

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 17TH DAY OF DECEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE S G PANDIT
AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO.100827 OF 2020

C/W

MISCELLANEOUS FIRST APPEAL NO.103477 OF 2019

MISCELLANEOUS FIRST APPEAL NO.103905 OF 2019

IN MFA NO.100827/2020
BETWEEN

SRINIVAS R. S/O. RUDRAPPA
AGE: 24 YEARS, OCC: OWNER OF THE VEHICLE
R/O : @ 20, BAIRANAHALLI VILLAGE,
HIEMALALI POST, CHANNAGIRI,
DIST : DAVANAGERE-577001.

...APPELLANT

(BY SRI GIRISH S. HIEMATH, ADVOCATE)

AND

1 . RESHMABANU W/O. HASANAPEER
AGE : 37 YEARS, OCC : HOUSEHOLD WORK,
R/O: SHIVAMOGGA,
NOW @ C/O: KABEERSAB KALEGUDUSAB
OF HALAGERI
TQ: RANEBENNUR, DIST: HAVERI-581110.

2 . SUHANA Y.H. D/O. HASANAPEER
AGE : 18 YEARS, OCC : STUDENT,
R/O: SHIVAMOGGA,
NOW @ C/O: KABEERSAB KALEGUDUSAB
OF HALAGERI
TQ : RANEBENNUR, DIST : HAVERI-581110.



3 . RUHINA Y.H. D/O. HASANAPEER
AGE : 16 YEARS, OCC : STUDENT,
R/O: SHIVAMOGGA,
NOW @ C/O: KABEERSAB KALEGUDUSAB
OF HALAGERI
TQ : RANEBENNUR, DIST : HAVERI-581110.

4 . MUFLIYA Y.H. D/O. HASANAPEER
AGE : 9 YEARS, OCC : NIL,
R/O: SHIVAMOGGA,
NOW @ C/O: KABEERSAB KALEGUDUSAB
OF HALAGERI
TQ : RANEBENNUR, DIST : HAVERI-581110.

[R4 IS MINOR REPRESENTED BY R1
MOTHER GUARDIAN]

5 . NOORJAHAN W/O. KASIMASAB
AGE : 79 YEARS, OCC : NIL,
R/O: SHIVAMOGGA,
NOW @ C/O: KABEERSAB KALEGUDUSAB
OF HALAGERI
TQ : RANEBENNUR, DIST : HAVERI-581110.

6 . THE GENERAL MANAGER
RELIANCE GENERAL INSURANCE CO. LTD.,
DESAI GALLI, NEAR, VIVEKANDA HOSPITAL,
DESHAPANDE NAGAR, HUBBALLI,
DIST. DHARWAD-580001.

...RESPONDENTS

(BY SRI ANJANEYA M., ADVOCATE FOR R1 TO R5;
SRI G.N. RAICHUR, ADVOCATE FOR R6.)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 173(1) OF MOTOR VEHICLES ACT, PRAYING TO FIX
THE LIABILITY ON RESPONDENT NO.6 AND ALLOW THE APPEAL
AS AGAINST THE JUDGMENT AND AWARD DATED 14.08.2019
PASSED IN MVC NO.465/2016, ON THE FILE OF THE
II ADDITIONAL SENIOR CIVIL JUDGE AND ADDITIONAL MOTOR

VEHICLE ACCIDENT CLAIMS TRIBUNAL, RANEBENNUR, IN THE INTEREST OF JUSTICE AND EQUITY.

IN MFA NO.103477/2019
BETWEEN

- 1 . RESHMABANU W/O. HASANAPEER
AGE: 36 YEARS, OCC: HOUSEHOLD WORK,
R/O: SHIVAMOGGA,
NOW @ C/O. KABEERSAB
KALEGUDUSAB OF HALAGERI,
TQ: RANEBENNUR, DIST: HAVERI-581208.
2. SUHAN Y.H. D/O. HASANAPEER
AGE: 17 YEARS, OCC: STUDENT,
R/O: SHIVAMOGGA,
NOW @ C/O. KABEERSAB
KALEGUDUSAB OF HALAGERI,
TQ: RANEBENNUR, DIST: HAVERI-581208.
3. RUHINA Y.H. D/O. HASANAPEER
AGE: 15 YEARS, OCC: STUDENT,
R/O: SHIVAMOGGA,
NOW @ C/O. KABEERSAB
KALEGUDUSAB OF HALAGERI,
TQ: RANEBENNUR, DIST: HAVERI-581208.
4. MUFLIYA Y.H. D/O HASANAPEER
AGE: 8 YEARS, OCC: NIL,
R/O: SHIVAMOGGA,
NOW @ C/O KABEERSAB
KALEGUDUSAB OF HALAGERI,
TQ: RANEBENNUR, DIST: HAVERI-581208.

