respondent No.1 and he was charge-sheeted for the offenses under section 279, 304(A) of IPC and 187 of M.V. Act whereas the petitioner No.1 was charge-sheeted for the offences under section 181 and 196 of M.V. Act i.e., for riding an uninsured motorcycle without DL. The learned counsel for the petitioners vehemently argued that the conclusion arrived at by the I.O., would suffice to hold that the accident leading to the death of Smt. Madhu occurred due to sole actionable negligence on the part of driver of the TATA Nexon car. Per contra, the contention of the respondent No.3 is that the petitioner No.1 being the rider of the motorcycle was also negligent and reckless as such, he too contributed to the accident. But as already observed, the IO has charge-sheeted only the driver of the vehicle belonging to respondent No.2 for the offence under section 279 of IPC and section 304(A) of IPC thereby clearly opining that the accident occurred due to sole actionable negligence on the part of the driver of the TATA Nexon car. It is necessary to clarify that no doubt the petitioner No.1 is also arrayed as an accused but column 17 of charge-sheet exhibited as Ex.P3 makes it clear that the provisions invoked against the petitioner No.1 are for riding an uninsured motorcycle without a DL.

17. Furthermore, the fact that PW.1 has categorically stated on oath that the accident occurred due to sole actionable negligence on the part of the driver of the TATA Nexon car and nothing could be elicited from the mouth of the said witness which could move this court to hold that even the PW.1 who was the rider of the motorcycle was reckless, as such there is absolutely no material before this court to hold that there was contributory negligence on the part of the PW.1. Needless to state the respondent No.2 could have very well summoned the driver of the TATA Nexon car to prove its defense that the PW.1 who was the rider of the motorcycle was also negligent and reckless as such, due to he also contributed to the accident, but even this is not done.

18. It must be borne in mind that filing of the charge sheet in a criminal case is itself *prima-facie* proof available in favor of the petitioners in this case, in order to discharge the burden cast on them regarding their contention that the accident occurred due to rash and negligent driving of TATA Nexon car by its driver. Further the PME report of Smt. Madhu exhibited as Ex.P7 makes it clear that, according to the doctor, the death of Smt. Madhu was due to septicaemia shock as a result of infection consequent to multiple injuries sustained.

19. It is relevant to note that PW.1 was subjected to probing cross-examination by the learned counsel for the respondent No.2, but nothing which could dilute the effect of the police records could be elicited from the mouth of the PW.1. Perhaps, let alone probalizing the defense set up by the respondents, nothing which could move this court to doubt the case of the petitioners could be culled out from the mouth

of the witness. Though it was further suggested to PW.1 that inspite of the fact that there was no negligence on the part of the driver of the TATA Nexon car, the petitioners, in collusion with the police authorities, have falsely got implicated the driver of the TATA Nexon car and the vehicle in question in order to claim compensation, the PW.1 has clearly denied the said suggestions.

20. It is necessary to state, even at the cost of repetition that that the Kowlande Police who registered the FIR on the basis of FIS lodged by one Sri. Nanjundaswamy, thereby *prima facie* opining that the said accident occurred due to rash or negligent driving of the TATA Nexon car by its driver. Furthermore, there is nothing before the court to overlook the opinion of the IO who has clearly stated that the accident occurred due to sole actionable negligence on the part of driver of the TATA Nexon car and also there is nothing in the form of evidence on the basis of which it can be held that the contention of respondent No.3 that the accident did not occur due to negligence on the part of the driver of the TATA Nexon car is proved.

21. The learned counsel for the respondent No.3 came up with an interesting argument which is that the PW.1 did not possess a DL at the time of accident, as such, contributory negligence must be attributed to the PW.1 and has supported the said argument with the decision of the Hon'ble High Court of Karnataka in

a) *Basavaraj Rangaswami Vs. H. Shivanandanayaka and another* reported in 2020(2) AKR 602

b) *Sanna Papamma and others Vs. B. Basavaraj and others* reported in 2023 (2) AKR 676 .

