

KAYG210006422023



**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.144/2023 C/W MVC No.143/2023

Dated this the 1st day of August-2026

**PETITIONER in MVC
No.143/2023 :-**

Mahiboob S/o Abbas Ali Bhavikatti,
Age: 22 years, Occ: Mechanic,
R/o: Naikal village, Tq: Wadagera,
Dist: Yadgir.

**PETITIONERS in
MVC No.144/2023 :-**

1. Hajarathali Jamshere S/o
Khajabhai, Age: 66 years, Occ: Nil,
2. Moulan Bee W/o Hazrath Ali
Jamshere, Age: 50 years, Occ:
Household,
3. Alimabee W/o Khaja Bai Jamshere,
Age: 30 years, Occ: Household,
4. Mohammed Khasim S/o Khaja Bai
Jamshere, Age: 10 years (minor),

5. Aliya D/o Khaja Bai Jamshere,
Age: 08 years (minor),
6. Kalendar Ghouse S/o Khaja Bai
Jamshere, Age: 06 years (minor),
Petitioners No.4 to 6 are minors and
are U/G of their natural mother
petitioner No.3.

All are R/o: Naikal village,
Tq: Wadagera, Dist: Yadgir.

(By Sri. T.N. Advocate)

Versus

COMMON
RESPONDENTS :-

- 1) Younus Malipatel S/o Allabaksha
Malipatel, Age: 35 years, Occ:
Business, R/o: Kurikota, Tq:
Kalaburagi, Dist: Kalaburagi-
585316.

**(Owner of the vehicle Ashok
Leyland Goods carrier bearing
No.KA-32-D-2560).**

2. Cholanmandalam M/S General
Insurance Company Limited, Golden
heights complex, Industrial Suburb,
Rajajinagar, 4th block, Bangalore.

**(Insurer of Ashok Leyland Goods
carrier bearing No.KA-32-D-2560).**

**(Respondent No.1 by Sri. S.B.P.
Advocate and respondent No.2 by**

Sri.S.V.P. Advocate)

COMMON JUDGMENT

That, the petitioners have filed the claim petitions under Section 166 of the Indian Motor Vehicles Act, claiming the compensation from the respondents.

Facts of the case are as under :-

1. That, one deceased Shri Khaja Bai was the son of the petitioners No.1 and 2, husband of petitioner No.3 and father of the petitioner No.4 and 5 (in MVC No.144/2023). That, the respondent No.1 is the owner of the Ashok Leyland Goods carrier bearing No.KA-32-D-2560 and the respondent No.2 is the Insurer of the said vehicle.

2. That, on 08.12.2022 at about 08.30 p.m., the said deceased Khaja Bai and Shri Mahiboob (petitioner in MVC No.143/2023) were proceeding in a Motorcycle bearing No.KA-33-W-3605 from Yadgir to Naikal village and on that day the said Mahiboob was riding the said

motorcycle in a slow and cautious manner and when they were proceeding near Chatnalli cross, on Naikal bypass road on Yadgir – Shahapur main road, at that time the driver of the said Goods vehicle bearing No.KA-32-D-2560 by driving the same came in high speed and in a rash and negligent manner from Yadgir side and dashed against the said motorcycle and caused the accident.

3. That, in alleged accident the said Khaja Bai and the Mahiboob have sustained the grievous injuries and immediately, they were shifted to Government Hospital Yadgir, for treatment and thereafter, the said Mahiboob was shifted to United Hospital, Kalaburagi for higher treatment. That, the said Mahiboob had spent more than Rs.3,00,000/- for his treatment.

4. That, the said Khaja Bai died on 09.12.2023 at about 00.30 hours, while he was shifting to Kalaburagi Hospital. That, on alleged date of accident, the said

deceased was aged about 36 years and was doing Auto mechanic work and getting the income of Rs.50,000/- per month. That, due to sudden death of said Khaja Bai the petitioners are leading a miserable life.

5. That, on alleged date of accident the said Mahiboob was aged about 22 years and was doing Auto mechanic work and getting the income of Rs.45,000/- per month. That, due to alleged accidental injuries he is unable to carryout his day today routine works and leading a miserable life. Hence, these petitions.

