

KADW050061742022



Presented on : 14-10-2022
Registered on : 14-10-2022
Decided on : 29-02-2024
Duration : 1 years, 4 months,
15 days.

**IN THE COURT OF IV ADDL.SENIOR CIVIL JUDGE & ADDL.
M.A.C.T., DHARWAD.**

PRESENT : SHRI. AMOL JAYKUMAR HIRIKUDE
B.A.L.L.B.,
IV Addl. Senior Civil Judge,
& Addl. M.A.C.T., Dharwad.

MVC Nos.645/2022 to MVC No.647/2022

Dated this the 29th day of February 2024

<u>Petitioners in MVC No.645/2022:</u>	1. Rehanabanu W/o Mohammadshafi Nulvi Age : 30 years, Occ: Housewife, R/o : Sherewad, Tq: Hubli, Dist:Dharwad.
	2. Mohammadhanifsab W/o Mohammadshafi Nulvi Age : 21 years, Occ: Student, R/o : Sherewad, Tq: Hubli, Dist:Dharwad.

	3. Khajamanna D/o Mohammadshafi Nulvi Age : 11 years, Occ: Student, R/o : Sherewad, Tq: Hubli,Dist:Dharwad.
	4. Nikat D/o Mohammadshafi Nulvi Age : 09 years, Occ: Student, R/o : Sherewad, Tq: Hubli,Dist:Dharwad.
	5. Sajiya D/o Mohammadshafi Nulvi Age : 06 years, Occ: Student, R/o : Sherewad, Tq: Hubli,Dist:Dharwad. Since petitioner No.2 to 5 are minors, R/by petitioner No.1 as their next friend. Now all are residing at Jannat Nagar, Dharwad.

<u>Petitioner in MVC No.646/2022 :</u>	Rehanabanu W/o Mohammadshafi Nulvi Age : 30 years, Occ: Coolie/Housewife, R/o : Sherewad, Tq: Hubli, Dist:Dharwad. Now she is residing at Jannat Nagar, Dharwad.
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<u>Petitioner in MVCNo.647/2022 :</u>	Sajiya D/o Mohammadshafi Nulvi Age : 06 years, Occ: Student, Since minor, R/by her natural mother Rehanabanu W/o Mohammadshafi Nulvi Age : 30 years, Occ: Coolie/Housewife, R/o : Sherewad, Tq: Hubli,Dist:Dharwad. Now she is residing at Jannat Nagar, Dharwad.
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(MVC No.645/2022 to 647/2022
R/by Sri.K.H.K,Adv)

Vs/-

<u>Common Respondents :</u>	1.Fakkirappa Naduvinkeri Age:40 years, Occ:Business, R/o:Ambedkar Nagar, Magadi, Dist:Gadag, Pincode:582117. (Owner of tipper/lorry bearing Reng.No.KA-25/AA-3840).
	2. The Divisional Manager, Reliance General Insurance Co.Ltd., CTS No.472-474, V.A.Kalburgi Square, Desai Cross, Deshpande Nagar, Hubli. Pincode:580029. (Policy No:140222123340001532 Valid from:18.11.2021 to 17.11.2022)

**(R1 Exparte)
(R2 R/by Sri.S.G.P, Adv)**

J U D G M E N T

These claim petitions are filed under section **166(1) of Motor Vehicle Act, 1988** claiming compensation against the respondents.

2. The petitioners in **MVC No.645/2022** have claimed compensation of **Rs.50,00,000/-**, petitioner in **MVC No.646/2022** has claimed compensation of **Rs.25,00,000/-** and petitioner in **MVC No.647/2022** has claimed compensation of **Rs.25,00,000/-** with interest at the rate of **18% per annum** from the date of the petition till the realization.

3. These cases are arising out of the same accident, hence these petitions are clubbed as per the order of this court dated **09-10-2023**.

4. **Brief facts of MVC No.645/2022 to MVC No.647/2022 are as under:**

4(a) That on 20.09.2022 at about 3.15 pm., when the husband of petitioner No.1 and father of petitioner No.2 to 5 in MVC No.645/2022, namely Mohammadshafi was proceeding on the motorcycle bearing Regn.No.KA-25/EN-1073 along with petitioner No.1 and 5 as pillion riders on

the said motorcycle from Kundagol towards Sherewad village and when they were near Nulvi lake at that time, the driver of tipper bearing Regn.No.KA-25/AA-3840 came from Kundagol towards Hubli in a rash and negligent manner and while overtaking a bus, he suddenly came to his right side and dashed to the motorcycle of the husband of petitioner No.1 and thereby caused accident and due to impact of this accident, the said Mohammadshafi sustained fatal injuries and died at the spot. The petitioner No.1 and 5 in MVC No.645/2022 also sustained grievous injuries.

4(b) Soon after the accident, dead body of the husband of petitioner No.1 in MVC No.645/2022 shifted to Kundagol Hospital and doctors of the said hospital have conducted postmortem of the dead body and handed over dead body to the relatives of the petitioners. The relatives of the petitioners brought the dead body to their native place and performed funeral ceremony and they have spent more than

Rs.50,000/- towards funeral and transportation of dead body etc.

4(c) Soon after the accident, the petitioner in MVC No.646/2022 namely Rehanabanu W/o Mohammadshafi Nulvi shifted to Kundagol Hospital and after first aid treatment, she was shifted to KIMS Hospital, Hubli and thereafter for further treatment she was shifted to Shakuntala Hospital, Hubli and admitted as inpatient. The doctor of the said hospital took X-ray of right hand of the petitioner, it reveals that the petitioner had sustained **fracture humerus**, for which she had underwent an operation and steel rod was inserted in her right hand. The petitioner has spent more than Rs.2,00,000/- towards medical and other incidental expenses and she also taking follow up treatment in the said hospital.

4(d) Soon after the accident, the minor petitioner in MVC No.647/2022 namely Sajiya D/o Mohammadshafi Nulvi

shifted to Kundagol Hospital and after first aid treatment, she was shifted to KIMS Hospital, Hubli and thereafter for further treatment she was shifted to Shakuntala Hospital, Hubli and admitted as inpatient. The doctor of the said hospital took X-ray of both legs of minor petitioner and it reveals that, the petitioner had sustained **1.crush injury left leg/foot, 2.left heel pad avulsion, 3.left open fracture calcaneum and abrasion over right foot** and for which she had underwent an operation and left leg below the knee was amputated. The relatives of the minor petitioner had spent more than Rs.2,00,000/- for her medical treatment and minor petitioner is also taking follow up treatment in the said hospital.

