KABC020377782022

IN THE COURT OF XXI ADDL.SMALL CAUSE JUDGE AND MOTOR ACCIDENT CLAIMS TRIBUNAL, BANGALORE. (SCCH-23)

DATED THIS THE 27th DAY OF JUNE – 2025

PRESENT: **Sri. Shreyansh Doddamani**
B.Com. LL.B, (Spl)
XXI ADDL. SCJ & ACJM
MEMBER – MACT, BENGALURU.

MVC. No.7167/2022

Petitioners :

1. Master. Ruthvik Gowda. L,
S/o Sri. Lingaraju. T.H,
Aged about 7 years,
Since minor Represented by his father and natural guardian
Sri. Lingaraju. T.H.

2. Sri. Lingaraju. T.H,
S/o Honnegowda,
Aged about 40 years.

Both are R/at : No.163/57,
1st Main road, Laggere,
Kempegowda Layout,
Bengaluru-560058.

And also at : No.125,
6th cross, Jnanajyothingar,
Ullal, Bengaluru.
Bengaluru University,
Bengaluru-560056.

3. Smt. Chikkathayamma,
W/o Sri. Sannamarigowda,
Aged about 70 years.

4. Sri. Sannamarigowda,
S/o Boregowda,
Aged about 78 years.

Both petitioners No.3 & 4 are R/at:
Hadamagere, Devalapura,
Nagamangala Taluk,
Mandya District.

(By Sri. Kumar Dyavapatna, Adv)

v/s

Respondents : 1) Royal Sundaram Gen.Ins.Co.Ltd.,
No.56/1, 2nd Floor, 9th Main road,
5th Block, Jayanagar,
Bengaluru-560041.
Represented by Legal Officer / Manager,
Policy No.VGT0166544000100

(By Sri.K.Nagaraja, Adv)

2) Sri. Anandappa,
S/o Late Shamanna,
Aged about 60 years,
No.8/1, Shamanna Layout,
Goragunte Palya,
Bengaluru-562022.

(Exparte)

J U D G M E N T

This claim petition is filed under Sec.166 of M.V Act, 1988 seeking compensation for the death caused in a Road Traffic accident.

2. The case of the petitioners in the nutshell is that on 06.09.2022 at about 10.30 to 10.40 a.m, the deceased was riding the Honda Activa scooter bearing Reg.No.KA-41-EN-3919 in front of C.N.Arcade building, Laggere Sub-Registrar office 50 feet road, Laggere, Bengaluru City, slowly and cautiously by observing all the traffic rules and regulations. At that time the driver of Water Tanker bearing Reg.No.KA-02-AD-0972 which was driven by its driver in a rash and negligent manner so as to endanger the human life and dashed against the deceased scooter. Due to the terrific impact the deceased sustained grievous injuries all over her body and died at the spot. It is submitted that postmortem was conducted at KIMS Hospital and corpse was handed over to the family members. It is submitted that, prior to the accident, the deceased was hale and healthy, she was working as Staff Nurse in KIMS Hospital and she was getting a sum of Rs.31,540/- p.m. and additional OT amount of Rs.8,500/- p.m, and incentives up to Rs.5,000/- to Rs.8,000/- and she had got good experience and at the time

of her death she was having bright future and in future she will be promoted for higher post along with good salary. It is further submitted the petitioner No.1 is the minor son, petitioner No.2 is the husband and petitioners No.3 and 4 are the parents of the deceased and because of death of deceased the petitioners have suffered both financially and emotionally. The accident was caused due to the sole negligence of driver of Water Tanker. The respondents No.1 and 2 being the insurer and owner thereof are jointly and severally liable to pay compensation.

3. Notice was duly served to respondent No.2, the respondent No.2 did not appear before this Tribunal. Hence he placed exparte.

