

**IN THE COURT OF XII ADDL. CHIEF JUDGE, CITY CIVIL COURT,
SECUNDERABAD.**

Present: Smt. Shoukath Jahan Siddique
XII Additional Chief Judge
Secunderabad.

TUESDAY, THE 24th DAY OF SEPTEMBER, 2024

M.V.O.P.No.847 OF 2022

Between:

1. Khamarunnisa Begum W/o Mohd Ghouse, Age: 37 years,
Occ: Household.
 2. Mohd Ghouse S/o Late Mohd Moin, Age: 40 years,
Occ: Private job.
 3. Naziya Sultana D/o Mohd Ghouse, Age: 21 years,
Occ: Student.
 4. Asra Sultana D/o Mohd Ghouse, Age: 15 years,
Occ: Student.
 5. Mohd Majeed S/o Mohd Ghouse, Age: 13 years,
Occ: Student
 6. Mohammad Mujahed S/o Mohd Ghouse, Age: 20 years,
Occ: Student.
- All are R/o.1-38-1052/1, Indiramma Nagar, Rasool Pura,
Secunderabad.

... Petitioners

AND

1. G.Vijayachander S/o G.Sadanandam, Age: major,
Occ: Business, R/o H.No.10-5-72/2, Flat No.206, Vishnu
Residency, Balanagar, Hyderabad.
2. M/s IFFCO-TOKIO General Insurance Co Ltd.,
Represented by its Divisional Manager, HSBC Building
6-3-1107 & 1108, Somajiguda, Hyderabad.

... Respondents

*This O.P is coming before me on 06.08.2024 for final hearing in the presence of **Sri CH.T.V.L.Narasimha Reddy**, Counsel for the petitioners, Respondent No.1 set ex parte, **Sri M.Koti Raja Sekhar**, Counsel for Respondent No.2 and the matter having been heard and stood over for consideration till this day, the Court delivered the following:*

J U D G M E N T

This petition is filed by the petitioners against the respondents claiming compensation of Rs.20,00,000/-.

2. The brief averments of the petition are that petitioners 1 and 2 are parents, petitioners 3 to 6 are brothers and sisters of the deceased Nikhat Sultana. On 03.09.2022 at about 07:25 hours, the deceased Nikhat Sultana along with two others Asfiya Begum and Asra Begum were going to Shadan College, Khairatabad from their residence and while crossing the zebra crossing at Begumpet Metro station, the rider of Avenger Bike bearing No.AP-11AS-3218 drove his vehicle in a rash and negligent manner and dashed to the deceased with high speed. Due to the sudden impact, Nikhat Sultana and her friend Asfiya Begum fell on the road and both received bleeding injuries and Nikhat Sultana's leg was cut very badly. All the three injured girls shifted to Yashoda Hospital and after First Aid, all the girls have been shifted to Gandhi General Hospital, Secunderabad. Later Nikhat Sultana died at Gandhi Hospital on the same day. PS Begumpet had registered a case in Crime No.416/2022 U/s.304-A, 337, 279 IPC.

The deceased was aged about 17 years at the time of accident and she was quite hale, healthy, and energetic and was studying Intermediate II year in Sadhan College, Khairatabad. Due to the accident, the deceased life totally ended suddenly. The deceased used to conduct tuition's to the 7th to 9th class students and earn Rs.12,000/- per month. The deceased used to contribute all her earnings for the maintenance of her family during her lifetime. Respondent No.1 is driver-cum-owner

and Respondent No.2 is the Insurer of the crime vehicle. As such, the Respondents are jointly and severally liable to pay compensation to the petitioners.

3. Respondent No.1 being the driver-cum-owner of the crime vehicle were set *ex parte* and remained *ex parte*. Respondent No.2/Insurance company filed counter inter-ilia contending that the driver of the crime vehicle was not holding valid and effective driving license at the time of accident. That the alleged accident took place due to sole negligence of the deceased who suddenly crossed the road along with her two friends. The petition is barred by limitation U/s.166(3) of Motor Vehicles Act. The compensation claimed is highly excessive.

4. Basing on the above pleadings, following issues are framed for trial:-

1. Whether the accident occurred was due to rash and negligent driving of the offending vehicle by R1?
2. Whether the petitioners are entitled to compensation, If so, to what quantum and from whom?
3. To what relief?

