

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL: CUM:
XI ADDITIONAL CHIEF JUDGE, CITY CIVIL COURTS AT
HYDERABAD**

TUESDAY, DATED THIS THE 11th DAY OF JUNE, 2024

**PRESENT: Smt. R. DANIE RUTH,
XI Additional Chief Judge,**

M.V.O.P.No.1566 of 2022

Between:

1. R.Padmavathi W/o Late R. Srinivasa Rao,
Age 42 years, Occ: Labour.
 2. R. Gopichand S/o Late R. Srinivasa Rao,
Age 21 years, Occ: Student.
 3. R. Bhaskara Rao S/o Late R. Srinivasa Rao,
Age 19 years, Occ: Student.
 4. R. Rama Rao S/o Late Bhaskara Rao
Age 75 years, Occ: Nil
 5. R. Nagendramma W/o R. Rama Rao,
Age 73 years, Occ: Nil
- All are B/o 1-9, Peddapuram (v)
Veerulapadu (M) Krishna Dist. A.P.
Presently R/o 16-2-738/A/H, Asmangadh,
Malakpet, Hyderabad.

... Petitioners

And

1. K. Venkateswara Rao S/o K. Rangaiah,
Age 56 years, Occ: Driver
2. L. Krishna Rao S/o Nageswara Rao,
Age: Major, Occ: Owner of Lorry bearing No.AP 16 TY 0066,
R/o 3021, Jujjuru, Veerulapadu Mandal,
Krishna District.A.P.

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3. National Insurance Co. Ltd.,
Rep by its Manager, Jubilee Building,
Nampally Station Road, Hyderabad. T.S.

(Policy No.560601312110001913
Valid from 01.09.2021 to 31.08.2022
issued by Governorpet Branch, Vijayawada,A.P)

...Respondents

This petition coming before me on 15.05.2024 for final hearing, in the presence of **Sri A. Pulla Reddy**, Advocate for the petitioners and of **Sri D. Praveen**, Advocate for Respondent No.3 and of Respondents No.1 and 2 remained exparte and the matter having stood over for consideration till this day, this Tribunal made the following:

:: O R D E R ::

This is a petition filed by the petitioner under section 166 of the Motor vehicle Act, 1988 and Rule 455 of A.P.M.V.Rules 1989 to grant compensation of Rs.18,00,000/- to the petitioners for the death of R. Srinivasa Rao in the road accident, with costs and interest @ 12% per annum from the date of accident till realization.

2. The averments in the petition in nutshell are, as follows:

On 30.07.2022 at about 21.00 hours the deceased after purchase of goods was returning to his home on his TVS XL bearing No.AP 20 AV 2411 from Yerrupalem to Peddapurama and reached near outskirts of Peddapuram check post, in the mean time one lorry bearing No.AP 16 TY

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0066 driven by its driver in rash and negligent manner in Zig Zag and without following the traffic rules and dashed to the deceased vehicle. As a result, the deceased was sustained multiple injuries all over the body and dragged to some distance and died on the spot. After that, the deceased was shifted to Community Health Center, Nandigama, NTR Dist. A.P for Post Mortem examination.

3. The Police, Veerulapadu has registered a case in crime No.154/2022 under Section 304(A) against the said crime vehicle.

4. The petitioner No.1 is the wife, petitioners No.2 and 3 are the sons and petitioners No.4 and 5 are the parents of the deceased. The deceased was aged 47 years at the time of accident and he was doing Sales business of Mixture bundi for their livelihood and used to earn for an amount of Rs.15,000/- per month and adding of 40% of future prospects. Prior to accident the deceased was hale and healthy and used to spend his earnings for the maintenance of his family. Due to sudden death of the deceased, the petitioner No.1 is suffering a lot and lost her life partner, and she is not recovering from the shock. The petitioners No.2 and 3 are Engineering Students and lost their future prospects and that the petitioners NO.4 and 5 lost their son at their old age.