4. After service of notice, respondent No.1 appeared and filed written statement contending that the petition itself is not maintainable either law or on facts. This respondent admitted the issuance of insurance policy in respect of Water Tanker bearing Reg.No.KA-02-AD-0972. However the liability if any is pleaded to be subject to the terms & conditions of

the policy. The petition is bad for non-joinder of necessary parties. Non-compliance of section's 147, 149, 134(c), 158(6) of MV Act is pleaded. This respondent specifically and empathically denied the occurrence, mode and manner of accident and also involvement of the vehicle in the accident. Negligence on the part of the driver of its insured vehicle is denied by this respondent. Per contra it is alleged that the deceased who was riding the motorcycle without having a proper lookout at the vehicular movement on the road and the deceased was solely responsible for the occurrence of the accident. Without prejudice to the said contention it is averred that the driver of the insured vehicle did not possess valid & effective DL and the insured is not possess valid FC as on the date of accident. In fact deceased was also not wearing helmet and also not possessing valid DL at the time of alleged accident. Despite knowing the said fact the owner thereof had handed over its possession to such a driver. Further the deceased was also not possess valid DL as on the date of accident. On account of willful breach of the terms &

conditions of the policy by the insured, the insurance company is not liable to indemnify him. Rest of the petition averments are contended as false and baseless and it is prayed to dismiss the petition.

5. On the basis of the above pleadings the following issues were framed :

ISSUES

1) Whether the petitioners prove that they are the legal heirs and dependents of the deceased ?
2) Whether the petitioners prove that the deceased succumbed to the injuries sustained in a road traffic accident that occurred on 06.09.2022 at about 10.30 to 10.40 a.m., In front of C.N. Arkade Building, Laggere Sub Registrar, 50 feet road, Laggere, Bengaluru City, due to actionable negligence of the driver of the Water Tanker Lorry bearing Reg.No.KA-02-AD-0972 ?
3) Whether the petitioners are entitled for compensation as prayed ? If so, at what rate and from whom ?
4) What order or award ?

6. Petitioner No.2 examined himself as PW.1. Ex's.P1 to 20 were marked on behalf of the petitioners. In order to prove the defence, the respondent No.1 Ins.Co.Ltd, got examined its official as RW.1 and got marked Ex.R.1 document.

7. Heard arguments of both sides. Perused the entire materials placed on record and arguments. My answers to the above issues are as follows :-

Issue No.1	:	**Partly in the Affirmative**
Issue No.2	:	**In the Affirmative**
Issue No.3	:	**Partly in the Affirmative**
Issue No.4	:	**As per final order for the following** :

R E A S O N S

8. **ISSUE NO.2 :** The occurrence of the accident on the relevant date, time and place is not in dispute. The parties are also not at variance with regard to the factum of the death of the deceased due to the injuries sustained in the said accident. The conflict is with respect to actionable negligence. The petitioners plead that the accident was caused due to the sole negligence of the driver of offending Water Tanker. Whereas the Insurance Company contends that the accident in question occurred because of negligence of the deceased herself.

9. In the instant case on hand the petitioners in order to prove rash and negligence on the part of the Water Tanker

driver they have produced Ex.P.1 to 9 documents being the police documents. From the evidence on record it is seen that after the receipt of complaint, the Rajajinagar Traffic police registered a case against the driver of Water Tanker in Crime No.198/2022 of their station. Based on the said FIS, the jurisdictional police registered FIR as per Ex.P.1, investigated the matter and laid charge sheet (Ex.P.3) against the driver of the Water Tanker for the offences punishable u/s's 279, 304(A) of IPC and u/s 134(A&b), 187, 3(1), 181, 5, 180 of MV Act. There is nothing on record to believe that the charge sheet filed by the police is defective or collusive. Added more with regard to the cause of death, Postmortem was conducted as per Ex.P.7 wherein it reflects that the cause of death was "due to the effects of Head Injury associated with other injuries sustained".