5. To prove their respective contentions, petitioners got examined PWs 1 and 2 and got marked Exs.A1 to A10. On behalf of respondents, none were examined, but got marked Ex.B1 policy copy.

6. After conclusion of trial, arguments of both sides heard. Perused the written arguments filed by respondents.

7. **ISSUE NO.1:- Whether the accident occurred due to rash and negligent driving of the offending vehicle by R1?**

To prove this issue, petitioner pressed into service her evidence as PW1. Having relevancy to this issue, PW1 deposed that on 03.09.2022 at about 07:25 hours, the deceased daughter of PW1 by name Nikath Sultana along with two others by name Asfiya Begum and Asra Begum were going to Shadaan College, Khairtabad by walk. While crossing the road at Zebra crossing Begumpet metro station the rider of the crime vehicle bearing No.AP-11AS-3218 Avenger Bike drove in a rash and negligent manner with high speed and hit the deceased and other two girls. All of them received serious injuries and were shifted to Yashoda Hospital and thereafter to Gandhi Hospital. But unfortunately the deceased daughter of PW1 Nikath Sultana died at Gandhi Hospital on the same date. To support the evidence of PW1, she relied on Ex.A1 certified copy of FIR, Ex.A3 certified copy of Charge sheet, Ex.A4 certified copy of Crime detail form along with the rough sketch and Ex.A6 MVI Report. To support the rash and negligent driving she filed Ex.A2 Inquest report, Ex.A5 PME report to support her contention that the deceased died as a result of accident at Gandhi Hospital.

8. She also examined PW2, as eye witness. PW2 deposed that he is the eye witness of the accident. He is the owner of the puncture shop which was situated at Rasoolpura X roads near Hockey Stadium. At the time of accident, PW2 was proceeding from his home towards his shop by walk. The accident occurred at about 07:30 AM on 03.09.2022. At the time of accident three girls are crossing the road in front of PW2, at that time a rider of the Bike bearing No.AP-11AS-3218 coming from Panjagutta side towards Secunderabad and drove the same in rash and negligence manner and dashed to three girls by

namely Nikhat Sultana, Asfiya Begum and Asra Begum as a result Nikhat sultana received grievous fractures injuries and other injured persons were shifted to Yashoda Hospital Secunderabad and from there shifted to Gandhi Hospital in 108 Ambulance. Later PW2 came to know that the injured Nikhat Sultana succumbed due to injuries at Gandhi Hospital on the same day. The said accident was occurred and the injured Nikhat Sultana died due to the rash and negligent driving of the rider of motorcycle bearing No.AP-11AS-3218 and there is no fault on part of Nikhat Sultana/Deceased.

9. From the record, it is seen that the Respondent No.1 who is the driver-cum-owner of the crime vehicle was set *ex parte* and remained *ex parte*. *Respondent No.2* is insurer of the crime vehicle. Respondent No.2 is the only contesting party.

10. The main allegations of the petitioner is against Respondent No.1 for rash and negligent driving of the crime vehicle due to which accident occurred. But it is surprising to see that the said allegations are not remonstrated by Respondent No.1/ Driver-cum-owner of the crime vehicle and thereby it is deemed that the said allegations are admitted by Respondent No.1. That apart, the documents filed by the petitioner under Ex.A1, shows that FIR was lodged on the same date i.e. on 03.09.2022. After lodging the FIR, the Police swung into action, did investigation and filed charge-sheet under Ex.A3. This Ex.A3 shows that Respondent No.1, who is shown as driver of the crime vehicle bearing No.AP-11AS-3216 is accused of rash and negligent driving and he is charged U/s.304-A, 337, 279 IPC and also U/s.184 M.V.Act (Penal Section for

Driving Dangerous). The above documents remained unchallenged by Respondents which proves the rash and negligent driving of Respondent No.1.

11. However, Respondent No.2 has challenged the evidence of PW1. It is amusing to note that following facts are elicited in the cross-examination of PW1 which confirms the rash and negligent driving of Respondent No.1.

1. It is true complaint was lodged by my son.
2. We received information about the accident through phone.
3. The deceased was my daughter.
4. It is true the accident took place while my daughter was crossing the road.

