

KAMS080017422023



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

Presided Over by SRI AFTHAB.K

Dated on this the 2nd day of April, 2026

M.V.C./1003/2023 C/W M.V.C./1004/2023

Petitioner in MVC.1003/2023:

Sri. Basavaraju S/o. Chaluvaiah,
Age: 39 years, R/at S. Kallahalli village,
Madduru post, Jayapura hobli,
Mysuru taluk-571125.

Petitioner in MVC.1004/2023:

Sri. Narayana S/o. Late Narayana,
Age: 46 years, R/at Singamaranahalli
village & post, Bilikere hobli, Hunsur taluk,
Mysuru district-571189.

(By – Sri. K.S. Rajagopal, Advocate)

Vs.

Respondents in both petitions:

1. Sri. Suresha S/o. Late Nagendrappa M,
Age: 46 years, R/at 250/3, Hebbal 1st stage,
Opp. SBI main road, near Market, Metagalli,
Mysuru-570016.
(Driver n owner of the car bearing No.KA-04/MM-8727)

2. HDFC ERGO General Insurance Co. Ltd.,
City Trade Center, B.N. road, opp. Suburban
bus stand, Mysuru – 570001.
Policy No.2302 2048 5437 4600 001 valid from
26.08.2022 to 25.08.2023
(Insurer of the car bearing No.KA-04/MM-8727)

(R1 – Sri. Ravikumar K.S., Advocate)

(R2 – Smt. K.L. Sugandhi, Advocate)

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**COMMON JUDGMENT IN M.V.C. No. 1003/2023 AND M.V.C.
No.1004/2023**

The petitioner in MVC No.1003/2023 has filed the petition under section 166 of Motor Vehicles Act, seeking compensation of ₹.42,80,000/- along with interest at the rate of 12% per annum and the petitioner in MVC No.1004/2023 has filed the petition under section 166 of Motor Vehicles Act, seeking compensation of ₹.4,50,000/- along with interest at the rate of 12% per annum from the date of petition till the date of realization of amount; for the injuries sustained by them in a road traffic accident which occurred on 18.12.2022.

2. The brief facts of the case of the petitioners in M.V.C No.1003/2023 and M.V.C No.1004/2023 are as under:

On 18.12.2022 around 4.15 p.m., on Mysuru – Manandavadi main road, near Karigala village, when the petitioners in MVC.1003/2023 and MVC.1004/2023 were proceeding on a motorcycle from Kallahalli side towards Handpost side of H.D. Kote taluk, the driver of the Renault car bearing No.KA-04/MM-8727 which was proceeding ahead of the motorcycle in which the petitioners were proceeding drove the same recklessly and in a zig-zag manner and all of a sudden and abruptly

applied brakes and stopped the vehicle without giving any indicator or signal and without following traffic rules and regulations on a highway. Further due to sudden application of brakes, the motorcycle in which the petitioners were proceeding dashed the car from rear side thereby resulting in the accident. Further in the said accident, the petitioner in MVC.1003/2023 who was proceeding as a pillion rider and petitioner in MVC.1004/2023 who was the rider sustained grievous injuries.

2.1. Further immediately after the accident, the petitioners were taken to K.R. Hospital, Mysuru where it was diagnosed that the petitioner in MVC.1003/2023 had sustained lacerated wound over the posterior aspect of right leg with absent pulsation at right DPA, ATA, PTA. Further as the injuries sustained by the petitioner in MVC.1003/2023 on right leg were in the nature of crush injuries, the doctors amputated the right leg of the petitioner in MVC.1003/2023 above knee joint and thereafter the petitioner in MVC.1003/2023 was discharged 04.01.2023 with advise to take follow up treatment on ODP basis.

2.2. Further in the said accident, the petitioner in MVC.1004/2023 sustained injuries in the nature of laceration on nose, laceration on left lateral wall of nose extending left maxillary region, abrasions on clavicular region and right shoulder. Further CT scan revealed that the petitioner in MVC.1004/2023 had sustained comminuted displaced fracture of left both nasal bones and frontal processes of maxilla, fracture of medial wall of the shape, fracture of left cribriform plate, fracture of roof of right frontal sinus. Further for the injuries sustained by the petitioner in MVC.1004/2023, he underwent treatment as an inpatient and was discharged from the hospital.

However the petitioners are taking treatment on OPD basis as per the advise of the doctors.

2.3. Further due to injuries sustained in the accident by petitioner in MVC.1003/2023, he has become permanently partially physically disabled as he cannot walk, stand or sit like a normal person. Further he needs assistance of others or clutches to walk. Further he is experiencing severe pain on his right leg and he is unable to do basic day to day activities without the assistance of others, as such his future has completely collapsed. Further even the petitioner in MVC.1004/2023 has become permanently partially disabled due to injuries sustained in the accident. Further the petitioner in MVC.1004/2023 is experiencing severe pain in head and face region. Further the movement of his face in downward direction is painful, he cannot chew or eat hard items. Further the petitioner in MVC.1003/2023 is finding it difficult to breathe.

2.4. Further prior to the accident, the petitioner in MVC.1003/2023 was working as a mason and was earning ₹.900/- per day and he was also taking masonry contract work and he has been registered with labour department and out of his income, he was maintaining his family. Further the petitioner in MVC.1004/2023 was doing coolie work and was earning ₹.700/- per day and was maintaining his family. Further now due to injuries sustained by them in the accident, both the petitioners are finding it difficult to do the work which they were doing prior to the accident and their earning capacity is lost. Further due to amputation of leg, the petitioner in MVC.1003/2023 has lost his future prospects. Further the earning capacity of the petitioners has reduced drastically. Further the

petitioners have incurred huge expenses towards medication and other incidental expenses. Further the petitioner in MVC.1003/2023 would have to undergo treatment in future as well for which he would incur medical expenses and this apart he would also incur expenses for prosthetic limb for which he would incur expenses. Further the petitioner in MVC.1004/2023 would have to undergo treatment in future for which he would incur expenses in future as well.

2.5. Further the accident occurred due to rash or negligent driving of the car bearing No.KA-04/MM-8727 by its driver i.e., respondent No.1, as such he being the owner and insured of the said car and respondent No.2 being the insurer are jointly and severally liable to pay compensation to the petitioners. On these amongst other ground, it is prayed that petitions be allowed as prayed for.

3. In response to the notice issued by this tribunal, the respondents appeared through their counsels and filed their detailed, yet separate objections to main petition.

4. *The gist of the objections of respondent No.1 in both MVC No. 1003/2023 and MVC.1004/2023 is as under:*

The petitions are neither maintainable under law nor facts and hence are liable to be dismissed *in limine*. Further, the petition averments are all denied *in toto*, more particularly the averments regarding age, income and occupation of the petitioners and also nature of injuries sustained by both the petitioners in the accident. Further the accident occurred due to sole actionable negligence on the part of the rider of the motorcycle.