10. Further more on perusal of Ex.P.4 to 6 being the Crime Details Form, Spot Sketch and Accident Spot google Map. Further the Crime Details Form and sketch it reflects that the accident happened near Laggare, Sub-Registrar

Office 50 feet road, C.K.Arcade Building, Bengaluru City. On close perusal of the same it reflects that the scooter in which the deceased was traveling was hit by the Water Tanker. Further the contents of the Ex.P.4 to 6 shows that the accident occured on the lane of deceased who was proceeding on its lane i.e., left side of the road. The driver of the offending Water Tanker came in rash and negligent manner from right side of the deceased motorcycle and violently dashed the deceased’s scooter from hind side. On close perusal of the Ex.P9/IMV Report it reflects the rear Brake light assembly, both sides rear indicators, rear right side seat and silencer, both sides rear fender, rear fender and all round ground pipe of the deceased’s motorcycle damaged. This categorically reflects that the offending vehicle had hit the vehicle of the deceased’s to its rear side shows that there is a negligence on the part of the driver of the Water Tanker. If the driver of the offending vehicle was coming in a normal speed then he would certainly avoided the accident. The IMV report which is read in consonance with the Crime Details

Form and sketch and in the light of charge sheet it is crystal clear that the offending vehicle had hit to right hind side of the motorcycle of the deceased. Above all even the charge sheet was also filed as against the driver of the offending Water Tanker for the offences punishable u/s 279, 304(A) of IPC and 134(A&b), 187, 3(1), 181, 5, 180 of MV Act.

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

required to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. Further the Hon'ble High Court of Karnataka in ***National Insurance Co. Ltd. Vs. Krishnappa and another*** reported in ***2001 ACJ 1105,*** where the Hon'ble High Court of Karnataka considering the fact that **the *rider of the offending vehicle was not examined to prove any contributory negligence on the part of scooterist held that the accident had occurred due to rash or negligent driving by the rider of the offending van***. Even in the instant case the driver of the Water Tanker is not examined to show that there was no negligence on his part and even otherwise the IO, as already observed, has clearly opined that the accident occurred only due to the fault of the driver of the Water Tanker and he was charge sheeted. Another important aspects to be noted here is, respondent No.1 did not made any endevour to examine the driver of the insured vehicle. Mere taking of defence is not sufficient to dislodge the testimony of other side, which has no sanctity in the eyes of Law. Under such circumstances the evidence of PW.1 which is supported by police documents has to be accepted. Consequently I hold that the accident is proved to have been caused due to the actionable negligence of the driver of Water Tanker Bearing Reg.No.KA-02-AD-0972. As such, this Tribunal answers issue No.2 **In the Affirmative.**

12. **ISSUE NO.1 :** The petitioners claim that petitioner No.2 is the husband, petitioner No.1 is the minor children and petitioners No.3 and 4 are the mother and father of the deceased. To prove the same, petitioner No.2 filed affidavit-in-lieu of his chief-examination and deposed about the above relationship. The Aadhar cards and Birth certificate of petitioners No.1 and 2 marked at Ex's.P.10 to 12 and contents of the police papers do fortify the said fact. Further the PW.1 has not produced any iota of documents with regard to petitioners No.3 and 4. Further during the course of cross examination PW.1 admitted that petitioners No.3 and 4 are the parents of the deceased, and they are not living

with them. Be that as it may, on the basis of evidence placed on record, I hold that the petitioner No.3 & 4 are the legal representatives of the deceased.

13. However the question that arises for consideration is that whether such status of legal representative alone will give rise to get an entitlement for compensation. The answer would be in the negative. Mere status of a legal representative alone is not sufficient to make a claim. To put it differently, dependency is the criteria to award compensation. In this view of the matter petitioners No.3 & 4 cannot be said to be dependent on the earnings of their married daughter (deceased). Under such circumstances only the petitioners No.1 and 2 are entitled for compensation under the head 'Loss of dependency'. **Hence, this Tribunal answers to issue No.1 Partly in the Affirmative.**

14. **ISSUE NO.3 :** In this case the petitioners have claimed the compensation on the death of deceased in the road traffic accident. The petitioners contended that deceased was working as Staff Nurse in KIMS Hospital and she was

getting a sum of Rs.31,540/- p.m. and additional OT amount of Rs.8,500/- p.m, and incentives up to Rs.5,000/- to Rs.8,000/- and she had got good experience and at the time of her death she was having bright future and in future she will be promoted for higher post along with good salary. In order to prove avocation and income the petitioners have not produced any documentary evidence before this Tribunal. Further they have produced Nursing certificate, Certificate of Registration of deceased as a Nurse, completion of nursing Degree, Nursing Marks card at Ex.P.15 to 18. Except study certificates, the petitioners have not produced any authentic documents or examined the employer of the deceased to prove the income and avocation.

