

KAYG210004162021



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC AND ADDITIONAL M.A.C.T-IV, SHAHAPUR**

Present: **Smt. Hema Pastapur, B.A., LL.B.**
Senior Civil Judge and JMFC
and Addl. M.A.C.T. IV, Shahapur

MVC.No.203/2021

Dated this 10th day of August – 2026

- Petitioners :-**
1. Smt. Amaramma W/o late Malappa,
Age: 35 years, Occ: Household.
 2. Mallikarjun S/o late Malappa,
Age: 25 years, Occ: Student.
 3. Basavaraj S/o late Malappa,
Age: 23 years, Occ: Student.
 4. Gangappa S/o late Malappa,
Age: 21 years, Occ: Student.
 5. Akkamma D/o late Malappa,
Age: 18 years, Occ: Student.
- (Petitioners No.2 and 3 are minors
under guardian of petitioner No.1)
- All are R/o: H.No.8/179, near
Hallirayana Temple, Doranhalli,
Tq: Shahapur, Dist: Yadgir.

6. Basamma W/o Nagappa Tangadiri,
Age: 69 years, Occ: Household.
R/o: H.No.8/179/25, near
Hallirayana Temple, Doranhalli,
Tq: Shahapur, Dist: Yadgir.

(By Sri. H.R.P. Advocate)

Versus

- Respondents:-** 1. Iqbal Ahmed Khan S/o Mohammed
Khan, Age: Major, Occ: Bussiness,
R/o: Lohar Galli, Sedam, Tq: Sedam,
Dist: Kalaburagi.

(Owner of the offending vehicle
bearing No.AP-02-W-9693)

2. The legal Manager, HDFC ERGO
General Insurance Co. Ltd., Branch
Office, 2nd Floor, 101/A/SF2, Kishan
Krupa, Opp. Kannada Bhavan, Main
road, S.V.P. circle, Kalaburagi-
585102.

(Insurer of the offending vehicle
bearing No.AP-02-W-9693)

**(Respondent No.1 exparte and
respondent No.2 by Sri.T.G.K.
Advocate)**

J U D G M E N T

That, the petitioners have submitted the claim petition under Section 166 of the Indian Motor Vehicles Act, claiming the compensation of Rs.35,00,000/- with cost and interest at the rate of 18% per annum from the date of petition till its realization.

Facts of the case are as under :-

- 1.** That, the respondent No.1 is the Owner of the Ashok leyland Lorry bearing No.AP-02-W-9693 and the respondent No.2 is the Insurer of the said vehicle. That, one deceased Shri Malappa was the husband of the petitioner No.1, father of the petitioners No.2 to 5 and son of the petitioner No.6.
- 2.** That, on 30.04.2019 the said deceased Malappa and one Shri Ningappa in a Motorcycle bearing No.KA-33-R-2366 were proceeding towards Doranahalli and on that day at about 08.30 p.m., when they were proceeding near the house of one Shri

Abdul Kareem Sab Math, on Shahapur – Yadgir main road, at that time the driver of the said Lorry bearing No.AP-02-W-9693 by driving the same came from backside in a rash and negligent manner and in high speed and dashed against the said motorcycle and due to which the said Malappa and Ningappa – pillion rider have fell down and the said lorry passed over the body of the said Malappa. That, in alleged accident the said Malappa had sustained the grievous injuries and died on the spot.

3. That, the Shahapur police have registered the case against the driver of the said Lorry in Crime No.115/2019.

4. That, on alleged date of accident the said deceased was aged about 40 years and was doing agricultural work and getting the income of Rs.25,000/- per month. That, due to sudden death of said Malappa the petitioners are leading a miserable life. Hence, this petition.

5. That, on notices being served, the respondent No.1 has not appeared and he is placed as *exparte* and the respondent No.2 has appeared before this Tribunal and submitted his objections to claim petition, wherein he has submitted that the respondent No.2 – Company had issued the commercial vehicle policy bearing No.2315202608699200000 in respect of the Lorry bearing No.AP-02-W-9693 and the same was valid from 21.01.2019 to 20.01.2020 and denied the rest of petition averments.

6. That, the respondent No.2 has pleaded that the alleged accident was occurred due to the negligent act of the deceased Malappa and on alleged date of accident he was not possessing with the valid driving license. That, the petitioners have not impleaded in the present petition the Owner and Insurer of the said motorcycle. Hence, the present petition is not maintainable.

7. That, the respondent No.2 has further averred that he is not liable to pay the compensation to the petitioners until and unless the Registration certificate and Permit of the said Lorry and driving license of the driver were in order. That, the respondent No.1 and concerned police have not complied with the mandatory provisions of the Indian Motor Vehicles Act. That, the claim putforth by the petitioners is exorbitant. That, the respondent No.2 in view of his aforesaid contentions has prayed for dismissing the claim petition against him.

