KAMS080002532023

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./167/2023

Dated on this the 1st day of July, 2026

Petitioners :

1) Smt. Shivamma W/o. Late G. Swamy,
Age: 65 years,

2) Smt. Geethanjali P.L. W/o. Late K.S. Girisha,
Age: 37 years,

3) Vismaya N.G. D/o. Late K.S. Girisha,
Age: 7 years,

4) Dhruthi G. D/o. Late K.S. Girisha,
Age: 3 years,
since petitioners No.3 and 4 are minors,
they are represented by their natural
guardian mother/2nd petitioner

All are r/at No.1418/2B, SV Regency,
Hinkal, Mysuru city-570017.

(By – Sri. Sharath Kumar B., Advocate)

Vs.

Respondents :

1) Sri. Dinesh C. S/o. Late Chikkannegowda,
Dead by LRs,
1a) Smt. Kalavathi W/o. Dinesh C,
Major, R/at Undavadi village,
Gavadagere hobli, Hunsur taluk,
Mysuru district-571105.
Owner of the car bearing No.KA-09/P-8823

2. Go Digit General Insurance Co. Ltd.,
Atlantis 95, 4th B cross, Koramangala Industrial layout, 5th block, Bengalulru-560095.
Policy No.DO53304780/25122021
valid from31.12.2021 to 30.12.2022
Insurer of the car bearing No.KA-09/P-8823

(R1 – Sri. S.P. Thyagaraju, Advocate)
(R2 – Sri. Mithun V.G., Advocate)

* * * * *

JUDGMENT

The petitioners have filed the petition under Section 166 of Motor Vehicles Act, 1988, seeking compensation of ₹.51,75,000/- along with interest at the rate of 12% per annum from the date of petition till the date of realization of amount for the death of Sri. K.S. Girisha S/o. Late G. Swamy, who demised due to the injuries sustained by him in the road traffic accident which occurred on 29.07.2022.

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

On 29.07.2022 at around 3.45 p.m., on Sagare – Sargur road, at

Sagare Bettaiah bridge, Kabini right canal, Beechanahalli, Saraguru taluk, when the deceased was proceeding in the car bearing No.KA-09/P-8823 as an inmate along with one Sri. Ashoka and Sri. Dinesh who was driver cum owner of the car, the driver of the car drove the same at a high speed and in a rash or negligent manner and lost control over the vehicle due to which the car fell into the Kabini canal near Sagare Bettaiah bridge. Further in the said accident the deceased Sri. K.S. Girish drowned in the canal.

2.1. Further the body of the deceased was recovered on the next day and his body was taken to Government Hospital, H.D Kote where PME was conducted. Thereafter the body of the deceased was handed over to the petitioner who took the same to the hometown of the deceased where funeral and obsequies ceremonies were performed as per the customs prevailing within their community. Further the petitioner No.1 is the mother, petitioner No.2 is the wife and petitioners No.3 and 4 are minor children of the deceased and they being legal heirs and representatives of the deceased have filed the petition seeking compensation.

2.2. Further the deceased Sri. K.S. Girish was hale and healthy prior to the accident. Further he was active and was practicing as an advocate at Hunsur Law Court and also before other quasi judicial authorities. Further he was earning ₹.40,000/- per month from which he was maintaining the family and also had bright future in his legal profession. Further now due to his untimely demise of Sri. K.S. Girisha, the petitioner No.2 has lost her love, care and affection of her husband in her middle age, the petitioners No.3 and 4 have lost love, care and guidance of their father in their young age and petitioner No.1 has lost love, care and affection of her son in her old age. Further the petitioners have lost sole bread earning member of the family, as such they are finding it difficult to maintain themselves. Further there is no one to look after the petitioners, as such the petitioners have not only suffered mentally, but also economically and psychologically.