SINCE THE APPELLANT 2 TO 4 ARE MINORS
REPRESENTED BY APPELLANT NO.1

5. NOORJAHAN W/O. KASIMSAB
AGE: 78 YEARS, OCC: NIL,
R/O: SHIVAMOGGA,

MFA No.100827/2020
C/W MFA No.103477/2019,
MFA No.103905/2019

NOW @ C/O. KABEERSAB
KALEGUDUSAB OF HALAGERI,
TQ: RANEBENNUR, DIST: HAVERI-581208.

...APPELLANTS

(BY SRI ANJANEYA M., ADVOCATE.)

AND

- 1 . SRINIVAS R. S/O. RUDRAPPA
OCC: OWNER OF THE OFFENDING LORRY,
#20, BAIRANAHALLI VILLAGE,
HIREMALALI,
POST: CHANNAGIRI,
DIST: DAVANAGERE-577213.
- 2 . THE GENERAL MANAGER
RELIANCE GENERAL INSURANCE CO. LTD.
DESAI GALLI, NEAR VEVEKANDA HOSPITAL,
DESHAPANDE NAGAR, HUBBALLI-580029.

...RESPONDENTS

(BY SRI G.N. RAICHUR, ADVOCATE FOR R2;
R1 – NOTICE DIPSNSD WITH.)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 14.08.2019, PASSED IN MVC NO.465/2016, ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, RANEBENNUR, BY ALLOWING THE THIS APPEAL WITH COST IN THE ENDS OF JUSTICE AND EQUITY.

IN MFA NO.103905/2019
BETWEEN

THE GENERAL MANAGER
RELIANCE GENERAL INSURANCE CO. LTD.,
DESAI GALLI, NEAR VIVEKANANDA HOSPITAL,
DESHPANDE NAGAR, HUBBALLI-580023.

REPRESENTED BY ITS AUTHORISED
SIGNATORY

...APPELLANT

(BY SRI G.N. RAICHUR, ADVOCATE)

AND

- 1 . RESHMABANU W/O. HASANAPEER,
AGE: 36 YEARS, OCC: HOUSEHOLD WORK,
R/O: SHIVAMOGGA NOW @
C/O: KABEERSAB KALEGUDUSAB OF
HALAGERI, TQ: RANEBENNUR,
DIST: HAVERI-570021.
- 2 . SUHAN Y.H. D/O. HASANAPEER,
AGE: 17 YEARS, OCC: STUDENT,
R/O: SHIVAMOGGA NOW @
C/O. KABEERSAB KALEGUDUSAB OF
HALAGERI, TQ: RANEBENNUR,
DIST: HAVERI-570021.
- 3 . RUHINA Y.H. D/O. HASANAPEER,
AGE: 15 YEARS, OCC: STUDENT,
R/O: SHIVAMOGGA NOW @
C/O. KABEERSAB KALEGUDUSAB OF
HALAGERI, TQ: RANEBENNUR,
DIST: HAVERI-570021.
- 4 . MUFLIYA Y.H. D/O. HASANAPEER,
AGE: 08 YEARS, OCC: STUDENT,
R/O: SHIVAMOGGA NOW @
C/O. KABEERSAB KALEGUDUSAB OF
HALAGERI, TQ: RANEBENNUR,
DIST: HAVERI-570021.

RESPONDENTS NO. 2 TO 4 ARE
MINORS REPRESENTED BY THEIR
MOTHER M/G RESPONDENT NO.1.

- 5 . NOORJAHAN W/O. KASIMSAB,
AGE: 78 YEARS, OCC: NIL,

MFA No.100827/2020
C/W MFA No.103477/2019,
MFA No.103905/2019

R/O: SHIVAMOGGA NOW @
C/O. KABEERSAB KALEGUDUSAB OF
HALAGERI, TQ: RANEBENNUR,
DIST: HAVERI-570021.