5. The respondent No.1 is the driver of crime vehicle and respondent NO.2 is the owner of crime vehicle and respondent NO.3 is the insurer of the crime vehicle, as such all the respondents are jointly and severally liable to pay the compensation to the petitioners. Hence, the petition.

6. Despite service of summons, the respondents No.1 and 2 did not turn up and remained exparte.

7. The respondent No.3 filed counter denied the averments of the petitioner and further contended that no cause of action occurred to the petitioners and by suppressing the facts and with false information FIR was registered with an improved version in order to fix the liability on 3rd respondent and no crime registered at an earliest point of time. The deceased ie, rider of TVS XL bearing AP 20 AB 2411 is not holds any valid existing documents to run the vehicle on public places and he violated the traffic rules and he is with a history of violation to disqualify to hold valid driving license at the time of accident. The owner of the insurer of TVS XL is a necessary party to the proceedings and he was not added as a party, hence this petition is liable to be dismissed. It is further contended that the deceased is responsible and contributed in the said alleged accident and he is not a third party against the crime vehicle to cover the risk.

8. It is further contended that the petitioners are not the legal heirs of the deceased and in the absence of entire police record the claim is barred. The respondent No.1 is not driver at the time of accident and respondents No.1 and 2 are not holding valid driving license to the insured vehicle. The respondent No.2 failed to inform about the accident to respondent No.3 thereby breached the terms and conditions of the policy. The insurance company denied the allegations made in the petition the manner of accident, the date, time, occupation/employment of the deceased. It is submitted that the police records reveals that the informant is the petitioner No.1 who is the wife of deceased and their complaint is basing on the self motive information without disclosing the true and factual aspects. The complaint does not disclose the number of the crime vehicle . As per her report one unknown vehicle which came in the opposite direction dashed him and pull a little distance, then he got sustained bleeding injuries and died, as such there is no involvement of insured vehicle and no nexus to the said accident.

9. It is denied about the age, avocation and income of the deceased. Respondent denied the allegation of the petitioners that accident occurred due to sheer negligence of driver (R1) of crime vehicle. The respondents did not furnish vehicle documents and particulars of driving license to the

insurance company. The police concerned also did not forward the relevant documents to the insurer as required under Section 158 (6) of Motor Vehicles Act, 1988. The claim of compensation of Rs.18,00,000/- and rate of interest claimed by the petitioners is highly excessive, arbitrary and out of all propositions. The respondent further seeks protection under Section 147 and 149(2) and 170 of M.V. Act. Hence, prayed to dismiss petition against the 3rd respondent with costs.

10. Basing on the pleadings of both sides the following issues have been settled for trial:

1. Whether the accident had occurred due to the rash and negligent driving of the driver of crime vehicle ie, Ashok Leyland bearing No.AP 16 TY 0066?

2. Whether the claimant is entitled for compensation. If so, to what extent and from whom?

3. To what relief?

11. During the course of trial, on behalf of the petitioner, P.W-1 & 2 were examined and A-1 to A-6 were exhibited. On behalf of the respondents, RW-1 examined and Ex.B1 to Ex.B5 were exhibited.

12. Heard both sides.

13. ISSUE No.1:

The petitioner No.2, was examined as P.W-1 have filed an affidavit in lieu of his chief examination as contemplated under Order-XVIII, Rule-4 (1) of C.P.C. His evidence is nothing but replica of petition pleadings. Further, Bhavirisetty Srinivasa Rao S/o Sankaraiah has been examined as PW-2.

14. It is in the evidence of P.W-1 that at the material time of accident the deceased Srinivasa Rao after purchase of goods was returning to his home on his TVS XL bearing No.AP 20 AV 2411 from Yerrupalem to Peddapurama and reached near outskirts of Peddapuram check post, in the mean time one lorry bearing No.AP 16 TY 0066 driven by its driver in rash and negligent manner in Zig Zag and without following the traffic rules and dashed to the deceased vehicle. As a result, the deceased was sustained multiple injuries all over the body and dragged to some distance and died on the spot. After that , the deceased was shifted to Community Health Center, Nandigama, NTR Dist. A.P for Post Mortem examination.

