

KAUP310005632020



TITLE SHEET

IN THE COURT OF SENIOR CIVIL JUDGE & ADDITIONAL MACT AT KUNDAPURA

***PRESENT : SRI KUMARA G. B.COM. LL.B.
SENIOR CIVIL JUDGE & ADDITIONAL MACT,
KUNDAPURA.***

***MVC NO.684 OF 2020
DATED ON THIS 04TH DAY OF JULY, 2026***

***PETITIONERS : 01. SMT SARITHA VINOD SIMON,
W/O LATE VINOD SIMON,
AGED ABOUT 43 YEARS.

02. SRI BRANDON VINOD SIMON,
S/O LATE VINOD SIMON,
AGED ABOUT 21 YEARS.***

***BOTH ARE R/AT KAVRADY POST,
HALNADU VILLAGE,
KUNDAPURA TALUK, UDUPI DISTRICT.***

***ALSO, R/A EXCELLENCIA, E-202,
KALYAN SHIL ROAD,
CASA BELLA,
PALAVA CITY, KALYAN,
THANE, MAHARASHTRA-421204.***

(REPRESENTED BY SRI HRS, ADVOCATE)

VERSUS

***RESPONDENTS : 01. SRI ELBALDO ALVITO GOMES,
S/O JOAQUIM GOMES***

DEAD & REPRESENTED BY HIS LR'S

- 1 (a) SMT JACQUELINE MARIA ANA GOMES,
W/O LATE ELBALDO ALVITO GOMES,
AGED ABOUT 53 YEARS.**
- 1 (b) SRI IYRON ANTHONY GOMES,
S/O LATE ELBALDO ALVITO GOMES,
AGED ABOUT 30 YEARS.**
- 1(c) SMT IONA ANTONY GOMES,
D/O LATE ELBALDO ALVITO GOMES,
AGED ABOUT 25 YEARS.**
- 1(d) SRI IAN ADRIN JOAQUIM GOMES,
S/O LATE ELBALDO ALVITO GOMES,
AGED ABOUT 22 YEARS.**
- 1(e) SMT ISHA AUDREY GOMES,
D/O LATE ELBALDO ALVITO GOMES,
AGED ABOUT 19 YEARS.**
- 1(f) SRI ISAAC ALORY GOMES
S/O LATE ELBALDO ALVITO GOMES,
AGED ABOUT 53 YEARS.**

**ALL ARE R/AT HOUSE NO.110/M,
MINI CASTLE, CUPEM, NUVEM SALCETE,
GOA-403705.**

- 02. NATIONAL INSURANCE COMPANY
LIMITED,
REPRESENTED BY ITS BRANCH MANAGER,
MARGAON BRANCH,
OFFICE NO.101 TO 107,
A WING, I FLOOR,
RELIANCE TRENDS CENTRE,
NEXT TO GRACE CHURCH,
VV ROAD, GOA-403601.**

**(R-1 (a) TO 1 (e) ARE REPRESENTED BY SRI HVKS,
ADVOCATE & R-2 IS REPRESENTED BY SRI NVR,
ADVOCATE)**

JUDGMENT IN MVC NO.684 OF 2020

This judgment arises out of claim petition filed by the petitioners under section 166 of ***Motor Vehicles Act, 1988 (hereinafter referred as "MV Act")*** against the respondents for awarding compensation relating to the death of Sri Vinod Simon S/o late George Simon stating that he died on 04-01-2020 due to fatal injuries suffered by him in the vehicular accident that occurred on 30-12-2019, opposite to Kunde Complex, Borda, Fatorda, Goa state.

02. The case of the petitioners in nutshell is that the petitioner No.1 is the wife and petitioner No.2 is the son of deceased Vinod Simon. On 30-12-2019, deceased Vinod Simon was standing along with petitioner No.2 on the Katcha portion of the road near an ATM, near Kunde Complex, Barda, Fatorda, Goa state. At about 09-00 PM, the rider of Royal Enfield Bullet bearing registration No.GA-02/E-1753 owned by the respondent No.1 rode it in rash and negligent manner from Borda side towards Holy Spirit Church side; drove it to his extreme left side and dashed to Sri Vinod Simon and caused the accident. The respondent No.1 was travelling as pillion rider on the Bullet. Due to the

accident, Sri Vinod Simon fell on the road; lost conscious and suffered greivous head injury to his head and other parts of the body. Immediately, he was shifted to Government Medical Hospital, Bambolim, Goa and treated as in-patient. On 04-01-2020 he died during treatment due to fatal injuries suffered by him in the accident. The petitioners have spent sum of Rs.2,00,000/- towards treatment, Rs.1,00,000/- towards conveyance and Rs.1,50,000/- towards funeral and obsequies ceremonies of deceased Vinod Simon.

03. Earlier to the accident, deceased Vinod Simon was aged about 49 years, hale and healthy person and he was working as International Purchasing Manager at Health Planet Company Limited, Kuwait and drawing monthly salary of 800 Kuwait Dinars which is more than INR.1,94,000/- per month. Deceased Vinod Simon was contributing his entire income for the maintenance of the family consisting of him and the petitioners. The family members including the petitioners were entirely depending on the earnings of deceased Vinod Simon and he was the only earning member in the family. Due to the untimely death of deceased Vinod Simon, the petitioners are facing hardship to lead their life. The accident and death of Vinod Simon was occurred due to rash and negligent riding on the part of rider of the Bullet. The respondent No.1 was the owner of the Bullet and he insured it with respondent No.2-Insurer and the Insurance Policy was in force as on the date of accident. Hence, the respondent

No.1 and 2 being the owner and insurer of the offending vehicle, both are jointly and severally liable to pay compensation. For the aforesaid reasons the petitioners have prayed for awarding total compensation of Rs.2,54,50,000/- under various heads.