- 6 . SRINIVASA R. S/O. RUDRAPPA,
OCC: OWNER OF THE OFFENDING
LORRY # 20 BAIRANAHALLI VILLAGE,
HIEMALALI POST, CHANNAGIRI,
DIST: DAVANAGERE-540028.

...RESPONDENTS

(BY SRI ANJANEYA M., ADVOCATE FOR R1 TO R5;
SRI GIRISH S. HIEMATH, ADVOCATE FOR R6.)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 14.08.2019 PASSED IN MVC NO.465/2016, ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, RANEBENNUR, BY EXONERATING THE APPELLANT INSURANCE COMPANY FROM THE LIABILITY AND REDUCING THE COMPENSATION BY ALLOWING THIS APPEAL WITH COST IN THE ENDS OF JUSTICE AND EQUITY.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 03.12.2025 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE S G PANDIT
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

CAV JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

These are appeals filed by the owner, claimants and insurer, respectively, under section 173(1) of the Motor

Vehicles Act, 1988 (for short, the Act), challenging the judgment and award passed in MVC No.465/2016, dated 14.08.2019, on the file of II Additional Senior Civil Judge and Additional MACT, Ranebennur (for short, the Tribunal).

2. The owner has challenged the judgment and award insofar as direction issued to insurer to pay the compensation and to recover the same from the owner. The claimants have filed the appeal being not satisfied with the quantum of compensation amount awarded by the tribunal. Insurer has filed the appeal challenging the liability and quantum, contending that the vehicle in question is not involved in the alleged accident.

3. The parties would be referred with their ranks, as they were before the tribunal, for the sake of convenience and clarity.

4. The claimants being the wife, children and mother of deceased have filed the claim petition under section 166 of the Act, contending that husband of claimant

No.1, Hasanpeer U.K. S/o.Kasimsab, died in a road traffic accident that occurred on 25.08.2014, involving goods lorry bearing registration No.KA-14/A-2930 and KA-16/A-2266. The contention of claimants is that husband of claimant No.1 was driver cum owner of the goods lorry bearing registration No.KA-14/A-2930 and they have stopped the vehicle due to mechanical defect near Hanchinasiddapur village on Shivamogga-Channagiri road by the side of the road by putting indicator lights and Hasanpeer has informed mechanic over phone who was coming from Shivamogga to the spot; at that time deceased-Hasanpeer, Allabaksha and Rudresh were standing behind the lorry and waiting for mechanic, at about 22.45 hours, a Canter lorry came from Shivamogga side, to the extreme left side without observing that the persons were standing by the side of road and dashed against Hasanpeer, Allabaksh and also damaged the lorry of Hasanpeer. The driver of Canter lorry escaped from the spot. In that accident both Hasanpeer and Allabaksh were injured and they could not make out the vehicle number due to darkness. Immediately Hassanpeer was

shifted to District Hospital, Shivamogga and then cleaner - Allabaksh was shifted to Government Hospital, Channagiri in an ambulance. Hasanpeer succumbed to injuries on next day morning at 06.00 a.m.

5. Claimants would contend that Hasanpeer was working as driver, owned the lorry and he is the only earning member of the family and was getting income of ₹3,000-4,000 per day. They contended that the Canter lorry, which caused the accident bearing registration No.KA-16/A-2266 belongs to respondent No.1 and it is validly insured with respondent No.2 and policy was in force as on the date of accident.

6. On service of notice, respondent No.2 appeared through its counsel and filed its objection statement, wherein it denied the petition averments in toto. Respondent No.2 took contention that the driver of said Canter lorry was not holding valid driving licence as on the date of accident and thus, respondent No.1 has violated the first and foremost condition of the policy by allowing an

unauthorised person to drive and thus, respondent No.2 is not liable to pay compensation. It further took contention that Channagiri Police have filed charge sheet against the driver alleging the offences punishable under Section 3 read with section 181 of M.V.Act and have filed charge sheet against owner under Section 4 read with section 180 of M.V.Act and thus, respondent No.2 is not liable to pay any compensation. This is a hit and run case and unnecessarily involved the vehicle of respondent No.1 colluding with police and thus, respondent No.2 is not liable to pay any compensation. It also took other defences and prayed for dismissal of petition with costs.

7. On behalf of claimants, claimant No.1 was examined as PW.1, the complainant, eye witness was examined as PW.2, the mechanic who did tinkering work to the offending vehicle as PW.3 and the Investigating Officer who has filed charge sheet as PW.4, got marked Exs.P.1 to P.30 and closed their side before the Tribunal. On behalf of respondents, two witnesses are examined as RW.1 and

RW.2 apart from marking Exs.R.1 to R.6 and closed their side.