5. Therefore, on these grounds the petitioners in MVC No.645/2022 to MVC No.647/2022 have sought for compensation from the respondents with interest at the rate of **18% per annum** as stated above.

6. Prior to the accident, the husband of petitioner No.1 in MVC No.645/2022 was running kirani shop and thereby earning Rs.20,000/- per month and same was contributed towards maintenance of his family. However, due to this unexpected and untimely death of the husband of petitioner No.1, the family members of the deceased were suffering physically, mentally and financially. The petitioner No.1 being wife of deceased, has lost her husband love and affection and petitioners No.2 to 5 being the children of deceased, has lost their father love and affection. Therefore on these grounds the petitioners have sought for compensation from the respondents to the tune of Rs.50,00,000/- with interest at the rate of 18% per annum.

7. Prior to the accident, the petitioner in MVC No.646/2022 was hale and healthy and she was working as a coolie under various employers and thereby earning Rs.15,000/- per month. However, due to this unexpected

accident, the petitioner and her family members are suffering physically, mentally and financially and family members of the petitioner took a hand loan from their relatives for petitioner medical treatment. Therefore on these grounds the petitioner has sought for compensation from the respondents to the tune of Rs.25,00,000/- with interest at the rate of 18% per annum.

8. Prior to the accident, the minor petitioner in MVC No.647/2022 was hale and healthy and she was studying in nursery. However, due to this unexpected accident, the minor petitioner become permanently disabled and she needs an artificial limb to lead her livelihood and family members of minor petitioner took hand loan of Rs.1,00,000/- for medical treatment of minor petitioner and she also need more than Rs.2,00,000/- for inserting artificial limb. Therefore on these grounds the petitioner has sought for compensation from the respondents to the tune of

Rs.25,00,000/- with interest at the rate of 18% per annum.

9. In all the three petitions, respondent No.1 and 2 are the owner and insurer of lorry bearing Regn.No.KA-25/AA-3840 respectively. On service of notice, the respondent No.1 did not appear before the Court, hence he was placed exparte. In response to the notice, the respondent No.2 had appeared before the Court through its counsel and filed objections to the petitions.

10. The sum and substance of **Objections of respondent No.2 in MVC No.645/2022 is as under:-** The respondent No.2 in its objection has denied the age, avocation and income of the deceased and also denied the factum of accident. Further respondent No.2 contended that the driver of the lorry bearing Regn.No.KA-25/AA-3840 did not possess valid driving license to drive the said lorry as on the date of the accident. The respondent No.1 had given his lorry to a person who had not possessed valid driving license, hence

respondent No.1 has violated the terms and conditions of the policy. Therefore respondent No.2 is not liable to pay compensation to the petitioners. Further, the respondent No.2 contended that, compensation claimed by the petitioners is highly excessive, exorbitant, hence amongst other grounds, the respondent No.2 prayed to dismiss the petition.

11. The sum and substance of Objections of respondent No.2 in MVC No.646/2022 is as under:- The respondent No.2 in its objections, has denied the age, occupation, income and also denied the injuries sustained by the petitioner and also treatment taken by the petitioner. Further respondent No.2 contended that the driver of the lorry bearing Regn.No.KA-25/AA-3840 did not possess valid driving license to drive the said lorry as on the date of the accident. The respondent No.1 had given his lorry to a person who had not possessed valid driving license, hence respondent No.1 has violated the

terms and conditions of the policy. Therefore respondent No.2 is not liable to pay compensation to the petitioners. Further, the respondent No.2 contended that, compensation claimed by the petitioner is highly excessive, exorbitant, hence amongst other grounds, the respondent No.2 prayed to dismiss the petition against it.

12. The sum and substance of Objections of respondent No.2 in MVC No.647/2022 is as under:- The respondent No.2 in its objections, has denied the age of the petitioner and also by denying injuries sustained by the minor petitioner and also treatment taken by her, has contended that the driver of the lorry bearing Regn.No.KA-25/AA-3840 did not possess valid driving license to drive the said lorry as on the date of the accident. The respondent No.1 had given his lorry to a person who had not possessed valid driving license, hence respondent No.1 has violated the terms and conditions of the policy. Therefore respondent No.2 is not

liable to pay compensation to the petitioners. Further, the respondent No.2 contended that, compensation claimed by the petitioner is highly excessive, exorbitant, hence amongst other grounds, the respondent No.2 prayed to dismiss the petition against it.

13. On the basis of the above pleadings, this Court has framed the following issues:-

:-ISSUES IN MVC No.645/2022:-

1. Whether the Petitioner proves that, on 20.09.2022 at about 3.15 pm., when the husband of petitioner No.1 namely Mohammadshafi was proceeding on the motorcycle bearing Regn.No.KA-25/EN-1073 along with petitioner No.1 and 5 as pillion riders on the said motorcycle from Kundagol towards Sherewad village and they were near Nulvi lake at that time, the driver of tipper bearing Regn.No.KA-25/AA-3840 came from Kundagol towards Hubli in a rash and negligent manner and dashed to the motorcycle of the husband of petitioner No.1 and caused accident

and because of the said accident the said Mohammadshafi sustained injuries and ultimately he died due to the said injuries ?

2. Whether the respondent No.2 proves that the driver of tipper bearing Regn.No.KA-25/AA-3840 had no valid driving license to drive the said vehicle as on the date of the accident ?

3. Whether the petitioners are entitled for the compensation as sought for ?

4. What order or award ?

-.ISSUES IN MVC No.646/2022:-

1. Whether the Petitioner proves that on 20.09.2022 at about 3.15 pm., when she was proceeding on the motorcycle bearing Regn.No.KA-25/EN-1073 along with her husband as pillion rider from Kundagol towards Sherewad village and when they were near Nulvi lake at that time, the driver of tipper bearing Regn.No.KA-25/AA-3840 came from Kundagol towards Hubli in a rash and negligent manner and dashed to the motorcycle of the petitioner and caused accident and because of the said accident the petitioner sustained injuries ?

2. Whether the respondent No.2 proves that the driver of tipper bearing Regn.No.KA-25/AA-3840 had no valid driving license to drive the said vehicle as on the date of the accident ?

