

KAMS080003782024



**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./175/2024

Dated on this the 10th day of August, 2026

Petitioners :

1. Smt. Devamani W/o. Mallu,
Age: 52 years,

2. Sri. Madhu M. S/o. Mallu,
Age: 29 years,

3. Sri. Manju M. S/o. Mallu,
Age: 26 years,

All are r/at No.1091, 1st main road, 2nd cross,
Vidyaranyaapuram, Mysuru city-571114.

(By – Sri. N. Basavaraju, Advocate)

Vs.

Respondents :

Kiran Kumar S. S/o. Late Nagaraju,
Age: 35 years, R/at 2491/1, 3rd cross,
Hosa Bandikeri, Nanjumalige,
Mysuru-570007.

Owner of the auto bearing No.KA-09/D-2141

(By – Sri. N.P. Raviraje Urs, Advocate)

JUDGMENT

The petitioners have filed the petition under Section 166 of Motor Vehicles Act, 1988, seeking compensation of ₹.41,00,000/- along with interest at the rate of 18% per annum from the date of petition till the date of realization of amount for the death of Sri. Mallu S/o. Late Kempanna who demised due to the injuries by him sustained in the road traffic accident which occurred on 02.05.2024.

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

On 02.05.2024 at around 2.30 p.m., between Akka Mahadevi road and Ring road junction, J.P. Nagar, Mysuru, when the deceased was proceeding by walk on the left side of the road, the driver of the auto bearing No.KA-09/D-2141 belonging to respondent drove the same at a high speed in a rash or negligent manner and dashed against the deceased who was proceeding by walk. Further in the said accident, the deceased sustained injuries on the back portion of his head, right cheek and on both hands apart from other injuries all over the body.

2.1. Further the driver of the auto belonging to respondent took the injured Sri. Mallu in the same auto and admitted him to the K.R. Hospital, Mysuru where he underwent treatment as an inpatient before eventually succumbing to the injuries. Further after the death of Sri. Mallu, his body was subjected PME at K.R. Hospital and thereafter handed over to the petitioners. Further at the time of narrating the history before the doctors, the driver of the auto falsely stated that the

deceased Sri. Mallu was found fallen on the road and he got him admitted to the hospital and the said fact is entered in the MLC. Further after persual of the CCTV footage, the actual facts came to light.

2.2. Further, prior to the accident, the deceased Sri. Mallu was hale and healthy and was into mason and coolie work, from which he was earning ₹.20,000/- per month and was maintaining his family. Further now due to his untimely demise of Sri. Mallu, the petitioners are finding it difficult to lead their life. Further the petitioner No.1 has lost love, care and affection of her husband in her old age and petitioner No.2 and 3 have lost, care and affection of their father. Further due to untimely demise of Sri. Mallu the petitioner have not only suffered financially but also mentally and psychologically.

2.3. Further, the accident occurred due to rash or negligent and high speed driving of the auto bearing No.KA-09/D-2141 belonging to respondent by its driver, in that regard the K.R. Traffic Police have registered a case in Crime No.213/2023 against the driver of the auto. Further the respondent being the owner of the said auto is solely 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 appeared before his counsel and filed detailed objections to the main petition.

4. *The gist of the objection raised by respondent 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 compensation and interest claimed are high and exorbitant. Further the respondent did not cause any accident, yet the petitioners have filed the petition against the respondent by lodging false FIS. Further the respondent is nowhere concerned to the accident and yet the jurisdictional police on the basis of false FIS lodged by the complainant have registered false case against the respondent, as such the petitioners are not entitled for compensation. On these amongst other grounds, it is prayed that the petition as against respondent 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. Mallu S/o. Late Kempanna died in the Road Traffic Accident which occurred on 25.10.2023 at around 2.30 p.m., in between Akkamahadevi road – Ring road junction, J.P. Nagar, Mysuru, when the deceased was proceeding as a pedestrian on the left side of the road, due to rash or negligent driving of the auto bearing No.KA-09/D-2141 by its driver?*
2. *Whether the petitioners are entitled for the*

compensation? If so, from whom; and what is the quantum ?