04. In pursuance of service notices of the claim petition, the respondent No.1 appeared through advocate and filed separate written statement by denying the claim petition averments as false. However, the respondent No.1 admitted that he was the owner of the alleged offending Bullet and he insured it with respondent No.2 and the Insurance Policy was in force as on the date of accident. It is specifically contended that at the time of accident he was traveling as a pillion rider on the Bullet and it was riding by his son slowly and carefully by observing traffic rules under his supervision. It is further contended that at the time of accident his son was having Learner's License and he was having valid Driving License to supervise his son and therefore, if the court comes to the conclusion that the petitioners are entitled compensation, the same shall be ordered to pay by the respondent No.2-Insurer. For the above said reasons, the respondent No.1 has prayed to dismiss the claim petition against him.

05. In pursuance of service of notice of the claim petition, the respondent No.2 also appeared through another advocate and filed written statement by

denying the entire claim petition averments as false including the manner of occurrence of the accident due to rash and negligent riding on the part of rider of Bullet; sustainment of fatal injuries and death of Sri Vinod Simon due to injuries suffered in the accident; occupation and income of Sri Vinod Simon and also dependency of the petitioners on the income of deceased Simon. However, this respondent also admitted that the respondent No.1 was the owner of the alleged offending Bullet and it was insured by him with it and the Insurance Policy was in force as on the date of accident. Except, admitting these facts, the respondent No.2 has denied the rest of the claim petition averments.

06. It is specifically contended by the respondent No.2 that the petitioners are the permanent residence of Thane District, Maharashtra State; the respondent No.1 is the permanent resident of Goa State and the accident was occurred at Goa State; the petitioners have not taken any permission to institute the claim petition before this tribunal and therefore this tribunal lacks territorial jurisdiction to try the claim petition and liable to be dismissed. It is further contended that the accident was occurred solely due to negligence on the part of the deceased Vinod Simon as he suddenly tried to cross the busy road without observing traffic rules and regulations; he suddenly came in front of the Bullet which was proceeding on the correct side of the road in the normal speed by observing traffic rules and in that process the accident occurred. It is

further contended that deceased Vinod Simon had contributed negligence for occurrence of the accident. It is further contended that the rider of the Bullet was not holding valid and effective Driving License to ride the Bullet; the respondent No.1 had handed over the vehicle to un-authorized person and thereby he had violated material terms and conditions of Insurance Policy and also violated other provisions of Motor Vehicles Act, 1988 and therefore, the respondent No.2-Insurer is not liable to pay the compensation to the petitioners. It is further contended that the petitioners are claiming excessive and exorbitant compensation without any basis. For the aforesaid reasons respondent No.2 has prayed for dismissal of claim petition with exemplary costs.

07. During pendency of the claim petition, the respondent No.1 was passed away. His wife and children have been brought on record as respondent No.1 (a) to 1 (f).

08. Basing on the pleadings of the parties, the following issues and additional Issue have been framed for determination:

ISSUES FRAMED ON 30-03-2022

01. Whether the petitioners prove that the deceased Vinod Simon succumbed to the injuries sustained in an accident, which occurred on 30-12-2020 at about 9.00 PM near Kunde Complex, Borda, Fatorda of Goa State, due to the rash and negligent driving by the

rider of the Bullet (Royal Enfield Bullet) bearing Reg.No.GA-02/E-1753?

02. Whether the petitioner is entitled for compensation? If so, at what quantum and from whom?

03. What Order or Award?

ADDITIONAL ISSUE FRAMED ON 03-10-2024:

01. Whether the respondent No.2 proves that the rider of the Bullet bearing registration No.GA-02/E-1753 had no valid and effective driving license as on the date of the accident in question and hence Insurance Company is not liable to pay the compensation?

09. In order to substantiate the claim petition averments, the petitioner No.2 himself examined as PW-1 and he produced and got marked 21 documents as per Exhibit P-1 to P-21. Sri Fakruddin B. Ahamed Khan stated to be the Operational Manager of Health Planet Company, Kuwait is examined as PW-2 and Exhibit P-22 to P-27 have been marked through him. The petitioner No.1 is examined as PW-3 and Exhibit P-23 (a) to 25 (a) have been marked through her. Exhibit P-28/Application for Registration-Cancellation-Renewal of Authorization for Signature has been marked with consent of both sides. Similarly, the Branch Manager of respondent No.2-Insurer examined as RW-1 and 09 documents admitted as per Exhibit R-1 to R-09. Exhibit R-10/Insurance Policy of the Bullet has been marked during cross-examination of RW-1 from respondent No.1 side. Exhibit R-11 to R-13 have been marked with consent of both sides.

10. After closure of evidence, heard the arguments advanced by Sri HRS, the learned counsel for the petitioners and Sri HVKS, the learned counsel for the respondent No.1 and Sri NVR, the counsel for the respondent No.2-Insurer.

11. The learned counsels for both sides have produced the list with citations. The learned counsel for the respondent No.2 has filed lengthy written arguments in pieces with huge number of citations. Hence, the learned counsel for the respondent No.2 has directed to file brief written arguments in the nature of synopsis and also produce one citation on one point. In spite of it, the learned counsel for the respondent No.2 has filed the revised written arguments which is similar to the written arguments filed on earlier occasion in pieces and also relied on huge number of citations which have already produced. Hence, the written arguments and the citations not taken on record and not fully considered.