6. That, on notices being served, the respondents have appeared before this Tribunal through learned counsel. That, the respondent No.1 has not filed his written statement. That, the respondent No.2 has submitted his objections to claim petitions, wherein he denied all the contentions of the petitioners. That, the respondent No.2 has pleaded that on alleged date of accident the driver of the said Goods vehicle was driving

the same on the left side of the road in a cautious manner and the petitioner – Mahiboob was riding the said motorcycle in a rash and negligent and zig-zag manner and dashed against the said Goods vehicle and caused the accident.

7. That, the respondent No.2 has further pleaded that the petitioners have not made the owner and insurer of the said motorcycle as a parties to the proceedings. Hence, the petitions are not maintainable. That, on alleged date of accident the said petitioner – Mahiboob was not possessing with the valid and effective driving license. That, the respondent No.2 has further pleaded that he cannot be held liable to indemnify the petitioners unless and until the Registration certificate, Fitness certificate and Permit of the said vehicles and Driving license of the said rider and driver of the said vehicles were in order. 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 petitions against him.

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

In MVC No.144/2023

1. Whether the petitioners proves that, on 08.12.2022 at about 08.30 p.m., deceased Khajabhayi S/o Hajarath Ali Jamshere was pillion rider and one Mahiboob S/o Abbas Ali Bhavikatti was rider, both were proceeding on Motorcycle bearing registered No.KA-33-W-3605 when they were reached near Chatnalli cross on Naikal bypass road on Yadgir – Shahapur main road, at that time a Tipper Lorry bearing registered No.KA-32-D-2560 came from Shahapur side drove it in a rash and negligence manner and in high speed by its driver and dashed to the said

motorcycle and thereby caused accident ?

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

In MVC No.143/2023

1. Whether the petitioner proves that, on 08.12.2022 at about 08.30 p.m., the petitioners was rider and one deceased Khajabhai S/o Hajarath Ali Jamshere was pillion rider both were proceeding on Motorcycle bearing registered No.KA-33-W-3605 when they reached near Chatnalli cross on

Naikal bypass road on Yadgir – Shahapur main road, at that time the driver of Tipper lorry bearing registered No.KA-32-D-2560 came from Shahapur side drove it in rash and negligence manner and in high speed by its driver and dashed to the said motorcycle and thereby caused accident ?

2. Whether the petitioner proves that, he has sustained injuries to right hand, left leg, left foot and all over the body in the said accident ?
3. Whether the petitioner is entitled for compensation ? If so, to what extent, from which respondent ?
4. What order or award ?

9. That, the petitioners in MVC No.144/2023, to demonstrate their aforesaid contentions have got examined the petitioner No.1 as PW1 and the petitioner

No.3 as PW2 and have got marked the documents at Exs.P1 to 11 and closed their side.

That, the petitioner – Mahiboob in MVC No.143/2023 to demonstrate his aforesaid contentions has deposed himself as PW1 and got marked the documents at Exs.P1 to 20. That, the petitioner to strengthen his contentions has got examined one Doctor Shri Shivabasanagouda Patil S/o Nagangouda Patil as PW2 and got marked the documents at Exs.P17(a) and (b) and closed his side.

That, the respondent No.2 to probabalise his aforesaid contentions in both the cases has got examined one Doctor Shri Raju Kulkani S/o Hanmanthrao as RW1 and one Shri Sajid Ahamed S/o Tippu Sultan Doddamani – Assistant manager as RW2 and got marked the documents at Exs.R1 to 9 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:-

In MVC No.144/2023

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

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

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

In MVC No.143/2023

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

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

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

Issue No.4 in

both the cases:- As per the final order for following:-

R E A S O N S

11. Issue No.1 and 2 in both the cases :- 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 08.12.2022 at

about 08.30 p.m., the said deceased Khaja Bai and Mahiboob in a Motorcycle bearing No.KA-33-W-3605 were proceeding from Yadgir to Naikal village and on that day the petitioner – Mahiboob was riding the said motorcycle in a cautious manner and when were proceeding near Chatnalli cross, on Naikal bypass road, on Yadgir – Shahapur main road, at that time the driver of the said Goods vehicle bearing No.KA-32-D-2560 by driving the same came in high speed and in a rash and negligent manner from Yadgir side and dashed against the said motorcycle and caused the accident. It is further case of the petitioners that, in alleged accident the said Khaja Bai and Mahiboob have sustained the grievous injuries and the said Khaja Bhai died on 09.12.2023 at about 00.30 hours, while he was shifting to Kalaburagi Hospital. It is further case of the petitioners that, the said Mahiboob was shifted to Government Hospital, Yadgir, for treatment and thereafter, to United Hospital,

