

KAMS080004602024



**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./226/2024

Dated on this the 1st day of August, 2026

Petitioners :

1) Smt. Kavya W/o. Late Swaminayaka,
Age: 25 years,

2) Kum. Kushi S. D/o. Late Swaminayak,
Age: 7 years,

3) Master Kushal S/o. Late Swamy Nayka,
Age: 5 years,

All are r/at Hullenahalli village, Bilikere post,
Hunsur taluk, Mysore district-571103.

(By – Sri. K.S. Rajgopal, Advocate)

Vs.

Respondents :

1) M/s Sri Balaji Traders,
No.456, Jigani Industrial Area, Anekal taluk,
Bangalore Urban district-560105.
Owner of the vehicle bearing No.KA-05/AK-6809

2. Universal Sompo General
Insurance Co. Ltd.,

No.363, 1st floor, Gurukar Devanna Street,
Fort Mohalla, near Agrahara circle,
Mysuru-570004.
Policy No.USN2023062836636126
valid from 29.06.2023 to 28.06.2024
Insurer of the vehicle bearing No.KA-05/AK-6809

(R1 – In person)

(R2 – Sri. Jagannath Suresh Kumar, Advocate)

* * * * *

JUDGMENT

The petitioners have filed the petition under Section 166 of Motor Vehicles Act, 1988, seeking compensation of ₹.36,50,000/- along with interest at the rate of 12% per annum from the date of petition till the date of realization of amount for the death of Sri. Swamy Nayka S/o. Late Sanna Nayaka, who demised due to the injuries sustained by him in the road traffic accident which occurred on 31.12.2023.

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

On 31.12.2023 at around 10.00 p.m., at Hullenahalli gate, Hunsur taluk, after finishing centering work at Hunsur the deceased Sri. Swamy Nayka was proceeding towards his house at Hullenahalli village on motorcycle bearing No.KA-45/L-7380, as the deceased was required to enter Mysuru – Hunsur road, he stopped his vehicle at designated place i.e., where there is opening in the divider and after waiting for vehicles coming from Mysuru side to pass, he promptly applied right indicator on his motorcycle and gave hand signal, and thereafter while he was

about to cross the four track road and enter the Hunsur – Mysuru main road, the driver of the Mahindra Bolero vehicle bearing No.KA-05/AK-6809 drove the same at a high speed and in a rash or negligent manner without observing traffic rules and regulations from Mysuru side and dashed his vehicle against the motorcycle ridden by the deceased. Further due to the impact, the said Sri. Swamy Nayka fell down and sustained injuries on his head as well as other parts of his body.

2.1. Further immediately after the accident, the deceased was taken to Kamakshi Hospital, Mysuru, for treatment where he was underwent treatment as an inpatient in ICU. Further on 05.01.2024, the injured Sri. Swamy Nayka was shifted to K.R. Hospital, for further treatment, however on 07.01.2024 at around 5.50 p.m., he succumbed to the injuries sustained in the accident, while undergoing treatment at K.R. Hospital. Further after the death of Sri. Swamy Nayka, his body was shifted to mortuary at Government Medical College and K.R. Hospital, where it was subjected to PME. Further after completion of formalities the body of the deceased was handed over to the petitioners who performed funeral obsequies ceremonies as per the customs prevailing within their community. Further the petitioner No.1 is the wife and petitioners No.2 and 3 are minor children of the deceased and as they were dependents of the deceased, in the said capacity they have filed the petition.

2.2. Further, prior to the accident, the deceased Sri. Swamy Nayka was hale and healthy. Further the deceased was an experienced centering worker and was earning ₹.1,000/- per day, that apart he was also undertaking contract work, from the said income he was maintaining his

family consisting of himself and petitioners. Further due to untimely demise of Sri. Swamy Nayka, the petitioner No.1 has lost love, care and affection of her husband in her young age and petitioners No.2 and 3 have lost love, care and guidance of their father. Further the petitioners are finding it difficult to lead their lives, as they have no source of income of their own. Further, the petitioners have incurred huge expenses towards transportation, medical expenses, funeral and obsequies ceremonies. Further due to death of Sri. Swamy Nayka the petitioners have not only suffered economically but also mentally and psychologically.