3. What order or award ?

6. Now to discharge the burden cast on them, the petitioners examined petitioner No.2 as PW.1 and got exhibited Ex.P1 to Ex.P14 documents and closed their side. Further, the respondent examined himself as RW.1 through whom Ex.R1 and R2 documents got exhibited and closed his side.

7. The learned counsel for the petitioners have submitted his written arguments whereas the learned counsel for the respondent has submitted his oral arguments.

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

for the following reasons

REASONS

9. Issue No.1:

At the very outset it is necessary to set out the facts leading to the present case, according to the petitioners, as can be seen from the

petition averments, on 02.05.2024 at around 2.30 p.m., between Akka Mahadevi road and Ring road junction, J.P. Nagar, Mysuru, when the deceased was proceeding by walk on the left side of the road, the driver of the auto bearing No.KA-09/D-2141 belonging to respondent drove the same at a high speed in a rash or negligent manner and dashed against the deceased who was proceeding by walk resulting in the deceased sustaining injuries on the back portion of his head, right cheek and on both hands apart from other injuries all over the body; though the driver of the offending auto belonging to respondent took the injured Sri. Mallu in the same auto and admitted him to the K.R. Hospital, Mysuru but the said Sri. Mallu succumbed to the injuries while undergoing treatment at the hospital. The petitioners being the wife and children of the deceased 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.2 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 auto bearing No.KA-09/D-2141. PW.1 has further deposed regarding injuries sustained by his father Sri. Mallu and has also categorically deposed that Sri. Mallu died due to injuries sustained in the accident; and he has also deposed regarding the occupation and income of the deceased.

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 alongwith annexed documents at Ex.P1 to P7 which make it unambiguously clear that the after thorough investigation, the Krishnaraja Traffic P.S. had concluded that the accident occurred due to the reckless and negligent driving of the offending auto bearing No.KA-09/D-2141 by its driver by name Sri. Kiran Kumar N, and hence the driver of the auto was charge-sheeted for the offenses under section 279 and 304A of IPC and section 134(b) read with 187, section 196 read with section 146 of M.V. 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. Mallu occurred due to sole actionable negligence on the part of driver of the offending auto. Furthermore, the PW.1 has categorically stated on oath that the accident occurred due to sole actionable negligence on the part of the driver of the auto and nothing could be elicited from the mouth of the said witness which could move this court to hold anything in contrary.

12. The main contention of the respondent is that the deceased was jaywalking under the influence of alcohol, as such, the deceased himself was responsible for the accident. Per contra, the learned counsel for the petitioners vehemently argued that perusal of Ex.P5 rough sketch reveals that the deceased had already reached the middle of the road when the accident occurred and the spot is close to place where the police had kept barricades and there was a junction which shows that the deceased though was under the influence of alcohol had crossed the

road vigilantly and the fact that he had already reached the middle of the road goes to show that the negligence was entirely on the part of the driver of the auto and there was no negligence on the part of the deceased and deceased did not contribute to the accident.

13. As regards the contention of the respondent that the deceased was under the influence of alcohol at the time of accident, the Ex.P6 PME report is clear on the said point as it is specifically mentioned that the quantity of alcohol in the blood of the deceased was 58.85 mg/dl. So there remains no doubt that indeed the deceased was under the influence of alcohol at the time of accident. But the question is whether merely because the deceased was under the influence of alcohol, contributory negligence can be attributed to him.

14. On this point, the learned counsel for the petitioners vehemently argued that what is prohibited under law is driving or riding of vehicle under the influence of alcohol, but there is no bar against a person who is under the influence of alcohol from proceeding as a pedestrian. In this regard, though there need not be any deliberation to hold that a pedestrian who is under the influence of alcohol is not prohibited from proceeding in public place provided that he is following the basic traffic rules like proceeding on the footpath, using the zebra crossing and waiting for the signal turn red while crossing the road near the traffic signals. With these points in mind, when the evidence adduced before the tribunal is analyzed, it is clear that the deceased had almost reached the other side of the road when the car dashed against him which shows

negligence on the part of the driver of the auto.