Kalaburagi, for higher treatment. That, the PWs1 and 2 in MVC No.144/2023 and Mahiboob- PW1 – petitioner in MVC No.143/2023 in their chief affidavits have reiterated the said facts. That, the PWs1 and 2 in MVC No.144/2023 have got marked the documents at Exs.P1 to 6. That, the petitioner – Mahiboob – PW1 has got marked the documents at Exs.P1 to 6. That, the Exs.P1 to 6 in both the cases are the same documents. That, the Ex.P2 is the certified copy of Complaint. That, one Shri Ismail S/o Hajrath Ali Jamshere – Brother of the deceased Khaja Bai had lodged the complaint against the one Shri Shrikanth S/o Hanmanth Sulgemi – driver of the Goods vehicle bearing No.KA-32-D-2560, in Wadagera 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- Shrikanth in Crime No.136/2022 for the offences punishable under Sections 279, 337, 338 and 304(A) of

the Indian Penal Code. That, the Ex.P3 is the certified copy of Final report. That, the Investigating officer has charge sheeted against the said driver for the alleged offences.

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 Yadgir – Shahapur main road, Naikal bypass road, near Chatnalli cross. That, the Ex.P5 is the certified copy of Hand sketch map of scene of offence. 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.KA-32-D-2560 and KA-33-W-3605.

13. That, the PWs1 and 2 in MVC No.144/2023 have further got marked the documents at Exs.P7 to 9. That, the Ex.P7 is the certified copy of Inquest panchanama

and the Ex.P8 is the Post-mortam report. That, the Ex.P9 is the certified copy of Statement of PW1 in MVC No.144/2023.

14. That, the petitioner – Mahiboob – PW1 has further got marked the documents at Exs.P7 and 12. That, the Ex.P7 is the Wound certificate of the said Mahiboob issued by the Government Hospital, Yadgir and the Ex.P12 is his Statement.

15. That, the respondent No.2 has pleaded that the alleged accident was occurred due to the negligent act of the petitioner – Mahiboob. That, the RW2 in his chief has reiterated the said facts and has further deposed that their Investigator had visited the residence of the alleged driver, where his brother Shri Jaganath was present and the said Jaganath had stated that on alleged date of accident he was driving the said Goods vehicle and the police have falsely implicated his brother Shrikanth and their investigator had recorded the statement of the said

Jaganath and the same was sent to FSL and the same was confirmed by the FSL report. That, the RW2 has got marked the documents at Exs.R3 to 9. That, the Ex.R3 is the Investigation report and Ex.R4 is FSL report. That, the Exs.R5 and 6 are the Compact discs, Ex.R7 is the Pendrive and Exs.R8 and 9 are the Brief profiles.

16. It is pertinent to note here that, the respondent No.2 to probabalise his aforesaid contentions has not examined either the said Jaganath or the said internal Investigating officer. That, the respondent No.2 has also not examined the Expert who prepared the Ex.R3. That, the respondent No.2 has not produced the certificate under Section 65(B) of the Indian Evidence Act or under Section 63(4) of the Bharatiya Sakshya Adhiniyam, in respect of the Exs.R5 to 7 – which are the Electronic documents. That, in absence of any material and cogent evidence the said pleadings and evidence of RW1 and the Exs.R3 to 9 cannot be believed.

17. That, the respondent No.2 in cross – examination of the PWs1 and 2 in MVC No.144/2023 tried to elicit that the alleged accident was occurred due to the negligent act of the petitioner – Mahiboob but, nothing has been elicited from them. That, respondent No.2 in cross – examination of said Mahiboob though, has also tried to demonstrate the alleged accident was occurred due to his negligent act but, all his efforts were went in vain.