2.3. Further, the accident occurred due to rash and negligent driving of the Mahindra Bolero vehicle bearing No.KA-05/AK-6809 by its driver, as such the respondent No.1 being the owner and respondent No.2 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 respondent No.1 appeared in person but did not prefer to file his objections to main petition. Further he clearly stated before the court that he neither intended to engage counsel nor file his objections to main petition and the same is noted in the order sheet and the respondent No.1 was deemed to be contesting the petition in person and even his objections is taken as not filed. However, upon service of notice on main petition, the respondent No.2 appeared through its counsel and filed its detailed objections to the main petition.

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

The petition is neither maintainable under law nor facts and hence is liable to be dismissed *in limine*. Further all the material allegations in the petition are false, more particularly the averments regarding age, occupation and income of the deceased and hence the petition averments are denied *in toto*. Further though it is admitted that the Mahindra Bolero vehicle bearing No.KA-05/AK-6809 belonging to respondent No.1 was insured with respondent No.2 company under policy bearing No.2374/70567982/00/000 which was in force from 29.06.2023 to 28.06.2024, however the policy was issued subject to terms and conditions.

4.1. Further the driver of the Bolero vehicle did not possess a valid and effective DL as the driving licence should have a specific endorsement which authorizes a person to drive the transport vehicle. Further the respondent No.1 by entrusting the vehicle to an unauthorized person has violated the policy conditions, as such the respondent No.2 cannot be directed to indemnify the respondent No.1 in paying compensation to the petitioner and hence the petition as against respondent No.2 is liable to be dismissed. Further the vehicle was plied without valid and effective FC and even for this reason the petition is liable to be dismissed as against respondent No.2.

4.2. Further the involvement of goods vehicle bearing No.KA-05/AK-6809 as well as the contention of the petitioners that the driver of the goods vehicle was rash or negligent are denied. Furthermore, as the case of the petitioners is that there is collision between two vehicles, the

negligence on the part of the deceased resulted in the accident as he was trying to enter the main road without following traffic rules and without observing the movement of the vehicles. Further the contention of the petitioners that the deceased had stopped his vehicle so as to enter the main road and waiting the vehicles to pass by, in the meanwhile the goods vehicle dashed against the motorcycle is denied, as the said contention is fabricated so as to cover up the negligence on the part of the deceased and to ensure that the liability is fixed on the goods vehicle.

4.3. Further the deceased was not wearing headgear at the time of accident, as such he has violated section 129 of M.V. Act, if the deceased had been wearing helmet, head injuries could have been prevented and consequently he might not have demised. Further the jurisdictional police have registered a case mechanically and have filed charge-sheet against the driver of the goods vehicle so as to support the claims of the petitioners. Further the petition is bad for non joinder of necessary parties as the owner and insurer of the two wheeler bearing No.KA-45/L-7380 who are necessary parties should have been arrayed as parties to the petition. 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.2 be dismissed.

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

1. *Whether the petitioners prove that deceased Sri. Swamy Nayka S/o. Sri. Sanna Nayaka died in the Road Traffic Accident which occurred on 31.12.2023 at around 10.00 p.m., at Hullenahalli Gate, Hunsuru Taluk when the deceased was proceeding on motorcycle bearing No.KA-45/L-7380, due to rash or negligent driving of the Mahindra Bolero vehicle bearing No.KA-05/AK-6809 by its driver?*
2. *Whether the respondent No.2 proves that the respondent No.1 has violated the policy conditions as contended at para.3 of the objections of the respondent No.2?*
3. *Whether the petitioner is entitled for the compensation? If so, from whom; and what is the quantum?*
4. *What order or award?*

6. In order to discharge the burden cast on them, the petitioner No.3 examined as PW.1 through whom Ex.P1 to Ex.P15 documents got exhibited and examined one eye witness by name Sri. Ravi C as PW.2 and petitioners' evidence stage was closed. Thereafter, the respondent No.2 though cross-examined PW.1 and 2 at length, it did not prefer to lead any evidence, on its behalf, hence respondents' evidence stage is taken as nil and matter stood posted for arguments.