15. But when the records are perused more particularly the Ex.P5 rough sketch, it is clear that the deceased was not walking on the edge of the road instead he was almost in the middle portion of the road. This aspect when considered in the light of the fact that the extent of alcohol in the blood of the deceased was around 58.85 mg/100ml which generally impairs balance, coordination, and judgment goes to show that because he was under the influence of alcohol, the deceased instead of walking by the side of the road had walked in the middle of the road so as to reach the divider. These aspects clearly reveal that even the negligence on the part of the deceased had contributed to the accident. At the same time the contribution of the deceased to the accident is minimal considering the fact that the accident occurred in broad day light at around 2.30 p.m., at a junction where the police anticipating such accident had consciously placed barricades so as to ensure that the vehicles passing by reduce the speed. But in the fact of this case, the driver of the auto had just passed the barricades and yet dashed the deceased which goes to show that despite the barricades, the auto driver did not reduce the speed instead was speeding his vehicle. Needless to state, had the auto been driven at moderate speed, considering the fact that the accident occurred on a straight road in broad day light, the driver could have easily sighted the deceased trying to cross the road and could have certainly reduced the speed or avoided the accident.

16. Interestingly, the respondent who examined himself as RW.1 has deposed that the deceased had already fallen down by the time RW.1

reached the spot. On this point, it is relevant to note that according to the petitioners after causing the accident the RW.1 took the deceased to the hospital and narrated a false history and true facts came to light only after the CCTV footage was perused as such the IO filed the charge sheet against the RW.1. Wherefore, on one hand this court has the case set up by the petitioners which is supported by the police records on the other hand, this court has the defence of the respondent which except for self serving statement is not supported by any cogent reliable evidence.

17. 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 was caused by auto bearing No.KA-09/D-2141. Furthermore as regards the cause of death, the PME report of Sri. Mallu exhibited as Ex.P6 makes it clear that, according to the doctor, the death of Sri. Mallu was due to head injury sustained. Further apart from the head injury the deceased had also sustained other injuries which by itself goes to show that the injuries sustained by the deceased were not due to self fall but due to impact upon him being hit by an external force. This by itself falsifies the contention of the RW.1 that by the time he reached the deceased had already fallen down. It is relevant to note that, as already observed, PW.1 was subjected to probing cross-examination by the learned counsel for the respondent, 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 auto, the petitioners, in collusion with the police authorities, have lodged a false case just to claim compensation, the PW.1 has clearly denied the said suggestions.

18. It is necessary to state, even at the cost of repetition that that the Krishnaraja Traffic Police who registered the FIR on the basis of FIS lodged by on duty police constable of Vidyaranyapuram P.S. have charge sheeted the respondent who is the driver cum owner of the auto at the time of accident thereby *prima facie* opining that the said accident occurred due to rash or negligent driving of the auto by its driver. Furthermore, the contents of Ex.P6 coupled with the contents of Ex.P3 charge-sheet and deposition of PW.1 who withstood the test of probing cross-examination make it clear that indeed the auto bearing No.KA-09/D-2141 was involved in the accident. Furthermore, as already observed, 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 auto and also there is nothing in the form of evidence on the basis of which it can be held that the contention of respondent that the accident did not occur due to negligence on the part of the driver of the auto is proved.

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 riding of motorcycle by respondent. In the recent decision rendered by the Hon'ble Apex Court in ***ICICI Lombard General Insurance Co. Ltd., Vs. Rajani Sahu and others*** rendered in SLP (C) No.29302/2019 rendered on 02.01.2025, wherein the Hon'ble Apex Court observed thus:

As regards the reliability of charge sheet and other documents collected by the police during the investigation in motor accident cases, this Court in the case of Mangla Ram v. Oriental Insurance Co. Ltd. and Ors, held in paragraph No.27, thus :

“27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in Dulcina Fernandes [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646, noted that the key of negligence on the

part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal”.