15. It is in the evidence of PW-2 that he is eye witness to the accident and he categorically stated that he is resident of Peddapuram village, Veerulapadu Mandal, Krishna District and he witnessed the accident when he was coming from Yerrupalem to Peddapuram after purchasing pesticides

and when he reached near check post the accident took place in the outskirts of Peddapuram village and further states that the accident occurred due to the rash and negligent driving of driver of crime vehicle Lorry bearing No.AP 16 TY 0066 and Police Veerulapadu has registered a case in crime No.154/2022 under Section 304-A IPC against the crime Lorry driver and later charge sheet is filed in C.C.No.2557/2022 and PW2 was examined by Police and recorded his statement and shown his name as LW-6.

16. From the material on record, it is clear that the deceased sustained injuries in the motor vehicle accident and succumbed to the injuries and that the said accident was occurred due to rash and negligent driving of the driver of Lorry bearing No.AP 16 TY 0066.

Accordingly, this issue is answered in favour of the petitioners and against the respondents.

17. ISSUE No.2 :

The claim petitioners filed the present petition by claiming compensation of Rs.18,00,000/- with interest @ 12% per annum, under all heads, as compensation for the death of R. Srinivasa Rao in the accident.

18. **Age, Avocation and Income of the deceased:** According to the petitioner, the deceased was aged about 47 years and he used to do Mixture vendor business was earning Rs.15,000/- per month and that he used to contribute his earnings for the welfare of family. Due to the sudden death of deceased the petitioner No.1 lost her love, affection and care and petitioners No.2 and 3 lost their father at young age and petitioners No.4 and 5 lost their son at their old age.

19. Admittedly the petitioner has not filed any documents in proof of age of the deceased. However in the Inquest/Ex.A3 and PME/Ex.A5 the age of the deceased is mentioned as 48 years. It is settled law that the certified copies of Inquest report, Post mortem report disclosing the age of the deceased as 48 years. Hence this court considers the age of the deceased as 48 as on the date of accident for the purpose of fixing compensation.

20. According to the petitioner the deceased was doing business and earning Rs.15,000/- per month. Though they have not filed any document in proof of that in the Charge sheet the occupation of deceased is mentioned as Mixture cart business. They have not filed any document to show the income of deceased is Rs.15,000/- per month. However, taking into consideration the material on record and valuable services of the deceased towards his family and present days minimum wages, this

Tribunal is of the view that it is just and proper to consider the earning of the deceased- R. Srinivasa Rao as Rs.10,000/- per month from all sources, for the purpose of fixing the compensation.

Calculation for loss of Dependency and Future Prospects:

21. According to the petitioner the deceased used to contribute his earnings for the welfare of the family. Due to the death of the deceased there is no one to serve her and lost love and affection of her husband. On applying the principles laid down in case of **Sarala Verma V. DTC and National Insurance Company Ltd., V. Pranay Sethi and others**, since the deceased was aged about 48years, and self employed 25% of the income has be added to the income of the deceased towards future prospects of income, which comes to $\text{Rs.10,000} \times 25\% = \text{Rs.2,500/-}$, $\text{Rs.10,000} + \text{Rs.2,500} = \text{Rs.12,500/-}$ per month $\text{Rs.12,500} \times 12 = \text{Rs.1,50,000/-}$ per annum.

22. Since the petitioners No.1 to 5 are dependents of deceased, $\frac{1}{4}^{\text{th}}$ of income has to be deducted towards personal expenses and by applying the appropriate multiplier (13) taking into consideration the age of the deceased at the time of his death as per **Sarala Verma** and **Pranay Sethi** cases (*supra*), the total loss of dependency comes to Rs.21,93,750/- $[\text{Rs.1,50,000/-} (-) \text{Rs.37,500/-} (\frac{1}{4} \text{ personal expenses}) = \text{Rs.1,12,500} \times 13 =$

Rs.14,62,500/-]. Therefore, the petitioners are entitled to claim Rs.14,62,500/- under the head of loss of dependency and future prospects.