3. Whether the petitioners are entitled for the compensation as sought for ?

4. What order or award ?

:-ISSUES IN MVC No.647/2022:-

1. Whether the Petitioner proves that, on 20.09.2022 at about 3.15 pm., when she was proceeding on the motorcycle bearing Regn.No.KA-25/EN-1073 as pillion rider from Kundagol towards Sherewad village and when she was near Nulvi lake at that time, the driver of tipper bearing Regn.No.KA-25/AA-3840 came from Kundagol towards Hubli in a rash and negligent manner and dashed to the motorcycle of the petitioner and caused accident and because of the said accident the petitioner sustained injuries ?

2. Whether the respondent No.2 proves that the driver of tipper bearing Regn.No.KA-25/AA-3840 had no valid driving license to drive the said vehicle as on the date of the accident ?

3. Whether the petitioners are entitled for the compensation as sought for ?

4. What order or award ?

14. In order to prove the case of the petitioners, the petitioner No.1 in **MVC No.645/2022 – Rehanabanu W/o Mohammadshafi Nulvi** got herself examined as **PW.1** and got marked **Ex.P1 to Ex.P15** documents and further she herself being petitioner of **MVC No.646/2022 ie., – Rehanabanu W/o Mohammadshafi Nulvi** got herself examined as **PW.2** and got marked **Ex.P16 to Ex.P23** documents. The mother of the minor petitioner in **MVC No.647/2022 – Rehanabanu W/o Mohammadshafi Nulvi** got himself examined as **PW.3** and got marked **Ex.P24 to Ex.P33** documents and the doctor namely Dr.Sandeep S. Ireshanavar in support of the case of the petitioner in MVC No.646/2022 deposed as **PW.4** and he also deposed as **PW.5** in support of the case of the petitioner in MVC No.647/2022. On the other hand, respondents did not examine any witnesses nor got marked any documents.

15. I have heard the arguments of counsel for petitioners and respondent No.2. I have perused the material available on record.

16. My findings on the Issues in **MVC No.645/2022 to MVC No.647/2022** are as under:

<u>ISSUE NOS.</u>	<u>MVC NO.645/2022 TO MVC NO.647/2022</u>
Issue No.1	: In Affirmative.
Issue No.2	: In Negative.
Issue No.3	: In Affirmative.
Issue No.4	: As per final order for the following:-

:-R E A S O N S :-

17. ISSUE NO.1 IN MVC NO.645/2022 TO MVC NO. 647/2022:- To avoid repetition of facts and for the sake of convenience, the Issue No.1 in all the petitions mentioned above are taken for discussion together.

17(a) In order to prove the negligence in causing the said accident, on the part of the driver of lorry bearing Reg.No.KA-25/AA-3840 of respondent No.1 and also to prove the death of husband of petitioner No.1 in MVC No.645/2022 and also prove the injuries sustained by the petitioner in MVC No.646/2022 and petitioner in MVC No.647/2022, the petitioner No.1 in MVC No.645/2022 and petitioner in MVC No.646/2022 and natural guardian of minor petitioner in MVC No.647/2022, got examined herself as **P.W.1 to PW.3** by filing her affidavits and got marked **33 documents** as **Ex.P1 to P33** and closed her side evidence.

17(b) In the affidavit filed in lieu of her examination in chief, the P.W.1 in MVC No.645/2022, the PW.2 in MVC No.646/2022 and PW.3 in MVC No.647/2022, has reiterated the averments of her petitions and stated that on 20.09.2022 when she was proceeding as a pillion rider along with her daughter on a motorcycle bearing Regn.No.KA-25/EN-1073

driven by her husband from Kundagol towards Sherewad village and when they were near Nulvi lake at that time, the driver of lorry bearing Regn.No.KA-25/AA-3840 of respondent No.1 came in a high speed and in a rash and negligent manner without following the traffic rules and regulations and dashed to the motorcycle of the husband of petitioner No.1 in MVC No.645/2022 and caused accident and thereby the husband of petitioner No.1 in MVC No.645/2022 died at the spot and petitioner in MVC No.646/2022 and petitioner in MVC No.647/2022 have sustained grievous injuries.

17(c) In this regard to substantiate the oral evidence, the PW.1 to 3 in MVC No.645/2022 to MVC No.647/2022 has produced the ***Ex.P.1 Certified Copy of FIR in Cr.No.101/2022 dated 20.09.2022 of Kundagol Police station. Ex.P2 certified copy of complaint. Ex.P3 is the certified copy of inquest panchanama. Ex.P4 is the certified copy of Spot panchanama and sketch. Ex.P5 is the certified copy of MV report. Ex.P6 is the***

certified copy of PM report. Ex.P7 is the FSL certificate issued by Specialist in Anesthesiology, General Hospital, Kundagol, Dist:Dharwad. Ex.P8 is the certified copy of charge-sheet in Cr.No.101/2022 dated 20.09.2022 of Kundagol Police station. Ex.P9 is the driving license of deceased Mohammadshafi Nulvi. Ex.P10 is the surviving family members certificate of deceased Mohammadshafi Nulvi. Ex.P11 is the notarized copy of Adhar card of deceased Mohammadshafi Nulvi. Ex.P12 to 15 are the notarized copies of Adhar cards of petitioner No.2 to 4.

17(d) The PW.2 in MVC No.646/2022 has produced Ex.P.16 – certified copy of wound certificate. Ex.P17 is the city scan report. Ex.P18 is the certified copy of wound certificate issued by Shakuntala Hospital, Hubli. Ex.P19 is the certified copy of discharge summary issued by Shakuntala Hospital, Hubli. Ex.P20 is the disability certificate. Ex.P21 is the 21 medical bills. Ex.P22 is the 12 medical prescriptions and Ex.P23 is the X-ray.

17(e) The PW.3 in MVC No.647/2022 has produced the Ex.P.24 – certified copy of wound certificate. Ex.P25 is the city scan report. Ex.P26 is the certified copy of wound certificate

issued by Shakuntala Hospital, Hubli. Ex.P27 is the certified copy of discharge summary issued by Shakuntala Hospital, Hubli. Ex.P28 is the disability certificate. Ex.P29 is the 24 medical bills. Ex.P30 is the 20 medical prescriptions. Ex.P31 is the 9 photos. Ex.P32 is the CD and Ex.P33 is the X-ray.