8. After recording evidence of both sides and hearing arguments of both sides, the Tribunal came to the conclusion that claimants are entitled for compensation in respect of the accidental death of husband of claimant No.1 totally amounting to ₹16,76,600/- with interest at 9% per annum from the date of claim petition till its realization holding that the claimants have established the involvement of the Canter lorry bearing No.KA-16/A-2266 in the accident.

9. Heard Sri Anjaneya M., learned counsel for claimants, Sri Girish S. Hiremath, learned counsel for owner of the offending lorry and Sri G.N.Raichur, learned counsel for the insurer.

10. Learned counsel for the claimants Sri Anjaneya M., would submit that, not satisfied with the aforesaid award of compensation, claimants have preferred

the appeal contending that the Tribunal has not taken into consideration the parental consortium to claimants No.2 to 4 and filial consortium to claimant No.5 and not awarded the compensation properly and they are also entitled for the escalation charges of 10% under conventional heads, as per the judgment of ***Magma General Insurance Co. Ltd. v. Nanu Ram, reported in (2019) 1 SCC 262.*** He further contended that, the claimants have produced all available evidence and proved the accident that had taken place on 25.08.2014 at 10.45 p.m. and thus, they are entitled for compensation.

11. Learned counsel for insurer Sri G.N.Raichur would submit that the husband of claimant No.1 succumbed to the injuries sustained by him in the accident that had taken place on 25.08.2014. On 26.08.2014 itself, the complaint was also lodged. However, the Canter lorry that belonged to respondent No.1 was traced about 10 months after the alleged incident i.e., during June 2015 and at that time the MV Inspector who examined the lorry has found

some scratches on its left side. However, PW.3 has given evidence that he did tinkering work for the damages that had caused to the offending lorry and it was kept in his mechanic shop for 3 days. This discrepancy itself establishes that the lorry in question was not involved in the accident. Furthermore, the lorry hit the husband of claimant No.1 and thus, there cannot be any damages to it. Furthermore, the vehicle in question was examined after a long period i.e., on 27.06.2015, it was seized and on 29.06.2015, it was examined by the MV Inspector. There is discrepancy in between the evidence of PW.3 and this MVI report. He would further submit that, in the complaint, Canter lorry number was not mentioned and it is specifically stated that due to darkness, they could not trace the lorry number. How this offending vehicle was traced after a long gap of 10 months is not explained by the Investigating Officer. The Investigating Officer who has filed charge sheet has not conducted the initial investigation. The learned counsel for insurer would further submit that even though PW.2 is an eye witness, he had not seen the lorry number,

which caused the accident, which is admitted by him in his complaint itself and also in his evidence. Furthermore, the driver of lorry was not possessing driving licence as on the date of accident. His licence was expired before the date of accident and he renewed it only on 01.10.2015 i.e., one year two months after the accident. The owner knowing fully well that driver was not holding licence has handed over the lorry to the driver and thus, the insurance company is not liable to make good the loss i.e., it cannot be directed to follow the 'pay and recovery' policy. Hence, insurance company is to be exonerated from making payment. Hence, merely because charge-sheet is filed against driver of the alleged offending vehicle, the involvement of offending vehicle in causing the accident is not proved in accordance with law. Hence, prayed for allowing the appeal.

12. Learned counsel for insurer would further submit that, in respect of compensation is concerned, the accident had taken place in the year 2014, but, the Tribunal has

taken the income of deceased at ₹10,000/- per month without any admissible documents and thus, it ought to have been taken at ₹7,500/- per month and imposing interest at 9% per annum is on higher side. It should be reduced to 6% per annum.

13. Learned counsel for the owner of the offending vehicle Sri Girish S. Hiremath, would submit that he is not liable to make payment, because the driver was holding the licence, but it was expired and then he got it renewed. Hence, the insurer is liable to make payment. Hence, prayed for modification of the award to that extent.

14. From the above facts, the points that would arise for consideration are as under:

- i) Whether the insurer proves that the Canter lorry bearing registration No.KA-16/A-2266 was not involved in the accident?
- ii) Whether the claimants are entitled for enhanced compensation?

- iii) Whether the liability saddled on insurer directing to 'pay and recover' by the Tribunal is justifiable?