12. Perused the oral and documentary evidence placed on records.

13. Upon hearing the arguments and on perusal of oral and documentary evidence let in before this tribunal, my answers to the above issues are as follows:

<i>Issue No.1</i>	<i>:- In the affirmative,</i>
<i>Addl, Issue No.1:-</i>	<i>Partly in the affirmative,</i>
<i>Issue No.2</i>	<i>:- In the affirmative and</i>
<i>Issue No.3</i>	<i>:- As per the final order for the following: -</i>

REASONS

14. ISSUE NO.1:- In order to prove Issue No.1, the petitioner No.2 has been examined as PW-1 and he filed affidavit in lieu of chief-examination and re-iterated all the petition averments. The petitioner No.2/PW-1 is the son and petitioner No.1 is the wife of deceased Vinod Simon. PW-1 has stated in the affidavit that on 30-12-2019, at about 09-00 PM, his father deceased Vinod Simon was standing on the Kaccha portion of the road near Kunde Complex, Borda, Fatorda of Goa State. PW-1 also stated that he was along with his father deceased Vinod Simon. He further stated that at that time, Sri Iyan Adrian Joquim Gomes i.e., respondent No.1 (d) rode the Royal Enfield Bullet bearing registration No.GA-02/E-1753 from Borda side towards Holy Spirit Church side in rash and negligent manner; lost control over the Bullet; rode it to his extreme left side and dashed to the deceased Vinod Simon and caused the accident. He also stated that the respondent No.1 was traveling as pillion rider in the Bullet at the time of accident. PW-1 further stated that due to the accident, Sri Vinod Simon sustained severe injuries and immediately and he was taken to Government Medical Hospital, Bambolim, Goa for treatment. He also stated that Sri Vinod Simon succumbed to the injuries on 04-01-2020 at about 9-20 AM. He further stated that the accident was occurred solely due to rash and negligent riding on the part of respondent No.1 (d) and due to the accident Simon Vinod sustained fatal injuries and died during treatment.

15. During the course of chief examination, PW-1 has tendered 21 documents and they have been admitted as per Exhibit P-1 to P-21. Exhibit P-16 to P-21 have been marked subject to proof of their contents. Exhibit P-1 is the First Information Report registered by Fatorda Police Station of South Goa in their Crime No.01/2020 on 02-01-2020 against the respondent No.1 (d) who was the rider of Royal Enfield Bullet relating to the accident in question in pursuance of First Information lodged by Sri Bradon Vinod Simon who is the petitioner No.2 herein for the offence punishable under Section 279 and 338 of Indian Penal Code, 1860. Exhibit P-2 is the true copy of First Information lodged by PW-1/Sri Brandon Vinod Simon on 02-01-2020 alleging that on 30-12-2019 he and his father namely Sri Vinod Simon were crossing the road and at that time the rider of Bullet rode it in rash and negligent manner; he could not able to control the Bullet and dashed to Sri Vinod Simon and caused the accident and due to accident his father suffered severe injuries and the accident was occurred solely due to rash and negligent riding of Bullet by its rider.

16. Exhibit P-3 is the further statement given by the petitioner No.2 on 03-01-2020 stating that the respondent No.1 who was the father of rider of the Bullet was traveling on the Bullet as pillion rider at the time of accident. Exhibit P-4 is the Charge Sheet filed by Fatorda Police in their Crime No.01/2020 against the rider of the Bullet for the offences punishable under Section 279 and 304 (a)

of Indian Penal Code, 1860 alleging that the accident was occurred solely due to rash and negligent riding on the part of rider of Bullet and he was riding the Bullet without possessing Driving License and he was possessing Learner's License. Exhibit P-5 is the Accident Spot Panchanama and it shows that the accident was occurred on Holly Spirit Church-Baroda Junction Road at the distance 01.75 feet from the left side edge of tar road while traveling from Holly Spirit Church to Baroda Junction which was the direction in which the Bullet was proceeding and the total width of the tar road was 14 meters. Exhibit P-6 is the Inquest Panchanama and Exhibit P-7 is the Post-mortem Report of Sri Vinod Simon and they shows that he suffered fatal injuries all over his body and he died due to damage to the head and brain as a result of blunt force impact. Exhibit P-8 is the Accident Report Form and it shows that scratch marks found on the left side of crash guard and both rear-view mirrors found missing and accident was not occurred due to any mechanical defects of the Bullet. Exhibit P-9 is the Police Report Request Letter submitted by the police to the hospital authority for postmortem of body of deceased Vinod Simon.

17. Exhibit P-1 to P-9 prima facie shows that on 30-12-2019, at about 09-00 PM, the petitioner No.2 and deceased Vinod Simon were crossing the road near Kunde Complex, Baroda, Fatorda of Goa State. They also shows that at that time the son of respondent No.1 had rode the Bullet in rash and negligent

manner and dashed to Sri Vinod Simon who was crossing the road. They also shows that Sri Vinoda Simon suffered fatal injuries and died in the hospital during treatment due to fatal injuries suffered in the accident. They also shows that the accident was not occurred due to any mechanical defect of the vehicle. They also show that criminal case was registered and charge sheet was also filed against the rider of Bullet for the offences punishable under section 279 and 304 (A) of Indian Penal Code, 1860.

18. The learned counsel for the respondent No.2 has conducted cross-examination of PW-1 pertaining to place and manner of occurrence of the accident to prove that the accident was occurred due to negligence crossing of the road by deceased Vinod Simon. It is suggested and admitted by PW-1 that the accident was occurred when the deceased Vinod Simon was standing near the ATM. It is suggested and denied by PW-1 that the accident was occurred while crossing the road. Except putting these suggestions and getting denial answers from the mouth of PW-1, nothing has been elicited regarding the place and manner of occurrence of the accident as contended by the respondent No.1.