17(f). On perusal of the Ex.P1 to P8, it is clear that the Kundagol police have registered the case in Cr.No.101/2022 of their police station against the driver of lorry of respondent No.1 i.e., the driver of lorry bearing Reg.No.KA-25/AA-3840 for the offences punishable under section 279, 337, 338 and 304(A) of IPC and after investigation have filed charge sheet against him for the above mentioned offences. From the above documents it is clear that the accident has been caused prima facie by the rash and negligent driving of the driver of the lorry of respondent No.1. Therefore, the initial burden cast on the petitioners to prove the rash and negligence on the part of

the driver of the respondent No.1 in occurring the said accident has been discharged by the petitioners.

17(g) Though the counsel for respondent NO.2 cross examined PW.1 suggesting her that, the accident took place due to the negligence on the part of the husband of PW.1 in riding his motorcycle, but the said suggestions have been denied by PW.1 and thereby nothing worth was elicited from her cross examination. Therefore, in view of oral evidence of PW.1 and **Ex.P1 to Ex.P8 documents**, it can be said that the accident has caused due to the rash negligent driving of the driver of lorry of the respondent No.1. Hence, for the above stated reasons I have answered **Issue No.1 in MVC No.645/2022 to MVC No.647/2022 “in affirmative”**.

18. ISSUE NO.2 IN MVC NO.645/2022 TO MVC NO.647/2022:- To avoid repetition of facts and for the sake of convenience, these Issues are taken together for discussion.

18(a) The respondent No.2 contended that the driver of lorry of respondent No.1 bearing Reg.No.KA-25/AA-3840 was not holding valid driving licence to drive the said lorry as on the date of accident and to substantiate its contention, the respondent No.2 has not produced anything. It is pertinent to mention here that if at all the driver of the lorry of respondent No.1 had not possessed valid driving license as on the date of accident, the police could have filed charge sheet against him for not possessing valid driving license while driving the said lorry. But, the police have not invoked the relevant section of the Motor Vehicles Act in that regard, the non invoking of the said provisions by the police gives rise to draw the inference that the driver of the said lorry was having valid and effective driving licence as on the date of accident. Therefore, the contention of the respondent No.2 in that regard that the driver of the lorry of respondent No.1 was not possessing valid driving license to drive the same

cannot be accepted. Hence for the above stated reasons, I have answered **Issue No.2 in all the petitions “in negative”.**

19. ISSUE NO.3 IN MVC NO.645/2022:- It is the case of the petitioners that in the above accident the husband of petitioner No.1 and father of minor petitioner No.2 to 4 namely **Mohammadshafi S/o Mohammadhanif Nulvi** died. The PW.1 relied upon Ex.P6 - postmortem report pertaining to the said deceased **Mohammadshafi S/o Mohammadhanif Nulvi**. As per Ex.P6 – postmortem report and the charge sheet i.e., Ex.P8, it is clear that the said **Mohammadshafi S/o Mohammadhanif Nulvi** died due to the injuries sustained in the accident. The petitioner No.1 is the wife and the petitioners No.2 to 5 are the children of the deceased. Hence, the petitioners are entitled for compensation under the following heads:-

I. LOSS OF DEPENDENCY:-

a) As per the say of the petitioners, the deceased was 34 years old as on the date of the accident. In the Postmortem report which is at Ex.P6, the age of the deceased was mentioned as 35 years and in the FIR which is at Ex.P1, the age of the deceased was mentioned as 35 years. To substantiate the same, the petitioners have produced Adhar card of deceased, which is at Ex.P11. On perusal of Ex.P11, it appears that the date of birth of the deceased is mentioned as 01.06.1987. The accident happened on 20.09.2022. Hence, as on the date of the accident, the deceased was aged about **35 years**.

b) As far as income of deceased is concerned, petitioners have contended in the petition that, the deceased was running kirani shop and thereby he was earning Rs.20,000/- per month. But to substantiate the same, the petitioners have not produced anything to show that the

deceased was running kirani shop and thereby earning Rs.20,000/- per month. Therefore, having regard to the facts and circumstance of this case and the year of accident and the age of the deceased, if the income of the deceased per month is assessed at **Rs.14,000/-** it would be just and proper.

c) Hence, the income of deceased is taken as **Rs.14,000/-** per month. As on the date of accident, the deceased was having 5 dependents i.e., his wife and 4 minor children. The petitioners have alleged that they are depended on the income of the deceased for their livelihood. Therefore, **the deceased being married and having four dependent, 1/4th of his income has to be deducted towards personal expenses** as per the ratio laid down in the **Sarla Verma case by the Hon'ble Apex Court**. To the said **income 40% future prospectus is to be added**. Thus the calculation is **Rs.14,000/- (total monthly income) – Rs.3500/- (1/4th deduction) = Rs.10,500/- + Rs.4,200/- (future prospectus added 40% on the income arrived after deduction of**

1/4th) = Rs.14,700/-. Hence the annual loss of dependency will be Rs.14,700/- x 12 (months) = Rs.1,76,400/-. The multiplier applicable to the age of deceased is 16 as per case law reported in (2009) 6 SCC 121 between Sarla Varma and others Versus Delhi Transport Corporation and another. Therefore, loss of income due to loss of dependency is: Rs.1,76,400 x 16 = Rs.28,22,400/- and same is just and proper.

II. LOSS TO ESTATE, CONSORTIUM, FUNERAL EXPENSES AND OBSEQUIES:-

a). The Hon'ble Apex Court in *National Insurance compnay vs. Pranay Sethi and others reported in 2017ACJ 2700* has held that an amount of Rs.15,000/- towards the loss to estate and an amount of Rs.15,000/- towards the funeral expenses and Rs.40,000/- to petitioners towards consortium can be awarded and the said amounts should be enhanced at the rate of 10% in every three years. Further, the counsel for respondent No.2 has relied upon a decision of Hon'ble Supreme Court in **Civil Appeal Nos.2410-2412/2023 in between**

Sri Ram General Insurance Co.Ltd., Vs. Bhagat Sing Ravat and others and contended that “**the compensation under the conventional heads that is for consortium shall not be granted Rs.40,000/- to each petitioners and only Rs.40,000/- has to be granted collectively to all the petitioners**”. Therefore relying upon the above mentioned decisions of Hon’ble Supreme Court, I am of the opinion that the petitioners are entitled to **Rs.18,000/- towards the loss to estate, Rs.18,000/- towards funeral expenses & obsequies and Rs.48,000/- towards consortium.**