15. In order to substantiate the above said fact absolutely no string of evidence is produced before this Court. It is relevant to rely on a decision of Hon'ble High Court of Karnataka rendered on Division Bench in the case of **Ananda v/s Arjun and another** in **MFA.No.101144/2020 (MV) dated.05.07.2023.** Wherein the Hon'ble High Court of

Karnataka has laid down the following principles in para No.8(b) are as here under :

> "(b) The accident is of the year 2017. The Tribunal has assessed the income of the deceased at Rs.7,000/- per month as against the claim of Rs.2,50,000/- per annum. To substantiate the said claim, the injured claimant has not placed any material on record, it is for the Courts and Tribunals to assess the income notionally. The notional income fixed by the Karnataka State Legal Services Authority for the accident of the year 2017 is Rs.10,250/-. In the absence of any material produced by the claimant to prove his income, it is appropriate to assess the notional income of the injured claimant at Rs.10,250/- per month, and the same is assessed as the monthly income of the injured claimant"

As such this court is taking the notional income as prescribed by the Karnataka Legal Service Authority, Bengaluru. Therefore in view of the above decision, the accident was occurred on 06.09.2022. Therefore, Rs.15,500/- has to be taken into consideration as monthly income of the deceased.

16. The petitioners have produced the Aadhar card and Driving Licence and SSLC Marks card to show the age of the

deceased as per Ex.P13 & 14, wherein the date of birth of deceased is mentioned as 30.06.1987, which indicates that she was aged (35 years 2 months 7 days) **35 years** on the date of accident. Therefore the appropriate multiplier as per Sarla Verma's case for the said age group is '**16**'.

17. As per the decision of Hon'ble Apex Court reported in **2017 ACJ 2700 (SC)** (*National Insurance Company Limited Vs Pranay Sethi and others*), if the person died in the motor accident, the income with respect to the future prospect has to taken into consideration while awarding compensation. The Hon'ble Apex Court has provide the chart for age of the deceased and percentage for future prospects in between below the age of 40 years 40%, 40 years to 50 years 25% and 50 to 60 years 10%. The deceased is not a permanent Employee and not a fixed salary person and she died at the age of 35 years. Therefore, in this case, 40% income has to be taken into consideration for future prospects. Further as stated above that, as on the date of accident, deceased aged about 35 years and as such, 40% is added to

the income of the deceased, then it comes to Rs.21,700/- p.m. (Rs.15,500/- + 6,200/- i.e. 40%).

18. The deceased died living behind 2 dependents. As per principle laid down by the Hon'ble Apex Court in Sarala Verma Case, 1/3rd of her income is required to be deducted towards her personal expenses which comes to Rs.14,467/- p.m. (Rs.21,700 – Rs.7,233 = Rs.14,467/-).

19. The income of the deceased is taken as Rs.14,467/- p.m. and the multiplier **'16'** is applied, then the loss of dependency comes to **Rs.27,77,664/-** (**Rs.14,467** X **12** X **16**). Considering the above facts, this Tribunal deems it just and reasonable to grant for compensation of **Rs.27,77,700/- under the head of loss of dependency.**

20. Further, as Law laid down by the Hon'ble Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others, the compensation towards loss to estate, funeral expenses and consortium is to be awarded. The petitioners contended that they have spent substantial amount towards transportation of dead body, funeral and obsequies etc., but

no documents are produced. Hence this Tribunal award **Rs.18,150/-** towards loss to estate and **Rs.18,150/-** towards funeral expenses as enhanced at the rate of 10% on every 3 years and **Rs.48,400/-** towards consortium to the petitioner No.2. By applying the observations made in the aforesaid case, as more than 6 years elapsed from the date of order amount of consortium, funeral expense and loss of estate to be enhanced.