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

8. 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

9. 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 31.12.2023 at around 10.00 p.m., at Hullenahalli gate, Hunsur taluk, the deceased Sri. Swamy Nayka was proceeding towards his house at Hullenahalli village on motorcycle bearing No.KA-45/L-7380, the driver of the Mahindra Bolero vehicle bearing No.KA-05/AK-6809 drove the same at a high speed and in a rash or negligent manner without observing traffic rules and regulations from Mysuru side and dashed his vehicle against the motorcycle ridden by the deceased resulting in the said Sri. Swamy Nayka falling off from the motorcycle and sustaining injuries on his head as well as other parts of his body; and immediately after the accident, the deceased was taken to Kamakshi

Hospital, Mysuru, for treatment where he was underwent treatment as an inpatient in ICU. Further on 05.01.2024, the injured Sri. Swamy Nayka was shifted to K.R. Hospital, for further treatment, however on 07.01.2024 at around 5.50 p.m., he succumbed to the injuries sustained in the accident, while undergoing treatment at K.R. Hospital. The petitioners being wife and children of the deceased Sri. Swamy Nayka have filed the petition seeking compensation in their capacities as legal heirs and dependents of the deceased.

10. 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 her chief-examination affidavit. PW.1 in her evidence has clearly deposed that the accident occurred due to sole actionable negligence on the part of driver of the Mahindra Bolero vehicle bearing No.KA-05/AK-6809. PW.1 has further deposed regarding injuries sustained by her husband Sri. Swamy Nayka and has also categorically deposed that Sri. Swamy Nayka died due to injuries sustained in the accident; and she has also deposed regarding the occupation and income of the deceased. Further the petitioners have also examined one Sri. Ravi C as PW.2 in his capacity as an eye witness.

11. 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 P6 which make it unambiguously clear that after thorough investigation, the Bilikere P.S. has concluded that the accident occurred due to the reckless and negligent driving of the offending Mahindra

Bolero vehicle bearing No.KA-05/AK-6809 by its driver and hence the driver of the Mahindra Bolero goods vehicle was charge-sheeted for the offenses under section 279 and 304A of IPC and Section 187 of MV Act. 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 Sri. Swamy Nayka occurred due to sole actionable negligence on the part of driver of the Mahindra Bolero goods vehicle. Per contra, the respondent No.2 company has come up with two fold defence:

Firstly, that the Mahindra Bolero vehicle bearing No.KA-05/AK-6809 was not at all involved in the accident and yet it was falsely implicated to suit the claim of the petitioners.

Secondly, that even the deceased contributed to the accident by being negligent as such contributory negligence must be attributed to the deceased.

12. As regards the first contention of the respondent No.2 company which is that Mahindra Bolero vehicle bearing No.KA-05/AK-6809 was not involved in any accident and it was falsely implicated, the said contention is primarily based on the fact that there is a delay in lodging the FIS as the learned counsel for respondent No.2 company emphasized on this point during his arguments. To elaborate, the learned counsel for the respondent No.2 vehemently argued that as per the very facts asserted by the petitioners, the accident occurred on 31.12.2023 at around 10.00 p.m., whereas the FIS was lodged on 01.01.2024 at around 11.15 a.m., as such there is delay of more than 12 hours in lodging the

FIS and the very fact that there is a delay goes to show that the Mahindra Bolero vehicle bearing No.KA-05/AK-6809 was falsely implicated.

13. In this regard, it is relevant to note that no doubt the documents make it evident that there is a delay of more than 12 hours but the same by no stretch of imagination can be considered as inordinate as the condition of the deceased was critical and he had to be shifted to Kamakshi Hospital and thereafter to K.R. Hospital. Moreover, in the case of *Ravi v. Badrinarayan and others* reported in *AIR 2011 SC 1226*, Hon'ble Supreme Court observed thus:

"The purpose of lodging the FIR in motor accident cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquillity of mind and are composed to lodge it, even if there is delay, the same deserve to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.

If the court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground."

Hence the delay of more than 12 hours cannot be considered as inordinate, atleast in the context of this case, as the deceased was in critical condition and even succumbed to the injuries later on and it is more than obvious that when the condition of the deceased was precarious, the family members would not bother about anything other than treatment and recovery. Perhaps the deceased is survived by wife and minor sons, hence the delay cannot be considered inordinate. Further, there is no contradiction in the history mentioned in any of the documents available before the court.