20. Thus the petitioners are entitled for compensation under the following heads:-

<u>Sl. No.</u>	<u>H E A D S</u>	<u>CALCULATION</u>
1	Towards loss of dependency	Rs.28,22,400/-
2	Towards loss to estate, funeral expenses, consortium and obsequies.	Rs.84,000/-
Total compensation awarded		Rs.29,06,400/-

21. ISSUE NO.3 IN MVC NO.646/2022:- It is the case of the petitioner/P.W.2 that she has sustained grievous injuries in the said accident and she took treatment at Kundagol Hospital and after first aid treatment, she took treatment at KIMS Hospital, Hubli and thereafter she took treatment at Shakuntala Hospital, Hubli and admitted as inpatient from 21.09.2022 to 29.09.2022 for a period of 9 days. To prove the same, the petitioner apart from her oral evidence, she has relied upon Ex.P19 – discharge summary. On perusal of the Ex.P19 – discharge summary issued by the Doctor of Shakuntala Hospital, Hubli, it is seen that the petitioner has been admitted in the said hospital for a period of 9 days and she has sustained fracture shaft of humerus right. In all, the P.W.2 has produced 21 medical bills, which are at Ex.P21. The total amount of which comes to Rs.55,417/-. Thus the medical expenses incurred by the P.W.2 can be said as **Rs.55,417/-**.

21(a) The petitioner has alleged that, she has suffered permanent disability by sustaining injuries in the said accident and to corroborate her averment, she has examined the treated doctor as **P.W.4** namely **Dr.Sandeep S. Ireshanavar**. The PW.4 has issued the disability certificate pertaining to the petitioner and who is a signatory on the disability certificate of the petitioner which is at Ex.P20. In the said Ex.P20, the doctor has stated that the petitioner is suffering from ***permanent disability of 21% in respect to right upper limb.*** ***Therefore, having regard to the nature of work of petitioner, I am of the opinion that if the functional disability of the petitioner is considered as 7% to the whole body, then it would meet the ends of justice in assessing the compensation.***

21(b) So far as the age of the petitioner is concerned it is mentioned in the petition as 30 years and in the wound certificate, which is at Ex.P18, the age of the petitioner is mentioned as 30 years. In the discharge summary, which is at Ex.P19, the age of the petitioner is mentioned as 31 years.

But to substantiate the same the petitioner has not produced anything. Therefore the age of the petitioner as on the date of accident is taken as **31 years**, in the absence of contrary material on record.

21(c) Petitioner has averred in the petition that, she was working as a coolie under various employers and thereby by earning Rs.15,000/- per month. To substantiate this contention, she has not produced anything. Under such circumstances, having regard to the year of the accident and the age of the petitioner, if her notional income is taken as **Rs.14,000/-** per month, then the ends of justice would be met.

21(d) With this background, the quantum of compensation to which the petitioner is entitled may be adjudicated. For the injuries suffered and treatment taken the petitioner is entitled for the compensation under the following heads.

I) PAIN AND SUFFERINGS:

22. On perusal of the Ex.P16 – wound certificate issued by General Hospital, Kundagol, Ex.P18 – wound certificate issued by Shakuntala Hospital, Hubli and Ex.P19 - discharge summary issued by the Shakuntala Hospital, Hubli, it appears that the petitioner has taken treatment as inpatient for a period of 10 days. Certainly she has suffered lot of pain during that period. Taking into consideration the injuries suffered by the petitioner, the treatment undergone by her, I am of the opinion that awarding compensation of **Rs.30,000/-** under this head would be just and reasonable.

II) COMPENSATION TOWARDS LOSS OF AMENITIES:-

23. Bearing in mind the nature of the injuries sustained by the petitioner, I am of the opinion that awarding compensation of **Rs.20,000/-** under this head would be just and reasonable.

III) COMPENSATION TOWARDS MEDICAL EXPENSES :-

24. The petitioner has produced **21 medical bills** which are at **Ex.P21** totally amounting to **Rs.55,417/-** Therefore the petitioner is entitled for **Rs.55,417/-** under this head.

IV) COMPENSATION TOWARDS LOSS OF INCOME DURING THE LAID-UP PERIOD:-

25. The petitioner has taken treatment for an approximate period of 10 days as indoor patient, therefore, considering the injuries sustained by the petitioner, I am of the opinion that the laid-up period may be considered as one month, because it cannot be expected from him to work immediately after discharged and certainly any person who has sustained injuries as sustained by the petitioner can require one month time after discharged to do any work. Thus the petitioner is entitled for compensation of **Rs.14,000/-** under this head.

**V) COMPENSATION TOWARDS ATTENDANT CHARGES,
EXTRA DIET AND NOURISHMENT:-**

26. Bearing in mind the nature of injuries sustained by the petitioner, the period of treatment taken as an indoor patient, this court is of the opinion that awarding compensation of **Rs.20,000/-** under this head would be just and proper.

**VI) COMPENSATION TOWARDS LOSS OF FUTURE
EARNINGS:-**

27. Petitioner has alleged that due to the injuries sustained by her in the accident, she has suffered permanent physical disability and she is not able to do her work as she was doing prior to the accident. In order to prove this fact, she has examined **Dr.Sandeep S. Ireshanavar as PW4**, who issued disability certificate. As held supra, the functional disability of the petitioner is assessed at **7%** to the whole body.

28. As per the ratio laid down by the Hon'ble Apex court in the case of **Smt.Sarala Verma and others Vs.Delhi Transport Corporation and another**, the multiplier applicable to the petitioner is **16**. With multiplier **16**, the per month income of the petitioner **i.e Rs.14,000/- is worked out (Rs.14,000 X 12 = Rs.1,68,000/-, Rs.1,68,000 X 16 (multiplier) = Rs.26,88,000/-, 7% (disability) of Rs.26,88,000/- = Rs.1,88,160/-**. Thus the petitioner is entitled for compensation of **Rs.1,88,160** - under this head.

TOTAL QUANTUM OF COMPENSATION TO WHICH THE PETITIONER IS ENTITLED.