21. In this case, the petitioner No.1 is the son of the deceased and as per the decision reported in **(2018) 12 SCC 130** in the case of **Magma General Insurance Company Limited V/s Nanu Ram alias Chuhru Ram and others**, the petitioner No.2 is entitled for filial consortium, as the filial consortium is the right of the parents and children to get compensation in the case of an accidental death of a children and father as the case may be. An accident leading to the death of a mother cause great shock and agony to the children of the deceased and he lost his love and affection towards his

mother. Therefore, petitioner No.1 is entitled for **Rs.40,000/-** under the head of Filial consortium.

22. The calculation table stands as follows :

Compensation heads	**Compensation amount**
1. Towards loss of dependency	Rs.27,77,700/-
2. Towards loss of Consortium to the petitioner No.2	Rs. 48,400/-
3. Towards loss to estate	Rs. 18,150/-
4. Towards transportation of dead body funeral and obsequies ceremony expenses	Rs. 18,150/-
5. Towards loss of Filial consortium to petitioner No.1	Rs. 40,000/-
Total	**Rs.29,02,400/-**

23. **REGARDING INTEREST & LIABILITY:** Having regard to the nature of the claim and current bank rate of interest, this Tribunal is of the view that if interest at the rate of 6% p.a is awarded it would meet the ends of justice.

24. While answering the issue No.2 this Tribunal comes to the conclusion that, accident occurred due to the negligence of the driver of Water Tanker bearing Reg. No.KA-02-AD-0972. The petitioners contended that the respondent No.1 and 2 are the insurer and owner of the said vehicle

hence they are jointly and severally liable to pay the compensation. The respondent No.1 admitted the issuance of policy in respect of the offending vehicle. The respondent No.1 contended that at the time of the accident the driver of offending Water Tanker Lorry was not holding driving license, hence it is violation of terms and conditions of the policy as such they are not liable to pay compensation to the petitioners. In support of this contention the official of the respondent No.1 company is examined as RW.1 and through him got marked Ex.R.1 document. In his examination-in-chief he deposed as per contentions taken by them during the course of written statement. RW.1 has stated that ನಿ.ಪಿ.21 ರ ಪ್ರಕಾರ ಚಾಲಕನಿಗೆ ಡಿಎಲ್ ಇತ್ತು ಆದರೆ ನವೀಕರಣ ಗೊಳಿಸಿರಲಿಲ್ಲ, ಆದರೆ ನವೀಕರಣ ಗೊಳಿಸಿಕೊಳ್ಳಲು ಅವರು ಅನರ್ಹತೆ ಇರಲಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಅವರಿಗೆ ಯಾವ ಅನರ್ಹತೆ ಇತ್ತು ಹೇಳಲು ಬರುವುದಿಲ್ಲ. ತದನಂತರ ಡಿಎಲ್ ನವೀಕರಣ ಗೊಳಿಸಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ.

25. In order to controvert the said aspect, the advocate for petitioners relied on the decision of Madras High Court in

Madras Motor and Gen.Ins.Co.Ltd V/s Madathi Ammal and another reported in **AIR 1975 Madras 250**, wherein High Court of Madras observed that if driver who did not hold an effective licence on the date of accident though prior to the date of accident he might have held a valid licence and on the date of accident he was not disqualified for holding or obtaining a driving licence. Therefore the insurance company is liable to pay the compensation. He has also relied on the decision of Hon'ble High Court of Karnataka, Dharawad bench in **MFA.No.103680/2015 (MV-D) c/w MFA.No.103681/2015 (MV-D)** wherein Hon'ble High Court of Karnataka observed that the non-possessing of Driving Licence and non renewal of driving licence are different. If the driver was having valid licence before the date of accident, but it was expired at the time of accident, it is not coming under the non-possession of valid driving licence. It is the case of non-renewal of driving licence. Even he has not renewed the licence, he has capable to drive the vehicle. Therefore, the Hon'ble High Court of Karnataka reject the contention of the insurance company and ordered to liable the insurance company to pay the compensation. The above decisions are aptly applicable to the case on hand. In the present case also the driver of the water tanker was having valid Driving Licence before the date of accident but it was expired as on the date of accident. He was not renewed the same. Therefore mere non renewal of Driving Licenne it is coming under the non-possession of valid Driving Licence. Even he was not renewed the Driving Licence as on the date of accident he was capable to drive. Hence in view of the above decision, the insurance company is liable to pay the compensation to the petitioners. **Accordingly, I answer the issue No.3 Partly in the Affirmative.**