14. To put it differently, where the delay when unaccounted is coupled with an attempt to twist the facts by colorizing the same, it is in such a scenario that the court would consider the delay as fatal. But, in the facts such as this, the respondent No.2 was unable to prove that the delay in lodging the FIS has resulted in colorization. It must be borne in mind that any contention no matter how convincing if not supported by cogent and reliable evidence the same would be of no avail especially when the said contention is disputed by the other side. In fact, there is no inconsistency in the history which was narrated before the doctor and the history which is mentioned in the FIS, as such, this tribunal finds no hesitation in holding that the delay is not fatal in the facts of the present case.

15. It must be borne in mind that not in all cases where there is delay, the case of the petitioner should be viewed in suspicion especially in facts such as this where despite the delay there is nothing which could move this court to view the delay in lodging the FIS as inordinate or view the same with suspicion is forthcoming from the documents produced by them. To add to this, as already observed the IO has clearly opined that the accident occurred due to negligence on the part of the one Sri. Shankaragowda Sathyangowda Lakkanagowda, who was the driver of the Mahindra Bolero vehicle bearing No.KA-05/AK-6809 and there is absolutely nothing before this tribunal in the form of cogent and reliable evidence to hold that the said conclusion is false and that there is false implication of vehicle.

16. Yet another aspect which assumes importance is the best person who could have denied the involvement of his vehicle is the respondent No.1 or the driver of the goods vehicle, but having appeared before the court in person, the respondent No.1 stated that he does not intend to contest the petition. To add to this Ex.P5 reveals that the goods vehicle had damages on front side with its front bumper broken, front registration number plate broken and front left side headlight broken and radiator grill broken and it is for the respondents to demonstrate as to how the goods vehicle sustained damages if not due to involvement in the accident. Hence this tribunal finds no hesitation in holding that the petitioner has proved his contention that the accident involved Mahindra Bolero vehicle bearing No.KA-05/AK-6809 by its driver and consequently the respondent No.2 company has failed to prove its

contention of false implication.

17. Now coming to the second line of defence put forth by the respondent No.2 company that there was no negligence on the part of driver of the goods vehicle instead the negligence was entirely on the part of the deceased who was the rider of the motorcycle and he, too, contributed to the accident. But as already observed, the IO has charge-sheeted the driver of the vehicle belonging to respondent No.1 thereby clearly opining that the accident occurred due to sole actionable negligence on the part of the driver of the Mahindra Bolero goods vehicle.

18. Furthermore, the fact that PW.1 and 2 have categorically stated on oath that the accident occurred due to sole actionable negligence on the part of the driver of the Mahindra Bolero goods vehicle and nothing could be elicited from the mouth of the said witnesses which could move this court to hold that even the deceased 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 deceased. Needless to state the respondent No.2 could have very well summoned the driver of the Mahindra Bolero goods vehicle to prove its defense that the deceased 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.

19. 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 Mahindra Bolero goods vehicle by its driver. Further the PME report of Sri. Swamy Nayka exhibited as Ex.P6 makes it clear that, according to the doctor, the death of Sri. Swamy Nayka was due to complications of multiple injuries sustained.

20. It is relevant to note that PW.1 and 2 were 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 and 2. 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 witnesses. Though it was further suggested to PW.1 and 2 that inspite of the fact that there was no negligence on the part of the driver of the Mahindra Bolero goods vehicle, the petitioners, in collusion with the police authorities, have falsely got implicated the driver of the Mahindra Bolero goods vehicle and the vehicle in question in order to claim compensation, the PW.1 and 2 have clearly denied the said suggestions.

21. It is necessary to state, even at the cost of repetition that that the Bilikere Police who registered the FIR on the basis of FIS lodged by father of the deceased by name Sri. Siddaraju thereby *prima facie* opining that the said accident occurred due to rash or negligent driving of the Mahindra Bolero goods vehicle 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 Mahindra Bolero goods vehicle 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.2 that the accident did not occur due to negligence on the part of the driver of the Mahindra Bolero goods vehicle is proved.