(Emphasis Supplied)

8. *It is true that the Tribunal had looked into the oral and documentary evidence including the FIR, final report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending truck was tried and found guilty for rash and negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal. In the contextual situation it is relevant to refer to a decision of this Court in Mathew Alexander v. Mohammed Shafi & Anr, this Court held thus:*

“12....A holistic view of the evidence has to be taken into

consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in Dulcina Fernandes vs. Joaquim Xavier Cruz, (2013) 10 SCC 646 which has referred to the aforesaid judgment in Bimla Devi."

9. Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible."

The sum and substance of the above observations is in line with decision of the Hon'ble Apex Court 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.*

20. To sum up the discussion in view of the contents of Ex.R2 which is the certified copy of the report of the RFSL submitted to the IO in Crime No.213/2023 of K.R. Traffic P.S. coupled with contents of Ex.P5 rough sketch moves this court to hold that there was contributory negligence on the part of the deceased to an extent of 25% whereas the percentage of contributory negligence on the part of the respondent is determined as 75%. *Wherefore Issue No.I is answered partly in the Affirmative.*

21. **Issue No.II:**

Now that this tribunal has answered the issue No.I in the affirmative and has thereby concluded that the death of Sri. Mallu indeed occurred due to rash and negligent driving on the part of both deceased and respondent, with deceased contributing to an extent of 25 % to the occurrence of the accident and respondent contributing to an extent of 75 % to the occurrence of the accident, the next aspect to be considered is quantum of compensation and as to by whom the same needs to be paid.

22. This brings the discussion to the crucial aspect of this judgment which is the quantum of compensation. It is relevant to note that though

the petitioners claim that prior to the accident the deceased Sri. Mallu was hale and healthy and was into mason and coolie work, from which he was earning ₹.20,000/- per month. 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 Late Sri. Mallu can be notionally considered at the rate of ₹.16,250/- per month.

23. 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 was 01.01.1967 whereas the accident occurred on 25.10.2023, as such, the age of the deceased was 56 years more precisely 56 years, 9 months and 24 day. 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, an addition of 10% of the established income to be added as future prospects while determining the income for the purpose of computing compensation for a person aged between 50 and 60 years. Future prospects of the deceased would be 10 % of the established income hence it is determined as ₹.1,625/- ($16,250 \times 10/100 = 1,625$). Thus the total income of the deceased for the purpose of determining the compensation would be ₹.17,875/- ($16,250 + 1,625 = 17,875$).

LOSS OF DEPENDENCY

24. As already observed, as per the documents available before this

court, the deceased aged 56 years at the time of his death. Further, though the respondent has denied the dependency of the petitioners on the deceased, since the petitioner No.1 is the wife and petitioner No.2 and 3 are the children of the deceased, supported by the fact that the petitioners have proved their relationship with the deceased by producing Ex.P7 to P14 documents, this tribunal finds no hesitation to hold that the petitioners are indeed the dependents of the deceased and it is the contention of the petitioners that the deceased was managing the affairs of the family and there is nothing before this tribunal to disbelieve the same. Hence, the contention of the respondent that the petitioners cannot be considered as dependents of the deceased cannot be accepted.

25. To elaborate, it is the argument of the learned counsel for respondent No.2 company that the petitioner No.2 and 3 herein are major sons, as such they cannot be considered to be the dependents as on the date of death of Sri. Mallu. In this regard, the petitioner No.2 and 3 have specifically contended that they were dependent on the income of the deceased and even otherwise, merely because the petitioners are major sons, the same by itself would not infer that they were not the dependents of the deceased. In fact, the Hon'ble Apex Court in *Seema Rani and others Vs. The Oriental Insurance Co. Ltd., and others* rendered on 11.02.2025 in *Civil Appeal No.2323/2025*, wherein the Hon'ble Apex Court by relying on the decision in *National Insurance Co. Ltd., Vs. Birender and others* rendered on 13.01.2020 in *Civil Appeal No.242-243 of 2020* held thus:

“9. We have heard the learned counsel for the Appellants. We are unable to agree with the view taken by the Tribunal on the dependents of the deceased. This Court in **National Insurance Company Limited v. Birender & Ors**, had expounded that major married and earning sons of the deceased, being legal representatives, have a right to apply for compensation, and the Tribunal must consider the application, irrespective of whether the representatives are fully dependent on the deceased or not....