8. That, on the basis of the pleadings of the both the parties, the following issues were struck:-

1. Whether the petitioners prove that, on 30.04.2019 at about 08.30 p.m., the deceased by name Malappa S/o Nagappa Tangadgi was rider and one Shri Ningappa was pillion rider of Motorcycle bearing register No.KA-33-R-2366

riding of Motorcycle on Shahapur to Yadgir main road, when they reached infront of house of one Abdul Kareem Sab Math within the limits of Doranahalli village the driver of lorry bearing register No.AP-02-W-9693 came from back side of the aforesaid motorcycle in rash and negligent manner driven by its driver and dashed to the said motorcycle and caused accident ?

2. Whether the petitioners prove that, in the alleged accident the husband of the petitioner No.1 namely Malappa has suffered grievous injuries all over the body and succumbed to injuries on the spot ?
3. Whether the petitioners are entitled for the compensation ? If so, to what extent, from which respondent ?
4. What order or award ?

9. That, the petitioners to demonstrate their aforesaid contentions have got examined the petitioner No.1 as PW-1 and have got marked the documents at Exs.P1 to 8. That, the petitioners to probabalise their aforesaid contentions have got examined the Eye witness to the incident – Shri Sanganna S/o Mahantappa Hugar as PW2 and closed their side.

That, the respondent No.2 to establish his case has got examined one Shri Vishalkumar V.P S/o Vijayakumar – Manager – Litigation and TP claiming as RW1 and got marked the documents at Exs.R1 and 2 and closed his side.

10. That, I have heard the arguments and perused the materials placed on record. That, My answer to the aforesaid issues are as under:-

Issue No.1 :- In the **AFFIRMATIVE**

Issue No.2 :- In the **AFFIRMATIVE**

Issue No.3 :- **PARTLY** in the **AFFIRMATIVE**

Issue No.4 :- As per the final order for following:-

REASONS

11. Issues No.1 and 2 :- That, as these issues are connected together, I have taken them for joint discussion to avoid repetition of facts. It is specific case of the petitioners that, on 30.04.2019 the said deceased Malappa and Ningappa in a Motorcycle bearing No.KA-33-R-2366 were proceeding towards Doranahalli and on that day when they were proceeding near the house of Abdul Kareem Sab Math, on Shahapur – Yadgir main road, at that time the driver of the said Lorry bearing No.AP-02-W-9693 by driving the same came from back side in a rash and negligent manner and in high speed and dashed against the said motorcycle and due to which the said Malappa and said Ningappa have fell down and the said lorry passed over body of the said Malappa and

due to which the said Malappa had sustained the grievous injuries and died on the spot. That, the PW1 in her chief affidavit has re-iterated the said facts and got marked the documents at Exs.P1 to 8. That, the Ex.P2 is the certified copy of Complaint. That, the said Ningappa – pillion rider had lodged the complaint against the driver of the said lorry in Shahapur police station. That, the Ex.P1 is the certified copy of F.I.R. That, the said police in pursuance of Ex.P2 have registered the case against the said driver of the said lorry in Crime No.115/2019. That, the Ex.P3 is the certified copy of Final report. That, the Investigating officer has charge sheeted against one Shri Javeed S/o Imamusab Masudar – driver of the said lorry for the offences punishable under Sections 279, 338 and 304(A) of the Indian Penal Code and under Sections 3, 181 and 187 of the Indian Motor Vehicles Act and arrayed him as accused No.1 and against present respondent No.1 for the offences punishable under

Section 180 of the Indian Motor vehicles Act and arrayed him as accused No.1 and against one Shri Mallayya S/o Bhimayya Guttedar – Owner of the said motorcycle under Section 196 of the Indian Motor vehicles Act and arrayed him as accused No.3.

12. That, the Ex.P4 is the certified copy of Crime details form. That, the contents of said document depicts that the alleged accident was occurred on Shahapur – Yadgir main road, near house of Abdul Kareem Sab Math. That, the Ex.P5 is the certified copy of Hand sketch map of the scene of accident.

13. That, the Ex.P6 is the certified copy of Motor vehicles accident report, wherein at column No.10 it has mentioned that the alleged accident was not occurred due to any mechanical defect in the Motor vehicles bearing No.AP-02-W-9693 and KA-33-R-2366. That, the Ex.P7 is the certified copy of Inquest panchanama and the Ex.P8 is the certified copy of

Post – mortam report. That, in Ex.P8 the cause of death of said Malappa has been mentioned as due to head injury sustained as a result of RTA.