23. **Compensation for loss of Affection:** The petitioners 2 to 5 (children and parents) are entitled for Rs.25,000/- each towards loss of love and affection due to loss of their father (deceased) as per the principles laid down in **Juju Kuruvila and others V. Kunjamma Mohan and others** reported in **2013 (9) SCC 166**.

24. **Compensation for loss of Consortium:** The petitioner being wife is entitled for Rs.44,000/- towards consortium of her deceased-husband.

25. **Compensation for loss of Estate:** As per the principles laid down in case of **Kalpanaraj and others V. Tamilnadu State Transport Corporation, reported in 2014 (5) Scale 479 and National Insurance Company Ltd., V. Pranay Sethi and others (referred supra)**, the petitioners are entitled for Rs.16,500/- towards loss of estate.

26. **Claim pertaining to the funeral expenses:** As per the principles laid down in **Rajesh and Others V. Rajbir Singh and others** and **National Insurance Company Ltd., V. Pranay Sethi and others (referred supra)**, the petitioners are entitled for Rs.16,500/- towards funeral expenses.

27. The petitioners are entitled for total compensation as under:

1.	Loss of Dependency	Rs.	14,62,500-00
2.	Loss of Love and Affection to the petitioners 2 to 5 (children and parents) @ Rs.25,000/-	Rs.	1,00,000-00
3.	Loss of Consortium	Rs.	44,000-00
4.	Loss of Estate	Rs.	16,500-00
5.	Funeral Expenses	Rs.	16,500-00
	Total	Rs.	16,39,500-00

28. The claim petitioners are entitled to claim a total compensation of **Rs. 16,39,500/-**.

29. **Apportionment:**

Sl. No.	To whom	Amount
1.	Petitioner No.1	Rs.12,39,500/-
2.	Petitioner No.2	Rs. 1,00,000/-
3.	Petitioner No.3	Rs. 1,00,000/-
4.	Petitioner No.4	Rs. 1,00,000/-
5.	Petitioner No.5	Rs. 1,00,000/-
	Total :	Rs. 16,39,500/-

30. **Liability:** According to the petitioners, the 1st respondent is the driver, 2nd respondent is the owner and 3rd respondent is the insurer of the Crime Car and 3rd respondent is the insurer of crime Lorry bearing No.AP 16 TY 0066. On behalf respondent No.3 RW-1 was examined and Ex.B1 to Ex.B5 marked. Ex.B1 copy of policy was exhibited bearing Insurance

policy No. 560601312110001913. As can be seen from the policy copy that was issued for Crime Lorry bearing No.AP 16 TY 0066 and the same is valid from 01.09.2021 to 31.08.2022. Admittedly accident occurred on 30.07.2022. Hence the policy was in force.

Though the respondents contended that deceased has no valid driving license and they have not filed any document in proof of their contention. Simply the respondents filed the policy copy and the notice issued to the owner of motorcycle the owner of TVS XL, no steps has been taken by the respondents to prove their contentions.

It is the contention of the respondent that there is no mention of the crime vehicle in the complaint attached to the FIR and subsequently the vehicle number was added. Admittedly the petitioner is the complainant and she is not eye witness to the incident. The accident occurred on 30.7.2022 and the complaint lodged on 31.7.2022, as seen from the complaint contents the petitioner was not eye witness to the accident and she was informed by someone about the accident and immediately she rushed to the spot and found that her husband died.

Basing on her complaint the FIR in crime NO.154/2022 was registered and the Police thoroughly investigated case and registered case against the driver of crime vehicle. In the charge sheet LW's 5 and 6 were

shown as eye witnesses to the accident. Though the petitioner has not filed statements of the witnesses who were examined by the Police, since the charge sheet is a final report and it can be safely relied upon. Admittedly a case under Section 304-A IPC was registered against the driver of the crime vehicle. Respondent No.1 the driver of crime vehicle even after receipt of notice did not turn up to say that his name is falsely implicated in the case.