4.1. Further the rider of the motorcycle did not possess a valid and effective DL to ride the two wheeler and was not experienced in riding a two wheeler. Further the petitioners were not wearing headgear at the time of accident and they were not following traffic rules. Further mere registration of FIR is not a conclusive proof that the accident occurred due to negligence on the part of the respondent No.1. Further the respondent No.1 possessed a valid and effective DL and the car was duly insured with respondent No.2. Further the compensation and interest claimed are high and exorbitant. On these amongst other grounds, it is prayed that the petitions as against respondent No.1 be dismissed.

5. *The gist of the objections of respondent No.2 in both MVC No. 1003/2023 and MVC.1004/2023 is as under:*

The petitions are neither maintainable under law nor facts and hence are liable to be dismissed *in limine*. Further, the petition averments are all denied *in toto*, more particularly the averments regarding age, income and occupation of the petitioner in both the petitions. Further in the event of it being proved that the car bearing No.KA-04/MM-8727 was insured with the respondent No.2 company at the time of accident, it may be considered policy was issued subject to terms and conditions. Further the driver of the car did not possess a valid and effective DL to drive the car and yet the insured allowed an unauthorized person to drive the car as such the respondent No.1 has violated the policy terms and conditions and also provisions of M.V. Act, for this reason also the petition as against respondent No.2 is liable to be dismissed.

5.1. Further the accident did not occur due to negligence on the part of the driver of the car bearing No.KA-04/MM-8727 instead it occurred due to negligence on the part of the rider of the motorcycle on which the petitioners were proceeding as the motorcycle hit from behind. Further the rider of the motorcycle did not maintain safe distance and even the pillion rider was not sitting properly without holding firmly. Further the petition is bad for non joinder of necessary parties as the owner and insurer of the motorcycle are not made 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 petitions as against respondent No.2 be dismissed.

6. After carefully going through the pleadings on either side; and also the documents produced in M.V.C.No.1003/2023, the following issues came to be framed:-

1. *Whether the petitioner proves that he sustained injuries in a road traffic accident that occurred on 18.12.2022 at about 4.15 p.m., when he was proceeding in motorcycle as a pillion rider on Mysuru – Manandvadi main road near Karigala village, due to rash and negligent driving of driver of Renault car bearing reg No.No.KA-04-MM-8727?*
2. *Whether the petitioner is entitled for compensation, if so, how much and from whom ?*
3. *What order or award ?*

7. Similarly, after carefully going through the pleadings on either side; and also the documents produced in M.V.C.No.1004/2023, the following issues came to be framed:-

1. *Whether the petitioner proves that he sustained injuries in a road traffic accident that occurred on 18.12.2022 at about 4.15 p.m., when he was proceeding in motorcycle on Mysuru – Manandvadi main road near Karigala village, due to rash and negligent driving of driver of Renault car bearing reg No.No.KA-04-MM-8727?*
2. *Whether the petitioner is entitled for compensation, if so, how much and from whom ?*
3. *What order or award ?*

8. In order to discharge the burden cast on them, the petitioner in MVC.1003/2023 and petitioner in MVC.1004/2023 got examined themselves as PW.1 and PW.2 respectively through whom Ex.P1 to P24 documents got marked and they also examined Dr. Vijay Kumar N. as PW.3 through whom Ex.P25 and P26 documents got exhibited and closed their side. Further, the respondent No.2 company examined its Branch Manager as RW.1 through whom Ex.R1 document got marked and closed it side.

9. Heard arguments of learned counsel for the petitioners and respondents.

10. The MVC.1003/2023 and MVC.1004/2023 were clubbed vide order dated 27.03.2024.

11. After giving its anxious consideration to arguments canvassed and after meticulously going through the oral and documentary evidence adduced by the petitioners in M.V.C.No.1003/2023 and M.V.C.No.1004/2023, the aforesaid issues are answered as under;

(a) Issue No.(i) in MVC No.1003/2023 & MVC.1004/2023 : In the affirmative

*(b) Issue No.(ii) in MVC No. 1003/2023 & MVC.1004/2023 : Partly affirmative
and regarding the amount of
compensation and from
whom the same needs to be
recovered, the same is
detailed in final order*

*(c) Issue No.(iii) in MVC No. 1003/2023 & MVC.1004/2023 : As per the final order
for the following:*

REASONS

12. ISSUE No.1 in M.V.C. No.1003/2023 and MVC.1004/2023:

At the very outset it is necessary to set out the facts leading to the present case, according to the petitioners, on 18.12.2022 around 4.15 p.m., on Mysuru – Manandavadi main road, near Karigala village, when the petitioners in MVC.1003/2023 and MVC.1004/2023 were proceeding on a motorcycle from Kallahalli side towards Handpost side of H.D. Kote taluk, with the petitioner in MVC.1003/2023 being the pillion rider and petitioner in MVC.1004/2023 being the rider, the driver of the Renault car bearing No.KA-04/MM-8727 which was proceeding ahead of the motorcycle in which the petitioners were proceeding drove the same recklessly and in a zig-zag manner and all of a sudden and abruptly

applied brakes and stopped the vehicle without giving any indicator or signal and without following traffic rules and regulations on a highway due to which the motorcycle in which the petitioners were proceeding dashed the car from rear side thereby resulting in the petitioners sustaining grievous injuries; and immediately after the accident, the petitioners were taken to K.R. Hospital, Mysuru where it was diagnosed that the petitioner in MVC.1003/2023 had sustained crush injuries which resulted in amputation of his right leg above knee joint and the petitioner in MVC.1004/2023 sustained injuries in the nature of comminuted displaced fracture of left both nasal bones and frontal processes of maxilla, fracture of medial wall of the shape, fracture of left cribriform plate, fracture of roof of right frontal sinus for which the petitioner in MVC.1004/2023 underwent treatment as an inpatient and even after being discharged from the hospital, the petitioners are taking follow up treatment on OPD basis.

13. In order to discharge the burden cast on them, the petitioners in MVC.1003/2023 and MVC.1004/2023 got themselves examined as PW.1 and 2 and they have clearly deposed regarding negligent driving of the Renault car bearing No.KA-04/MM-8727 by its driver which led to the accident resulting in the petitioners sustaining the injuries. To substantiate these aspects, the petitioners have relied on the Ex.P1 and P2 which are the true copies of the F.I.R in Crime No.402/2022 of H.D. Kote Police station and FIS lodged by one Sri. Mahadevaiah, who is the father in law of the petitioner in MVC.1003/2023. Further, the petitioners have produced charge sheet documents which are marked as Ex.P1 to P7 and P22 with Ex.P7 being the charge sheet. Further the petitioners in order to show that

the petitioners sustained injuries in the said accident have also produced the wound certificates and other medical records. All these police documents make it amply clear that the said accident occurred due to rash or negligent driving of the Renault car bearing No.KA-04/MM-8727 which was being driven by respondent No.1 resulting in petitioners sustaining injuries.

14. It is necessary to state, even at the cost of repetition that the H.D. Kote Police who registered the FIR on the basis of FIS lodged by Sri. Mahadevaiah have charge sheeted the driver of the Renault car bearing No.KA-04/MM-8727, thereby *prima facie* opining that the said accident occurred due to rash or negligent driving of the Renault car bearing No.KA-04/MM-8727 by its driver i.e., respondent No.1. On the other hand the respondent No.2 company has come up with two fold defence:

Firstly, that the accident occurred solely due to negligence on the part of rider of the motorcycle as he did not maintain safe distance.