18. That, in Ex.P3 – Final report the Investigating officer has specifically mentioned that due to negligent act of said driver the said accident was occurred and in alleged accident the Mahiboob and Khaja Bai have sustained the grievous injuries and the said Khaja Bai died on 19.12.2022 at about 00.30 hours. That, the respondents have not challenged the Ex.P3 in any proper Forum and it has remained unchallenged.

19. 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.

20. That, in these cases from police records coupled with ocular evidence of PWs1 and 2 and the petitioner – Mahiboob – PW1 clearly appears that the alleged

accident was occurred due to negligent act of the said driver- Shrikanth and due to his actionable negligence the petitioner – Mahiboob and the Khaja Bai have sustained the injuries and due to alleged accidental injuries the Khaja Bai died on 09.12.2022 at about 00.30 hours. Hence, without much discussion issues No.1 and 2 in both the cases are answered in the **AFFIRMATIVE.**

21. Issue No.2 and 3 in both the cases:- That, the petitioners in MVC No.144/2023 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 Khaja Bai from the Government Hospital, Yadgiri to their native place. Hence, it is feasible to award 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.3 – PW2 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.1 – PW1 and the petitioner No.2 have lost their young, loving and protective son. Hence, it is feasible to award Rs.40,000/- each under this head. i.e. $40,000 \times 2 = 80,000/-$

d) **Parental Consortium:-** That, the petitioners No.4 to 6 have lost their loving the protective father in their tender age. Hence, it is feasible to award Rs.40,000/- each under this head. i.e. $40,000 \times 3 = 1,20,000/-$

e) **Loss of Dependency:-** That, the petitioners though, have pleaded that on alleged date of accident the deceased Khaja Bai was aged about 36 years but, to probabalise the same have not produced before this Tribunal his school and birth certificate. That, in Ex.P8 – Post – mortam report the age of the deceased has been mentioned as 36 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.

22. That, the petitioners though, have pleaded that the said Khaja Bai during his life time was working as a auto mechanic and getting the income of Rs.50,000/- per month but, to probabalise the same have not adduced any documentary evidence.

23. That, as per revised Notional income chart prepared by the Karnataka State Legal Services Authority, Bengaluru, dated:- 26.02.2026 the income of the deceased is taken at Rs.14,750/- per month (for the year 2022).

24. 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.

25. That, the compensation is calculated as under :-

$$14,750 \times 12 = 1,77,000/-$$

$$\frac{1,77,000 \times 40\%}{100} = 70,800/-$$

$$1,77,000 + 70,800 = 2,47,800/-$$

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

$$2,47,800 \times \frac{1}{4} = 61,950/-$$

$$2,47,800 - 61,950 = 1,85,850/-$$

That, the annual income for the purpose of calculating loss of dependency is Rs.1,85,850/-.

$$1,85,850 \times 15 \text{ (multiplier)} \\ = 27,87,750/-$$

That, as the petitioner No.1 – PW1 is the father of the deceased cannot be considered as a dependent of the deceased. That, the petitioners No.2 to 6 are entitled for Rs.27,87,750/- under this head.

26. That, the petitioners are entitled for total compensation of Rs.30,72,750/-.

27. That, the petitioner No.1 is entitled for the compensation under the following heads :-

HEADS	COMPENSATION IN RUPEES
Transportation of dead body	15,000.00
Funeral expenses	15,000.00
Filial consortium	40,000.00
Loss of estate	15,000.00
Total	85,000.00

28. That, the petitioners No.2 to 6 are entitled for the total compensation under the following heads :-

HEADS	COMPENSATION IN RUPEES
Loss of consortium	40,000.00

Filial consortium	40,000.00
Parental consortium	1,20,000.00 (40,000X3)
Loss of dependency	27,87,750.00
Total	29,87,750.00

29. That, the petitioners No.2 to 6 are entitled to receive the compensation in following ratio :-

Petitioner No.2 - 10%
 Petitioner No.3 - 60%
 Petitioner No.4 - 10%
 Petitioner No.5 - 10%
 Petitioner No.6 - 10%

30. That, the petitioner - Mahiboob entitled for the compensation under the following heads :-

a) **Pain and suffering:-** That, in Ex.P7-Wound certificate of the petitioner, the concerned doctor has mentioned that in alleged accident the petitioner had sustained the following injuries :-

1. Right upper limb
 sutuhing

with laceration.