19. Though the petitioners have averred in the claim petition that the accident was occurred when Sri Vinod Simon was standing on the kaccha portion of the road near ATM; they have not produced any kind of evidence to

prove this fact except their oral evidence. But the police papers placed on record as per Exhibit P-1 to P-9 and also the Accident Spot Sketch placed on record as per Exhibit R-11 from respondent No.2 side shows that the accident was occurred at the distance of 1.75 meters from the edge of the road in the road which is having total width of 14 meters. So, it can be inferred that the accident was occurred while deceased Vinod Simon was crossing the road and not on the Katcha portion of the road as asserted by the petitioners. Therefore, I am of the opinion that the accident was occurred on the side of the main road while deceased Vinod Simon was crossing the road and not occurred near ATM when he was standing.

20. It could be seen from the pleadings of the parties that the occurrence of the accident; sustainment of injuries by deceased Vinod Simon and also his death due to sufferance of fatal injuries in the accident are not in dispute. It is also not in dispute that the Bullet owned by respondent No.1 was ridden by his son and it was dashed to the deceased Vinod Simon. Under these facts and circumstances of the case, it can be concluded that on the alleged date, place and time, an accident was taken place while deceased Vinod Simon was crossing the road; he had suffered fatal injuries and died during treatment.

21. The learned counsel for the respondent No.2 has argued that the accident was occurred while Vinod Simon was crossing the road; he suddenly

entered the road and came in front of Bullet; the rider of the Bullet tried his level best to avoid the accident and in spite of accident occurred. He also argued that the accident was occurred due to negligence crossing of the road by deceased Vinod Simon and therefore contributory negligence has to be fastened. As I already discussed and opined that the accident was occurred while deceased Vinod Simon was crossing the road. It is an undisputed fact that the road on which the accident was occurred is the busy road in Goa State. It is well-known to everybody that Goa State is popular tourist spot and large number of tourists will visit goa on each and every day. Admittedly the accident was occurred on 31-12-2029 which was the year ending and large number of tourists will visit Goa for welcoming the new year. It is also well-known that the roads in Goa are filled with tourists during year ending. When such being the case, it is quite natural that the tourists uses to cross the roads. It is also the admitted fact that the accident did not occurred on the national highway. If at all, the accident was taken place on National Highway while the pedestrian crossing the road wherein it was not permitted, naturally it can be said that the pedestrian was negligent while crossing of the road. But in the present case on hand, the accident was occurred not on the Highway and it was occurred on the road which is situated inside the city. Therefore, it cannot be said that the accident was occurred due to contributory negligence of the deceased.

22. By looking to the situation and location of the road inside the city and also the date of accident on the year ending, it is the bound and duty of the rider/driver of the vehicles to ride/drive the vehicles slowly and cautiously. If at all the rider of Bullet was very slow and cautious in riding Bullet, even if the deceased who was the pedestrian was crossing the road negligently, the rider could have avoided the accident and he would not have dashed to deceased Vinor Simon and the accident would not have occurred. By looking to the situation and location of the road on which the accident was taken place and also by looking to the year ending, I am of the opinion that the rider of the Bullet was negligent and not cautious while riding the vehicle and therefore, the accident was occurred solely due to his rash and negligent riding. Under these facts and circumstances of the case, I am concluding that the accident was occurred solely due to rash and negligent riding of the Bullet by its rider and not due to rash or negligent crossing of the road by deceased. Hence, I am answering to ***Issue No.1 in the affirmative.***

23. ADDITIONAL ISSUE NO.1:- It is the specific contention of the respondent No.2-Insurer that the rider of the Bullet was not possessing valid and effective Driving License to ride the Bullet at the time of accident. It is further contended that the rider of the Bullet was holding Learner's License; he was not authorized to ride the Bullet independently; there was no authorized

person seated on the backside of the Bullet to instruct the rider to ride the vehicle; the respondent No.1 being the owner of the Bullet handed it over to unauthorized person and thereby he had violated material terms and conditions of Insurance Policy and therefore, the respondent No.2-Insurer is not liable to pay compensation to the petitioner.

24. In order to prove this issue, the respondent No.2-Insurer has examined its Deputy Manager as RW-1 and produced the Learner's License (LLR) and Driving License of respondent No.1 (d) who was the rider of the Motor Cycle at the time of accident as per Exhibit R-1 and R-3 respectively. Exhibit R-1 shows that the respondent No.1 (d) had obtained the Learner's License on 27-11-2019 and it was valid till 26-05-2020. Exhibit R-3 shows that the respondent No.1 (d) obtained Driving License on 28-01-2020 and it will be valid till 24-08-2024. The accident was occurred on 30-12-2019. The petitioners and the respondent No.1 are not disputing the contents of Exhibit R-1 and R-3. So, it is clear from the contents of Exhibit R-1 and R-3 and from the undisputed facts that the respondent No.1 (d) who was the rider of the Bullet was having Learner's License and not having Driving License at the time of accident to ride the Bullet.

25. After holding that the rider of the Bullet was possessing only the Learner's License and not possessing Driving License to ride the Bullet at the

time of accident, the next question arises for consideration is whether riding Bullet by possessing Learner's License and without possessing valid Driving License is violation of the materials terms and conditions of the Insurance Policy which exonerate it from liability of payment of compensation?

