

**IN THE COURT OF SENIOR CIVIL JUDGE & MACT,****AT SHORAPUR**

**PRESENT :- Smt. Tayyaba Sultana, B.A., LL.B.,**  
Senior Civil Judge & MACT.,  
Shorapur.

Dated this the 4<sup>th</sup> day of **September 2019**

**MVC.No.277/2018**

- PETITIONER/S :-**
- 1. Lalabee W/o.**  
Khasimsab Godihal  
Age: 27 years, Occ: House  
hold,
  - 2. Salma Begum D/o.**  
Khasimsab Godihal  
Age: 04 years Minor
  - 3. Badesab S/o.**  
Khasimsab Godihal  
Age: 8 years Minor  
  
The petitioners No.2 and 3 are  
minors U/G their natural  
mother Petitioner No.1.
  - 4. Sopama W/o.**  
Badesab Godihal,  
Age: 60 years, Occ: house hold  
  
All R/o. Bachimatti,  
Tq: Shorapur Dist. Yadgir  
Mobile No.9740481928

[Rep By Sri. RBD, Advocate]

- V/S -

- RESPONDENT/S :-**
- 1. Laxmanrao S/o.**  
Subburao Peravali

Age: 40 years,  
Occ: Agriculture,  
R/o. Waganagera,  
Tq: Shorapur, Dist. Yadgir

**2. HDFC ERGO General Insurance Company Ltd.**

Through its Branch Manager  
1<sup>st</sup> floor, Virupakshakrupa,  
Opp: KIMS main Gate,  
PB Road, KIMS RD Vidya  
Nagar, Hubli-580021

**3. Moulasab S/o**

Badesab Age: 36 years,  
Occ: Agriculture,  
R/o. Bachimatti,  
Tq: Shorapur, Dist. Yadgir

**4. The Oriental Insurance Company Limited, Through its Divisional Manager, Opposite Mini Vidhanasoudha, Super Market Road, Kalaburgi-585102**

[Respondent No.1 By Sri. NNC Adovcate]

[Respondent No.2 By Sri. TGK Advocate]

[Respondent No.3 By Sri. SBG Advocate]

[Respondent No.4 By Sri. RND Advocate]

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**J U D G M E N T**

The petitioners have filed this petition under Section 166 of Motor Vehicles Act for claiming compensation of Khasimsab S/o. Badesab Godihal who died in the Motor

Vehicle Accident.

**2. The brief facts of the petition are as follows:-**

The petitioner No.1 is the wife and petitioners No.2 and 3 are the daughter and son and the petitioner No.4 is the mother of the deceased Khasimsab S/o. Badesab Godihal. Immediately before the accident deceased Khasimsab was aged about 35 years and he was hale and healthy and he was working as a driver-cum-conductor under Government of Karnataka department of BMTC depot-30 Bangalore, thereby he was getting a gross salary of Rs.26,820/- per month. The petitioners No.1 to 4 were completely dependents upon the deceased for their livelihood. On 10.05.2017 deceased Khasimsab was riding the motorcycle bearing Chassis No.ME4JC673MG8098307 and his friend Babu Bambekar was pillion rider were going from Shorapur to Bachimatti village after finishing their personal work. At about 6.15 pm when the said motorcycle was near Talavagera village at near Ettangibhatti on Shorapur-Kannalli main road, the deceased Khasmisab was riding the

motorcycle carefully on the extreme left side of the road. At that time a motorcycle Hero Honda splendor bearing No.KA-48-H-7792 being ridden by its rider Deva S/o. Ningappa Kengoori came from opposite side in a rash and negligent manner so as to endanger to human life. Suddenly the said motorcycle came and hit the deceased motorcycle with high speed and great force, due to the impact and force of the accident the deceased Khasimsab sustained grievous injuries on his head, right hand, fracture of left leg and other parts of his body. Immediately after the accident the deceased Khasimsab shifted to GGH Shorapur through 108 ambulance vehicle, thereafter immediately he was shifted to United hospital Kalaburgi and for higher treatment again shifted to Victoria hospital Bangalore. The Khasimsab died at hospital on 17.05.2017 as the treatment was not fruitful. The petitioners have incurred a sum of Rs.3,50,000/- for his treatment. Due to untimely death of said Khasimsab the petitioners are put to great mental shock and agony.