2. Deep cut lacerated wound over 1st, 2nd and 4th web space of (Right) hand.
3. Deep abrasion over (Right) forearm with soft tissue injury.
4. Cut lacerated wound over left and the above injuries are simple in nature.

31. That, the petitioner due to said injuries might have sustained pain and inconvenience. Hence, it is feasible to award Rs.30,000/- under this count.

- b) **Attendant and conveyance, Food and Nutrition charges etc.** :- That, the petitioner has got marked his Discharge summary

issued by the United Hospital, Kalaburagi, at Ex.P13 and Letter addressed by the Administrator of the said Hospital at Ex.P14. That, from the said documents it appears that the petitioner was admitted in said hospital from 08.12.2022 to 13.12.2022 as an inpatient, i.e., for 05 days. That, since the petitioner was an inpatient, more likely that at least some person would have stayed with him as an attendant and had incurred some expenses. Hence, it is feasible to award Rs.1,000/- per day. i.e, $1,000 \times 05 = 5,000/-$. That, the petitioner is entitled for Rs. 5,000/- under this head.

c) **Medical Expenses:-** That, the petitioner has got marked his Medical bills at Ex.P15 (31 in number) and Medical prescriptions at Ex.P16 (02 in number). That, the total amount

of Ex.P15 comes to Rs.98,871/-. That, the respondent No.2 in the cross – examination of the petitioner though, has tried to elicit that to claim the higher compensation he had got created the medical documents but, nothing has been elicited from him. That, the petitioner is entitled for Rs.98,871/- under this count.

d) **Loss of future income:-** That, the petitioner has contended that on alleged date of accident he was aged about 22 years. That, the petitioner has got marked notary attested copy of his Driving license at Ex.P20. That, in Ex.P20 the date of birth of the petitioner has been mentioned as 11.03.2001. That, on alleged date of accident the petitioner was aged about 21 years, 08 months and 27 days. That, the age of the petitioner on alleged date

of accident is taken as 21 years. That, as being guided in ***Sarala Verma and others Versus Delhi Transport Corporation and another, decided in Civil Appeal No. 3483 of 2008 decided on 15/04/2009*** the appropriate multiplier for the age group of 21 to 25 years is 18.

32. That, the petitioner though, has pleaded that prior to alleged date of accident he was doing auto mechanic work and getting the income of Rs.45,000/- per month but, to probabalise the same has not adduced any documentary evidence. That, as per revised Notional income chart prepared by the Karnataka State Legal Services Authority, Bengaluru, dated:- 26.02.2026 the income of the petitioner is taken at Rs.14,750/- per month (for the year 2022).

33. That, the petitioner has submitted that due to alleged accidental injuries he is unable to carryout his day today routine works and his said avocation.

34. That, the PW2 in his chief affidavit has deposed that the petitioner on 17.01.2024 had visited his clinic for the purpose of disability and at that time he studied his Wound and Discharge certificates and found that the petitioner is having the following physical impairment:-

1. persistent pain over over
the right hand.
2. unable to hold or lift heavy
objects.

That, on clinical examination the
petitioner is having the following physical
findings :-

1. old healed surgical scar
present over right hand.
2. decreased grip strength.

3. unable to hold or lift heavy objects.

Mobility component:-

Decreased grip strength = 10%

Stability component:-

unable to lift or hold

heavy objects = 5%

That, the PW-2 has further deposed that the petitioner is having physical impairment of 23% to the right upper limb and to the whole body permanent disability of 23%. That, the petitioner in the evidence of this witness has got marked his Disability certificate at Ex.P17.

35. It is pertinent to note here that, the respondent No.2 has got examined the Doctor – Shri Raju Kulkarni as RW2. That, this witness has deposed that generally, the cut – lacerated wound are simple in nature and the injuries mentioned in the Ex.P13 are simple in nature.