10. Adverting to the facts at hand, on a perusal of the statement of Shashi Kumar, the son of the deceased (Appellant No.2 herein), annexed as Annexure P6, was working at a petrol pump, while the other son was involved in temporary employment opportunities only. Both of them were residing with the deceased. In such circumstances, it cannot be said that they were self-sufficient or independent of the deceased. Similarly, applying the exposition in *Birender (Supra)*, there is no reason to exclude a married daughter from compensation. Therefore, in view of this, the High Court erred in excluding these dependants.”

In fact in **National Insurance Co. Ltd., Vs. Birender and others** rendered on **13.01.2020** in **Civil Appeal No.242-243 of 2020**, the Hon'ble Apex Court held as under;

In paragraph 15 of the said decision, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the

concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between “right to apply for compensation” and “entitlement to compensation”. The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.

15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/- and Rs.1,50,000/- per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who

met with an accident at the young age of 48 years.

(Emphasis supplied by me)

Even in the facts of this case, though the petitioner No.2 and 3 are majors, but the petitioner No.2 is working for finance company and has studied only upto PUC which shows the nature of the work he might have been assigned with and petitioner No.3 is working as a delivery agent with Flipkart. Hence this tribunal is of the firm opinion that as held by the Hon'ble Apex Court in the decisions cited supra, the petitioner No.2 and 3 must be considered as dependents of the deceased. Further regarding the relationship of the petitioners with deceased, the petitioners have produced Ex.P7 to P14 which are the aadhar cards and PAN card of the petitioners and deceased which reveals that the said Sri. Mallu was the husband of petitioner No.1 and father of petitioners No.2 and 3. Hence the petitioners being the wife and sons of the deceased are held to be his dependents.

26. 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 ₹.5,958/- per month and when the said sum is deducted from the monthly income of the deceased, the balance amount is ₹.11,917/- (17,875 – 5,958 =

11,917). This tribunal has already held that the petitioners are the dependents deceased Sri. Mallu. Further this Court has already held that the age of the deceased Sri. Mallu at the time of his death was 56 years and if the age of the deceased as on the date of accident is between 56 and 60 years, as per table provided in *Sarla Varma Vs. Delhi Transport Corporation and another* (2009 ACJ SC 1298), the multiplier applicable would be 9. Hence, loss of dependency can be determined as ₹.12,87,036/- ($11,917 \times 9 \times 12 = 12,87,036$)

LOSS OF FILIAL CONSORTIUM

27. The petitioner No.1 being wife of the deceased Sri. Mallu have lost the love, care and affection of her husband and hence she is entitled for compensation under the head of loss of love and affection as per Judgment in *National Insurance Company Limited v. Pranay Sethi* (2017) 16 SCC 680. Hence, the petitioners are entitled for ₹.5,000/- for loss of filial consortium.

LOSS OF LOVE AND AFFECTION

28. The petitioners 2 and 3 being children of the deceased Sri. Mallu have lost the love and affection of their father and son respectively and hence they are entitled for compensation under the head of loss of love and affection as per Judgment in *National Insurance Company Limited v. Pranay Sethi* (2017) 16 SCC 680. Hence, the petitioners are entitled for ₹.5,000/- each for loss of Love and affection.