It is respondent No.3 who contended that the name of the driver was falsely implicated. Since the driver of the crime vehicle has not appeared before this court, an adverse inference can be drawn against him. If at all he is not involved in the case he would have definitely appeared before this court to prove his innocence. In these circumstances the contentions raised by the respondents cannot be considered. The Police filed charge sheet under Section 304-A IPC only, hence it is clear that the accused that the driver of crime vehicle has valid driving license is true. In cross-examination RW1 admitted that the policy was in force as on the date of accident and hence the respondent No.3 cannot escape from his liability.

30. **Rate of interest:** The petitioners are claiming interest @ 12% per annum. As per the principles laid down in 2022 ACJ 948 (Supreme Court) Benson George v. Reliance General Insurance Co. Ltd interest 6% p.a. on compensation amount, this Tribunal awards an interest @ 6% per annum,

on the compensation amount. Accordingly, these issues are answered in favour of the petitioners and against the respondents.

32. **ISSUE No.3:** In view of findings and conclusions on the above issues, the petitioner is entitled for compensation from the respondents. Accordingly, these issues are answered.

IN THE RESULT: The petition filed by the petitioners is allowed in part by awarding a compensation of **Rs.16,39,500/- (Rupees Sixteen Lakhs Thirty Nine Thousand and Five Hundred only)** with proportionate costs against the respondents No.1 and 3 and all the respondents are jointly and severally liable to pay compensation with subsequent interest @ 6% per annum from the date of petition till the date of deposit of the amount.

The respondents No.1 and 3 are directed to deposit the awarded amount within one month from the date of this Award.

After deposit, petitioners No.1 is entitled for a sum of **Rs.12,39,500/-** and petitioners No.2 and 3 are entitled for a sum of **Rs.1,00,000/-** each and petitioners No.4 and 5 are entitled for a sum of **Rs.1,00,000/-** each and all the petitioners No.1 to 5 are permitted to withdraw their entire amount with costs and interest.

Petitioners filed IA 5489/2022 and exempted from payment of court fee of Rs.17,360/- on the claim amount of Rs.18,00,000/- vide its order dated 11.10.2022. Now the petitioners are directed to pay court fee of

Rs.17,360/- and court fee on the more compensation awarded to them within 30 days from the date of this order.

The office is directed to prepare decree on payment of court fee.

The rest of the claim of the petitioners is dismissed.

The Advocate fee is fixed at Rs.15,000/-.

Typed to dictation by the Stenographer, Corrected and pronounced by me in the Open Court, on this the 11th day of June, 2024.

CHAIRMAN,

MACT - cum - XI Additional Chief Judge,
City Civil Court, Hyderabad

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR PETITIONERS:

PW-1:R. Gopichand
PW-2: Bhavirisetty Srinivasa Rao

FOR RESPONDENTS:

RW-1: Shail Pragya

DOCUMENTS MARKED FOR PETITIONERS

Ex.A1	Certified copy of FIR
Ex.A2	Certified copy of Charge sheet
Ex.A3	Certified copy of Inquest report
Ex.A4	Certified copy of Rough sketch
Ex.A5	Certified copy of Post Mortem examination

Ex.A6 Certified copy of MVI Report.

DOCUMENTS MARKED FOR RESPONDENTS

Ex.B1 Attested True copy of Insurance Policy

Ex.B2 Attested True copy of Insurance certificate along with Tax
invoice dt. 01.09.2021.

Ex.B3 Office copy of letter to the respondent No.2 dt. 24.03.2023.

Ex.B4 Original RPAD Postal Receipt No.RN016892402IN
dt. 29.3.2023.

Ex.B5 Original Postal Acknowledgment card dt. 31.03.2023.

CHAIRMAN,
MACT - cum - XI Additional Chief Judge,
City Civil Court, Hyderabad