26. The learned counsel for the petitioners has argued that the father of the rider of the Bullet i.e., respondent No.1 was traveling as pillion rider on the alleged offending Bullet and the rider was riding the Bullet under the instructions of respondent No.1 and hence, it is deemed that the rider riding the Bullet without violating any provisions of law and also without violating the terms and conditions of Insurance Policy. On the other hand, the learned counsel for the respondent No.2 has argued that the rider of the Bullet alone was riding Bullet and nobody was seated on the Bullet as pillion rider. He also argued that even if it is assumed that father of rider of the Bullet was traveling as pillion rider, he is not the authorized instructor and therefore material terms and conditions of the Insurance Policy have been violated.

27. It could be seen from the case papers that the accident was occurred on 30-12-2019 at about 09-00 PM. It could also be seen that the First Information was lodged by the son of the deceased on 02-01-2020 as to the alleged accident and there is no mention of traveling of pillion rider on the alleged offending Bullet at the time of accident. But it could be seen from the

case papers that the first informant i.e., petitioner No.2 has given supplementary statement on 03-01-2020 before Investigation Officer stating that at the time of accident, the respondent No.1 who was the father of the rider of the Bullet was traveling as pillion rider. As I already stated that the accident was occurred on 30-12-2019; and information has been lodged on 02-01-2020 and the further statement has been recorded on 03-01-2020. Admittedly, the father of the first informant has suffered severe injuries in the accident. When such being the case, naturally the relatives of the injured including his son i.e. first informant was engaged and busy in providing treatment to the injured father. Under these facts and circumstances of the case, it is quite natural that there may be some omission in the First Information as to nature of occurrence of the accident, number of vehicles involved in the accident, names and addresses of the parties who have injured in the accident and also the names of persons travelling on the vehicles. In such a situation, those mistakes can be clarified in the further statement. In the present case on hand, there is no huge delay in giving and recording the further statement of the First Information and therefore, I am of the opinion that delay in lodging further statement is properly explained. Under these facts and circumstances of the case on combined reading of the Exhibit P-1 to P-3, , I am of the opinion that the petitioners are able to prove that the respondent No.1 was traveling as pillion rider on the Bullet which was riding by its rider.

28. Law permits the riding of Motor Cycle by the person holding Learner's License under the instructions of the person holding valid Driving License and it is not the fundamental breach of terms and conditions of the Insurance Policy and therefore, the insurer cannot be absolved from liability to pay compensation in its entirety and the Insurer can be directed to pay the compensation to the injured/to the legal heirs of the deceased first and then it can recover the same from the owner of the vehicle. Under these facts and circumstances of the case, I am of the opinion that riding of Bullet by respondent No.1 (d) by possessing Learner's License under the instructions of respondent No.1 is not fundamental breach of terms and conditions of Insurance Policy. Hence, I am concluding that though the respondent No.2 is able to prove that the rider of the Bullet had no valid and effective Driving License to ride the Bullet at the time of accident, it is not the violation of materials terms and conditions of the Insurance Policy as he was riding the Bullet by possessing valid Learner's License under the instructions of the respondent NO.1 who was possessing Driving License. Hence, I am answering to ***Additional Issue No.1 partly in the affirmative and partly in the negative.***

29. ISSUE NO.2: - This issue is regarding the persons who are entitled for the compensation, quantum of compensation and liability to pay compensation. According to claim petition, the petitioner No.1 is the wife and the petitioner

No.2 is the son of deceased Vinod Simon. The petitioners who have been examined as PW-1 and 3 also stated their relationship in the affidavits filed in lieu of chief-examination. According to claim petition, the age of deceased was 49 years at the time of his death and the age of petitioner No.1 and 2 was 43 years and 21 years respectively. The relationship and age of the petitioners with the deceased is not disputed by the respondents. Hence, the petitioner No.1 and 2 being the wife and son of deceased, they are the legal heirs and dependents on the income of the deceased and hence petitioner No.1 and 2 are entitle for compensation pertaining to the death of deceased Vinod Simon.

30. The petitioners are seeking for awarding total compensation of Rs.2,54,50,000/-. The petitioners have claimed and deposed that deceased Vinod Simon was aged about 49 years at the time of accident, he was working as International Purchasing Manager at Health Planet Company (Food supplement) at Kuwait and drawing 800 KWD (Kuwait Dinars) per month which is more than Rs.1,94,000/- per month in Indian Rupees. In order to prove the age, the petitioners have relied upon the contents of Passport of deceased Vinor Simon placed on record as per Exhibit P-15 and it shows that deceased Vinod Simon was born on 25-07-1971. The accident was occurred on 30-12-2019 and he was passed away on 04-01-2020. Hence, the age of the deceased was 48 years; 05 months and 05 days as on the date of accident and 48 years; 05

months and 10 days at the time of his death. Therefore, the age of the deceased Vinod Simon has been determined as 48 years at the time of his accident and also his death.

31. In order to prove the occupation and income of the deceased Vinod Simon, the petitioners have relied upon the evidence of PW-1 to 3 and also the contents of documentary evidence placed on record as per Exhibit P-15 to P-28, P-22 (a), P-24 (a) and P-25 (a). Exhibit P-15 to P-21 have been marked through PW-1. Exhibit P-22 to P-28 have been marked through PW-2. Exhibit P-22 (a), P-24 (a) and P-25 (a) have been marked through PW-3. As I already stated PW-1 and PW-3 are the son and wife of deceased Vinod Simon and they have deposed that deceased Vinod Simon was working as International Purchasing Manager at Health Planet Company (Food supplement) at Kuwait and drawn monthly salary of 800 KD (Kuwait Dinars). PW-2 namely Sri Fakruddin B. Ahmed Khan is stated to be the Operational Manager of Health Planet Company, Kuwait and stated to have authorized to give evidence. PW-2 filed affidavit and stated that he is working in that company for the past four years as Operational Manager and he has been authorized by CEO to give evidence in this case. He also stated that Sri Vinod Simon was appointed as an employee on 20-02-2008 as Sales Co-Ordinator and he was paid monthly salary of 325 KWD (Kuwait Dinars) at the

time of his appointment and he was paying 800 KWD at the time of his accident and his death.