14. That, the PW2 has submitted chief affidavit supporting to case of the petitioners.

15. That, the respondent No.2 in his pleadings has traversed that the alleged accident was occurred due to the negligent act of the deceased Malappa. That, the RW1 in his chief affidavit has reiterated the said facts. That, the respondent No.2 to demonstrate his aforesaid contentions has not adduced any documentary evidence. That, mere plausible explanation is not sufficient for rebuttal evidence but proof of explanation is necessary. That, in absence of any cogent evidence the said contention of the respondent No.2 do not assume any importance.

16. That, the respondent No.2 in cross – examination of the PWs1 and 2 though, has tried to demonstrate that the alleged accident was occurred due to the negligent act of the deceased Malappa but, nothing has been elicited from him.

17. That, the Investigating officer in Final report – Ex.P3 has specifically mentioned that the alleged accident was occurred due to the negligent act of the driver of the said lorry and due to his actionable negligence the said Malappa lost his breath. That, the respondents have not challenged the Ex.P3 in any Forum and it has remained unchallenged.

18. *It is settled principle of law that, in case of accident it is not mandatory to prove the guilt of the accused beyond all reasonable doubt. That, for the purpose of claim petition mere proof of accident due to negligence is sufficient. That, in National Insurance Company Versus Pushpa*

Rama and other, reported 2009 ACJ 287 it has held that, the certified copy of the Criminal Court records such as FIR, Recovery memo and mechanical Inspection report of Vehicle documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under Motor Vehicles Act are not akin to proceedings in a Civil Suit and hence, strict rules of evidence are not required to be followed in this regard.

19. That, in present case from police records coupled with ocular evidence of the PWs1 and 2 it clearly appears that the alleged accident was occurred due to the negligent act of the said Javeed – driver of the said lorry and due to his negligent act the said Malappa lost his breath. Hence, without much discussion, issues No.1 and 2 are answered in the **AFFIRMATIVE.**

20. Issue No.3:- That, the petitioners are entitled for the compensation under the following heads :-

a) **Transportation of dead body:-** That, the petitioners might have spent some amount to transport the dead body of said Malappa from Government Hospital, Shahapur to their native place. Hence, it is feasible to award a sum of Rs.15,000/- under this head.

b) **Loss of estate, loss of consortium and funeral expenses:-** That, the petitioners are entitled for Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. That, the petitioner No.1 is entitled for Rs.40,000/- towards loss of consortium.

c) **Filial Consortium:-** That, the Hon'ble Supreme Court in Magma General

Insurance Company Limited Versus nanu Ram @ Chuhru and others in Civil Appeal No. 9581/2018 dated: 18.09.2018 has held as under:-

Filial Consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the decease. The greatest agony for a parent is to loose their child during their life time. Children are valued for their love, affection, companionship and their role in the family unit.

That, the petitioner No.6 has lost her protective son. Hence, it is feasible to award Rs.40,000/- under this head.

d) **Parental Consortium:-** That, in this case the petitioners No.2 to 5 have lost their loving father. Hence, they are entitled for Rs.40,000/- each under this head i.e., $40,000 \times 4 = 1,60,000/-$.

e) **Loss of dependency:-** That, the petitioners though, have contended that on alleged date of accident the deceased Malappa was aged about 40 years but, to probabalise the same have not produced his school records and birth certificate. That, the respondent No.2 in cross-examination of PW1 has tried to elicit that on alleged date of accident the said deceased was aged about 60 years but, nothing has been elicited from her. That, in Ex.P8 – Post mortem report the age of the said deceased has been mentioned as 40 years. Hence, the age of the said deceased

on alleged date of accident is taken as 40 years. That, as being guided in **Sarla Verma and others Versus Delhi Transport Corporation and another**, decided in **Civil Appeal No. 3483 of 2008 dated:15.04.2009** the appropriate multiplier for the age group of 36 to 40 years is 15.

21. That, the petitioners though, have contended that the said deceased during his life time was doing agriculture labour work and getting the income of Rs.25,000/- per month but, to probabalise the same have not adduced any documentary evidence. That, as per revised National income chart prepared by the Karnataka State Legal Services Authority, Bengaluru, dated:- 26.02.2022 the income of the said deceased is taken at Rs.13,250/- per month (for the year 2019).

22. That, the *Hon'ble Supreme Court in the case of National Insurance Company Limited Versus Pranay Sethi and others, reported in 2017 ACJ 270* has held as under:-

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.