**3.** It is further case of the petitioners that, the accident was caused due to the sole rash and negligent act of the rider of motorcycle bearing No.KA-48-H-7792 and motorcycle bearing Chassis No.ME4JFC673MG8098307. The respondent No.1 and 3 are the owners of the respective vehicles and the respondents No.2 and 4 are the insurers of the above vehicles as on the date of accident. Hence all the respondents are jointly and severally liable to pay the compensation of Rs.91,50,000/- with interest @ 12% p.a. from the date of petition with costs.

**4.** On issuance of notice to the respondents, the respondents appeared through their counsels and filed written statement, counters and objections to the main petitions.

**5. The written statement filed by the respondent No.1 as is follows:-**

All the allegation made in the claim petition are false, baseless and claim petition is not maintainable. Further denied the age, occupation and earnings of the deceased

Khasimsab. Further denied the nature of accident. It is denied that, the accident occurred due to rash and negligent riding of the rider of vehicle bearing No.KA-48-H-7792. The accident was occurred due to rash and negligent riding of rider of the motorcycle bearing Chassis No. ME4JFC673MG8098307 and the police have filed charge sheet against both the riders. On the date of accident his respondent had valid motor vehicle policy insured with respondent No.2 with policy No.320201478516200000 to the motorcycle bearing No.KA-48-H-7792 and the rider of the said motorcycle was having valid and effective Driving license. Hence, prayed to dismiss the petition.

**6. The objection filed by the respondent No.2 as is follows:-**

All the material allegations made in the petition are false. Further denied that, this respondent was insurer of motorcycle No.KA-48-H-7792 on 10.05.2017. This respondent issued policy No.2320 2008 9736 5600 000 against the motorcycle bearing No.KA-48-H-7792 valid from 07.11.2014 to 06.11.2015, but the date of accident is on

1.05.2017, hence there is no valid policy as on the date of accident. Further denied the age, occupation and income of the deceased at the time of accident. The claim of Rs.91,50,000/- is exorbitant and baseless. The driver of offending motorcycle bearing No.KA-48-H-7792 was not holding driving license to drive the motorcycle and the policy was not in force on the date of accident. The deceased also was not having driving license to drive the motorcycle. In case the tribunal comes to the conclusion that the petitioners are entitled for any interest, the tribunal may be pleased to award interest only @ 6% p.a.Hence prayed to dismiss the petition against the respondent No.2.

**7. The Counter filed by the respondent No.3 as is follows:-**

The allegation made in the claim petition are false and baseless. The averments made in para No.1 to 22 are admitted. It is denied that, the said accident occurred due to rash and negligent riding of the rider of the motorcycle bearing chassis No.ME4JC673MG8098307. The rider of the

said vehicle was expert rider/Driver and he was working as a driver in BMTC Bangalore. But the accident was occurred due to rash and negligent riding of rider of motorcycle bearing No.KA-48-H-7792 only. On the date of accident, this respondent had valid motor vehicle policy with the oriental insurance company with policy No.472900/31/2017/14823 to the motorcycle bearing chassis No. ME4JC673MG8098307 and the rider deceased Khasimsab had valid and effective driving license. Hence the respondent No.4 insurer is liable to pay the compensation to the petitioners.

**8. The Counter filed by the respondent No.4 as is follows:-**

All the allegations made in the claim petition are false. Further denied the age, occupation and income of the deceased. It is denied that, the vehicle Honda motorcycle bearing chassis No.82097383-8098307 and Engine No.JC67E82097383 was insured with this respondent on the date of accident and the rider of said vehicle was not

having valid and effective driving license. Hence this respondent is not liable to pay the compensation. The alleged accident took place due to rash and negligent act of the rider of motorcycle bearing No.KA26-K-9348 but not the rash and negligent driving of the rider of motorcycle bearing chassis No.82097383-8098307 and Engine No.JC6782097383. The rider of motorcycle No.KA-26/K-9348 was not having valid DL and policy on the date of accident. The said accident took place due to negligence of the deceased Khasimsab. Hence the petitioners are not entitled for compensation. The compensation claimed under different heads is highly excessive and exorbitant. Therefore prayed to dismiss the petition.