15. Our findings to the above points are in the affirmative, negative and negative, respectively for the following:

REASONS

16. The death of husband of claimant No.1 in the accident that was occurred on 25.08.2014 at about 10.45 p.m. on Sivamogga-Channagiri road near Hanchinasiddapur village Cross is not in dispute. The only dispute is whether the offending vehicle, a goods Canter lorry bearing registration No.KA-16/A-2266 has caused the said accident or whether it is a 'hit and run' case and unknown person had caused the accident.

17. The initial burden is on the claimants to prove that the Canter lorry bearing registration No.KA-16/A-2266 is involved in the accident to claim compensation.

18. To substantiate these things, claimants rely upon the oral evidence of PW.1 to PW.4. PW.1 is the wife of claimant No.1 and she has not seen the accident and thus unable to say anything about the way in which accident had taken place. Hence, her evidence is of least importance to decide this point.

19. PW.2 is the person who has lodged complaint immediately after the accident i.e., on 26.08.2014. Ex.P.1 is the FIR; Ex.P.2 is the copy of complaint. The contents of Exs.P.1 & P.2 reveal that on 25.08.2014, the deceased was driving lorry bearing No.KA-14/A-2930 and they had stopped the lorry on left side of the road as the engine bending was cut near Themba and they have called mechanic and were waiting for the mechanic; at about 10.45 p.m., one Canter came with rashness and negligence, being driven by its driver and dashed against Hasanpeer and Allabaksh when this complainant along with husband of claimant No.1 and Allabaksh, the cleaner of the lorry were talking on the left side of the road, and has not stopped the

vehicle and run away from the spot. Because of darkness, he could not verify the number of the lorry.

20. The above averments in complaint clearly and categorically establish that the complainant has not seen the registration number of the Canter lorry and he does not know who caused the accident. In this regard PW.2 in his examination has deposed that, they have made efforts to trace the lorry which caused the accident i.e., he chased the lorry on a bike and tried to trace the lorry; but could not trace it; at that time they were not aware about the registration number of the lorry. Thus, PW.2 also had not seen who caused the accident.

21. PW.3 is the mechanic working at Nallur, Chennagiri Taluk and has stated in his affidavit evidence that, on 26.08.2014, a 407 lorry bearing No.KA-16/A-2266 was brought to his shop by its owner Sreenivas and one Yuvaraj of Itagi village, who are known to the witness and he had seen crush damage on left side shape, its left side body came out and there was dent on its top. When he

enquired, they told that on 26.08.2014, while coming from Shivamogga, during night time after passing Hanchinasiddapur village near Themba on Chennagiri boundary, he has dashed the stationed Canter lorry; afterwards, he has put tinkering and lappa on that lorry and three days afterwards they came and took away the lorry. The cross-examination of PW.3 reveals that he had not seen the accident and he has done only tinkering to the lorry in question. However, to substantiate that he did tinkering and charged some amount for tinkering to the lorry owner or driver, no receipt or bill is produced and there is no other material evidence except the oral evidence of PW.3 to substantiate this fact.

22. PW.4 is the Investigating Officer, who has filed charge sheet against the driver and owner of the Canter lorry bearing No.KA-16/A-2266. This charge sheet was filed on 07.11.2015, i.e., one year three months after the accident. In this regard, this PW.4 has given evidence that he has received the case file from CPI-Ravi Nayak. After he

has taken charge of the Channagiri Circle Inspector Office on 08.05.2015 and then he issued notice to PW.3 on 27.06.2015 and recorded his statement and then issued notice to owner of the lorry bearing No.KA-16/A-2266 and allowed to produce the lorry and he has produced it and then he seized it under panchanama as per Ex.P.4 and on the same day he has recorded the further statements of PW.2 Rudresh and one Siddesh and then on 30.06.2015 he has recorded the statement of some witnesses. On the same day, he has received the MVI report from the MV Inspector. On 20.09.2015 he recorded the statements of some persons and based on it, he has filed charge sheet against driver of the Canter lorry bearing No.KA-16/A-2266.

23. The cross-examination of PW.4, the Investigating Officer reveals that, at the initial stage when complaint was lodged, he was not in charge of that police station and he has not conducted investigation at that time. He further deposed that, generally in the case of present nature, they would file charge-sheet within 3-4 months, but because his

earlier Investigating Officer has not filed charge-sheet, has not completed the investigation, he completed the investigation and filed charge sheet. He denied other suggestions that this vehicle was not involved in the accident, etc.