Secondly, there is violation of policy conditions as the driver of the car did not possess a valid and effective DL at the time of accident.

15. As regards the first contention the case of the respondent No.2 company is that the rider of the motorcycle did not maintain safe distance and went on to dash his motorcycle against the car from rear side and the fact that the rider of the motorcycle was negligent was well within the knowledge of the petitioners as such they did not lodge the FIS immediately. As regards the delay in lodging the FIS, it is evident that even as per the facts asserted by the petitioners, the accident

occurred on 18.12.2022, whereas the FIS was lodged on 20.12.2022 as such there is an inordinate delay of 2 days in lodging the FIS and the same was only because the petitioners were aware that the entire negligence was on the part of the rider of the motorcycle. However, what is relevant to note is that in the very FIS the reason behind the delay in lodging the FIS is clearly averred as it is stated that because the petitioners were undergoing treatment and had to be admitted to multiple hospitals, the FIS could not be lodged immediately. Even otherwise, what cannot be lost sight of is it was not the petitioners who have lodged the FIS, instead the FIS was lodged by Sri. Mahadevaiah, who is the father-in-law of the PW.1. Perhaps the Hon'ble Supreme Court in the case of **Ravi v. Badrinarayan and others** reported in **AIR 2011 SC 1226**, wherein 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 though there is delay of 2 days, the same is not fatal especially in the context of this case as it is more than obvious that when the family member is injured and had to be admitted to different hospitals for treatment, the focus of other family members would be on the health and safety of the injured.

16. As already observed, it is not the petitioners who lodged the FIS and the nature of injuries sustained by the petitioners was such that it required him to undergo treatment as an inpatient which makes it obvious that the family members of the petitioner were focusing on treatment of the petitioners which makes the reason assigned in the FIS plausible. Perhaps, what cannot be lost sight of is despite there being a delay of 2 days in lodging the FIS, there is no change in history, as in all the documents it is specifically mentioned that the accident involved car and a motorcycle. Under such circumstances, this tribunal is not inclined to accept the argument of the learned counsel for respondent No.2 company that the delay in lodging FIS was due to the fact that the petitioners were aware that the negligence was on the part of the rider of the motorcycle resulted in the accident.

17. Now coming to the next aspect of the matter which is regarding the question whether the petitioners have proved issue No.I. It is necessary to note that, as already observed, the fact that car bearing No.KA-04/MM-8727 was involved in the accident is not in dispute instead, the bone of contention is that there was no negligence on the part of the driver of the car. To elaborate, the argument of the learned counsel for the respondent No.2 company is that admittedly the motorcycle hit the car from rear side which infers that the rider of the motorcycle by not maintaining safe distance was responsible for the accident. The learned counsel for respondent No.2 company has relied on following decisions in support of its contention:

- a) *New India Assurance Co. Ltd., Vs. Durgappa and others* reported in 2017 ACJ 2600
- b) *H.S. Girijaand and others Vs. K. Shanthi and others* reported in 2024 (1) AKR 253
- c) *Supriya Maiti and others Vs. National Insurance Co. Ltd., and others* reported in 2024 ACJ 1958

Per contra, the learned counsel for the petitioners vehemently argued that because the driver of the car negligently overtook the motorcycle and applied sudden brake, the rider of the motorcycle did not have any time to reduce the speed or to avoid collision as such no negligence can be attributed to the rider of the motorcycle. In support of the said argument the learned counsel for the petitioner has cited following decisions:

- a) *Poonam and others Vs. Ramesh Kumar and others*

reported in 2021 ACJ 745 (P & H.)

b) *Nagaraju M.R. Vs. Reliance General Insurance Co. Ltd.*, rendered in MFA No.5712/2015 *cw* MFA No.5971/2015 (MV-D) rendered on 11.01.2021

c) *Sushila Bai and others Vs. Kunwar Singh and others* reported in 2006 ACJ 1432 (M.P.) (D.B.)

d) *Abdul Kareem and others Vs. New India Assurance Co. Ltd.*, reported in MACA No.970/2016

(e) *Chandra Mogera Vs. Sathish A Ganachari and another* rendered in Civil Appeal No.2183/2025

(f) *Sudhir Kumar Rana Vs. Surinder Singh and others* reported in 2008 ACJ 1834 (S.C.)

(g) *Dinesh Kumar J. Vs. National Insurance Co. Ltd.*, reported in 2018 ACJ 535 (S.C.)

Before looking for *ratio decidendi* or *obiter dicta* in the decisions, it is relevant to note that amongst the decisions cited by the petitioners, the decision in *Poonam* is rendered by Hon'ble High Court of Punjab and Haryana, *Nagaraju* is rendered by Hon'ble High Court of Karnataka, *Sushila Bai* is rendered by Hon'ble High Court of Madhya Pradesh, *Abdul Kareem* is rendered by Hon'ble High Court of Kerala whereas amongst the decisions cited by learned counsel for respondent No.2 company, *Supriya Maiti* is rendered by Hon'ble High Court of Calcutta, *H.S. Girija*, *Durgappa* and *Shailaja* are rendered by Hon'ble High

Court of Karnataka. Needless to state, it is the settled position of law that the decisions rendered by Hon'ble High Court of Karnataka is binding precedent on this tribunal whereas the decisions rendered by Hon'ble High Courts of other states only have persuasive value and only when there are no decisions of the Hon'ble High Court of Karnataka on a particular point this tribunal can rely on the decisions rendered by Hon'ble High Court of other states subject to other prerequisites of law of precedents.

18. Even when it comes to the decisions rendered by the Hon'ble High Court of Karnataka, the decisions of Division bench of Hon'ble High Court of Karnataka prevail over the decisions rendered by Single bench of Hon'ble High Court of Karnataka and even amongst the decisions rendered by division bench of Hon'ble High Court of Karnataka, the most recent decision of the Hon'ble High Court of Karnataka on the said point becomes binding precedent. It would also be apt to note that the thumb rule of precedents is that the factual set up of each case should be considered while applying a particular decision as slightest of differences in the factual set up would change the line of discussion and also the outcome of the case. Needless to state, the facts of no two cases are similar and each case has its peculiarities, as such the first and foremost thing that this tribunal is expected to do is to ascertain whether the party is citing the decisions with emphasis on *ratio decidendi* or *obiter dicta*; and if the party seeks to rely on *ratio decidendi* then invariably the facts of the case in which a particular decision was rendered has to be looked into by the court seeking to apply a particular decision, moreso

in MVC cases where this exercise is of utmost importance as the nuances in facts would assist this court in holding whether the decision is applicable to the facts at hand or not.