26. **ISSUE NO.4 :** In view of the discussion made supra, this Tribunal proceeds to pass the following :

O R D E R

The petition filed under Section 166 of M.V. Act 1988, is hereby partly allowed with costs in the following terms :

The petitioners are entitled for compensation of **Rs.29,02,400/-** with interest at the rate of **6%** p.a. from the date of claim petition till realization of the entire award amount.

The **respondent No.1** is liable to pay and directed to deposit the compensation amount within a period of **Two months** from the date of award.

On deposit of the award amount together with interest, the claimants are entitled for the compensation amount by way of apportionment as follows :

Petitioner No.1 - **50%**
Petitioner No.2 - **50%**

Out of the share amount of **Petitioner No.2** a sum equal to **30%** shall be **deposited** in his name in any Nationalized or Scheduled Bank of his choice for a period of **3** years and the remaining **70%** shall be **released** to him through E-payment on proper identification and verification. However the said petitioner is at liberty to withdraw the periodical interest accrued on his deposit amount from time to time.

The share amount apportioned in the name of **minor petitioner No.1** is ordered to be

deposited in his name vide Fixed Deposit till he attains the **age of majority**, at any Nationalized/Scheduled Bank as per the choice of the next friend/Natural guardian of the said minor petitioner.

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

Draw an award accordingly.

(Dictated to the Stenographer directly on computer & printout taken by him, then corrected and pronounced by me in the open court on this the **27th day of June-2025**).

(Shreyansh Doddamani)
XXI Addl. Small Causes Judge
& ACJM, Bengaluru.

ANNEXURES

List of witnesses examined for the petitioner/s:

PW.1 : Sri. Lingaraju. T.H

List of documents got marked for the petitioner/s:

Ex.P.1	True copy of FIR
Ex.P.2	True copy of Complaint
Ex.P.3	True copy of Charge Sheet
Ex.P.4	True copy of Spot Mahazar
Ex.P.5	True copy of Sketch which was drawn at the time of Spot Mahazar
Ex.P.6	True copy of Google map sketch
Ex.P.7	True copy of PM Report
Ex.P.8	True copy of Inquest
Ex.P.9	True copy of IMV Report

Ex.P.10	Copy of Birth Certificate of petitioner No.1
Ex.P.11	Notarized copy of Aadhaar card of petitioner No.2
Ex.P.12	Notarized copy of Aadhaar card of petitioner No.1
Ex.P.13	Notarized copy of DL of deceased
Ex.P.14	Notarized copy of SSLC marks card of the deceased
Ex.P.15	Notarized copy of Nursing Certificate card of deceased
Ex.P.16	Notarized copy of Certificate of Registration of deceased as a Nurse
Ex.P.17	Notarized copy of Completion Certificate of Nursing Degree
Ex.P.18	Notarized copy of Nursing marks cards (4 in Nos.)
Ex.P.19	Notarized copy of PUC marks card of deceased
Ex.P.20	Notarized copy of Certificate of Completion of computer course

List of witnesses examined for the respondent/s:

RW.1 : Sri. Sudhakara. H

List of documents got marked for the respondent/s :

Ex.R.1 Authorization letter

(Shreyansh Doddamani)
XXI Addl. Small Causes Judge
& ACJM, Bengaluru.