22. Furthermore when the Ex.P5 which is the IMV report is perused along side the rough sketch annexed to Ex.P4 spot panchanama it is clear that the front left side of the Mahindra Bolero vehicle came in contact with the motorcycle. When this fact is analyzed, in the light of the fact that the distance of the point of impact to the divider is around 2 feet and width of the said road is around 24 feet. Further the fact that the front left side headlight and radiator grill of the goods vehicle were broken shows the force at which the goods vehicle hit the motorcycle. The reason why this tribunal has emphasized on the said aspect is, if it was a low impact accident the headlight no doubt would have broken but the radiator grill would not have sustained any damages let alone the same getting broken. This fact by itself would suffice to hold that the driver of the Bolero vehicle was negligent considering the fact that the Bolero was approaching a junction where four roads meet i.e., one leading to Mysuru, one leading to Bilikere, one leading to Hullenahalli and other leading to Devarahalli and hence the driver of the Bolero vehicle should have exercised caution. Let alone driving the vehicle cautiously, the driver

of the Bolero vehicle seems to have driven the same at high speed close to the divider. In fact, had the vehicle been driven at moderate speed considering the fact that it was a junction, in view of the fact that there was around 24 feet space available to his left, the driver could have very well averted the accident by driving his vehicle to the left. Hence this tribunal finds no hesitation in holding that the negligence was entirely on the part of the driver of the Bolero vehicle.

23. 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 Vs 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 Mahindra Bolero goods vehicle i.e., Sri. Shankaragowda Sathyangowda Lakkanagowda, 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 goods vehicle i.e., Sri. Shankaragowda Sathyangowda Lakkanagowda and accordingly he was chargesheeted.

24. As regards the next leg of the argument of the learned counsel for the respondent No.2 that contributory negligence must be attributed to the deceased for riding the motorcycle without a headgear, the respondent No.2 company appears to have taken the said contention merely because the helmet was not seized by the IO, which is certainly not a criteria to conclude that the deceased was not wearing a headgear, as it is possible that the same was misplaced after the accident. Since the respondent No.2 company has failed to prove that the deceased was not wearing a helmet. Even otherwise, as observed by the Hon'ble High Court of Karnataka in *Smt. Mallavva W/o. Virupana @ Virupakshappa Karigar and others Vs. The Managing Director, NWKRTC and another rendered in MFA No.103130/2023 (MV-D) rendered on 19.03.2024*, even assuming that the deceased was not wearing a headgear, contributory negligence cannot be attributed on that ground alone, this principle is clearly enunciated at para No.16 and 17 of the said decision wherein, the Hon'ble High Court of Karnataka observed thus:

“16. It appears, that the Tribunal fastened 50% of negligence on the rider of the motorcycle on the ground that he had no driving license and he had not worn a helmet....

17. It is true that the deceased did not take care of himself or took precautionary measures of wearing helmet. It has no relation to riding of the motorcycle. And on that basis it cannot be considered that he was negligent in riding the vehicle....”

Hence, viewed from any angle the said contention of the respondent No.2 company that contributory negligence must be attributed to the deceased as he was not wearing a headgear cannot be accepted for two simple reasons i.e., firstly, it is not proved that the deceased was not wearing headgear, secondly, it is not proved that merely because the deceased was not wearing a headgear, contributory negligence cannot be attributed to him.

25. By considering all these facts this court is not inclined to accept the contention of the respondent No.2 that the deceased contributed to the accident, as the facts of this case do not reveal anything which could suggest that this is a case of contributory negligence. Further in view of the discussion made in the foregoing paragraphs of this judgment this court finds no hesitation in holding that the petitioners have proved the Issue No.1 whereas the respondent No.2 has failed to prove its defense that there was contributory negligence on the part of the deceased. *Wherefore Issue No.1 is answered held in the Affirmative.*

26. ISSUE No.III:

Though it may turn out that the issues were not dealt with in order, but for the sake of convenience and since this Court has already held Issue No.I in the affirmative, which makes it more than obvious that the petitioners are entitled for compensation, this court has ventured to consider issue No.III ahead of issue No.II. This brings the discussion to the crucial aspect of this judgment which is the quantum of compensation. It is relevant to note that the petitioners claim that prior to the accident the deceased Sri. Swamy Nayka was hale and healthy and was an experienced centering worker and was earning ₹.1,000/- per day and that apart he was also undertaking contract work. But in support of the same the petitioners have not produced any document. 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 ₹.16,250/- if the accident had occurred in the year 2023, 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 ₹.16,250/- per month, in the absence of proof of income of the deceased. Hence the income of Sri. Swamy Nayka can be notionally considered at the rate of ₹.16,250/- per month.