2.3. Further the seating capacity of the car is 5 and the policy covered the claims of inmates of the car. Further, the accident occurred due to rash and negligent driving of the car bearing No.KA-09/P-8823 by its driver, as such, the respondent No.1 being the owner of the car and respondent No.2 being the insurer are jointly and severally liable to pay compensation to the petitioners. On these, amongst other grounds, it is prayed that the petition be allowed as prayed for.

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

4. ***The gist of the objection raised by respondent No.1(a) 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 respondent No.1(a) is the wife of the owner of the car by name Sri. Dinesh who also demised in the accident. Further after the death of her husband, the respondent No.1(a) changed the ownership of the car bearing No.KA-

09/P-8823. Further the driver of the car possessed a valid and effective DL to drive the said class of vehicle and same was duly insured with respondent No.2 company at the time of accident. Further the compensation and interest claimed are high and exorbitant. Further in the event of this tribunal coming to the conclusion that the petitioners are entitled for compensation, the same may be recovered from respondent No.2. On these amongst other grounds, it is prayed that the petition as against respondent No.1 be dismissed.

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

The petition is neither maintainable under law nor facts and hence is liable to be dismissed *in limine*. Further, the petition averments are denied *in toto*, more particularly, the averments regarding age, occupation and income of the deceased. Further it is admitted that the Santro car bearing No.KA-09/P-8823 was insured with respondent No.2 company under private car liability only policy bearing No.D053304780/25122021 which was in force from 31.12.2021 to 30.12.2022, however the policy was issued subject to terms and conditions.

5.1. Further the respondent No.2 company has not collected additional premium to cover the risk of the inmates traveled in the car bearing No.KA-09/P-8823. Further since respondent No.2 has collected only a premium to cover the risk of third party only and as the inmates of the vehicle are not third parties their claim does not qualify within the purview of section 147 of M.V. Act. Further the respondent No.2

company is not liable to pay compensation to the petitioners as the deceased was not a third party and on this score alone the petition is liable to be dismissed.

5.2. Further the petitioners in collusion with respondent No.1(a) and jurisdictional police have falsely implicated the deceased Sri Dinesh in the accident just to make wrongful gain. Further the policy issued by respondent No.2 is a private car liability only policy and the deceased Sri. K.S. Girisha is an inmate at the time of accident and since the policy is a liability only policy, it did not cover the claims of the inmates of the car, as such the respondent No.2 company is not liable to pay compensation to the petitioners. Further the driver of the car did not possess a DL at the time of accident, as such the insured has contravened the provisions of M.V. Act as well as the policy conditions and even for this reason, the petition is liable to be dismissed as against the respondent No.2 company. Further the compensation and interest claimed are high and exorbitant. On these amongst other grounds, it is prayed that the petition as against respondent No.2 be dismissed.

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

1. ***Whether the petitioner proves that Sri. K.S. Girisha succumbed to injuries sustained in a Road Traffic Accident that occurred on 29.07.2022 at about 3.45 p.m., while he was travelling in Santro Car bearing reg No.KA-09-P-8823 at Sagare Bettaiah bridge, Kabini***

right canal, Sagare – Saragur road, Becchanahalli, Saraguru Taluk, due to rash and negligent driving of the said Santro Car bearing reg No.KA-09-P-8823 by its driver?

2. ***Whether the petitioners are entitled for compensation, if so, how much and from whom ?***

3. ***What order or award?***

ADDITIONAL ISSUE DATED 18.03.2025

1. ***Whether the respondent No.2 proves that the respondent No.1 has violated the policy conditions as contended at para.8 of the objections of the respondent No.2?***

7. In order to discharge the burden cast on them, the petitioner No.2 examined as PW.1 through whom Ex.P1 to Ex.P16 documents got exhibited and examined an eye witness by name Sri. Shivappa as PW.2 and petitioners' evidence stage was closed. Thereafter, the respondent No.2 examined its Deputy Manager as RW.1 through whom Ex.R1 document got exhibited and closed its side.