32. Exhibit P-16 is the Certificate said to have been issued by the Managing director of Health Planet Company stating that Sri Vinod Simon was working in the company as International Purchasing Manager from 20-02-2008 and he was drawing monthly salary of 800 KWD. Exhibit P-18 is also the certificate said to have been issued by the Managing Director of Health Planet Company on 02-07-2012 stating that Sri Vinod Simon was working in the company as Sales Co-Ordinator. Exhibit P-16 did not contains the address of the company and also not contains the date of its issue. Exhibit P-18 did not contains the address of the company. The nature of job of deceased Vinod Simon is different in Exhibit P-16 and P-18 and they are contradicting with each other.

33. Exhibit P-17 is said to be the Employment Order issued by the Health Planet Company on 02-07-2012 stating that Sri Vinod Simon was appointed in the position as Sales Co-Ordinator from 20-02-2008 with the monthly salary of 325 KWD. Exhibit P-17 is also not contains the details of the employer company and also the detail of the employee. Exhibit P-19 and P-20 and P-26 and P-27 are one and the same and they are stated to be the Statement of Bank Salary Account of deceased Vinod Simon maintained with National Bank of Kuwait for

the period from 01-10-2019 to 31-10-2019 and 21-11-2019 to 19-01-2020 and they shows that an amount of 800 KWD credited to his account on two occasions on 28-10-2019 and 28-11-2019.

34. Exhibit P-21 is another Certificate issued by the Kuwait Embassy of India on 15-6-2017 for the purpose of admission of his son i.e. petitioner No.2 stating that he was holder of Indian Passport and residing at Kuwait Exhibit. Exhibit P-23 is the Translated Copy of File Details of the Health Planet Company and it shows that details of that company. Exhibit P-24 is the Translated Work Permit of deceased Vinod Simon and stated to have issued on 14-03-2018 and it is mentioned therein that the work permit of Sri Vinod Simon has been renewed on 14-06-2018 for 02 years. Exhibit P-24 (a) is the attested copy of Exhibit P-24 by the Embassy of India, Kuwait and also by Kuwait Chamber of Commerce and Industry.

35. Exhibit P-22 is the Authorization Letter stated to have issued by CEO of Health Planet Company on 03-07-2022 in favour of Sri Fakrouddin Bashir Ahmed Khan stated to be the Operational Manager of the said company to attend and represent the company before this tribunal. Exhibit P-22 (a) is stated to be the attested copy of Exhibit P-22 (a) by Kuwait Chamber of Commerce and Industry. Exhibit P-25 is the original Civil ID of Fakrouddin Bashir Ahmed Khan and Exhibit P-25(a) is stated to be the attested copy of Exhibit P-25 by Embassy

of India, Kuwait and Kuwait Chamber of Commerce and Industry. Exhibit P-28 is the translated copy of request filed for authorization of signature of Authorized Agent.

36. Exhibit P-16 to P-28, P-22 (a), P-24 (a) and P-25 (a) are the documents issued stated to have issued at Kuwait and they are the Foreign Country documents. ***As per section 77 (F) of Barathiya Sakshya Adhiyaniyam, 2023***, the original or copy certified by the legal keeper thereof of foreign documents have to be produced in Indian courts with certificate under the seal of a Notary Public or of an Indian Consul or Diplomatic Agent that a copy of duly certified by the Officer having the legal custody of the original and upon proof of the character of the document according to the law of foreign country. So, it is clear that the original or copy certified by the legal keeper of the foreign documents have to be produced before the Indian courts with certificate under the seal of the Notary Public or an Indian Consul or Diplomatic Agent. In the present case on hand, though Exhibit P-16 to P-28, P-22 (a), P-24 (a) and P-25 (a) are the foreign documents produced in Indian courts, they have not certified under the seal of a Notary Public or an Indian Consul or Diplomatic Agent except Exhibit P-24 (a) and P-25 (a). Therefore, no probative value can be attached to the said documents except Exhibit P-24 (a) and P-25 (a). Exhibit P-24 (a) shows that deceased Vinod Simon was having valid permit to work in Kuwait as on the date

of accident and his death. Similarly, it is proved from Exhibit P-25 (a) that PW-2 is having Civil ID at Kuwait. So, from the legally admissible documents placed on record from the petitioners' side as per Exhibit P-15, P-24 and P-P-24 (a), I am of the opinion that the petitioners are able to prove that deceased Vinod Simon was having working permit to work at Kuwait and he was working at Kuwait at the time of his death. But, as I already discussed the documents placed on record from the petitioners' side have not legally attested by the Notary Public or Indian Consul or Diplomatic Agent working at Kuwait as required under ***section 77 (F) of Barathiya Sakshya Adhiyanyam, 2023*** and as required under ***section 3 of Diplomatic and Consular Officers (Oaths and Fees) Act, 1948***. Hence, I am concluding that though the petitioners are able to prove that deceased Vinod Simon was working at Kuwait since from the year 2008 with legal working permit, they have failed to prove that he was working with Health Planet Company and drawing monthly salary of 800 KWD.