**9.** Based on the above pleadings following Issues and additional issues have been framed:-

### **ISSUES**

- 1) Whether the petitioners prove that, the deceased Khasimsab S/o. Badesab Godihal died in the road accident that occurred on 10.05.2017 at about 6.15 pm near Ettangibhatti of Talavaragera village on Shorapur-Kannalli main road due to actionable negligence of the driver of the motorcycle vehicle bearing

No.KA-48-H-7792?

- 2) Whether the 1<sup>st</sup> respondent proves that he had possessed valid and effective driving license on the date of accident?
- 3) Whether the 3<sup>rd</sup> respondent proves that he had possessed valid and effective driving license on the date of accident?
- 4) Whether the 4<sup>th</sup> respondent proves that, drivers of the offending motorcycles did not possess valid and effective driving license on the date of accident?
- 5) Whether the petitioners are entitled for the compensation? If so, to what extent and against whom?
- 6) What order or award?

**ADDL. ISSUE**

- 1) Whether the 2<sup>nd</sup> respondent proves that, driver of the offending vehicle motorcycle bearing No.KA-48-H-7792 did not possess valid and effective driving license on the date of accident?

**10.** In order to prove the above issues, the petitioner No.1 examined as PW1 and got marked 9 documents as per Ex.P1 to 9. On the other hand, the respondent No.1 got examined himself as RW1 and got marked Ex.P1 to 3, the

respondent No.4 got examined its Assistant as RW1 and got marked the documents as per Ex.R4 and 5 and the respondent No.3 has got examined himself as RW3 and got marked the documents as per Ex.R6 and 7. The respondent No.2 has not led its side evidence.

**11.** Heard the arguments of learned counsel for both parties and perused the case records.

**12.** My findings to the above issues are as follows:-

**Issue No.1 : In Negative.**

**Issue No.2 : Does not survive for consideration.**

**Issue No.3 : Does not survive for consideration.**

**Issue No.4 : Does not survive for consideration.**

**Issue No.5 : In Negative.**

**Addl. Issue No.1: Does not survive for consideration.**

**Issue No.6 : As per final order,**

**for the following**

### **R E A S O N S**

**13. ISSUE No.1 to 4 and Addl. Issue No.1 :-** It is the

case of petitioners that, the petitioner No.1 is the wife and petitioners No.2 and 3 are the daughter and son and the petitioner No.4 is the mother of the deceased Khasimsab S/o. Badesab Godihal. Immediately before the accident deceased Khasimsab was aged about 35 years and he was hale and healthy and he was working as a driver-cum-conductor under Government of Karnataka department of BMTC depot-30 Bangalore, thereby he was getting a gross salary of Rs.26,820/- per month. The petitioners No.1 to 4 were completely dependents upon the deceased for their livelihood. On 10.05.2017 deceased Khasimsab was riding the motorcycle bearing Chassis No.ME4JC673MG8098307 and his friend Babu Bambekar was pillion rider were going from Shorapur to Bachimatti village after finishing their personal work. At about 6.15 pm when the said motorcycle was near Talavagera village at near Ettangibhatti on Shorapur-Kannalli main road, the deceased Khasimsab was riding the motorcycle carefully on the extreme left side of the road. At that time a motorcycle Hero Honda splendor