In this regard it is necessary to note that no doubt I.O. has invoked Sec 181 and 196 of M.V. Act against the PW.1 for having ridden an uninsured motorcycle without a DL and it appears that the respondent No.3 company is claiming that the PW.1 did not possess a DL only on the basis of the Ex.P3 chargesheet. Be that as it may, the question before this tribunal is whether for the sole reason that the PW.1 did not possess a DL at the time of accident can be a ground to attribute contributory negligence.

22. In this regard, what cannot be lost sight of is the I.O. though has arrayed as PW.1 as accused No.1, but he has clearly opined that the negligence was entirely on the part of driver of the car and even the Ex.P3 spot panchanama and rough sketch annexed thereto makes it evident that the accident occurred due to negligence on the part of driver of the car only. Under such circumstances, where except for the fact that the PW.1 did not possess a DL, there are absolutely no materials to hold that even the PW.1 was negligent and hence contributed to the accident, it is firm opinion of this tribunal that contributory negligence cannot be attributed to the PW.1 unless there is cogent and reliable evidence which point towards the negligence on the part of the PW.1.

23. When this court ventures to analyze the decisions cited before it by learned counsel for the respondent No.3, in both the cases the tribunal

found that there was contributory negligence on the part of the injured and the deceased and that apart in *Sanna Papamma's* case the tribunal also took note of the fact that the deceased who did not possess a DL tried to cross the road negligently without observing the movement of vehicles. The reason why this tribunal deemed it fit to point to the facts before the Hon'ble High Court of Karnataka is it is the thumb rule of law of precedents that while applying a decision to facts before it, the court cannot turn a blind eye to the factual backdrops of each case in which the said decisions were rendered. This rule is all the more applicable when the decisions cited pertain to MVC cases, as the facts of each case would be different and it is the minute difference and nuance involved in the case which would make the decision inapplicable to other cases.

24. Even here, when the facts of the present case are juxtaposed, it becomes evident that the facts can be differentiated on many levels. In fact, in the present it was a head on collision and the sketch shows that the car which was proceeding from Chamarajanagara side towards had caused the accident on the right lane when a person is proceeding from Chamarajanagara to Nanjanagudu, wherein fact, the car should have been on the left lane. Furthermore, the point of impact is situated on almost the edge of Chamarajanagara – Nanjanagudu road. Further, these facts go to show that the petitioner No.1 was proceeding on the correct side of the road and yet the car which was coming from the opposite direction had caused the

accident. The fact that the head on collision occurred on the right lane when a person is proceeding from Chamarajanagar towards Nanjanagudu would suffice to hold that the negligence was entirely on the part of the driver of the car. Under such circumstances where there is nothing to show that the PW.1 was also negligent and hence had contributed to the accident, merely because the PW.1 did not possess a DL cannot move this tribunal to hold that there was contributory negligence on the part of petitioner.

25. The view taken by this tribunal is supported by the decisions rendered by Hon'ble Apex Court which are cited hereunder:

1. *Sudhir Kumar Rana Vs. Surinder Singh & others* reported in 2008 ACJ 1834
2. *Dinesh Kumar J Vs. National Insurance Co. Ltd., & others* reported in 2018 ACJ 535
3. *Saraswati Palariya & Others Vs. New India Assurance Co. Ltd., & others* reported in 2019 ACJ 42

The essence of the decisions cited above is that unless there any evidence is let in to show contributory negligence on the part of the victim, the tribunal cannot conclude that there was contributory negligence on the part of victim himself or herself merely because the victim did not possess a driving license at the time of accident. This is clear from the following except from the decision of the Hon'ble Apex Court in *Sudhir Kumar Rana's* case cited *supra.*:

8. *If a person drives a vehicle without a licence, he commits an*

offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.

(Emphasis supplied by me)

This view taken by Hon'ble Apex Court was upheld by the Full Bench of Hon'ble Apex Court in **Dinesh Kumar's** case cited *supra*. Further following excerpt from the decision of the Hon'ble Apex Court in **Saraswati Palariya's** case cited *supra* is also worth referring to:

5. The finding of the High Court of contributory negligence on the ground that the deceased was driving the vehicle without a driving license is equally unsustainable. Driving without a valid driving license may expose the claimant(s) to other liabilities but no inference of contributory negligence can be arrived on that basis.