37. As I already discussed, though the petitioners are able to prove that deceased Vinod Simon was working at Kuwait since from the year 2008 with legal working permit, they have failed to prove that he was working with Health Planet Company and drawing monthly salary of 800 KWD. When such being the working of deceased Vinod Simon at Kuwait, naturally he was having sufficient income in Kuwait Dollars and he is having good income compared to Indian

Rupees. Therefore, by looking to the age, nature of work at Kuwait and the year in which the death was taken place the income of the deceased is determined as Rs.30,000/- per month on notional basis. As I already determined the age of the deceased was 49 years at the time of his death and he was employed and therefore 25 percent has to be added towards future prospect as per the decision reported in **(2017) 16 SCC 680** in between ***National Insurance Company Limited versus Pyanay Sethi and others***. Therefore, the notional income of the deceased is Rs.37,500/- (Rs.30,000/- PM plus Rs.7,500/- future prospects). The proper multiplier which has to be adopted is 13 as per decision reported in **AIR 2009 SUPREME COURT 3104** in between ***Sarala Verma versus Delhi Road Transport Corporation and another***.

38. As I already stated the petitioner No.1 and 2 being the widow and son of the deceased Vinod Simon and hence, they are entitle for the compensation and they are two in number. Therefore, out of total annual notional income of deceased, $1/3^{\text{rd}}$ has to be deducted towards his personal expenses and remaining $2/3^{\text{rd}}$ of his notional income has to be considered as contribution to the family. So, the annual contribution of the deceased to his family is $\text{Rs.37,500/-} \times 12 \times 2/3 = \text{Rs.3,00,000/-}$. Thus, the petitioner No.1 and 2 are entitle for total compensation of $\text{Rs.3,00,000/-} \times 13$ (multiplier) = Rs.39,00,000/- under the head loss of dependency.

39. The petitioners are also entitle for Rs.15,000/- and Rs.15,000/- under the conventional heads of loss of love and affection and funeral expenses respectively as held by the Constitution bench of Hon'ble Supreme Court of India in the decision reported in **2017 ACJ 2700 Supreme Court in between National Insurance Company Limited versus Pranay Sethi and others**. The petitioner No.1 is entitle for spousal consortium and petitioner No.2 are entitle for parental consortium at the rate of Rs.40,000/- each as held in the decision reported in **2020 SCC Online 418 in between United India Insurance Company Limited versus Satinder Kaur @ Satwinder Kaur and other** rendered by the Hon'ble Apex Court. Thus, the petitioner No.1 and 2 in all entitled for just compensation under the following heads:

SL.NO	NATURE OF THE HEADS	COMPENSATION
1	Loss of Dependency (Rs.37,500/- (monthly income including future prospect of 25 %) X 12 (months) X 2/3 (contribution) X 13 (multiplier) = Rs.39,00,000/-	Rs.39,00,000=00
2	Loss of Consortium to petitioners at the rate of Rs.40,000/- each	Rs.00,80,000=00
3	Loss of Estate	Rs.00,15,000=00
4	Funeral Expenses	Rs.00,15,000=00
	TOTAL	Rs.40,10,000=00

40. I am already given finding to Issue No.1 in the affirmative holding that the accident was occurred on 31-12-2019 at about 09-00 PM, opposite to

Kunde Complex, Borda, Fatorda, Goa on the public road due to rash and negligent driving on the part of rider of Bullet i.e. respondent No.1 (d) owned by respondent No.1 and out of the accident Sri Vinod Simon sustained fatal injuries and died on 04-01-2020 during treatment. It is not in dispute that the respondent No.1 was the owner and he insured the vehicle with respondent No.2-Insurer and the Insurance Policy was in force as on the date of accident. Similarly, I am already given finding to Additional Issue No.1 in the partly in the affirmative and partly in the negative holding that though the rider of the Bullet was not holding valid and effective Driving License as on the date of accident he was holding Learner's License (LLR), it was not the violation of material terms and conditions of Insurance Policy which exonerate the respondent No.2 completely from the liability to pay the compensation.

41. In the decision reported in ***(2018) 9 SCC 650 in a case between Shamanna and another versus Divisional Manager, Oriental Insurance Company Limited and other***, rendered by the Hon'ble Apex Court held that even in case of third party risks, if the driver of the offending vehicle had no valid Driving License and terms and conditions of Insurance Policy have been violated, the Insurer can be directed to pay the compensation to the petitioners first and then recover the same from the owner. In the present case on hand, though the rider of the offending Bullet was having LLR, he was

not holding valid Driving License and therefore, the respondent No.2 can be directed to pay the compensation with interest to the petitioners first and then it can recover the same from the owner. Hence, I am answering to ***Issue No.2 in the affirmative holding that petitioner No.1 and 2 are entitle for total compensation of Rs.40,10,000/- from respondent No.2 along with simple interest at the rate of Rs.6/- percent per annum from the date of petition till the date of payment.***

42. ISSUE NO.3:- In view of my findings to Issues No.1 and 2 and Additional Issue No.1, the petitioners are entitled for the compensation at above rate from respondent No.2-Insurance Company. The petitioner No.1 and 2 being the mother and son of deceased Vinod Simon, they are equally entitle for compensation awarded under all the heads. The compensation awarded to the petitioners is including the expenses already incurred by them for funeral, obsequies ceremony and transportation of dead body and they are also required amount to maintain themselves. Hence, I am of the opinion that 60 % of the compensation awarded and apportioned to petitioners shall be released to them and the remaining amount shall be kept in their names in any nationalized bank as fixed deposit for 03 years. Accordingly, I proceed to pass the following:

ORDER

The claim petition filed by petitioners under section 166 of the Motor Vehicles Act, 1988 is allowed in part.

The petitioner No.1 and 2 are awarded with total compensation of Rs.40,10,000/- (Rupees Forty Lakhs and Ten Thousand only) with simple interest at the rate of Rs.6/- percent per annum.