19. With these basic principles pertaining to law of precedents in mind, when the decisions are scanned through it is clear that though in all the cases cited supra, the vehicle of the victim had hit the offending vehicle from rear side and in cases cited by the learned counsel for the petitioners, the Hon'ble High Courts have held that no contributory negligence can be attributed to the victim or the rider/driver of the vehicle in which the victim was proceeding if the accident occurred due to sudden application of brake by the driver/rider of the vehicle proceeding ahead, whereas in the decisions cited by the respondent No.2 company, the Hon'ble High Courts have attributed contributory negligence to the victim or the rider or driver of the vehicle in which the victim was proceeding on the ground that safe distance should have been maintained.

20. In fact the Division Bench of the Hon'ble High Court of Karnataka in *Nagaraju's case* cited supra refused to attribute contributory negligence on the driver of the car in which the deceased was proceeding, whereas in *H.S. Girija, Durgappa* and *Shailaja* also rendered by Division Benches of the Hon'ble High Court of Karnataka, contributory negligence was attributed though the claimants therein were found to be proceeding in the vehicle which hit the offending vehicle from rear side. Furthermore, the decision in *H.S. Girija* is the most recent one as the decision in *Durgappa* was rendered in the year

2016, the decision in *Shailaja* was rendered in the year 2015, whereas the decision in *Nagaraju* was rendered in the year 2021. As such it is the view taken by the Hon'ble High Court of Karnataka in the most recent decision i.e., in *H.S. Girija* rendered in the year 2023 would be the binding precedent provided that the factual set up are similar to the facts of the present case.

21. But as already observed in the facts of this case, there is a minute difference in the factual set up of the present case when compared with the facts of the case in *H.S. Girija*. To be precise, in the facts of the present case, the driver of the car had overtaken the motorcycle in which the petitioners were proceeding and thereafter had applied sudden brake, whereas in the facts of the case in *H.S. Girija* there is no such fact forthcoming that just before the accident the driver of the offending lorry had overtaken the vehicle of the victims. The reason why this tribunal considers this subtle difference as a major point to hold that the factual set up of the decision in *H.S. Girija* can be differentiated from the facts of the present case is as rightly argued by learned counsel for petitioners unlike in the facts of the case before the Hon'ble High Court of Karnataka in *H.S. Girija* where it appears that the driver of the tempo traveller had dashed his vehicle against the trailer lorry from behind, which infers that even prior to the accident the tempo traveller was proceeding behind the trailer lorry, so it was expected of the tempo traveller to maintain safe distance. However in the facts of this case, as rightly pointed out by the learned counsel for petitioners and as forthcoming from the column No.17 of Ex.P7, the driver of the car

overtook the motorcycle on which the petitioners were proceeding and applied sudden brake; and it is for this reason that the IO cited only the driver of the car as the accused. Hence with due respect to decision cited by learned counsel for respondent No.2 in *H.S.Girija*, the same cannot be made applicable to the facts of this case.

22. Perhaps of all the decisions cited by either side, the only decision which stands on the same as that of the case on hand is the decision of the Hon'ble High Court of Madhya Pradesh in *Sushila Bai* wherein in a similar set of facts the Hon'ble High Court refused to attribute contributory negligence on the deceased. The relevant excerpt from the decision is reproduced hereunder for better appreciation:

7.It is further proved by the deposition of Kaushal Kumar Dwivedi, CW 2, the eyewitness of incident, he stated that his car was behind the deceased and on overtaking his car and the scooter by the said dumper, the dumper suddenly stopped in the middle of the road without giving any indication or switching on the brake lights. He also said regarding the high speed of the dumper. According to him, due to this sudden stoppage of the dumper, the deceased was rammed into dumper and died. Thus, according to our considered opinion, the incident took place because of the rash and negligent act of respondent No. 1 in driving the said dumper. Therefore, it is held that respondent Nos. 1 to 3 are liable to indemnify the claim of the appellants."

Even here the PW.1 and 2 who were the victims and eye witnesses have categorically stated that the negligence was entirely on the part of the

driver of the car who, after overtaking their vehicle, suddenly applied brake resulting in the collision. Hence, in view of the fact that the respondent No.2 company has not placed before this tribunal any decision of the Hon'ble High Court of Karnataka wherein the Hon'ble High Court of Karnataka has taken a different view in similar factual setup where the accident occurred after the offending vehicle overtook the vehicle of the victims and applied sudden brake, this tribunal should not have any impediment to rely on decision in *Sushila Bai's* case and hold that no contributory negligence is attributable to the petitioners.

23. To sum up the discussion, as already observed the Ex.P7 chargesheet reveals that according to IO the car which was being driven at a high speed and in a rash or negligent manner overtook the motorcycle of the petitioners and abruptly applied brake, thereby resulting in the accident, this tribunal finds no hesitation in holding that the accident indeed occurred due to sole actionable negligence on the part of the respondent No.1 thereby holding that the contention of the respondent No.2 company regarding contributory negligence on the part of the PW.2 is not proved. To add to this, 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 was contributory negligence on the part of the petitioners.

24. The view taken by this Court that the police records are *prima facie* proof in support of the case of the petitioner, 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 claimant is expected to prove the incident on the 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 by 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 respondent No.2 has not examined the driver of the lorry or any eye witness to prove its contention that there was contributory negligence on the part of the petitioner 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 Renault car bearing No.KA-04/MM-8727 respondent No.1 was charge sheeted.

25. The learned counsel for respondent No.2 company vehemently argued that the charge-sheet averments cannot be considered as gospel truth and merely on the basis of the contents of the charge-sheet it cannot be held that there was no contributory negligence on the part of PW.2; and in support of the said argument learned counsel for the respondent No.2

company has relied on the decision of the Hon'ble High Court of Karnataka in *The Manager, Iffco Tokio General Insurance Co. Ltd. Vs. Ramesh C.V. and another* rendered in MFA No.9736/2018 (MV-I) rendered on 15.12.2022. Though there can be no iota of doubt that the charge-sheet averments cannot be considered as gospel truth but it is equally important to bear in mind that it is for the party which contends that contents of the charge-sheet are not reliable to prove the same by leading cogent evidence. But in the facts of this case, on one hand this court has the Ex.P7 charge-sheet and also the depositions of the victims i.e., PW.1 and 2 who have withstood the probing cross-examination and on the other hand, this tribunal has the deposition of RW.1 who is the Branch Manager of respondent No.2 company who has deposed purely on the basis of what is forthcoming from the police records. Under such circumstances, it is more than obvious that the Ex.P7 which is supported by depositions of PW.1 and 2 who have not given away any admissions will weigh heavier in the scales of justice as against the hear-say evidence of RW.1 who is admittedly not an eye witness, instead she is deposing on the basis of police records. Hence, even this argument of learned counsel for respondent No.2 company has to fail.