(Emphasis supplied by me)

Furthermore, the Hon'ble High Court of Karnataka in **Smt. Seema W/O**

Sambhaji Kadlekar vs Shri. Awadhoot S/O. Krishnarao Patil dated 8 February, 2024 reported in MFA No. 101991 of 2021 (MV-D), has held thus:

10. Having heard the learned counsel for the parties and on perusal of the appeal papers, the following points would arise for consideration:

- a) Whether the Tribunal is justified in saddling 25% contributory negligence on the part of the deceased?*
- b) Whether the claimants have made out any case for enhanced compensation?*

11. Our answer to the above points would be in the negative and partly affirmative respectively for the following reasons:

12. The occurrence of accident on 24.02.2019 involving car bearing registration No.KA-22/EX-5908 and Hyundai Car bearing registration No.MH-09/EM-3606, resultant death of Amar Kadlekar is not in dispute in this appeal.

13. The first issue is with regard to contributory negligence. It is the contention of the respondent/insurance company that driver of the car i.e. deceased was not having valid and effective driving license as on the date of the accident, hence, the Tribunal rightly saddled 25% contributory negligence on the deceased.

14. Section 3 of the MV Act contemplates necessity for driving license, which reads under:

No person shall drive a motor vehicle in any public place unless

he holds an effective driving license issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle (other than a motor cab or car) hired for his own use or rented under any scheme made under sub-section(2) of Section 75) unless his driving license specifically entitles him so to do so.

15. Section 181 of the MV Act provides driving vehicles without possession of driving license, which reads as under:

Whoever drives a motor vehicle in contravention of Section 3 or 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine (of five thousand rupees), or with both.

A perusal of the above provisions would make it clear that whoever drives a motor vehicle without valid and effective driving license is an offence under Section 181 of the MV Act.

Mere non-possession of driving license while driving/driving a motor vehicle itself cannot be held to be a ground for saddling contributory negligence. The MV Act does not provide for absolving the liability of the insurance company on the ground of non-possession of driving license.

16. The Hon'ble Apex Court in the case of Sudhir Kumar Rana Vs. Surinder Singh & Others⁴, at paragraphs-9 has held as follows:

9. If a person, drives a vehicle without a license, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by

the Courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any license but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a license, he would be held to be guilty of contributory negligence.

(Underlined by us)

17. A reading of the above paragraph, it is very clear that merely because deceased driver of car was not having driving license, that itself cannot be held to be guilty of contributory negligence. Negligence cannot be fixed on the shoulders of the driver of the car merely for not having driving license. Therefore, it cannot be said that there was contributory negligence on part of the driver due to which the accident has occurred. Moreover, it is for the insurer who contends that driver of the car had no license to prove the same. There is no material to that effect and also there is (2008) 12 SCC 436 no material evidence to say that negligence of the driver contributed to the occurrence of accident. Thus, the contention of the insurance company cannot be acceded to and same is liable to be rejected. Therefore, in the present facts and circumstances of the case, we are of the considered view that finding recorded by the Tribunal with regard to contributory negligence to an extent of 25% on the deceased is wholly unsustainable and same is modified holding that due to sole negligence on the part of the driver of

offending car, the accident took place. Hence, Issue No.1 is answered in the negative holding that the insurance company is liable to pay entire compensation amount.

Hence in view of the ratio laid down in the decisions cited above, this tribunal finds no hesitation in holding that in view of the fact that the respondent No.3 has failed to prove that the PW.1 contributed to the accident by being reckless or negligent, merely because the PW.1 did not possess DL, contributory negligence cannot be attributed to the PW.1.