29. To sum up, the petitioner is entitled for compensation under the following heads:

1.	Pain and suffering	Rs.30,000/-
2.	Loss of Amenities	Rs.20,000/-
3.	Medical bills	Rs.55,417/-
4.	Income during laid-up period	Rs.14,000/-
5.	Towards nourishment and attendant charges.	Rs.20,000/-

6.	Loss of future income	Rs.1,88,160/-
	Total	Rs.3,27,577/-

30. ISSUE NO.3 IN MVC NO.647/2022:- It is the case of the guardian of the minor petitioner that, her minor daughter has sustained grievous injuries in the said accident and she took treatment at Kundagol Hospital and after first aid treatment, she was taking treatment at KIMS Hospital, Hubli and thereafter she took treatment at Shakuntala Hospital, Hubli and admitted as inpatient from 21.09.2022 to 29.09.2022 for a period of 9 days. To prove the same, the petitioner apart from her oral evidence, she has relied upon Ex.P27 – discharge summary. On perusal of the Ex.P27 – discharge summary issued by the Doctor of Shakuntala Hospital, Hubli, it is seen that the minor petitioner has been admitted in the said hospital for a period of 9 days and she has sustained **1.crush injury left leg/foot, 2.left heel pad avulsion and 3.left open fracture calcaneum.**

Further, on perusal of Ex.P27 it is clear that, the below knee amputation of left leg has been done in the said hospital. In all, the P.W.3 has produced 24 medical bills, which are at Ex.P29. The total amount of which comes to Rs.71,928/-. Thus the medical expenses incurred by the P.W.3 can be said as **Rs.71,928/-**.

30(a) P.W.5 is the Dr.Sandeep Ireshanavar, who issued the disability certificate pertaining to the minor petitioner and who is a signatory on the disability certificate of the petitioner which is at Ex.P28.

30(b) The guardian of minor petitioner has alleged that, her minor daughter has suffered permanent disability by sustaining injuries in the said accident and to corroborate her averment, she has examined the treated doctor as **P.W.5** namely **Dr.Sandeep S. Ireshanavar**. The PW.5 has issued the disability certificate pertaining to the minor petitioner and who is a signatory on the disability certificate of the

petitioner which is at Ex.P28. In the said Ex.P28, the doctor has stated that the minor petitioner is suffering from ***permanent disability of 55% in respect to left lower limb and she needs another surgery for stump correction and she will require prosthesis limb.*** As stated above it is clear that the below knee left leg of the minor petitioner has been amputated due to the crush injury suffered in the said accident. Therefore, the disability has to be considered as opined by the treated doctor ie., PW.5.

30(c) The petitioner has produced **24 medical bills** which are at Ex.P29 totally amounting to **Rs.71,928/-**. The said medical bills are found to be correct and hence the same are accepted.

30(d) So far as the age of the petitioner is concerned it is mentioned in the petition as 6 years. To substantiate the same, the mother of the minor petitioner has produced Adhar card of the minor petitioner which is at Ex.P15. On

perusal of the same, the date of birth of the minor petitioner is mentioned as 22-07-2016. Therefore, as on the date of the accident, she is aged about 6 years.

30(e). The counsel for petitioner relied upon a decision of our **Hon'ble High Court of Karnataka Bench at Kalburgi in MFA No.202371/2017 (MV-I) decided on 14.10.2022 in between Vishnu Vs. the Depot Manager** and argued that **"the loss of future earning capacity has to be determined by taking notional income of the minor petitioner as provided by the Legal Services Committee chart as observed by the Hon'ble High Court in the above mentioned decision at para No.25"**. In the above mentioned case, **there was also amputation of leg of minor of 9 year old boy. Likewise in the present case is also of a amputation of left leg below knee of a minor girl/petitioner aged about 6 years. Therefore by relying upon the above mentioned decision, as the accident is of the year 2022, if the notional income per month of the petitioner is taken as Rs.14,000/- per month then it would meet the ends of justice.**

30(f). The counsel for petitioner also relied upon a decision of our **Hon'ble High Court of Karnataka at Bengaluru in MFA No.1914/2017(MV-I) in between Sri.Saleem Ahammed Vs. the National Insurance Company Limited decided on 16.12.2022,** wherein also the petitioner had sustained amputation of left leg below knee and in the said case, the Hon'ble High court considering disability and need of medical expenses and need of artificial limb, towards loss of marriage prospects and towards loss of future earnings has granted an amount of Rs.27,97,496/- against the order of Tribunal which was only granted an amount of Rs.7,24,315/- as compensation. Therefore the counsel for petitioner argued to award just compensation by relying upon the above mentioned decisions.

31. With this background and by relying upon the above mentioned decisions of our Hon'ble High court, the quantum of compensation to which the petitioner is entitled may be adjudicated as under. For the injuries suffered and treatment taken the minor petitioner is entitled for the compensation under the following heads:-

I) PAIN AND SUFFERINGS:

32. On perusal of the Ex.P24 – wound certificate issued by General Hospital, Kundagol, Ex.P26 – wound certificate issued by Shakuntala Hospital, Hubli and Ex.P27 - discharge summary issued by the Shakuntala Hospital, Hubli, it appears that the petitioner has taken treatment as inpatient for a period of 10 days and she underwent surgery and under left leg below knee was amputated. Certainly she has suffered lot of pain during that period. Taking into consideration the injuries suffered by the petitioner, the treatment undergone by her, I am of the opinion that awarding compensation of **Rs.1,00,000/-** under this head would be just and reasonable.

II) COMPENSATION TOWARDS LOSS OF AMENITIES:-

33. Bearing in mind the nature of the injuries sustained by the minor petitioner, I am of the opinion that

awarding compensation of **Rs.50,000/-** under this head would be just and reasonable.

**III) COMPENSATION TOWARDS MEDICAL EXPENSES
ALREADY INCURRED :-**

34. The petitioner has produced **24** medical bills which are at **Ex.P29** totally amounting to **Rs.71,928/-**. The said medical bills are found to be correct and hence the same are accepted. Therefore the petitioner is entitled for **Rs.71,928/-** under this head.

IV. TOWARDS FUTURE MEDICAL EXPENSES:

35. It is opined by the PW.5 in his evidence that, the minor petitioner needs another surgery for stump correction and whcih she needs Rs.25,000/- and require Rs.1,50,000/- to Rs.2,00,000/- to implant an artificial leg. Though the counsel for respondent No.2 argued that no estimation cost or documents substantiating the same are produced but the

respondent No.2 did not produce anything to show that the artificial limb suggested by the P.w.5 is not of Rs.2 lakh expensive. Therefore, having regard to the facts and circumstances of this case, I am of the opinion that if an amount of **Rs.2,00,000/-** is awarded under this head it would be just and proper.