26. The learned counsel for respondent No.2 vehemently argued that contributory negligence must be attributed to PW.2 as PW.2 did not possess a DL at the time of accident and the same is clear from the fact that he has clearly admitted that he did not produce his DL before the IO inspite of the fact that the IO had directed him to produce the same. But the question is, even admitting for a moment that the PW.2 did not

possess a DL, whether the said fact can be a ground to attribute contributory negligence on PW.2. On this point, it is necessary to reassert, as already observed, there is absolutely no evidence to hold that even the PW.2 was negligent. Under such circumstances, merely because the PW.2 did not possess a DL cannot be a ground to attribute contributory negligence to the PW.2. The view taken by this tribunal is supported by the following decisions cited by the learned counsel for the petitioners which are rendered by Hon'ble Apex Court :

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**

The essence of the decisions cited above is that unless there any evidence is let in to show negligence on the part of the victim/claimant, 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 & Others Vs. New India Assurance Co. Ltd., & others*** reported in **2019 ACJ 42** 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 tipper lorry 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 tipper lorry 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 tipper lorry) 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 tipper lorry 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 tipper lorry 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 tipper lorry 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.2 has failed to prove that the PW.2 contributed to the accident by being reckless or negligent, merely because the PW.2 did not possess DL, contributory negligence cannot be attributed to the PW.2. 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.2 moreso where I.O., has opined that the negligence was entirely on the part of the driver of the car bearing No.KA-04/MM-8727, this court finds no hesitation in holding that the contention of the learned counsel

for the respondent No.2 regarding contributory negligence on the part of PW.2 holds no water.

27. In view of the ratio laid down in the citations referred to above and applying the same to the case at hand supported by the oral and documentary evidence placed on record by PW.1 and PW.2, this Tribunal is of the considered opinion that the accident leading to the present petitions, indeed occurred due to the actionable negligence of driver of the offending Renault car bearing No.KA-04/MM-8727 resulting in grievous injuries to petitioners in MVC.1003/2023 and MVC No.1004/2023. *Wherefore Issue No.I in MVC.1003/2023 and MVC No.1004/2023 are held in the Affirmative.*

28. Issue No.(II) in M.V.C. No.1003/2023 and M.V.C. No.1004/2023:

Now that this Court has held Issue No.I in MVC No.1003/2023 and MVC No.1004/2023 in the affirmative, the next aspect to be considered is compensation. Hence the next obvious question is what is quantum of compensation to which the petitioners are entitled. Needless to state the quantum of compensation which is awarded has to be proportionate to the nature of the injuries and the compensation has to be awarded by keeping in mind the pecuniary damages and non-pecuniary damages suffered by the injured-claimants. By pecuniary damages this Court is referring to the actual loss sustained by the petitioners, which can be determined in terms of money, by taking into account the oral or documentary evidence whereas by non-pecuniary damages this Court is referring to the losses that the claimant has though suffered, but will not be able to prove for the reason that it can

neither be calculated in terms of the money nor can it be proved leading documentary evidence. Perhaps the non-pecuniary damages can be figured out by looking into the facts of each case by taking into account the nature of injuries and the aftermath. It is required to be reminded to oneself that compensation in a case arising out of injury can never be granted on mathematical precision and invariably a good amount of guesswork is involved while determining the compensation in such cases. Perhaps unlike in a fatal case, in a case involving bodily injury the victim is left to suffer throughout his life; and hence it becomes the bounden duty of the tribunal to award compensation to a victim of permanent disability so as to bring in sustainability and also to ensure that victim is not pushed to poverty.

PETITIONER IN MVC.1003/2023

29. In order to demonstrate the pecuniary loss suffered by him due to the injuries, the PW.1 has led oral and documentary evidence. The PW.1 in his oral evidence has asserted on oath that immediately after the accident, he was admitted to K.R. Hospital, Mysuru where he underwent treatment as an inpatient from 18.12.2022 to 04.01.2023. Further the PW.1 has supported the said contention by producing Ex.P6, P9, P10, P14, P15, P18, P20, P21, P25 and P26 which make it clear that indeed the PW.1 underwent treatment at K.R. Hospital, Mysuru as an inpatient from 18.12.2022 to 04.01.2023. Further he has asserted that he has spent huge amount towards his treatment and has sought to prove the same by producing Ex.P20 which are the medical bills along with prescriptions which are further supported by Ex.P9, P10 and P25 which

are the discharge summary, OP record and case sheet respectively. As regards the nature of injuries and the disability suffered, the PW.1 has produced Ex.P6 which is the wound certificate followed by the oral evidence adduced by PW.3 i.e., the doctor. It is keeping these facts in mind that the compensation has to be determined.

30. While determining the compensation this court has to look into the pain the sufferings, medical expenses, diet food, nourishment, attendant and conveyance charges and loss of amenities and enjoyment of life, which are discussed herein below:

(A) TOWARDS PAIN AND SUFFERINGS:

The PW.1 has relied upon Ex.P6, P9, P10, P14, P15, P18, P20, P21, P25 and P26 which are the wound certificate, discharge summary, OPD record, photographs, CD, case sheet, prescriptions, x-ray films and medical bills which reveal that the injuries sustained by him are in the nature of post traumatic right popliteal artery thrombosis which are grievous in nature which resulted in amputation of the right leg above knee region. According to the PW.1 he has obtained treatment at K.R. Hospital, Mysuru as an inpatient from 18.12.2022 to 04.01.2023 and is under follow-up treatment even to this day. The PW.1 has relied upon wound certificate, prescriptions, discharge summary, photographs along with CD, x-ray films, OPD slips, case sheets and medical bills in order to show that he had sustained injuries and underwent pain and sufferings. As already observed, the PW.1 had sustained grievous injuries which required him to undergo

treatment at K.R. Hospital, Mysuru as an inpatient from 18.12.2022 to 04.01.2023; and even resulted in amputation of right leg below knee. Considering the nature of the injuries mentioned in wound certificate, it can be said that the PW.1 must have undergone some amount of physical pain and sufferings, *for which, an amount of ₹.1,00,000/- can be held to be just and proper compensation under this head.*

(B) TOWARDS MEDICAL EXPENSES:

The PW.1 has contended that he has spent huge amount towards medical expenses and treatment; and has produced medical bills along with prescriptions for having spent money towards medical expenses which are exhibited as Ex.P9 which are supported by Ex.P9, P10 and P25 which are the discharge summary, OP record and case sheet respectively. The sum total of the medical bills is ₹.14,787/- excluding the receipts issued for having paid advance amount. There is no serious dispute regarding the bills got exhibited by the PW.1 as the same are supported by Ex.P9, P10 and P25 which are the discharge summary, OP record and case sheet which make it clear that the PW.1 has incurred the medical expenses towards his treatment. Hence the sum of medical bills is ₹.14,787/- excluding the travel bill which is rounded off to ₹.14,800/-. *Accordingly, the PW.1 is entitled for an amount of ₹.14,800/- towards medical expenses.*

(C) TOWARDS DIET, FOOD, NOURISHMENT, ATTENDANT AND CONVEYANCE CHARGES:

As already observed the Ex.P9, P10 and P25 which are the discharge summary, OP record and case sheet respectively which makes it amply clear that the PW.1 underwent treatment at K.R. Hospital, Mysuru as an inpatient from 18.12.2022 to 04.01.2023. Further during the said period the PW.1 might have taken assistance from others and taken diet food. On consideration of the injuries sustained by the PW.1 and period of stay in the hospital, *this Tribunal is of the opinion that it is just and proper to award an amount of ₹.75,000/- under this head.*

(D) TOWARDS LOSS OF FUTURE EARNING CAPACITY ON ACCOUNT OF PERMANENT DISABILITY:

(i) The PW.1 has alleged that due to injuries sustained in the accident more particularly amputation of the right leg above knee region, he has become permanently disabled and he is not in a position to continue his work as a mason and masonry contractor which has also reduced his earning capacity. In order to establish that he has suffered physical disability, the PW.1 has got examined Dr. Sri. Vijay Kumar N, Consultant Orthopaedic Surgeon at K.R. Hospital, Mysuru as PW.3 who has deposed in his evidence that the PW.1 underwent treatment at K.R. Hospital, Mysuru as an inpatient from 18.12.2022 to 04.01.2023. Further the deposition of PW.3 corroborates the nature of injuries sustained by the PW.1 as forthcoming from the wound certificate, discharge summary, OPD

record and case sheet.