24. On careful perusal of the evidence of PW.2 to PW.4, it is crystal clear that PW.2 has not seen the vehicle which caused the accident that had taken place to the vehicle in question. Evidence of PW.3 is not supported by any cogent documentary evidence. Only based on the statement of PW.3, PW.4 has filed charge sheet against the driver of lorry bearing No.KA-16/A-2266. There is an inordinate delay in involving this lorry to the present case, which appears to be doubtful. Furthermore, as pointed out by learned counsel for the insurer, in the MVI report as per Ex.P.7, it is stated that there is front left side fender scratched, headlight cover damaged. But, he has not mentioned about tinkering to the lorry, which is deposed by

PW.3 and thus, there is quite contradiction in between these two.

25. The strict proof of accident beyond reasonable doubt is not required in the case of present nature as it is a summary proceeding. The claimants have to establish their case on the touchstone of preponderance of probabilities as held by the Hon'ble Apex Court in the case of ***Mathew Alexander v. Mohammed Shafi and another, reported in (2023) SCC 510.***

26. Under those circumstances, without making proper enquiry, the Investigating Officer has involved the driver of the vehicle as accused.

27. On behalf of respondents, the manager of respondent No.2-insurance company is examined as RW.2, who has stated in his affidavit evidence that, there is no FC and thus, respondent No.1 has violated the policy terms and conditions and he has stated about filing of charge sheet by the Investigating Officer alleging offences under

Section 3 read with section 181 of M.V.Act, against accused No.1, driver and under section 4 read with section 180 against accused No.2, owner of the lorry bearing No.KA-16/A-2266. It is also stated in his affidavit evidence at paragraph No.5 as follows:

"The husband of petitioner No.1 Mr.Hasanpeer came and dashed to our insured vehicle, as such, respondent No.2 is not liable to pay compensation to the petitioners."

28. On perusal of the above statement of RW.2 in his affidavit evidence, it appears that, there is some admission from his side regarding the accident. However, since from inception, respondent-insurer has taken contention that the vehicle in question is falsely implicated in this case, in the objection statement and also while cross-examining PW.1 to PW.4.

29. The above discussion reveals that mere filing of charge-sheet by the Investigating Officer would not prove the involvement of offending vehicle in the accident.

30. In ***Mathew Alexander case (supra)***, the Hon'ble Apex Court has held as paragraph No.13 as under:

In that view of the matter, it is for the appellant herein to establish negligence on the part of the driver of the tanker lorry in the petition filed by him seeking compensation on account of death of his son in the said accident. Thus, the opinion in the final report would not have a bearing on the claim petition for the aforesaid reasons. This is because the appellant herein is seeking compensation for the death of his son in the accident which occurred on account of the negligence on the part of the driver of the tanker lorry, causing the accident on the said date. It is further observed that in the claim petitions filed by the dependents, in respect of the other passengers in the car who died in the accident, they have to similarly establish the negligence in accordance with law.

31. Thus, the opinion in the final report would not have a bearing on the claim petition. The claimants have to establish their case without the influence of finding on the criminal case lodged against the driver of the alleged offending vehicle.

32. By placing reliance on the principles noted in the aforesaid judgment of the Hon'ble Apex Court and for the

aforesaid reasons, we are of the considered opinion that the claimants failed to establish involvement of offending Canter lorry bearing registration No.KA-16/A-2266 in causing the accident to the deceased Hasanpeer. Under those circumstances, granting compensation to claimants' payable by the owner/insurer of the offending vehicle does not arise. Hence, we pass the following:

ORDER

i) Appeal filed by the insurer, in MFA No.103905/2019 and the appeal filed by the owner of the offending Canter lorry, in MFA No.100827/2020 are allowed.

ii) Appeal filed by the claimants in MFA No.103477/2019 is dismissed.

iii) The judgment and award dated 14.08.2019, passed in MVC No.465/2016, by the II Additional Senior Civil Judge and Additional MACT, Ranebennur, is set aside by

rejecting the claim petition filed by the claimants.

iv) The amount in deposit, if any made by the insurer and owner of offending Canter lorry shall be refunded to them, on proper identification.

v) No order as to costs.

Sd/-
(S G PANDIT)
JUDGE

Sd/-
(GEETHA K.B.)
JUDGE