36. It is pertinent to note here that, an auto mechanic relies heavily on lifting, bending, using heavy tools and manual dexterity. It is pertinent to note here that, a wound is medically simple if it does not involve a fracture or endanger life, but, it can still lead to long – term functional impairment such as restricted joint movement, chronic nerve pain and muscle weakness. It is significant to note here that, the PW2 in his cross-examination has specifically deposed on basis of the clinical examination he had mentioned the grip strength of the petitioner. That, the PW2 has further deposed that the petitioner is unable to hold or lift heavy objects. That, admittedly, petitioner is working as an auto mechanic, he might be facing some difficulties in lifting heavy objects and to climb the vehicles. It is pertinent to note here that, the PW2 has not specifically deposed what difficulty the petitioner is facing to carryout his said avocation as prior to alleged accident. That, it is an

admitted fact that the PW2 has not treated the petitioner. That, from perusal of the evidence of PW2 it appears that he had assessed the disability at higher stage. Hence, it is feasible to take the disability to the whole body to the extent of 15 %.

37. That, the compensation is calculated as under :-

$$14,750 \times 12 = 1,77,000/-$$

$$\frac{1,77,000 \times 18 \text{ (multiplier)} \times 15 \% \text{ (disability)}}{100}$$

$$= 4,77,900/-$$

That, the petitioner is entitled for
Rs.4,77,900/- under this head.

38. That, the petitioner - Mahiboob is entitled for the total compensation under the following heads :-

HEADS	COMPENSATION IN RUPEES
Pain and suffering	30,000.00

Attendant and conveyance, Food and nutrition charges, etc.	05,000.00
Medical expenses	98,871.00
Loss of future income	4,77,900.00
Total	6,11,771.00

39. 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 petitions till its realization.

40. Liability:- That, the respondent No.2 has pleaded that on alleged date of accident the petitioner was not possessing with the valid and effective driving license. That, from perusal of Ex.P20 it appears it was issued infavour of the petitioner on 22.07.2022. That, from perusal of Ex.P8 it appears that, the Investigating officer

had issued the notice to the respondent No.1 under Section 133 of the Indian Motor Vehicle Act, for producing the driving license of the said driver Shrikanth. That, from Ex.P9 it appears that the respondent No.1 had given reply to Ex.P8, wherein he stated that on alleged date of accident the said Shrikant was owning the driving license and submitted the same along with Ex.P9. That, the from perusal of Ex.P10 it appears that the Investigating officer had issued the Notice under Section 133 of the Indian Motor Vehicle Act, to one Shri Abdulbasha S/o Badesab Momin owner of the Motorcycle bearing No.KA-33-W-3605 for producing the driving license of the petitioner – Mahiboob. That, the contents of Ex.P11 reveals that the said owner had replied to Ex.P10, wherein he stated that on alleged date of accident the petitioner was possessing with the driving license and submitted the same with the Ex.P11.

41. That, the petitioners have placed their reliance on the following decision:-

AIR 2004 Supreme Court 1531

National Insurance Co. Ltd.

VS

Swaran Singh and ors.

The summary of our findings to the various issues as raised in these petitions are as follows:-

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the

provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in

themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the

vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have

contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance

companies would be liable to satisfy the decree.

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and

jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7),

as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal.

Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act

the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and

circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

42. It is pertinent to note here that, from perusal of Ex.P20 it appears that on alleged date of accident the petitioner – Mahiboob was possessing with the effective and valid driving license.

43. That, the RW2 has got marked the copy of Insurance policy of offending vehicle – Ashok Leyland Goods vehicle bearing No.KA-32-D-2560 at Ex.R2. That, from Ex.R2 it appears that it was valid from 31.08.2022 to 30.08.2023. That, on alleged date of accident the Ex.R2 was in force. That, the respondent No.2 being the insurer of the said offending vehicle is liable to indemnify the petitioners in both the cases. Hence, without much discussion issue No.3 in both the cases is answered **partly** in the **AFFIRMATIVE**.

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

ORDER

That, the petitions filed by the petitioners under Section 166 of the Indian Motor Vehicles Act, are partly allowed with costs.

That, the petitioners in MVC No.144/2023 are entitled to recover from the respondent No.2 the compensation amount of Rs.30,72,750/- with interest at the rate 6% per annum from the date of petition till realization.

That, the respondent No.2 shall deposit the said compensation amount within 30 days from the date of passing of award.