26. Needless to state, driving without a driving license can at the most call for penal consequence, but merely because the deceased did not possess a driving license it cannot be assumed that there was contributory negligence on the part of the deceased moreso, because the I.O., has clearly opined that the accident occurred wholly and solely due to negligence on the part of the driver of the TATA Nexon car bearing No.KA-09/ME-5510. Perhaps, had there been contributory negligence or had it been true that the PW.1 himself did not know to ride a motorcycle and did not possess a driving license and hence contributed to the accident, the I.O, certainly would have invoked the relevant provisions under the BNS and MV Act. Wherefore, in view of the decisions cited above, which are aptly applicable to case on hand, supported by the fact that there is no material available on record on the basis of which this court can conclude that there was contributory negligence on the part of the PW.1 moreso where I.O., has opined that the negligence was entirely on the part of the driver of the car bearing

No.KA-09/ME-5510, this court finds no hesitation in holding that the contention of the learned counsel for the respondent No.3 regarding contributory negligence on the part of petitioners holds no water.

27. To add to this, there is absolutely nothing in the form of evidence before this tribunal which could move this tribunal to overlook or brush aside the charge-sheet. No doubt this tribunal is not bound by the charge-sheet as it is only an opinion of the IO but for this court to overlook the charge-sheet there must be credible and strong evidence which is lacking in this case. The view taken by this Court that the police records are *prima facie* proof in support of the case of the petitioners, is supported by the decision rendered in ***Kishan Gopal and another Vs. Lala and others*** reported in **2013 (4) T.A.C 5 (S.C.)**, wherein the Hon'ble Apex Court has categorically held thus:

16. In view of the aforesaid facts, the Tribunal should have considered both oral and documentary evidence referred to supra and appreciated the same in the proper perspective and recorded the finding on the contentious issue No. 1 & 2 in the affirmative. But it has recorded the finding in the negative on the above issues by adverting to certain statements of evidence of AW-1 and referring to certain alleged discrepancies in the FIR without appreciating entire evidence of AW-1 and AW-2 on record properly and also not assigned valid reasons in not accepting their testimony. The Tribunal should have taken into consideration the pleadings of the parties and legal evidence on

record in its entirety and held that the accident took place on 19.07.1992, due to which Tikaram sustained grievous injuries and succumbed to the same and the case was registered by the Uniara Police Station under Sections 279 and 304-A, IPC read with Sections 133 and 181 of the M.V. Act against the first and second respondents. The registration of FIR and filing of the charge-sheet against respondent Nos.1 & 2 are not in dispute, therefore, the Tribunal should have no option but to accept the entire evidence on record and recorded the finding on the contentious issue Nos.1 and 2 in favour of the appellants.

(Emphasis supplied by me)

It is necessary to reassert that in a claim for compensation filed under Section 166 of Motor Vehicles Act, 1988, the claimants are expected to prove the incident on basis of principle of *preponderance of probabilities* and the view taken by this Court is fortified by the decision rendered by the Hon'ble Supreme Court in ***Kusum and others V/s Satbir and others*** which is reported in **2011 SAR (CIVIL) 319**. Further the Hon'ble Supreme Court in case of ***Bimla Devi and others v. Himachal Road Transport Corporation and others*** reported in **(2009) 13 SCC 530** has observed that, *it is necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants are merely required to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.* Further the Hon'ble High Court of Karnataka in ***National Insurance Co. Ltd. Vs. Krishnappa and another*** reported in **2001 ACJ 1105**, where the Hon'ble High Court of

Karnataka considering the fact that the driver of the offending vehicle was not examined to prove any contributory negligence on the part of scooterist held that the accident had occurred due to rash or negligent driving by the driver of the offending van. Even here the driver of the TATA Nexon car i.e., respondent No.1 is not examined to show that he was not negligent and even otherwise the IO, as already observed, has clearly opined that the accident occurred only due to the fault of the driver of the TATA Nexon car i.e., respondent No.1 and accordingly he was chargesheeted.

28. One of the other contentions of the respondent No.3 company is that when Ex.P7 which is the PME report is perused, it reveals that the deceased had sustained grievous injuries on both bones of her right leg with dislocation at their lower 1/3rd with extravasation of blood, Laceration over right inguinal region, right pelvic bone fracture, fracture of pubic symphysis at its middle and the blood is extravasated into the pelvic cavity apart from other injuries all over the body and when this fact is analyzed in the light of the fact that PW.1 admits that the deceased had delivered a baby few days prior to the accident and the petitioner No.1 was taking the deceased to the hospital for the purpose of getting sutures removed when the accident occurred goes to show that the negligence shown by petitioner No.1 and the deceased in proceeding on the motorcycle few days after the delivery goes to show that even the deceased was negligent.