bearing No.KA-48-H-7792 being ridden by its rider Deva S/o. Ningappa Kengoori came from opposite side in a rash and negligent manner so as to endanger to human life. Suddenly the said motorcycle came and hit the deceased motorcycle with high speed and great force, due to the impact and force of the accident the deceased Khasimsab sustained grievous injuries on his head, right hand, fracture of left leg and other parts of his body. Immediately after the accident the deceased Khasimsab shifted to GGH Shorapur through 108 ambulance vehicle, thereafter immediately he was shifted to United hospital Kalaburgi and for higher treatment again shifted to Victoria hospital Bangalore. The Khasimsab died at hospital on 17.05.2017 as the treatment was not fruitful. The petitioners have incurred a sum of Rs.3,50,000/- for his treatment. Due to untimely death of said Khasimsab the petitioners are put to great mental shock and agony. It is further case of the petitioners that, the accident was caused due to the sole rash and negligent act of the rider of motorcycle bearing

No.KA-48-H-7792 and motorcycle bearing Chassis No.ME4JFC673MG8098307. The respondent No.1 and 3 are the owners of the respective vehicles and the respondents No.2 and 4 are the insurers of the above vehicles as on the date of accident. Hence all the respondents are jointly and severally liable to pay the compensation of Rs.91,50,000/- with interest @ 12% p.a. from the date of petition with costs.

**14.** In order to prove the above facts in issue, the petitioner No.1 i.e., wife of deceased got examined herself as PW1 and she filed chief examination affidavit by reiterating the averments made in the petition and in support of her oral evidence. She got marked police and medical documents as per Ex.P1 to P9. Among them Ex.P1 is the certified copy of the FIR and complaint, Ex.P2 is the certified copy of charge sheet with spot panchanama and inquest panchanama, Ex.P3 is the certified copy of IMV report, Ex.P4 is the certified copy of PM report, Ex.P5 is the

salary certificate of the deceased Khasimsab, Ex.P6 is the discharge summary, Ex.P7 is the hospital bill, Ex.P8 are the hospital bills and Ex.P9 is the Transfer certificate.

**15.** It is the case of the respondent No.1 that, The accident was occurred due to rash and negligent riding of rider of the motorcycle bearing Chassis No. ME4JFC673MG8098307 and the police have filed charge sheet against both the riders. On the date of accident his respondent had valid motor vehicle policy insured with respondent No.2 with policy No.320201478516200000 to the motorcycle bearing No.KA-48-H-7792 and the rider of the said motorcycle was having valid and effective Driving license.

**16.** In order to prove the above fact, the respondent No.1 got examined himself as RW1 and marked the documents as per Ex.R1 to 3. Among them Ex.R1 is the driving license, Ex.R2 is the RC card and Ex.R3 is the insurance policy copy.

**17.** It is the case of respondent No.2 that, this respondent issued policy No.2320 2008 9736 5600 000 against the motorcycle bearing No.KA-48-H-7792 valid from 07.11.2014 to 06.11.2015, but the date of accident is on 1.05.2017, hence there is no valid policy as on the date of accident. The driver of offending motorcycle bearing No.KA-48-H-7792 was not holding driving license to drive the motorcycle and the policy was not in force on the date of accident. The deceased also was not having driving license to drive the motorcycle.

**18.** It is the case of respondent No.3 that, the rider of the said vehicle was expert rider/Driver and he was working as a driver in BMTc Bangalore. But the accident was occurred due to rash and negligent riding of rider of motorcycle bearing No.KA-48-H-7792 only. On the date of accident, this respondent had valid motor vehicle policy with the oriental insurance company with policy No.472900/31/2017/14823 to the motorcycle bearing chassis No. ME4JC673MG8098307 and the rider deceased

Khasimsab had valid and effective driving license.

**19.** In order to prove his contention, the respondent No.3 got examined himself as RW3 and got marked the documents as per Ex.R6 and 7. Among them Ex.R6 is the insurance policy copy and Ex.R7 is the RC card.

**20.** It is the case of respondent No.4 that, the alleged accident took place due to rash and negligent act of the rider of motorcycle bearing No.KA26-K-9348 bu not the rash and negligent driving of the rider of motorcycle bearing chassis No.82097383-8098307 and Engine No.JC6782097383. The rider of motorcycle No.KA-26/K-9348 was not having valid DL and policy on the date of accident. The said accident took place due to negligence of the deceased Khasimsab.