27. 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, the petitioners have produced Ex.10 which is the adhaar card of the deceased, as per which his year of birth is 1985 and considering the fact that the accident occurred in the year 2023, there need not be any further deliberation to hold that the deceased was aged 38 years at the time of his death. 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 ₹.16,250/- per month, since the petitioner was aged 38 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 person aged below 40 years. Future prospects of the deceased would be 40% of the established income hence it is determined as ₹.6,500/- ($16,250 \times 40/100 = 6,500$). Thus the total income of the deceased for the purpose of determining the compensation would be ₹.22,750/- ($16,250 + 6,500 = 22,750$).

LOSS OF DEPENDENCY

28. As already the deceased Sri. Swamy Nayka at the time of death was aged 38 years. The deceased is survived by his wife and children who are the petitioners herein. As regards the relationship of the petitioners with the deceased Sri. Swamy Nayka, the petitioners have produced Ex.P11 to 14 which are the adhaar cards of the petitioners and deceased and Ex.P15 which is the G-tree; and in the said documents it is clearly mentioned that the name of the husband of petitioner No.1 and father of petitioner No.2 and 3 is Sri. Swamy Nayka. Even otherwise the respondent No.2 has not seriously disputed the relationship of the deceased with the petitioners; and as regards the whether the petitioner No.1 was the dependent of the deceased or not, there is nothing before this tribunal to hold that the petitioner No.1 had her own source of income and as regards petitioner No.2 and 3 they are minors, it must be held that the petitioners are indeed the legal heirs and hence the dependents of the deceased.

29. 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 his personal and living expenses which would mean ₹.7,583/- per month and when the said sum is deducted from the monthly income of the deceased, the balance amount is ₹.15,167/- ($22,750 - 7,583 = 15,167$). This tribunal has already held that the petitioners are the dependents deceased Sri. Swamy Nayka. Further this Court has already held that the age of the deceased Sri. Swamy Nayka at the time of his death was more than 38 years and if the age of the deceased as on the date of accident is between 36 and 40 years, as per table provided in *Sarla Varma Vs. Delhi Transport Corporation and another* (2009 ACJ SC 1298), the multiplier applicable would be 15. Hence, loss of dependency can be determined as ₹.27,30,060/- ($15,167 \times 15 \times 12 = 27,30,060$)

LOSS OF CONSORTIUM, LOSS AND AFFECTION

30. The petitioners being wife and children of the deceased Sri. Swamy Nayka 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. Further in *Shri Ram General Insurance Co. Ltd., Vs. Bhagat Singh Rawat and others* rendered in *Civil Appeal Nos.2410-2412/2023* the amount which can be awarded under the head of consortium is ₹.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 and also the 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 filial consortium.*

FUNERAL EXPENSES

31. 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

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

MEDICAL EXPENSES:

33. The petitioners have contended that they have spent huge amount towards medical expenses and treatment of the deceased; and have produced medical bills which is exhibited as Ex.P8. It is clear from the perusal of Ex.P7 which is the discharge summary issued by Kamakshi Hospital that the deceased underwent treatment from 31.12.2023 to 05.01.2024. The sum total of the medical bill is ₹.1,06,950/-. There is no dispute regarding the medical bill produced and got exhibited by the petitioner; and the same are supported by Ex.P7 discharge summary. Further the Ex.P6 reveals that from 05.01.2024 to 07.01.2024, the deceased was undergoing treatment at K.R. Hospital. *Hence, the petitioners are entitled for compensation of ₹.1,06,950/- under the head medical expenses.*

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

Loss of dependency	-	₹.	27,30,060
Loss of consortium	-	₹.	48,400
Funeral expenses	-	₹.	18,150
Loss of estate	-	₹.	18,150
Medical expenses	-	₹.	1,06,950
Total	-	₹.	29,21,710

In total, the petitioners are held entitled for ₹.29,21,710/-.

35. The petitioners have claimed the interest and in that 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 ₹.29,21,710/- with interest at the rate of 6% p.a. from the date of petition till the realization. *Hence issue No.III is answered partly in the affirmative and it is held that the petitioners are entitled for compensation of ₹.29,21,710/- (Rupees Twenty Nine Lakhs Twenty One Thousand Seven Hundred and Ten only) alongwith interest at the rate of 6% per annum from the date of petition till the realization.*

ISSUE NO.II

36. It would be incumbent upon this tribunal to clarify that the necessity to frame this issue arose in view of the specific contention taken by the respondent No.2 that the respondent No.1 has violated the policy conditions as he allowed the Mahindra Bolero vehicle bearing No.KA-05/AK-6809 belonging to him to be driven by a person who was not holding a DL at the time of accident. Needless to state, the answer to this issue will determine whether the respondent No.1 must be made personally liable to pay compensation or whether it is the respondent No.2 who is liable to compensate the petitioners by indemnifying the respondent No.1 in paying compensation to the petitioners.