The Respondent No.2-Insurance Company is liable to pay the compensation to the petitioners with interest.

The petitioners are equally entitle for compensation awarded under all the heads with interest.

Out of the total compensation awarded and apportioned to petitioner No.1 and 2, 40 percent shall be deposited as FD in their names for 03 years in any nationalized bank of their choice with liberty to withdraw interest once in three months and they are permitted to utilize the remaining 60 percent amount.

The respondent No.2 is directed to transfer 60 percent of compensation with accrued interest directly to the bank accounts of the petitioner No.1 and 2 and also directed to deposit the remaining 40 percent of compensation of petitioners with accrued interest before this tribunal within 30 days from the date of this judgment.

The respondent No.2-Insurer is at liberty to recover the compensation with interest from the respondent No.1/owner/his legal heirs after payment to the petitioners.

The petitioners are directed to furnish their bank account details, PAN Card and Adhar Card details along with other particulars which are necessary for transfer of amount forthwith.

No premature withdrawal of FD without the prior permission of the tribunal.

Draw the award accordingly.

(Dictated to the stenographer, transcribed by her, corrected, then signed by me and pronounced in the open court on this 04th day of July, 2026)

**(KUMARA G.)
SENIOR CIVIL JUDGE & ADDITIONAL
MACT, KUNDAPURA.**

ANNEXURE

I. LIST OF WITNESSES EXAMINED FROM PETITIONERS SIDE:

PW-1 : Sri Brandon Vinod Simon (Petitioner No.2)
PW-2 : Sri Fakruddin B. Ahmed S/o Basheer Ahmed Khan
PW-3 : Smt Saritha Vinod Simon (Petitioner No.3)

II. LIST OF DOCUMENTS EXHIBITED FROM THE PETITIONERS SIDE:

Exhibit P-1 : First Information Report registered by Fatorda PS in
Crime No.01/2020
Exhibit P-2 : First Information given by the petitioner No.2
Exhibit P-3 : Further Statement of petitioner No.2
Exhibit P-4 : Charge sheet filed by Fatorda PS in their Crime
No.01/2020
Exhibit P-5 : Accident Spot Panchanama
Exhibit P-6 : Inquest Panchanama of deceased Vinod Simon
Exhibit P-7 : Post-Mortem Report of deceased Vinod Simon
Exhibit P-8 : Accident Report Form (MV Report)
Exhibit P-9 : Police Request to the Medical Officer for conduction
of PM
Exhibit P-10 : Notarized Adhar Card of petitioner No.1
Exhibit P-11 : Notarized Adhar Card of petitioner No.2
Exhibit P-12 : Residential Certificate of petitioner No.2
Exhibit P-13 : Certified copy of Death certificate of Sri Vinod Simon
Exhibit P-14 : Certified copy of Transfer certificate of Sri Vinod Simon
Exhibit P-15 : Certified copy Passport of Late Vinod Simon
Exhibit P-16 : Certificate issued by Health Planet Company

- Exhibit P-17 : Employment Order dated 10-02-2008
- Exhibit P-18 : Certificate issued by Health Planet Company on 02-07-2012
- Exhibit P-19 : Bank Statement for the period from 01-10-2019 to 31-10-2019
- Exhibit P-20 : Bank Statement for the period from 21-11-2019 to 19-01-2020
- Exhibit P-21 : Certificate issued by Kuwait Embassy of India on 15-06-2017
- Exhibit P-22 : Authorization Letter issued by CEO of Health Planet Company on 03-07-2022
- Exhibit P-22(a): Attested Copy of Exhibit P-22
- Exhibit P-23 : Translated File Details of Health Planet Company
- Exhibit P-24 : Work Permit of Sri Vinod Simon issued on 10-10-2020
- Exhibit P-24(a): Attested copy of Exhibit P-24
- Exhibit P-25 : Civil Identity Card of Fakroudine Basheer Ahamed Khan
- Exhibit P-25(a): Attested copy of Exhibit P-25
- Exhibit P-26 : Air Ticket of Fakroudine
- Exhibit P-27 : Bank Statement of Sri Late Vinod Simon
- Exhibit P-28 : Application for Registration-Cancellation-Renewal-
Authorized for Signature

III. LIST OF WITNESSES EXAMINED FROM RESPONDENTS SIDE:

- RW-1 : Sri Ramesh Naik K.

IV. LIST OF DOCUMENTS EXHIBITED FROM THE RESPONDENTS SIDE:

- Exhibit R-1 : Certified copy of Learning License of respondent No.1 (d)
- Exhibit R-2 : Certified copy of Vehicle Particulars of Bullet No.GA-02/E-1753
- Exhibit R-3 : Certified copy of Driving license of respondent No.1 (d)
- Exhibit R-4 : Insurance Policy of Bullet No.GA-02/E-1753
- Exhibit R-5 : Letter written by Insurance Auxiliary Services to respondent No.2
- Exhibit R-6 : Deposition of Sri Ronald D'Souza recorded in CC No.35/S/2021/I by the JMFC, Margao
- Exhibit R-7 : Deposition of petitioner No.2 recorded in CC No.35/S/2021/I by the JMFC, Margao

Exhibit R-8 : Statement of petitioner No.2 recorded by IO
Exhibit R-9 : Kuwait Labour Law Book
Exhibit R-10 : Premium Collection Receipt
Exhibit R-11 : Accident Spot Sketch
Exhibit R-12 : Notarized PAN Card of the petitioner No.1
Exhibit R-13 : Notarized Driving License of petitioner No.1

(KUMARA G.)
SENIOR CIVIL JUDGE & ADDITIONAL
MACT, KUNDAPURA.