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

9. After giving its anxious consideration to arguments canvassed and after meticulously going through the oral and documentary

evidence adduced by the petitioners, the aforsesaid issues are answered as under;

Issue No.1	***:***	***In the affirmative***
Addl. Issue No.I	***:***	***In the negative***
Issue No.2	***:***	***Partly in the affirmative***
Issue No.3	***:***	***As per the final order***

for the following reasons

REASONS

10. **ISSUE NO.I**

At the very outset it is necessary to set out the facts leading to the present case, according to the petitioner, as can be seen from the petition averments, on 29.07.2022 at around 3.45 p.m., on Sagare – Sargur road, at Sagare Bettaiah bridge, Kabini right canal, Beechanahalli, Saraguru taluk, when the deceased was proceeding in the car bearing No.KA-09/ P-8823 as an inmate along with one Sri. Ashoka and Sri. Dinesh who was driver cum owner of the car, the driver of the car drove the same at a high speed and in a rash or negligent manner and lost control over the vehicle due to which the car fell into the Kabini canal near Sagare Bettaiah bridge resulting in late Sri. K.S. Girish demising after drowning in the canal. Further the petitioners being wife and children of the deceased Sri. K.S. Girisha have filed the petition seeking compensation.

11. 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 her chief-examination affidavit. PW.1 in her evidence has clearly deposed that the accident

occurred due to sole actionable negligence on the part of driver of the car bearing No.KA-09/P-8823. PW.1 has further deposed that Sri. K.S. Girisha died due to drowning after the accident; and she has also deposed regarding the occupation and income of the deceased.

12. Furthermore, the petitioners in support of their evidence have exhibited the certified copies of the police records including the FIR, FIS, PME report and the charge-sheet along with annexed documents at Ex.P1 to P7 which make it unambiguously clear that after thorough investigation, the Saraguru P.S. has concluded that the accident occurred due to the reckless and negligent driving of the offending car bearing No.KA-09/P-8823 by its driver and abated charge-sheet was filed against Sri. Dinesh C, who was the driver of the car by invoking section 279, 338 and 304A of IPC. 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. K.S. Girisha occurred due to sole actionable negligence on the part of driver of the car bearing No.KA-09/P-8823 car. Per contra, the respondent No.2 company has come up with two fold defence:

Firstly, that the death of Sri. K.S. Girisha is due to drowning and not due to injuries sustained in the accident.

Secondly, that respondent No.2 company is not liable to pay compensation the petitioners as the claims of the inmates of the car is not covered under Ex.R1 policy which is a liability only insurance policy.

As regards the latter contention the same will be considered by this tribunal while answering additional issue No.I.

13. As regards the first contention of the respondent No.2 company which is that the said Sri. K.S. Girisha demised due to drowning and not due to injuries sustained in the accident. The main reason for the respondent No.2 company to come to the said contention is that the body of Sri. K.S. Girisha was recovered on the next day and that too at some distance from the spot where accident occurred. However when the records are revisited it is amply clear that Sri. K.S. Girisha was indeed proceeding as an inmate in the car and the car fell into the canal due to rash and negligent driving of the same by Sri. Dinesh C who was the driver of the car. Furthermore, the Ex.P3 which is the abated charge-sheet filed against the said Sri. Dinesh C leaves no scope for any doubt that Sri. K.S. Girisha indeed demised due to drowning which was consequence of car falling into the canal due to rash and negligent driving by the said Sri. Dinesh C. Hence, merely because the body of the deceased was not found near or inside the car cannot be a ground to hold that the death was not direct result of accident.

14. Yet another aspect which assumes importance is the best person who could have denied the contention of the petitioners that, Sri. K.S. Girisha died due to drowning as a result of car falling into canal, is respondent No.1(a) who is the wife of Sri. Dinesh C who was the driver of the car and who also demised in the accident. But interestingly the respondent No.1(a) who appeared through her counsel and filed her objections, has

taken up a contention that she is not liable to pay any compensation as the vehicle was insured with respondent No.2 company and the driver of the car Sri. Dinesh C possessed a valid DL. This infers that the respondent No.1(a) does not dispute the fact that death of Sri. K.S. Girisha was a result of accident. Even for this reason, this tribunal finds no hesitation in holding that the contention of the respondent No.2 company that Sri. K.S. Girisha did not demise due to accident instead it was due to drowning cannot be accepted. Perhaps, the Ex.P7 PME report reveals that the cause of death as asphyxia as a result of drowning.