37. As already observed, the respondent No.2 has contended that there the deceased himself was the rider of the motorcycle had his own negligence resulted in the accident and in the alternate it was also contended that the deceased himself contributed to the accident through his reckless conduct in not wearing a helmet, 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.2 company admitted that the Mahindra Bolero vehicle bearing No.KA-05/AK-6809 belonging to respondent No.1 was insured with it under policy bearing No.2374/70567982/00/000 which was in force from 29.06.2023 to 28.06.2024 and during the cross examination of PW.1 goes to show that the respondent No.2 company has given a clear go-by to the said contention. As such this tribunal finds no hesitation in concluding that Mahindra Bolero vehicle bearing No.KA-05/AK-6809 was insured with the respondent No.2 company at the time of accident and since the respondent No.2 has not proved violation of any policy conditions, the respondent No.2 has to be made liable to pay the compensation. For the foregoing reasons this court finds no hesitation in holding that the respondent No.2 has failed to discharge the burden cast on it in issue No.II as it has miserably failed to prove violation of policy condition by respondent No.1.

38. Before parting with the case it is necessary to apportion the compensation amongst the petitioners. Since the petitioners are the wife and minor children of the deceased and it is already held that the

petitioners are entitled to the compensation, their shares are apportioned at the ratio of 40:30:30 respectively. *Wherefore the Issue No.II is held negative and it is held that the petitioners are entitled for compensation of ₹.29,21,710/- (Rupees Twenty Nine Lakhs Twenty One Thousand Seven Hundred and Ten only) alongwith interest at the rate of 6% per annum from the date of petition till the realization including the interim compensation if any awarded and it is also held that the respondents are jointly and severally liable to pay the compensation to the petitioners and the respondent No.2 being the insurer is liable to indemnify the respondent No.1 in paying compensation to the petitioner; and the 40% of the award amount is apportioned towards the share of petitioner No.1 and 30% each is apportioned towards the share of petitioner No.2 and 3 respectively.*

39. Issue No.IV:

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 ₹.29,21,710/- (Rupees Twenty Nine Lakhs Twenty One Thousand Seven Hundred and Ten 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 respondents are jointly and severally liable to pay compensation to the petitioners within one month from the date of this judgment.

Further the Respondent No.2 shall indemnify the respondent No.1 in payment of compensation to the petitioners.

Further it is held that the petitioners No.1 to 3 are entitled for compensation at the ratio of 40:30:30 respectively.

Further once the compensation amount is deposited, out of the compensation amount 50% shall be deposited in the name of petitioner No.1 in a fixed deposit for a period of 3 years, in any nationalized bank or scheduled bank on a condition that the petitioner No.1 shall not withdraw and encumber the deposit in any mode without prior permission of this court and the concerned bank shall be directed to make a note on the deposit receipt not to avail any loan or advance; and the remaining

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 1st day of August, 2026)

(AFTHAB.K)

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

ANNEXURE:

Witnesses examined for the petitioner:		
PW.1	-	Smt. Kavya
PW.2	-	Sri. Ravi C.

Documents marked for the petitioner :		
Ex.P1	-	FIR
Ex.P2	-	Complaint
Ex.P3	-	Charge sheet along with inquest panchanama and seizure panchanama
Ex.P4	-	Spot panchanama with rough sketch
Ex.P5	-	IMV report
Ex.P6	-	PME report
Ex.P7	-	Discharge summary
Ex.P8	-	Medical bills
Ex.P9	-	Prescriptions
Ex.P10	-	Copy of Aadhar card of deceased
Ex.P11	-	Copy of Aadhar card of petitioner No.1
Ex.P12	-	Copy of Aadhar card of petitioner No.2
Ex.P13	-	Copy of Aadhar card of petitioner No.3
Ex.P14	-	Copy of DL of deceased
Ex.P15		G-tree

Witnesses examined for the respondents:		
		NIL

Documents marked for the respondents:		
		NIL

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