FUNERAL EXPENSES

29. 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 and final rites were performed at the hometown of the deceased, hence the petitioners could have spent atleast ₹.5,000/-. *Hence, the petitioners are entitled for a sum of ₹.5,000/- under this head.*

LOSS OF ESTATE

30. 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 **₹.5,000/- towards loss of estate.**

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

Loss of dependency	-	₹.	12,87,036
Loss of filial consortium	-	₹.	5,000
Loss of love and affection	-	₹.	10,000
Transportation of dead body and final rites and cremation	-	₹.	5,000
Loss of estate	-	₹.	5,000
Total	-	₹.	13,12,036

In total, the petitioners are held entitled for **₹.13,12,036/-.**

32. The petitioners have claimed the interest at the rate of 18% 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 ₹.13,12,036/- with interest at the rate of 6% p.a. from the date of petition till the realization. *Hence the issue No.III is held in the affirmative and it is held that the petitioners are entitled for compensation of ₹.13,12,036/- alongwith interest at the rate of 6% per annum from the date of petition till the realization.*

LIABILITY:

33. 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 petitioner?*. In this regard it is relevant to note that the IO has clearly stated in the charge sheet that the auto was uninsured at the time of accident. It is relevant to note that the respondent has examined himself as RW.1 and in his evidence, as well as objections, he has admitted in clear unequivocal terms that the offending auto was registered in the name of respondent at the time of accident. It is relevant to note that this Court has already held that contributory negligence of the deceased is

25% and contributory negligence on the part of respondent who is the driver of the auto is 75%. Hence the petitioners are entitled for 75% out of total compensation amount of ₹.9,84,042/- i.e., 75% of ₹.13,12,056/-. Wherefore, the respondent must be held personally liable to pay 75% of the total compensation amount of ₹.9,84,042/- i.e., 75% of ₹.13,12,056/- to the petitioners.

34. Before parting with the case it is necessary to apportion the compensation amongst the petitioners. Since the petitioners are the wife and 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. *Hence it is held that the petitioner is entitled for total compensation of ₹.9,84,042/- (i.e., 75% of ₹.13,12,056/-) alongwith interest at the rate of 6 % per annum from the date of petition, till the realization and the respondent is held solely liable to pay the said sum of ₹.9,84,042/- (i.e., 75% of ₹.13,12,056/-) to the petitioners alongwith interest at awarded rate; and the 50% of the award amount is apportioned towards the share of petitioner No.1 whereas 25% each in the compensation amount is apportioned to the share of the petitioner No.2 and 3; and the respondent is held solely liable to pay the compensation to the petitioners.*

35. **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 and II,

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 ₹.9,84,042/- (Rupees Nine Lakhs Eighty Four Thousand and Forty Two only) i.e., 75% of ₹.13,12,056/- along 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 is solely liable to pay compensation to the petitioners within one month from the date of this judgment.

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

Since the compensation amount awarded in favour of petitioners are meagre, the requirement of keeping a portion of

compensation in FD is dispensed with and upon deposit the entire compensation amount along with interest shall be released in favour of the petitioners.

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 10th day of August, 2026)

(AFTHAB.K)

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

ANNEXURE:

Witnesses examined for the petitioner:		
PW.1	-	Sri. Madhu M

Documents marked for the petitioner :		
Ex.P1	-	FIR
Ex.P2	-	Complaint
Ex.P3	-	Charge-sheet along with seizure panchanama, inquest and other documents
Ex.P4	-	Spot Mahazar
Ex.P5	-	Rough sketch
Ex.P6	-	IMV Report
Ex.P7	-	PME report

Ex.P8	-	Copy of aadhar card of petitioner No.1
Ex.P9	-	Copy of aadhar card of petitioner No.3
Ex.P10	-	Copy of aadhar card of petitioner No.2
Ex.P11	-	Copy of aadhar card of deceased
Ex.P12	-	Copy of PAN card of petitioner No.1
Ex.P13	-	Copy of PAN card of petitioner No.3
Ex.P14	-	Copy of PAN card of petitioner No.2

Witnesses examined for the respondents:
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RW.1	-	Sri. Kiran Kumar N.
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Documents marked for the respondents:
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Ex.R1	-	Copy of DL
Ex.R2	-	Copy report of the RFSL

(AFTHAB.K)

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