15. Furthermore, the fact that PW.1 has categorically stated on oath that the accident occurred due to sole actionable negligence on the part of the driver of the car bearing No.KA-09/P-8823 car and nothing could be elicited from the mouth of the said witness which could move this court to hold that there was no negligence on the part of the driver of the car. Furthermore the petitioners have also examined PW.2 in his capacity as an eye witness who too has deposed in support of the case of the petitioners and deposition of PW.2 has corroborated the version of PW.1.

16. It must be borne in mind that filing of the charge sheet in a criminal case is itself *prima-facie* proof available in favor of the petitioners in this case, in order to discharge the burden cast on them regarding their contention that the accident occurred due to rash and negligent driving of car bearing No.KA-09/P-8823 car by its driver. It is relevant to note that PW.1 and 2 were subjected to probing cross-

examination by the learned counsel for the respondent No.2, but nothing which could dilute the effect of the police records more particularly Ex.P7 PME report and Ex.P3 charge-sheet could be elicited from the mouth of the PW.1 and 2. Perhaps, let alone probabilizing the defense set up by the respondents, nothing which could move this court to doubt the case of the petitioners could be culled out from the mouth of the witnesses.

17. It is necessary to state, even at the cost of repetition that that the Saraguru Police who registered the FIR on the basis of FIS lodged by one Sri. Yogannegowda who is one of the inmates of the car who survived thereby *prima facie* opining that the said accident occurred due to rash or negligent driving of the car bearing No.KA-09/P-8823 car by its driver. Furthermore, there is nothing before the court to overlook the opinion of the IO who has clearly stated that the accident occurred due to sole actionable negligence on the part of driver of the car bearing No.KA-09/P-8823 car and also there is nothing in the form of evidence on the basis of which it can be held that the contention of respondent No.2 that the accident did not occur due to negligence on the part of the driver of the car bearing No.KA-09/P-8823 car is proved.

18. The view taken by this Court that the police records are *prima facie* proof in support of the case of the petitioners, is supported by the decision rendered in ***Kishan Gopal and another Vs. Lala and others*** reported in ***2013 (4) T.A.C 5 (S.C.)***, wherein the Hon'ble Apex Court has

categorically held thus:

> *16. In view of the aforesaid facts, the Tribunal should have considered both oral and documentary evidence referred to supra and appreciated the same in the proper perspective and recorded the finding on the contentious issue No. 1 & 2 in the affirmative. But it has recorded the finding in the negative on the above issues by adverting to certain statements of evidence of AW-1 and referring to certain alleged discrepancies in the FIR without appreciating entire evidence of AW-1 and AW-2 on record properly and also not assigned valid reasons in not accepting their testimony. The Tribunal should have taken into consideration the pleadings of the parties and legal evidence on record in its entirety and held that the accident took place on 19.07.1992, due to which Tikaram sustained grievous injuries and succumbed to the same and the case was registered by the Uniara Police Station under Sections 279 and 304-A, IPC read with Sections 133 and 181 of the M.V. Act against the first and second respondents. The registration of FIR and filing of the charge-sheet against respondent Nos.1 & 2 are not in dispute, therefore, the Tribunal should have no option but to accept the entire evidence on record and recorded the finding on the contentious issue Nos.1 and 2 in favour of the appellants.*
>
> *(Emphasis supplied by me)*

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

19. Further in view of the discussion made in the foregoing paragraphs of this judgment this court finds no hesitation in holding that the petitioners have proved the Issue No.1 whereas the respondent No.2 has failed to prove its defense that there was no negligence on the part of the driver of the car and has also failed to prove that the death of Sri. K.S. Girisha was not due to the accident. ***Wherefore Issue No.I is answered held in the Affirmative***.