(ii) Further the PW.3 has deposed that he has examined the PW.1 for the purpose of assessing the disability and observed that the PW.1 had discomforts and disabilities detailed in his affidavit filed in lieu of examination in chief and keeping in mind the fact that the petitioner had amputation of right leg above knee region, PW.3 opined that the PW.1 had 89% permanent physical disability on the whole right lower limb.

(iii) The learned counsel for the petitioner in MVC.1003/2023 vehemently argued that considering the fact that even according to PW.3, the PW.1 has 89% permanent physical impairment of the whole of right limb, the same must be considered as 100% functional disability to the PW.1. The learned counsel for the petitioner in MVC.1003/2023 has relied on the decision of the Hon'ble Apex Court in *Chandra Mogera Vs. Santhosh S. Ganachari and another* rendered in *Civil Appeal No.2183/2025* rendered on **11.09.2025**. Per contra, the learned counsel for the respondent No.2 company vehemently argued that if the physical disability has not affected claimant's capacity to work no compensation can be awarded towards loss of earning capacity.

(iv) This tribunal has carefully analyzed and has given its anxious consideration the argument on either side with respect to disability. Though this tribunal is completely in agreement with the argument of the respondent No.2 company that if the physical

disability has not affected claimant's capacity to work no compensation can be awarded towards loss of earning capacity but in the facts of this case, the PW.1 who was a mason has lost his right limb above the knee region and there need not be further deliberation to hold that free movement of all four limbs are crucial to attend to mason work, under such circumstances, where the PW.1 has lost his right lower limb above the knee region, it is more than obvious that the disability has resulted in loss of earning capacity of the PW.1.

(v) In order to prove that he has suffered permanent physical disability apart from having examined PW.3 the PW.1 has also produced Ex.P12 which is the notarized copy of the Unique Disability ID and Ex.P18 which is the Disability Certificate issued by Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India both pertaining to PW.1. Perusal of Ex.P12 and P18 make it amply clear that even according to the concerned Government Department, the PW.1 has 75% loco-motor disability and it is also certified that the same is a permanent disability and accordingly the concerned Government department has issued Ex.P12 which is the unique disability ID. Furthermore, what Ex.P18 reveals is that the said certificate was issued on the basis of the report received from K.R. Hospital which infers that even as per the opinion of the doctors at K.R. Hospital, the PW.1 has 75% loco-motor disability and the same is permanent. Further when the

Ex.12 and P18 clearly reveal that an independent Government Department after following all the procedures has certified that the petitioner has 75% loco-motor disability which is permanent in nature, it is for the respondent No.2 company to adduce evidence to disprove the contents of the certificate. But as already observed, except for having examined its own authorized representative as RW.1, the respondent No.2 company has not let in any other cogent and reliable evidence on the basis of which this tribunal can hold that the Ex.P12 and P18 are incorrect. Perhaps, apart from the fact that there is nothing before this tribunal to disbelieve or brush aside the Ex.P12 and P18 the petitioners have also examined PW.3 who, too, has deposed facts which corroborate the contents of Ex.P12 and P18.

(vi) To sum up the discussion on the point of disability, when the Ex.P12 and P18 are perused vis-a-vis, the depositions of PW.3, this tribunal finds no hesitation in holding that though the PW.3 has opined that the PW.1 has suffered 75% loco-motor disability, considering the fact that PW.1 was mason, this tribunal is of the firm opinion that the PW.1, the functional disability of the PW.1 must be considered as 100%. The view taken by this tribunal is supported by the decision of the Hon'ble Apex Court in *Chandra Mogera* cited supra wherein the Hon'ble Apex Court considering the fact that a driver had lost his lower limb held that though the doctor had assessed disability at 75% the functional disability must be considered at 100%. Applying the said decision to the

facts of this case, because the PW.1 was a mason and he has suffered amputation of the right leg, though the disability is assessed by PW.3 at 89%, the functional disability must be assessed at 100%.

(vii) For the foregoing reasons, this tribunal finds no hesitation in holding that though the PW.3 has opined that the PW.1 has suffered 89% permanent partial physical disability on the right lower limb, considering the avocation of the PW.1, the same must be considered as 100% functional disability.

(viii) As regards the age of the PW.1, the petitioner has produced Ex.P19 which is the study certificate issued by Headmaster, Government Higher Primary School, S. Kallahalli village, Jayapura hobli, Mysuru, which reveals that the date of birth of the petitioner is 10.06.1985, which means as on the date of accident which occurred on 18.12.2022, the petitioner was aged more than 37 years precisely 37 years, 6 months, 8 days. It would not be out of context to note that as per the Ex.P17 which is the notarized copy of the aadhar card of the PW.1 as per which the date of birth of the PW.1 is 01.01.1983 so obvious question is whether it is the date of birth mentioned in the Ex.P19 or EX.P17 which should be considered as correct date of birth and in this regard, the position of law no more *res integra* as the Hon'ble Apex Court in *Saroj and others Vs. Iffco Tokio General Insurance Co. Ltd.*, rendered on 24.10.2024 has put the ambiguity to rest by holding that date of

birth mentioned in school leaving certificate must be preferred over the date of birth mentioned in the aadhar card as details in the aadhar card it is not *per se* proof of date of birth. Hence the age of the PW.1 at the time of accident is determined as 37 years. If the age of the PW.1 as on the date of accident is between 36 years and 40 years, as per table given in *Sarla Varma Vs. Delhi Transport Corporation and another* (2009 ACJ SC 1298), the multiplier would be 15.