29. The other angle from which the learned counsel for respondent No.3 company has argued is the deceased was not seated comfortably and

upon seeing the vehicle approaching she panicked resulting in her falling down and sustaining injuries. To substantiate her argument, the learned counsel for respondent No.3 company referred to PME report and argued that the deceased had not sustained any head injuries which shows that the death of was due to bleeding which occurred as the deceased had delivered a baby just a few days before the accident. In this regard, one aspect which is undisputed is that the deceased was hale and healthy prior to the accident and her death was due to injuries sustained in the accident. Further the Ex.P7 PME report reveals that the death was due to shock and hemorrhage as a result of multiple injuries sustained. Hence there need not be any further deliberation to hold that the death of Smt. Madhu was due to injuries sustained by her in the accident and not as an aftermath of traveling on a motorcycle just few days after delivering a baby. Further even the contention of the learned counsel for the respondent No.3 company that the deceased was not seated properly and hence she fell down and sustained fatal injuries is misconceived for the reason that the car and motorcycle had come in contact and even the petitioner No.1 had sustained injuries as such it was not a case of deceased falling off due to improper seating. Hence the said argument of the learned counsel for respondent No.3 company has to fail.

30. In view of the ratio laid down in the authorities referred to above and applying the settled principle of law to the case at hand, which is further supported by the oral and documentary evidence adduced by PW.1, this Tribunal is of the considered opinion that the accident leading to this case indeed occurred due to the actionable negligence

on the part of the driver of the car bearing No.KA-09/ME-5510 resulting in death of Smt. Madhu. This would infer to mean that the respondent No.2 has failed to prove its defense that the PW.1 being the rider and deceased being the pillion rider of the motorcycle was also rash or negligent and contributed to the accident. *Wherefore Issue No.I is answered held in the Affirmative.*

31. **Issue No.III:**

Now that this court has answered the issue No.I in the affirmative and has thereby concluded that the death of Late Smt. Madhu indeed occurred due to rash and negligent driving by the driver of car bearing No.KA-09/ME-5510, the next aspect to be considered is quantum of compensation and as to who needs to be made liable to pay the same.

32. This brings the discussion to the crucial aspect of this judgment which is the quantum of compensation which the petitioners seek to support by relying on decision of the Hon'ble Apex Court in *Pappu Deo Yadav Vs. Naresh Kumar and others* rendered in *Civil Appeal No.2567/2020*. It is relevant to note that though the petitioners claim that prior to the accident the deceased Smt. Madhu was hale and healthy and milk vending and vegetable business and was earning ₹.30,000/- per month. But, unlike in the decision cited supra, no evidence is led by the petitioners in support of their contentions regarding the income and avocation of the deceased. Perhaps, the court will now have to consider the notional income of the deceased. Principal Bench of the Hon'ble High Court of Karnataka, at Bengaluru while holding Lok-Adalath is

determining the notional income at ₹.15,000/- if the accident had occurred in the year 2021, in cases where the actual income of the deceased or injured, as the case may be, is not proved; and the same had been circulated by the Hon'ble Karnataka State Legal Services Authority, Bengaluru directing the courts, dealing with the motor vehicle compensation cases, to determine the notional income as determined therein, while holding lok-adalats at District Courts. Hence, this Tribunal is of the opinion that it is just and proper to fix the notional income of deceased at ₹.15,000/- per month, in the absence of proof of income of the deceased. Hence the income of Smt. Madhu can be notionally considered at the rate of ₹.15,000/- per month.