**V) COMPENSATION TOWARDS ATTENDANT CHARGES,
EXTRA DIET AND NOURISHMENT AND TRANSPORTATION
CHARGES :-**

36. Bearing in mind the nature of injuries sustained by the minor petitioner, the period of treatment taken as an indoor patient, this court is of the opinion that awarding compensation of **Rs.75,000/-** under this head would be just and proper.

VI) LOSS OF MARRIAGE PROSPECTS:

37. The minor petitioner has suffered amputation of her left leg below knee, certainly it would affect the marriage prospects of minor petitioner. Therefore, by relying upon the above mentioned 2 decisions relied upon by the petitioner, I am of the opinion that awarding of an amount of **Rs.2,00,000/-** under this head would be just and proper.

VII) LOSS OF FUTURE EARNINGS.

38. As discussed above, the notional income of the petitioner is taken as **Rs.14,000/-** per month. To the said income 40% future prospectus is to be added by relying upon the above mentioned two decisions submitted by petitioner. Thus the calculation is **Rs.14,000/- (total monthly income) + Rs.5600/- (future prospectus added 40%) = Rs.19,600/-**. Hence the annual loss of dependency will be **Rs.19,600/- x 12 (months) x 18 (multiplier) = Rs.42,33,600/-**. The disability is 55%. Therefore 55%

of Rs.42,33,600/- comes to Rs.23,28,480/-. Therefore, loss of future earning is: Rs.23,28,480/- and same is just and proper.

TOTAL QUANTUM OF COMPENSATION TO WHICH THE PETITIONER IS ENTITLED.

39. To sum up, the petitioner is entitled for compensation under the following heads:

1.	Pain and suffering	Rs.1,00,000/-
2.	Loss of Amenities	Rs.50,000/-
3.	Medical Expenses already incurred	Rs.71,928/-
4.	Future medical expenses	Rs.2,00,000/-
5.	Future loss of earnings	Rs.23,28,480/-
6.	Towards nourishment and attendant charges and transportation charges.	Rs.75,000/-
7.	Marriage prospects	Rs.2,00,000/-
	Total	Rs.30,25,408/-

40. **LIABILITY:-** This Court has arrived at the conclusion that the accident has occurred due to the rash

and negligent driving of the driver of the lorry bearing Regn.No.KA-25/AA-3840 of respondent No.1. Thus, the respondent No.1 being the owner and the respondent No.2 being the insurer are jointly and severally liable to pay the compensation to the petitioners in all the petitions mentioned above. Thus the respondent No.2 being the insurer is vicariously liable to pay the compensation assessed above to the petitioners in all the petitions.

41. INTEREST: The petitioners have claimed compensation with interest at the rate of **18% per annum**. On the other hand the respondent No.2 has contended that the interest claimed by the petitioners in all the petitions are highly excessive and exorbitant. At the time of awarding compensation, courts should see that the compensation amount should carry reasonable rate of interest considering the rapid loss of value of money due to inflation and market situation. Considering the same and having regard to the

attending circumstances, this court is of the opinion that it would be just and proper if the interest at the rate of 6% **per annum** is awarded because the same rate of interest awarded by the Hon'ble High court in the two decisions relied upon by the petitioners. Therefore, for the above stated reasons, I have answered **Issue No.3 in MVC No.645/2022 to MVC No.647/2022 “in Affirmative”**.

42. ISSUE NO.4 IN MVC NO.645/2022 TO MVC NO.647/2022:- In view of the above discussion, I am of the opinion that the petitioners in **MVC No.645/2022** is entitled for compensation of **Rs.29,06,400/-** with interest at the rate of **6% per annum** from the date of the petition. The petitioner in **MVC No.646/2022** is entitled for compensation of **Rs.3,27,577/-** with interest at the rate of **6% per annum** from the date of the petition. The petitioner in **MVC No.647/2022** is entitled for compensation of **Rs.30,25,408/-** with interest at the rate of **6% per annum** from the date of the petition. In the result, I

proceed to pass the following:-

ORDER

The claim petitions filed by the petitioners in **MVC No.645/2022 to MVC No.647/2022** under section 166(1) of Motor Vehicles Act are hereby **allowed** as under.

The petitioners in **MVC No.645/2022** is entitled for compensation of **Rs.29,06,400/-** with interest at the rate of **6% per annum** from the date of the petition till the date of deposit of the award amount.

The petitioner in **MVC No.646/2022** is entitled for compensation of **Rs.3,27,577/-** with interest at the rate of **6% per annum** from the date of the petition till the date of deposit of the award amount.

The petitioner in **MVC No.647/2022** is entitled for compensation of **Rs.30,25,408/-** with interest at the rate of **6% per annum** from the date of the petition till the date of deposit of the award amount.

The respondent No.2 is liable to pay the compensation to the petitioners in all the petitions. The respondent No.2 shall deposit the award amount with interest within 60 days from the date of the Award.

Compensation amount awarded to the petitioners in MVC No.645/2022 is apportioned among them as shown below:

1.	To petitioner No.1, 40% of the total compensation.
2.	To petitioner No.2 to 5, 15% each of the total compensation.

On deposit of the Award amount with interest by the respondent No.2, half of the compensation amount allotted to petitioner No.1 shall be released in her favor and the remaining amount apportioned to her share with interest shall be kept in FD for a period of 3 years in any Nationalized bank of her choice.

The petitioner No.2 to 5 being minors, the entire amount of the share of petitioner No.2 to 5

shall be kept in FD in their names for a period of 5 years or till the attaining of age of majority by them whichever is later, in any Nationalized bank of the choice of petitioner No.1.

On deposit of the Award amount with interest by the respondent No.2 in **MVC No.646/2022**, considering the medical expenses incurred by the petitioner, the entire compensation amount is ordered to be released in her favour after proper identification.

On deposit of the Award amount with interest by the respondents No.2 in **MVC No.647/2022**, considering the medical expenses incurred by the mother of the minor petitioner and also considering the future medical expenses, 20% of amount is ordered to be released in favour guardian of minor petitioner after proper identification and the remaining compensation amount is ordered to be kept as FD in any Nationalized bank, till attaining the age of majority by the minor petitioner.

The Advocate fee is fixed at **Rs.1,000/-** in each petition.