20. **Issue No.II:**

This brings the discussion to the crucial aspect of this judgment which is the quantum of compensation. It is relevant to note that though the petitioners claim that prior to the accident the deceased Sri. K.S. Girisha was hale and healthy and was practicing as an advocate at Hunsur Law Court and also before other quasi judicial authorities from which he was earning ₹.40,000/- per month. Though in support of the said contention the petitioners have produced Ex.P13 and P14 which are the certificate in respect of practice issued by Hunsur Bar Association and the notarized copy of ID card issued by Karnataka State Bar Council however on the basis of said documents it is not possible to ascertain the income of the deceased. The learned counsel for the petitioners vehemently argued that the deceased was a practicing advocate with 15 years standing at the bar, as such his income cannot be restricted to notional income. However, as there is no information regarding the number of cases in which the deceased had appeared for the litigants, this court has no option but to venture to ascertain the notional income. In this regard, 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-adalats at District Courts. Hence, this Tribunal is of the opinion that it is just and proper to fix the notional income of deceased at ₹.15,500/- per month, in the absence of proof of income of the deceased. Hence the income of Sri. K.S. Girisha can be notionally considered at the rate of ₹.15,500/- per month.

21. It is necessary to take note that the Hon'ble Supreme Court of India in the matter of ***National Insurance Company Limited v. Pranay***

Sethi and others reported in ***(2017) 16 SCC 680*** has clearly observed at para 61 (iv) as under:

> ***"(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."***

In the facts of this case, the petitioners have produced Ex.14 and P15 which are the the notarized copy of ID card issued by Karnataka State Bar Council and SSLC marks card of the deceased, as per which the date of birth of the deceased is 04.05.1981 and considering the fact that the accident occurred on 29.07.2022, there need not be any further deliberation to hold that the deceased was aged 41 years more precisely 41 years, 2 months and 25 days at the time of his death. Since it was held by the Hon'ble Apex Court that if the deceased was self employed or on a fixed salary, an addition of future prospects is to be made while determining the income of the deceased for the purpose of calculation of compensation under the head Loss of Dependency. Wherefore, future prospects needs to be added to the income of the deceased, as provided in *Pranay Sethi* Case (cited supra) for the purpose of determining income of the deceased. This Court had already considered the notional income of the deceased at ₹.15,500/- per month, since the petitioner was aged 41 years, an addition of 25% of the established income to be added as future prospects while determining the income for the purpose of computing compensation for the age between 40 and 50 years. Future prospects of the deceased would be 25% of the established income hence it is determined as ₹.3,875/- (15,500 x 25/100 = 3,875). Thus the total income of the deceased for the purpose of determining the compensation would be **₹.19,375/- (15,500 + 3,875 = 19,375).**

<u>LOSS OF DEPENDENCY</u>

22. As already the deceased Sri. K.S. Girisha at the time of death was aged 41 years. The deceased is survived by his mother, wife and minor children who are the petitioners herein. As regards the relationship of the petitioners with the deceased Sri. K.S. Girisha, the petitioners have produced Ex.P8 which is the Genealogy certificate pertaining to family of the deceased so also Ex.P9 to P16 which are the adhaar cards of the petitioners as well as the deceased; and from the perusal of the said documents it becomes crystal clear that the petitioner No.1 is indeed the mother, petitioner No.2 is the wife and petitioners No.3 and 4 are the minor children of the deceased Sri. K.S. Girisha.