33. It is necessary to take note that the Hon'ble Supreme Court of India in the matter of *National Insurance Company Limited v. Pranay Sethi and others* reported in (2017) 16 SCC 680 has clearly observed at para 61 (iv) as under:

“(iv) 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 facts of this case, it is relevant to note that Ex.P11 reveals that the

date of birth of the deceased is 01.01.1992 whereas the accident took place on 27.08.2021, as such, the age of the deceased should be considered as 29 years more precisely, 29 years, 7 months, 26 days at the time of accident. Since it was held by the Hon'ble Apex Court that if the deceased was self employed or on a fixed salary, an addition of future prospects is to be made while determining the income of the deceased for the purpose of calculation of compensation under the head Loss of Dependency. Wherefore, future prospects needs to be added to the income of the deceased, as provided in *Pranay Sethi Case* (cited *supra*) for the purpose of determining income of the deceased. This Court had already considered the notional income of the deceased at ₹.15,000/- per month, since the petitioner was aged 29 years, an addition of 40% of the established income to be added as future prospects while determining the income for the purpose of computing compensation for the age of the deceased is between below 40 years. Future prospects of the deceased would be 40% of the established income hence it is determined as ₹.6,000/- ($15,000 \times 40/100 = 6,000$). Thus the total income of the deceased for the purpose of determining the compensation would be **₹.21,000/-** ($15,000 + 6,000 = 21,000$).

LOSS OF DEPENDENCY

34. As already observed, as per the documents available before this court, the deceased aged 29 years at the time of her death. The learned counsel for the respondent No.3 vehemently argued that the PW.1 has categorically admitted that he was managing the affairs of the family from his income and even after his wife's death is doing the very same

work and is looking after his sons and meeting their expenses which goes to show that the petitioners were not dependent on the deceased for their livelihood. The learned counsel for respondent No.3 company has cited the decision of the Hon'ble Apex Court in *ICICI Lombard General Insurance Co. Ltd., Vs. Meenakshi Shantilal Vuland (Sharma) and others* reported in 2025 ACJ 2597.

35. In this regard, what cannot be lost sight of is the PW.1 was into mason work as such even the deceased would certainly be contributing to the expenses of family though the PW.1 was managing the affairs. In other words, it is not necessary that the deceased alone was managing the affairs of the family and even if the deceased used to contribute her income for the family expenditure the petitioners would be considered as dependents of the deceased. Since the petitioner No.1 is the husband and petitioner No.2 and 3 are the children supported by the fact that the petitioners have proved their relationship with the deceased by producing Ex.P8 to P11 which are the aadhar cards of the petitioners, this tribunal finds no hesitation in holding that the argument of the learned counsel for the respondent No.3 company is totally misconceived and the petitioners are certainly the dependents of the deceased. The decision of the Hon'ble Apex Court cited supra is of no relevance to the facts of the present case as the same pertained to a claim by a married sister of a deceased bachelor which is wholly different from the facts of the present case, hence with due respect to the decision cited the same are not applicable to the present case.

36. Now that this court has concluded that the petitioners were the dependents on the deceased, there need not be any further deliberation to hold that 1/3rd of the income of the deceased needs to be deducted towards their personal and living expenses in adherence to principles laid down by the Hon'ble Apex Court in *Sarla Varma Vs. Delhi Transport Corporation and another* reported in 2009 ACJ SC 1298. As already observed 1/3rd income of the deceased should be deducted towards her personal and living expenses which would mean ₹.7,000/- per month and when the said sum is deducted from the monthly income of the deceased, the balance amount is ₹.14,000/- ($21,000 - 7,000 = 14,000$). This tribunal has already held that the petitioners are the dependents deceased Smt. Madhu. Further this Court has already held that the age of the deceased Smt. Madhu at the time of her death was 29 years and if the age of the deceased as on the date of accident is between 26 years and 30 years, as per table provided in *Sarla Varma Vs. Delhi Transport Corporation and another* (2009 ACJ SC 1298), the multiplier applicable would be 17. Hence, loss of dependency can be determined as ₹.28,56,000/- ($14,000 \times 17 \times 12 = 28,56,000$)