The original judgment shall be kept in **MVC No.645/2022** and the copy of the same shall be kept in **MVC No.646/2022 & MVC No.647/2022.**

Draw Award accordingly.

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court, this the **29th day of February 2024**)

(Amol Jayakumar Hirikude)
IV Addl.Senior.Civil Judge
& Addl.M.A.C.T.,Dharwad.

A N N E X U R E

<u>Witnesses examined on behalf of the Petitioners :</u>	
P.W.1:	Smt.Rehanabanu W/o Mohammadshafi Nulvi
P.W.2:	Smt.Rehanabanu W/o Mohammadshafi Nulvi
P.W.3:	Smt.Rehanabanu W/o Mohammadshafi Nulvi
P.W.4:	Dr.Sandeep S.Ireshanavar.
P.W.5:	Dr.Sandeep S.Ireshanavar.
<u>Documents marked as Exhibits for the Petitioners :</u>	
Ex.P-1	Certified copy of FIR.
Ex.P-2	Certified copy of Complaint.

Ex.P-3	Certified copy of Inquest panchanama.
Ex.P-4	Certified copy of Spot panchanama and sketch.
Ex.P-5	Certified copy of MV report.
Ex.P-6	Certified copy of PM report.
Ex.P-7	FSL certificate dated 01.02.2023.
Ex.P-8	Certified copy of Charge sheet.
Ex.P-9	Notarized copy of driving license of deceased Mohammadshafi Nulvi.
Ex.P-10	Surviving family members of deceased Mohammadshafi Nulvi.
Ex.P-11	Notarized copy of Adhard card of deceased Mohammadshafi Nulvi.
Ex.P-12 to 15	Notarized copies of Adhar cards of petitioner No.2 to 5 in MVC No.645/2022.
Ex.P-16	Certified copy of wound certificate of petitioner in MVC No.646/2022.
Ex.P-17	City scan report of PW.2.
Ex.P-18	Certified copy of wound certificate of PW.2 issued by Shakuntal Hospital, Hubli.
Ex.P-19	Discharge summary of PW.2 issued by Shakuntal Hospital, Hubli.
Ex.P-19(a)	Signature of PW.4.

Ex.P-20	Disability certificate of PW.2.
Ex.P-20(a)	Signature of PW.4.
Ex.P-21	21 Medical bills of PW.2.
Ex.P-22	12 Medical prescriptions of PW.2.
Ex.P-23	X-ray of PW.2.
Ex.P-24	Certified copy of wound certificate of petitioner in MVC No.647/2022.
Ex.P-25	City scan report of minor petitioner in MVC No.647/2022.
Ex.P-26	Certified copy of wound certificate of minor petitioner in MVC No.647/2022 issued by Shakuntal Hospital, Hubli.
Ex.P-27	Discharge summary of minor petitioner in MVC No.647/2022 issued by Shakuntal Hospital, Hubli.
Ex.P-27(a)	Signature of PW.5.
Ex.P-28	Disability certificate of minor petitioner in MVC No.647/2022.
Ex.P-28(a)	Signature of PW.5.
Ex.P-29	24 Medical bills of minor petitioner in MVC No.647/2022.
Ex.P-30	20 Medical prescriptions of minor petitioner in MVC No.647/2022.
Ex.P-31	6 Photos of minor petitioner in MVC No.647/2022.
Ex.P-32	CD of minor petitioner in MVC No.647/2022.

Ex.P-33	X-ray of minor petitioner in MVC No.647/2022.
<u>Witnesses examined on behalf of the Respondents :</u>	
NIL.	
<u>Documents marked as Exhibits for the respondents:</u>	
NIL.	

(Amol Jayakumar Hirikude)
IV Addl.Senior Civil Judge
& Addl.M.A.C.T., Dharwad.

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For Judgment
29-02-2024

(Judgment pronounced in the open Court vide separate Judgment)

ORDER

The claim petitions filed by the petitioners in **MVC No.645/2022 to MVC No.647/2022** under section 166(1) of Motor Vehicles Act are hereby **allowed** as under.

The petitioners in **MVC No.645/2022** is entitled for compensation of **Rs.29,06,400/-** with interest at the rate of **6% per annum** from the date of the petition till the date of deposit of the award amount.

The petitioner in **MVC No.646/2022** is entitled for compensation of **Rs.3,27,577/-** with interest at the rate of **6% per annum** from the date of the petition till the date of deposit of the award amount.

The petitioner in **MVC No.647/2022** is entitled for compensation of **Rs.30,25,408/-** with interest

at the rate of **6% per annum** from the date of the petition till the date of deposit of the award amount.

The respondent No.2 is liable to pay the compensation to the petitioners in all the petitions. The respondent No.2 shall deposit the award amount with interest within 60 days from the date of the Award.

Compensation amount awarded to the petitioners in **MVC No.645/2022** is apportioned among them as shown below:

1.	To petitioner No.1, 40% of the total compensation.
2.	To petitioner No.2 to 5, 15% each of the total compensation.

On deposit of the Award amount with interest by the respondent No.2, half of the compensation amount allotted to petitioner No.1 shall be released in her favor and the remaining amount apportioned to her share with interest shall be kept in FD for a period of 3 years in any

Nationalized bank of her choice.

The petitioner No.2 to 5 being minors, the entire amount of the share of petitioner No.2 to 5 shall be kept in FD in their names for a period of 5 years or till the attaining of age of majority by them whichever is later, in any Nationalized bank of the choice of petitioner No.1.

On deposit of the Award amount with interest by the respondent No.2 in **MVC No.646/2022**, considering the medical expenses incurred by the petitioner, the entire compensation amount is ordered to be released in her favour after proper identification.

On deposit of the Award amount with interest by the respondents No.2 in **MVC No.647/2022**, considering the medical expenses incurred by the mother of the minor petitioner and also considering the future medical expenses, 20% of amount is ordered to be released in favour guardian of minor petitioner after proper identification and the remaining compensation amount is ordered to be kept as FD in any Nationalized bank, till attaining the age of

majority by the minor petitioner.

The Advocate fee is fixed at **Rs.1,000/-** in each petition.

The original judgment shall be kept in **MVC No.645/2022** and the copy of the same shall be kept in **MVC No.646/2022 & MVC No.647/2022.**

Draw Award accordingly.

(Amol Jayakumar Hirikude)
IV Addl.Senior Civil Judge,
& Addl. M.A.C.T.,Dharwad.