23. 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 1/4th 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 1/4th income of the deceased should be deducted towards his personal and living expenses which would mean ₹.4,843/-

per month and when the said sum is deducted from the monthly income of the deceased, the balance amount is **₹.14,532/- (19,375 – 4,843= 14,532).** This tribunal has already held that the petitioners are the dependents deceased Sri. K.S. Girisha. Further this Court has already held that the age of the deceased Sri. K.S. Girisha at the time of his death was more than 41 years and if the age of the deceased as on the date of accident is between 41 and 45 years, as per table provided in ***Sarla Varma Vs. Delhi Transport Corporation and another (2009 ACJ SC 1298)***, the multiplier applicable would be 14. Hence, loss of dependency can be determined as ***₹.24,41,376/- (14,532 x 14 x 12 = 24,41,376)***

LOSS OF CONSORTIUM, LOSS AND AFFECTION

24. The petitioner No.1 being mother, petitioner No.2 being the wife and petitioners No.3 and 4 of the deceased have lost the love and affection of the deceased, as such, they are entitled for compensation under the head of loss of consortium ***Hence, the petitioners are entitled for ₹.5,000/- each towards loss of consortium, love and affection.***

FUNERAL EXPENSES

25. As already observed, according to PW.1 they have spent huge amount for transportation of the body of the deceased and they have incurred expenses cremation, funeral and other incidental charges, they have not specified the amount spent by them. Though as regards the transportation charges, cremation, funeral and other incidental charges, they have not given particulars of the expenses incurred by them. Having said that this court cannot ignore the fact that that the dead

body was transported from hospital to hometown of the deceased where final rites were performed at the hometown of the deceased, hence ***the petitioners are entitled for a sum of ₹.10,000/- under this head***.

LOSS OF ESTATE

26. If the deceased had survived, certainly his dependents would have had the benefit of his estate, as such this court deems it fit to hold that ***the petitioners are entitled for ₹.10,000/- towards loss of estate.***

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

Loss of dependency	-	₹.	24,41,376
Loss of consortium	-	₹.	20,000
Funeral expenses	-	₹.	10,000
Loss of estate	-	₹.	10,000
Total	**-**	**₹.**	**24,81,376**

In total, the petitioners are held entitled for **₹.24,81,376/-**.

28. 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 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 **₹.24,81,376/-** with interest at the rate of 6% p.a. from the date of petition till the realization. ***Accordingly, issue No.II is answered partly in the affirmative and it is held that the petitioners are entitled for compensation of ₹.24,81,376/- (Rupees Twenty Four Lakhs Eighty One Thousand Three Hundred and Seventy Six only) alongwith interest at the rate of 6% per annum from the date of petition till the realization.***

29. **Additional Issue No.(I):**

It would be incumbent upon this tribunal to clarify that the necessity to frame this issue arose in view of the specific contention taken by the respondent No.2 that the deceased Sri. Dinesh C who was the owner of the car had violated the policy conditions. Needless to state, the answer to this issue will determine whether the respondent No.1(a) must be made personally liable to pay compensation or whether it is the respondent No.2 who is liable to compensate the petitioners by indemnifying the respondent No.1(a) in paying compensation to the petitioners.

30. Now that this court has ascertained the compensation amount, the last aspect of the matter is regarding fixation of liability i.e., *who should be made liable to pay the compensation to the petitioners in both the petition?*. Though the respondent No.2 has not disputed the fact that the offending vehicle i.e., Car bearing No.KA-09/P-8823 was insured with it at the time of accident and the same is clear from deposition of RW.1 through whom Ex.R1 is marked, but it came up with two fold

defence in respect of its liability:

Firstly, that there is violation of policy conditions by the insured

Secondly, the claims of the petitioners is not covered under the Ex.R1 policy.

But the respondent No.2 has not been able to prove that there was any violation of policy conditions and has not been able to prove anything which could move this court to completely exonerate the respondent No.2 company from paying the compensation to the petitioners. However, the discussion would not end here as the main bone of contention of the respondent No.2 company is that the claims of the petitioners is not covered under the Ex.R1 policy. To elaborate, it is the respondent No.2 company that admittedly the deceased was an inmate and perusal of Ex.R1 reveals that it is a private car liability only policy. Hence the question to be pondered upon is whether the claims of the deceased who was an inmate is covered under the policy.