LOSS OF CONSORTIUM, LOSS AND AFFECTION

37. The petitioners being husband and children of the deceased Smt. Madhu are entitled for compensation under the head of loss of consortium, love and affection as per Judgment in *National Insurance Company Limited v. Pranay Sethi* (2017) 16 SCC 680. On this point, it is worthwhile to refer to the decision of the Hon'ble Apex Court in *Shri Ram General Insurance Co. Ltd., Vs. Bhagat Singh Rawat and others*

rendered in *Civil Appeal Nos.2410-2412/2023* wherein it is held that under the head of loss of consortium the petitioners are entitled for a sum of ₹.40,000/- with 10% escalations for every three years. Hence, after going through the decision of the Hon'ble Apex Court in *The New India Assurance Co. Ltd., Vs. Somwati and others* reported in *AIR Online 2020 SC 717*, which is cited by the learned counsel for the petitioners and also decision rendered in *Bhagat Singh Rawat* case, this tribunal deems it fit to hold that the petitioners would be entitled for ₹.40,000/- and two escalations of 10% each. *Hence, the petitioners are entitled for ₹.48,400/- for loss of consortium, love and affection.*

FUNERAL EXPENSES

38. As already observed, according to PW.1 they have spent huge amount for transportation of the body of the deceased and they have incurred expenses cremation, funeral and other incidental charges, they have not specified the amount spent by them. Though as regards the transportation charges, cremation, funeral and other incidental charges, they have not given particulars of the expenses incurred by them. Having said that this court cannot ignore the fact that that the dead body was transported from hospital to hometown of the deceased where final rites were performed at the hometown of the deceased, hence in view of the decision of the Hon'ble Apex Court in *Pranay Sethi and Bhagat Singh Rawat case* the petitioners are entitled for a sum of ₹.18,150/- under this head.

LOSS OF ESTATE

39. If the deceased had survived, certainly his dependents would have had the benefit of her estate, as such this court deems it fit to hold that *the petitioners are entitled for ₹.18,150/- towards loss of estate.*

40. Thus, the petitioners are entitled for compensation under the following heads:-

Loss of dependency	-	₹.	28,56,000
Loss of consortium	-	₹.	48,400
Funeral expenses	-	₹.	18,150
Loss of estate	-	₹.	18,150
Total	-	₹.	29,40,700

In total, the petitioners are held entitled for **₹.29,40,700/-**.

41. The petitioners have claimed the interest at the rate of 12% per annum. In this regard the Hon'ble High Court of Karnataka in the decision reported in *Shriram General Insurance Co. Ltd v. Smt. Laxmi and others* rendered in MFA No.103557/2016 rendered on 20.03.2018 awarded interest at the rate of 6% per annum by considering the relevant provisions. Considering the aforesaid decision and also prevailing Bank rate of interest, this tribunal also deems it proper to award interest at the rate of 6% per annum. Hence, the petitioners are entitled total compensation of **₹.29,40,700/-** with interest at the rate of 6% p.a. from the date of petition till the realization. *Hence it is held*

that the petitioners are entitled for compensation of ₹.29,40,700/- alongwith interest at the rate of 6% per annum from the date of petition till the realization.

LIABILITY

42. Now that this court has ascertained the compensation amount, the last aspect of the matter is regarding fixation of liability i.e., *who should be made liable to pay the compensation to the petitioners?* In this regard, though the respondent No.3 contended that the PW.1 being the rider of the motorcycle and deceased being the pillion rider had contributed to the accident through their reckless conduct, but this tribunal while answering issue No.I has touched upon the said point and concluded that the said contention is not substantiated by the respondents. This apart, the respondent No.3 has admitted that the car bearing No.KA-09/ME-5510 belonging to respondent No.2 was duly insured with respondent No.3 company at the time of accident under the policy bearing No.P0020300050/4111/100010 which was in force from 29.06.2019 to 28.06.2022. However, the respondent No.3 company qualified the said admission with a specific contention that the policy was issued subject to terms and conditions. But as the respondent No.3 has not proved violation of any policy conditions, the respondent No.3 has to be made liable to pay the compensation. To sum up, the respondent No.2 and 3 must be held liable to pay compensation to the petitioner and respondent No.3 shall indemnify the respondent No.2 in payment of compensation to the petitioners. Further, the respondent

No.1 was the driver of the car bearing No.KA-09/ME-5510 at the time of accident, the petition as against him also needs to be dismissed.