23. That, in this case the compensation is calculated as under :-

$$13,250 \times 12 = 1,59,000/-$$

That, on alleged date of accident the said deceased was aged about 40 years, if 25% warranted then it comes as under:-

$$\frac{1,59,000 \times 25\%}{100} = 39,750/-$$

$$1,59,000 + 39,750 = 1,98,750/-$$

That, if 1/4th is deducted towards personal living and expenses of the deceased then it comes to :-

$$1,98,750 \times 1/4 = 49,687.5$$

That, the said amount is rounded off to Rs.49,687/-.

$$1,98,750 - 49,687 = 1,49,063/-$$

That, the annual income for the purpose of calculating the loss of dependency is Rs.1,49,063/-

$$1,49,063 \times 15 = 22,35,945/-$$

That, the petitioners are entitled for Rs.22,35,945/- under this head.

24. That, the petitioners are entitled to receive the compensation as under:-

Petitioner No.1 - 50%

Petitioner No.2 - 10%

Petitioner No.3 - 10%

Petitioner No.4 - 10%

Petitioner No.5 - 10%

Petitioner No.6 - 10%

25. That, the petitioners are entitled for the total compensation under the following heads :-

HEADS	COMPENSATION IN RUPEES
Transportation of dead body	15,000.00
Loss of estate	15,000.00
Funeral expenses	15,000.00
Loss of consortium	40,000.00
Filial consortium	40,000.00
Parental consortium	1,60,000.00 (40,000 X 4)
Loss of dependency	22,35,945.00
Total	25,20,945.00

26. Interest:- That, as being guided by the **Hon'ble High of Karnataka in Regional Manager Oriental Insurance Company Limited Versus Pushpa and others** decided in **MFA No.5956/2017 clubbed with 6310/2017 (MV)** it is just and proper to award the interest at the rate of 6% per annum from the date of petition till its realization.

27. Liability:- That, the respondent No.2 has got marked the copy of Insurance policy of offending vehicle – Lorry bearing No.AP-02-W-9693 at Ex.R2. That, from the perusal of Ex.R2 it appears that on alleged date of accident the policy of the lorry was in force. It is to be noted here that, in this case the respondent No.2 is liable to indemnify the petitioners at the first instance and is at liberty to recover the same from the respondent No.1 in accordance with law. Hence, without much discussion, issue No.3 is answered **partly** in the **AFFIRMATIVE**.

28. Issue No.4:- That, as discussed on issues No.1 to 3, I proceed to pass the following :-

ORDER

That, the claim petition filed by the petitioners under Section 166 of the Indian Motor Vehicles Act, is partly allowed with cost.

That, the petitioners are entitled to recover from the respondent No.2 the compensation amount of Rs.25,20,945/- with interest at the rate of 6 % per annum from the date of petition till realization.

That, the respondent No.2 is hereby directed to deposit the said compensation amount within 30 days from the date of passing of the award.

That, on deposit of said compensation amount by the respondent No.2, the amount apportioned in favour of the

petitioner No.1, 50% shall be released in her favour through e-banking on due to identification and 50% shall be kept as a Fixed deposit in her name in any Nationalised Bank of her own choice for the period of two years with a liberty to withdraw the periodical interest and the amount apportioned infavour of the petitioners No.2 to 6 shall be released in their favour forthwith through E-banking on due identification.

That, draw the award accordingly.

That, Advocate fee is fixed at
Rs.1,000/-.

(Directly dictated to the stenographer, typed by him, corrected and then signed and pronounced by me in the open Court on this 10th day of August- 2026)

(Hema Pastapur)
Sr. Civil Judge and Addl., MACT-
IV, Shahapur.

ANNEXURE**List of witnesses examined on behalf of petitioners:-**

- PW-1 : Amaramma W/o late Malappa.
PW-2 : Sanganna S/o Mahantappa Hugar.

List of documents marked on behalf of petitioners:-

- Ex.P.1 Certified copy of FIR.
Ex.P.2 Certified copy of Complaint.
Ex.P.3 Certified copy of Final report.
Ex.P.4 Certified copy of Crime Details Form.
Ex.P.5 Certified copy of Hand sketch map of scene of offence.
Ex.P.6 Certified copy of Motor Vehicles Accident Report.
Ex.P.7 Certified copy of Inquest panchanama.
Ex.P.8 Certified copy of Post-Mortem report.

List of witnesses examined on behalf of the respondent No.2:-

- RW-1 : Vishalkumar V. P. S/o Vijaykumar.

List of documents marked on behalf of the respondent No.2:-

- Ex.R1 : Authorization letter.
Ex.R2 : Copy of Insurance policy of offending vehicle bearing No.AP-02-W-9693.

List of witnesses examined on behalf of the respondent
No.1:-

-NIL-

List of documents marked on behalf of the respondent
No.1:-

-NIL-

(Hema Pastapur)
Sr. Civil Judge and Addl.,MACT-
IV, SHAHAPUR.