31. In this regard, the learned counsel for the petitioners came up with an intention argument which is to effect that because the body of the deceased was not found inside the car it can be inferred that he did not die inside the car which leads to an obvious possibility that the death occurred outside the car as such the deceased must be considered as third party. In essence the point that the learned counsel for the petitioners is trying to bring home is once the inmate of the car steps out of the car he ceases to remain an inmate instead he

would become a third party. To substantiate this argument the learned counsel for the peitioners relied on the decision of the Hon'ble High Court of Andhra Pradesh in ***United India Insurance Co. Ltd., Vs. Mangila Ajmeera and another*** reported in ***2013 (3) T.A.C. 898 (A.P.)***. This tribunal has gone through the decision and with due respect to the decision cited the same is not applicable to the facts of the present case. This is because in the facts of the case before the Hon'ble High Court, the driver of the offending lorry had pushed the claimant out of the lorry and had driven the same forward due to which the wheel of the lorry ran over the leg of the claimant. It is under these circumstances it was held that though the claimant was inside the lorry but when he got injured due to negligence on the part of the driver of the lorry, the claimant was out of the lorry as such he would become the third party. But in the facts of the present case, what can be inferred is after the car fell into the canal the deceased might have come out and then he might have died due to drowning as such he cannot be considered as third party or it might even possible that the deceased might have demised while inside the car due to drowning as he could not open the door and after his death his body might have drifted away in the stream. Hence no matter how the death occurred, the claims of the petitioner would not be covered under the policy as it was liability only policy and no premium was paid to cover the claims of inmates of the car.

32. The sum and substance of the above discussion is though the

respondent No.2 company has failed to prove violation of policy conditions it has proved that the claims of the petitioners is not covered under the policy. Now the obvious question is whether the respondent No.2 company has to be completely exonerated from its liability or the benefit of *pay and recover* principle must be extended to the facts of the present case.

33. In this regard, the learned counsel for the respondent No.2 company vehemently argued that even the benefit of pay and recover principle cannot be extended in favour of the petitioners in view of the peculiar facts. Per contra, the learned counsel for the petitioners has cited the following decisions:

> ***a) Sunitha and others Vs. United India Insurance Co. Ltd., and others*** reported in ***2025 ACJ 1841*** rendered by Hon'ble Supreme Court of India
>
> ***b) M/s United India Insurance Co. Ltd., Vs. Smt. Shobha and others*** rendered in ***MFA No.517/2020 (MV-D)*** rendered on ***25.04.2026*** rendered by Hon'ble High Court of Karnataka
>
> ***c) Maruti Basagouda Malagoudanavar Vs. Smt. Kavitha*** rendered in ***MFA No.103406/2014 (MV) c/w MFA No.23555/2012 (MV)*** rendered on ***24.04.2026*** rendered by Hon'ble High Court of Karnataka

This tribunal has gone through the decisions and what can be gathered from the decisions is even in case where the policy was only a liability only policy the pay and recover principle must be applied instead of completely exonerating the respondent No.2 company. In fact, the facts of the case in ***Shobha*** cited supra which is rendered by the Division Bench of Hon'ble High Court of Karnataka the facts are similar to the extent that in that case the deceased was traveling in a car which fell into water canal and the deceased demised and before the tribunal it was contended that the policy issued in respect of the car was a liability only policy but the tribunal had fixed the liability on insurance company. The Hon'ble High Court of Karnataka allowed the appeal in part and instead of making the insurance company liable it applied the pay and recover principle. Further even in the decision of the Hon'ble High Court of Karnataka in ***Maruti Basagouda Malagoudanavar***, the Hon'ble High Court of Karnataka by considering the fact that the policy was only a act only policy or liability only policy which did not cover the risk of the occupants of the vehicle ordered the insurance company to satisfy the award with liberty to recover the same from the owner. Wherefore by following the decision of the Hon'ble High Court of Karnataka so also the view taken by the Hon'ble Apex Court, this tribunal deems it fit to hold that even in the facts of the case the respondent No.2 company must be directed to satisfy the award with liberty to recover the same from respondent No.1(a).