(ix) The PW.1 has contended in his petition that, prior to the accident, he was working as a mason and was also undertaking masonry contract work and is also registered under Labour Department and was earning ₹.900/- per day which adds upto ₹.27,000/- per month. Further to substantiate the same he has produced Ex.P11 which is the document issued by Labour Department but on the basis of Ex.P11 the income of the PW.1 cannot be determined. As such it must be held that the PW.1 has not substantiated his contention regarding his income. Hence, this Tribunal is left with no option but to determine the notional income of the petitioner. Perhaps, the court will now have to consider the notional income of the petitioner by considering the year of accident. In this regard it is relevant to note that the Principal Bench of the Hon'ble High Court of Karnataka, at Bengaluru while holding Lok-Adalath is determining the notional income at ₹.15,500/- if the accident had occurred in the year 2022, 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-adalaths at District Courts. Hence, this Tribunal is of the opinion that it is just and proper to fix the notional income of deceased at ₹.15,500/- per month, in the absence of proof of income of the petitioner. Hence the income of petitioner can be notionally considered at the rate of ₹.15,500/- per month. In view of the decision of the Hon'ble Apex Court in *Pappu Deo Yadav Vs. Naresh Kumar and others* reported in *AIR 2020 SC 4424*, the claimant is entitled to addition of future prospects to the tune of 40% as the claimant was aged 37 years of age at the time of accident. The view taken by this tribunal is supported by the following decisions rendered by the Hon'ble Apex Court in

- a) *Chandramani Nanda Vs. Sarat Chandra Swain and another* rendered in *S.L.P.(C) Nos.3050/2023*
- b) *Mohd. Sabeer @ Shabir Hussain Vs. Regional Manager, U.P. State Road Transport Corporation* rendered in *Civil Appeal Nos.9070-9071/2022*

Therefore, the notional income of the petitioner after addition of future prospects comes to ₹.21,700/- per month i.e., ₹.6,200/- (40% of ₹.15,500/-) + 15,500 = ₹.21,700/-.

(x) If the age of the petitioner was between 36 to 40 years as on the date of accident, as per the table given in *Sarla Verma* case, the

relevant multiplier would be 15. The annual income of the petitioner would be ₹.2,60,400/- (21,700 x 12). *Hence, the petitioner is entitled for a sum of ₹.39,06,000/- (2,60,400 x 15 x 100/100) towards loss of future income.*

Since this tribunal has held that the PW.1 had suffered 100% permanent physical disability to the whole body, the question of awarding any compensation under the head of loss of income during laid up period does not arise.

(F) TOWARDS PROCUREMENT AND INSTALLATION OF PROSTHETIC LEG:

The PW.1 has suffered amputation above the right knee and the learned counsel for the PW.1 vehemently argued that the PW.1 would incur expenses towards procurement of prosthetic leg. Further the PW.1 has produced Ex.P13 as per which the PW.1 might incur ₹.3,45,000/- towards modular AK prosthesis with hydraulic joint with SACH foot. Hence this tribunal deems *it is just and proper to award ₹.3,45,000/- under this head.*

31. Thus, the petitioner is entitled for compensation under the following heads:-

Towards pain and sufferings	-	₹.	1,00,000.00
Towards Medical expenses	-	₹.	14,800.00
Towards diet, food, nourishment, attendant and conveyance charges	-	₹.	75,000.00
Towards loss of future earning capacity	-	₹.	39,06,000.00

Towards procurement and installation of prosthetic leg	-	₹.	3,45,000.00
Total	-	₹.	44,40,800.00

Totally, the petitioner in MVC.1003/2023 is entitled compensation of ₹. 44,40,800/-.

PETITIONER IN MVC.1004/2023

32. In order to demonstrate the pecuniary loss suffered by him due to the injuries, the PW.2 has led oral and documentary evidence. The PW.2 in his oral evidence has asserted on oath that immediately after the accident, he was admitted to K.R. Hospital, Mysuru where he underwent treatment on 18.12.2022. Further the petitioner has supported the said contention by producing Ex.P22 and P23 which make it clear that indeed PW.2 was took treatment at K.R. Hospital, Mysuru. As regards the nature of injuries and the disability suffered, the PW.2 has produced Ex.P22 which is the wound certificate. It is keeping these facts in mind that the compensation has to be determined.

33. While determining the compensation this court has to look into the pain and sufferings, medical expenses, diet, food, nourishment, attendant and conveyance charges and loss of amenities and enjoyment of life that the PW.2 has suffered, which are discussed herein below:

(A) TOWARDS PAIN AND SUFFERINGS:

The PW.2 has relied on Ex.P22 and P23 which are the wound certificate and OP record pertaining to PW.2 which make it crystal clear that PW.2 had sustained injuries in the nature of

comminuted displaced fracture of left both nasal bones and frontal processes of maxilla, fracture of medial wall of the shape, fracture of left cribriform plate, fracture of roof of right frontal sinus. Hence keeping in mind the injuries mentioned in wound certificate, it can be said that the PW.2 must have undergone some amount of physical pain and sufferings, for which, *an amount of ₹.10,000/- can be held to be just and proper compensation under this head.*

(B) TOWARDS MEDICAL EXPENSES:

The PW.2 has contended that he has spent huge amount for her treatment but has not produced medical bills. However, considering the fact that the PW.2 underwent treatment as an inpatient, it is obvious that he might have incurred some expenses towards medication. Hence *the PW.2 is entitled for an amount of ₹.5,000/- towards medical expenses.*

(C) TOWARDS DIET, FOOD, NOURISHMENT, ATTENDANT AND CONVEYANCE CHARGES:

As already observed the Ex.P22 and P23 make it amply clear that the PW.2 underwent treatment at K.R. Hospital, Mysuru. Considering the injuries sustained by the PW.2 and considering the fact that the PW.2 was obtaining follow up treatment regularly at K.R. Hospital, Mysuru until 2023 as can be seen from Ex.P23 and for the said purpose he was commuting from all the way from Hunsur taluk, *this Tribunal is of the opinion that it is just and proper to award an amount of ₹.20,000/- under this head.*

(D) TOWARDS LOSS OF FUTURE EARNING CAPACITY ON ACCOUNT OF PERMANENT DISABILITY:

Though the PW.2 has contended that due to accidental injuries, he has suffered disability, but he has not made any efforts to prove the disability. Even otherwise the nature of injuries sustained makes it evident that no injury which could have resulted in permanent disability was sustained by the PW.2. *Accordingly, the petitioner is not entitled for any compensation under this head.*

(E) TOWARDS LOSS OF INCOME DURING LAID UP PERIOD:

On this aspect the PW.2 had sustained grievous injuries and he claims that she was doing mason work and was earning ₹.700/- per day prior to the accident, but has not produced any document to substantiate his claim. Under such circumstances, this Tribunal is of the opinion that the notional income of the petitioner has to be determined. Perhaps, the court will now have to consider the notional income of the injured and considering the avocation of the PW.2 and the year of accident. In this regard it is relevant to note that the Principal Bench of the Hon'ble High Court of Karnataka, at Bengaluru while holding Lok-Adalath is determining the notional income at ₹.15,500/- if the accident had occurred in the year 2022, 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-adalaths at District Courts. Hence, this Tribunal is of the opinion that it is just and proper to fix the notional income of deceased at ₹.15,500/- per month, in the absence of proof of income of the petitioner. Hence the income of petitioner can be notionally considered at the rate of ₹.15,500/- per month. Considering the nature of injuries, it is more than obvious that PW.2 might not have attended his regular work at least for a period of 2 months. As such the PW.2 is entitled for compensation under the head of loss of income during laid up period and this court finds it just and reasonable to award ₹.31,000/- towards loss of income during laid up period. *As such ₹.31,000/- is awarded to the petition under this head.*

(F) TOWARDS LOSS OF AMENITIES AND ENJOYMENT OF LIFE:

The PW.2 has not sustained any injuries which might have deprived him of the basic comforts and enjoyment. *Wherefore, petitioner is not entitled for any sum under this head.*

34. To sum up the above discussion, the petitioner is entitled for compensation under the following

Towards pain and sufferings	-	₹.	10,000.00
Towards Medical expenses	-	₹.	5,000.00

Towards diet, food, nourishment, attendant and conveyance charges	-	₹.	20,000.00
Loss of income during laid up period	-	₹.	31,000.00
Total	-	₹.	66,000.00

Totally, the petitioner in MVC.1004/2023 is entitled compensation of **₹.66,000/-**.