That, on deposit of said compensation amount by the respondent No.2, the amount apportioned infavour of the petitioners No.1 and 2 shall be released forthwith through E-banking on due identification and the amount apportioned infavour of the petitioner No.3, 50% shall be released in her name through E-banking on due identification and 50% shall be kept as a Fixed deposit in her name in any Nationalized bank of her choice for the period of two years with a liberty to withdraw the periodical interest.

That, the amount apportioned infavour of the petitioners No.4 to 6 shall be kept as a Fixed deposit in any Nationalized bank at the choice of the petitioner No.3 till they attain majority.

That, the petitioner in MVC No.143/2023 is entitled to recover from the respondent No.2 the compensation amount of Rs.6,11,771/- with interest at the rate of 6% per annum from the date of petition till realization.

That, the respondent No.2 shall deposit the said compensation amount within 30 days from the date of passing of award.

That, on deposit of said compensation amount by the respondent No.2, the entire amount shall be released infavour of the petitioner – Mahiboob through E-banking on due identification.

That, draw the award accordingly.

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

That, the copy of this Judgment shall
be kept in MVC No.143/2023.

(Directly dictated to the stenographer, typed by him,
corrected and then signed and pronounced by me in the open
Court on this 01st day of August - 2026)

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

ANNEXURE

**List of witnesses examined on behalf of
petitioner in MVC No.143/2023 :-**

PW-1 : Mahiboob S/o Abbas Ali Bhavikatti

PW-2 : Shivabasanagoud Patil S/o Nagangouda
Patil

**List of documents marked on behalf of
petitioner in MVC No.143/2023 :-**

Ex.P1	Certified copy of FIR.
Ex.P2	Certified copy of Complaint.
Ex.P3	Certified copy of Final report.
Ex.P4	Certified copy of Crime details form.
Ex.P5	Certified copy of Hand sketch map of scene of offence.

Ex.P6	Certified copy of Motor Vehicles Accident report.
Ex.P7	Certified copy of Wound certificates of PW1.
Exs.P8 and 10	Notices.
Exs.P9 and 11	Reply.
Ex.P12	Certified copy of Statement of PW1.
Ex.P13	Discharge summary of PW1.
Ex.P14	Letter of United Hospital, Kalaburagi.
Ex.P15	Medical bills (31)
Ex.P16	Medical prescriptions (02)
Ex.P17	Disability certificate of PW1.
Exs.P17(a) and (b)	Signatures of PW2.
Exs.P18 and 19	X-ray films (02)
Ex.P20	Notary attested copy of Driving license of PW1.

List of witnesses examined on behalf of petitioners in MVC No.144/2023 :-

PW-1 : Hajarathali Jamshere S/o Khajabhai

PW-2 : Alima Bee W/o Khaja Bai Jamshere

List of documents marked on behalf of petitioners in MVC No.144/2023 :-

Ex.P1 Certified copy of FIR.

- Ex.P2 Certified copy of Complaint.
Ex.P3 Certified copy of Final report.
Ex.P4 Certified copy of Crime details form.
Ex.P5 Certified copy of Hand sketch map of scene of offence.
Ex.P6 Certified copy of Motor Vehicles Accident report.
Ex.P7 Certified copy of Inquest report.
Ex.P8 Certified copy of Post-mortam.
Ex.P9 Certified copy of Statement of PW1.
Ex.P10 Notice.
Ex.P11 Reply.

List of witnesses examined on behalf of respondent No.1 in MVC No.143/2023 and 144/2023:-

-NIL-

List of documents marked on behalf of respondent No.1 in MVC Nos.143/2023 and 144/2023:-

-NIL-

List of witnesses examined on behalf of respondent No.2 in MVC Nos.143/2023 and 144/2023 :-

RW-1: Raju Kulkarni S/o Hanamantrao

RW-2 : Sajid Ahamad S/o Tippu Sultan
Doddamani

List of documents marked on behalf of respondent No.2 in MVC Nos.143/2023 and 144/2023 :-

- Ex.R1 Authorization letter.

Ex.R2 Copy of Insurance policy of Vehicle
bearing No.KA-32-D-2560.

Ex.R3 Investigation report.

Ex.R4 FSL report.

Exs.R5 and 6 Compact discs.

Ex.R7 Pen drive.

Exs.R8 and 9 Brief profiles.

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