**21.** In order to prove the above said fact, the respondent No.4 has got examined its Assistant as RW-2 and got marked two documents as per Ex.R4 and 5. Among them Ex.R4 is the authorization letter and Ex.R5 is the insurance policy copy.

**22.** The petitioners have produced the copy of FIR, complaint, Charge sheet, IMV report, inquest, PM report which have been marked as Ex.P1 to P9. On perusal of inquest and PM report it clearly goes to show that the deceased person has died in the accident. On perusal of the entire documents, it is very clear that one Moulasab S/o Badesab Godihal has given first information statement to the police against the driver of the motor cycle bearing Reg.No.KA-48-H-7792 and motor cycle chassis No.ME4JC673MG 8098307. The I.O has visited the spot and conducted the investigation. After completion of investigation the I.O has submitted the charge sheet against the deceased Khasimsab S/o Badesab Godihal and against the one Deva S/o Ningappa Kenguri. The petitioners have not challenged the charge sheet submitted by the I.O against the deceased. All the documents produced by the petitioners is contrary to their pleadings.

**23.** In support of the documentary evidence, the petitioner No.1 examined herself as PW.1 and reiterated the

petition averments. In the cross examination it is suggested that the police have submitted charge sheet against the deceased. Apart from the oral evidence the petitioners have not placed any other reliable evidence to prove that the rider of the motor cycle bearing Reg.No.KA-48/H-7792 is responsible for rash and negligent driving. Moreover, the petitioners have not examined any eye witness and I.O to prove their contention.

**24.** After considering all the oral and documentary evidence it clearly disclosed that the accident happened due to rash and negligent driving of the deceased Khasimsab. The petitioners have not placed any sufficient evidence to prove the issue No.1. When the petitioners have failed to prove the issue No.1, the consideration of issue No.2 to 4 and Addl. Issue No.1 does not arise. Therefore, the issue No.2 to 4 and Addl. Issue No.1 does not survive for consideration. Hence I proceed to answer issue No.1 in **Negative.**

**25. ISSUE No.5:-** The petitioners have not proved

the issue No.1, therefore the petitioners are not entitled any compensation from the respondents. Hence I proceed to answer issue No.5 in **Negative**.

**26. Issue No.6** : In view of the above discussion on Issue No.1 and 5, I proceed to pass the following:-

**ORDER**

The claim petition filed by the petitioners under section 166 of Motor Vehicles Act is hereby dismiss.

No order as to costs.

Draw award accordingly.

*(Dictated to the Stenographer directly on computer, typed by him and corrected signed by me and then judgment pronounced in the open court on this the 4<sup>th</sup> day of September 2019).*

**(Smt.Tayyaba Sultana )**  
Senior Civil Judge & MACT.,  
Shorapur.

**A N N E X U R E**

**List of witnesses examined for the petitioners:-**

PW1 : Lalabee W/o. Khasimsab

**List of documents marked for the petitioners:-**

Ex.P1 : FIR with Complaint

Ex.P2 : Charge sheet

Ex.P3 : IMV report

Ex.P4	:	PM report
Ex.P5	:	Salary certificate
Ex.P6	:	Discharge summary
Ex.P7	:	Hospital bills
Ex.P8	:	Medical bills
Ex.P9	:	T.C

**List of witnesses examined for the respondents:-**

RW1	:	Laxmanrao S/o. Subburao
RW2	:	Shivaraj S/o. Late. I.Sharanappa
RW3	:	Moulasab S/o. Badesab

**List of documents marked for the respondents:-**

Ex.R1	:	DL
Ex.R2	:	RC
Ex.R3	:	Insurance policy copy
Ex.R4	:	Authorization letter
Ex.R5	:	Insurance policy copy
Ex.R6	:	Insurance policy copy
Ex.R7	:	RC

**(Smt.Tayyaba Sultana )**  
*Senior Civil Judge & MACT.,*  
*Shorapur.*