35. The petitioners have claimed the interest at the rate of 12% per annum. 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 serves as a guiding lamp and in the said decision, the Hon'ble High Court of Karnataka 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. It is held that the petitioner in MVC.1003/2023 is entitled for total compensation of **₹.44,40,800/- (Rupees Forty Four Lakhs Forty Thousand and Eight Hundred only)**. Since the amount awarded under the head of procurement and installation prosthetic leg is for future expenses, the interest at the rate of 6% p.a. from the date of petition cannot be awarded to the said amount. **Hence the interest of 6% is payable on the sum of ₹.40,95,800/- (Rupees Forty Lakhs Ninety Five Thousand and Eight Hundred only)**. Further the petitioner in MVC.1004/2023 is entitled for total compensation of **₹.66,000/- (Rupees Sixty Six Thousand only) along with interest at the**

rate of 6 % per annum from the date of petition till the date of realization.

LIABILITY

36. 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?*. Though the respondent No.2 contended that the accident occurred due to negligence on the part of the PW.2 himself and there was no negligence on the part of driver of the car insured with respondent No.2 company, 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, though the respondent No.2 has not specifically denied the fact that the offending vehicle i.e., car bearing No.KA-04/MM-8727 was insured with it at the time of accident instead, in its objections to main petition, the respondent No.2 company took a vague stand that it does not admit issuance of policy for want of material particulars. However, when the cross-examination of PW.1 is perused, it appears that the respondent No.2 company has given a clear go by to the said contention as the cross-examination mainly focused on income and extent of disability. To add to this, the respondent No.2 company though examined its Branch Manager as RW.1 and produced Ex.R1 insurance policy, which goes to show that the offending vehicle i.e., car bearing No.KA-04/MM-8727 was insured with it at the time of accident. Since the respondent No.2 has failed to prove violation of

policy conditions, the respondent No.2 has to be made liable to pay the compensation.

37. For the foregoing reasons this court finds no hesitation in holding that the respondents are jointly and severally liable to pay the compensation to the petitioner and the respondent No.2 being the insurer is liable to indemnify the respondent No.1 in payment of compensation to the petitioner. Accordingly, it is held that the petitioner in MVC.1003/2023 is entitled for total compensation of **₹.44,40,800/- (Rupees Forty Four Lakhs Forty Thousand and Eight Hundred only)**. *Since the amount awarded under the head of procurement and installation prosthetic leg is for future expenses, the interest at the rate of 6% p.a. from the date of petition cannot be awarded to the said amount. Hence the interest of 6% is payable on the sum of ₹.40,95,800/- (Rupees Forty Lakhs Ninety Five Thousand and Eight Hundred only).* Further the petitioner in MVC.1004/2023 is entitled for total compensation of **₹.66,000/- (Rupees Sixty Six Thousand only)** along with interest at the rate of 6 % per annum from the date of petition till the date of realization; and respondents are jointly and severally liable to pay compensation to the petitioners and respondent No.2 shall indemnify the respondent No.1 in paying compensation to the petitioners.

38. Issue No.III in M.V.C. No. 1003/2023 and M.V.C. No.1004/2023:

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 in

M.V.C. No.1003/2023 and M.V.C. No.1004/2023, this court finds no hesitation to pass the following:

"ORDER"

"The claim petitions in MVC No.1003/2023 and MVC No.1004/2023 are allowed in part with costs.

Petitioner in MVC No.1003/2023 is entitled for compensation of ₹.44,40,800/- (Rupees Forty Four Lakhs Forty Thousand and Eight 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.

It is clarified that in MVC.1003/2023, the interest at the rate of 6% per annum shall be payable on ₹.40,95,800/- (Rupees Forty Lakhs Ninety Five Thousand and Eight Hundred only) from the date of petition till its realization including interim compensation if any awarded.

It is hereby clarified that since the sum of ₹.3,45,000/- (Rupees Three Lakhs Forty Five thousand only) awarded under the head of procurement and installation of prosthetic leg is

for future expenses, the same shall not carry any interest.

Further the Petitioner in MVC No.1004/2023 are entitled for compensation of ₹.66,000/- (Rupees Sixty Six Thousand 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 petitioner 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 petitioner.

Further once the compensation amount is deposited in MVC.1003/2023, out of the total compensation amount, 50% of the award amount shall be deposited in the name of petitioner in MVC.1003/2023 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 in MVC.1003/2023; and the balance amount shall be paid to the petitioner in MVC.1003/2023, by following the procedure prescribed in that regard.

Considering the fact that the quantum of compensation awarded in favor of petitioner in MVC.1004/2023 is meager, after deposit of the compensation amount, the entire compensation amount shall be released in favor of the petitioner in MVC.1004/2023, by following the procedure prescribed in that regard.

Advocate's fee is fixed at ₹.1,000/-.

Draw award accordingly.

The original judgment shall be kept in MVC No.1003/2023 and the copy of the same shall be kept in MVC No.1004/2023."

(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 petitioners in MVC.1003/2023 & MVC.1004/2023		
PW.1	-	Sri. Basavaraju
PW.2	-	Sri. Narayana
PW.3	-	Dr. Vijay Kumar N.

Documents marked for the petitioners in MVC.1003/2023 & MVC.1004/2023		
Ex.P1	-	FIR
Ex.P2	-	Complaint
Ex.P3	-	Spot panchanama
Ex.P4	-	Rough sketch
Ex.P5	-	IMV report
Ex.P6	-	Wound certificate
Ex.P7	-	Charge-sheet
Ex.P8	-	Certified copy of order sheet in CC.344/2023
Ex.P9	-	Discharge summary
Ex.P10	-	OP record
Ex.P11	-	Employment certificate
Ex.P12	-	Disability certificate
Ex.P13	-	Estimate
Ex.P14	-	2 Photographs
Ex.P15	-	CD
Ex.P16	-	Studio receipt
Ex.P17	-	Copy of aadhar card
Ex.P18	-	Copy of disability certificate
Ex.P19	-	School admission certificate
Ex.P20	-	Medical bills
Ex.P21	-	X-ray films
Ex.P22	-	Wound certificate
Ex.P23	-	OPD record

Ex.P24	-	Copy of aadhar card
Ex.P25	-	Entire case sheet
Ex.P26	-	X-ray films

Witnesses examined for the respondents		
RW.1	-	Smt. Madhumathi

Documents marked for the respondents		
Ex.R1	-	Copy of policy

(AFTHAB.K)

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