34. Before parting with the case it is necessary to apportion the compensation amongst the petitioners. Since the petitioners are the mother, wife and minor children of the deceased and it is already held that the petitioners are entitled to the compensation, their shares are

apportioned at the ratio of *10:40:25:25* respectively. Wherefore the ***additional issue No.I is held in the negative and it is held that the petitioners are entitled for compensation of ₹.24,81,376/- (Rupees Twenty Four Eighty One Thousand Three Hundred and Seventy Six only) alongwith interest at the rate of 6% per annum from the date of petition till the realization including the interim compensation if any awarded and it is also held that the respondents are jointly and severally liable to pay the compensation to the petitioners and it is also held that the respondent No.2 shall pay the compensation amount as awarded by this court to the petitioners and recover the same from respondent No.1(a); and the 10% of the award amount is apportioned towards the share of petitioner No.1, 40% of the award amount is apportioned towards the share of petitioner No.2 and 25% each is apportioned towards the share of petitioner No.2 and 3 respectively.***

35. **<u>Issue No.III:</u>**

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

<u>ORDER</u>

> ***"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 ₹.24,81,376/- (Rupees Twenty Four Lakhs Eighty One Thousand Three Hundred and Seventy Six 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 is directed to pay the compensation awarded to the petitioner and recover the same from the respondent No.1(a).

Further it is held that the petitioners No.1 to 4 are entitled for compensation at the ratio of 10:40:25:25 respectively.

Further once the compensation amount is deposited, out of the compensation amount 50% shall be deposited in the name of petitioner No.2 in a fixed deposit for a period of

3 years, in any nationalized bank or scheduled bank on a condition that the petitioner No.2 shall not withdraw and encumber the deposit in any mode without prior permission of this court and the concerned bank shall be directed to make a note on the deposit receipt not to avail any loan or advance; and the remaining amount shall be paid to the petitioner No.2 by following the procedure prescribed in that regard.

Further the amount apportioned towards the share of petitioner No.3 and 4 shall be deposited in the separate name of petitioners No.3 and 4 in any nationalized bank or scheduled bank until they attain majority or for a period of 3 years whichever is higher. However the next friends of the petitioner No.3 and 4 is entitled to get the interest amount released periodically.

Considering the fact that the quantum of compensation awarded in favor of petitioner No.1 is meager, after deposit of the compensation amount, the entire compensation

amount shall be released in favor of the petitioner No.1, by following the procedure prescribed in that regard.

Advocate's fee is fixed at ₹.1,000/-.

Draw award accordingly."

(Dictated to the stenographer, computerized by her, corrected and then pronounced by me in the open court, this the 1st day of July, 2026)

Digitally signed by AFTHAB K
Location: PRL. Judge, Court of Small Causes, Mysuru

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

:ANNEXURE:

Witnesses examined for the petitioner:		
PW.1	-	Smt. Geethanjali P.L.
PW.2	-	Sri. Shivappa

Documents marked for the petitioner :		
Ex.P1	-	FIR
Ex.P2	-	Complaint
Ex.P3	-	Charge sheet along with inquest panchanama and seizure panchanama
Ex.P4	-	Spot mahazar
Ex.P5	-	Rough sketch
Ex.P6	-	IMV report
Ex.P7	-	PME report
Ex.P8	-	G-tree

Ex.P9	-	Copy of Aadhar card of petitioner No.1
Ex.P10	-	Copy of Aadhar card of petitioner No.3
Ex.P11	-	Copy of Aadhar card of petitioner No.4
Ex.P12	-	Copy of Aadhar card of petitioner No.2
Ex.P13	-	Certificate issued by Bar Association, Hunsur
Ex.P14	-	Copy of Bar council ID card of the deceased
Ex.P15	-	Copy of SSLC marks card of the deceased
Ex.P16	-	Copy of aadhar card of deceased

Witnesses examined for the respondents:		
RW.1	-	Sri. Mahesh Prasad P.

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

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