43. Before parting with the case it is necessary to apportion the compensation amongst the petitioners. Since the petitioners are the husband and minor children of the deceased respectively and it is already held that the petitioners are entitled to the compensation, and this tribunal deems it fit to apportion their shares at the ratio of 50:25:25 respectively. *Accordingly, it is held that the petitioners are entitled for compensation of ₹.29,40,700/- alongwith interest at the rate of 6% per annum and it is also held that the respondents are jointly and severally liable to pay the compensation to the petitioners and the respondent No.3 being the insurer is liable to indemnify the respondent No.2 in paying compensation to the petitioner; and 50% of the award amount is apportioned towards the share of petitioner No.1 and 25% each award amount is apportioned towards the share of petitioner No.2 and 3; and the petition as against respondent No.1 is liable to be dismissed.*

44. Issue No.III:

In view of the reasons assigned in the foregoing paragraphs of this judgment and in view of the finding given on Issue No. I to III, this court finds no hesitation to pass the following:

ORDER

“The petition filed by the petitioners under

section 166 of Motor Vehicles Act is hereby allowed in part with costs.

It is hereby ordered and decreed that the Petitioners are entitled for compensation of ₹.29,40,700/- (Rupees Twenty Nine Lakhs Forty Thousand and Seven Hundred only) with interest at the rate of 6% per annum from the date of petition till its realization including interim compensation if any awarded.

The respondent No.2 and 3 are jointly and severally liable to pay compensation to the petitioners within one month from the date of this judgment.

Further the Respondent No.3 shall indemnify the respondent No.2 in payment of compensation to the petitioners.

It is further clarified that the petition as against respondent No.1 who is the driver is dismissed.

Further it is held that the petitioners No.1 to 3 are entitled for compensation at the ratio of 50:25:25 respectively.

Further once the compensation amount is deposited, out of the total compensation amount apportioned towards the share of petitioner No.1, 50% of the compensation shall be deposited in the separate name of petitioner No.1 in fixed deposit for a period of three years in any nationalized bank on condition not to withdraw and encumber the deposit in any mode without prior permission of this Tribunal with a direction to the bank to make note on the deposit receipt not to avail any loan or advance and remaining amount shall be paid to the petitioner No.1; and the balance amount shall be paid to the petitioner No.1 by following the procedure prescribed in that regard.

Further the amount apportioned towards the share of petitioner No.2 and 3 shall be deposited in the separate names of petitioner No.2 and 3 in any nationalized bank or scheduled bank until they attain majority or for a period of 3 years whichever is higher. However the next friend of the petitioner No.2 and 3 is entitled to get the interest amount released periodically.

Advocate's fee is fixed at ₹.1,000/-.

Draw award accordingly."

(Dictated to the stenographer, computerized by her, corrected and then pronounced by me in the open court, this the 2nd day of April, 2026)

(AFTHAB.K)

Prl. Judge, Court of Small Causes
& MACT, Mysuru

ANNEXURE:

Witnesses examined for the petitioner:		
PW.1	-	Sri. V.N. Parashivamurthy

Documents marked for the petitioner :		
Ex.P1	-	FIR
Ex.P2	-	Complaint
Ex.P3	-	Charge sheet along with Inquest panchanama, seizure panchanama and PF memo
Ex.P4	-	Spot panchanama
Ex.P5	-	Rough sketch of spot
Ex.P6	-	IMV report
Ex.P7	-	PME report
Ex.P8	-	Copy of aadhar card of PW.1
Ex.P9	-	Copy of aadhar card of petitioner No.2
Ex.P10	-	Copy of birth certificate of petitioner No.3
Ex.P11	-	Copy of aadhar card of deceased

Witnesses examined for the respondents:		
		NIL

Documents marked for the respondents:		
		NIL

(AFTHAB.K)
Prl. Judge, Court of Small Causes
& MACT, Mysuru