12. Except the above stated facts which confirms the accident, respondent No.2/Insurance company never challenged Ex.A1 or Ex.A3 i.e. FIR and charge-sheet in which the police have held respondent No.1 as responsible for accident after due investigation. When the said documents remained unchallenged by the respondents, then it is deemed that they are admitting the contents of the said documents to be true. Moreover, when the police investigation under Ex.A3 speaks about the rash and negligent driving of Respondent No.1. Respondent No.2 cannot screen the offender only to escape from the liability of paying compensation. The cross-examination of PW2 is only by way of suggestions. Suggestions cannot take the place of proof. Therefore, the evidence of Pws 1 and 2 coupled with the documentary evidence under Exs.A1 and A3 proves the rash and negligent driving of driver of the vehicle on the alleged date. Ex.A6 MVI report also speaks that accident did not occur due to mechanical defects in the vehicle which also adds to the evidence of PW1 that the accident occurred due

to rash and negligent driving of respondent No.1. Hence, we hold that the petitioner proved the rash and negligent driving of respondent No.1.

13. With respect to the fact that the deceased died on the same date of accident at Gandhi Hospital as the consequence of the injuries received by her in the accident, is proved by PW1 by filing Ex.A2 Inquest Report and Ex.A5 PME report. Even the said documents remained unchallenged by the respondents. Hence, we hold that petitioner proved that the deceased died due to the injuries she sustained in the accident. Accordingly, the issue is answered.

14. **ISSUE NO.2:- *Whether the petitioners are entitled for any compensation? If so, to what quantum and from whom?***

PW1 stated that she is the mother, petitioner No.2 is father, petitioners 3 and 4 are unmarried sisters, petitioner No.5 and 6 are brothers of the deceased. The legal status of the petitioners are not at all challenged by respondents in the cross-examination of PW1. However, it is suggested to PW1 that petitioners 3 to 6 were not dependents on the deceased and as such petitioners 3 to 6 were not necessary parties. However, the said suggestion is denied by the witness. Hence, we hold that petitioner proved the legal status of the deceased with her and the remaining petitioners.

15. However, it is for the Court to decide who are the necessary parties. From the record i.e. the petition averments, it is observed that petitioners 3 to 6 are brothers and sisters of the deceased, among them petitioners 3 and 6 are majors. Being majors, they are not entitled for compensation. Regarding

petitioners 4 and 5, though they are minors aged about 15 years and 13 years, they are the responsibility of petitioner No.2, but not the responsibility of the deceased. Hence, they are not entitled for compensation.

16. PW1 deposed that the deceased was aged about 17 years and she was intermediate student in Shadaan College. To support the said evidence of PW1, the petitioner relied on Ex.A10 Aadhar card copy of the deceased, Ex.A7 ID Card of the deceased and Ex.A8 Original Intermediate Marks Memo. The said documents were not challenged by the respondents in the cross-examination of PW1 except suggesting that they are false and fabricated. A document does not become false and fabricated only on giving suggestion unless the fact suggested is proved. In this case leave aside proving a fact, the contesting Respondent No.2 not even deposed his case on oath. On perusal of the said documents, it is observed that the date of birth of the deceased is 06.11.2005 and the deceased was studying intermediate Bi.PC in Shadaan College, Khairtabad. The documents proves the age of the deceased and also proves the fact that the deceased was studying Intermediate at the time of accident. Accident took place on 03.09.2022 and the date of birth of the deceased is 06.11.2005. The deceased was aged about 17 years at the time of accident as stated by PW1 and she was studying Intermediate in Shadaan College.

17. PW1 stated that the deceased was Brilliant student in her studies. That she used to conduct tuition's and earn Rs.12,000/- per month. However, except

the oral testimony of the PW1, there is no proof of the avocation and income of the deceased.

18. There is a case law of Hon'ble Supreme Court in ***Meena Devi Vs. Nunu Vhand Mahato @ Nem Chand Mahato and others dated 13.10.2022*** the Court referred about the calculation of the income of the death of Minors. The Court has also referred about case law of ***M.S.Greval and another Vs. Deep Chand Sood (2001) 8 SSC 151 and Latha Vadhuva and others Vs. State of Bihar (2001) 8 SSC 197*** held that *"the compensation may be awarded to the minors considering the age of the parents"*.

19. PW1 stated that the deceased was studying Intermediate and having a dream of becoming Software Engineer. Taking into consideration the college in which she was studying and the evidence of PW1 that the child wanted to become a software Engineer, it would be just and proper to fix the Notional Income of the deceased as Rs.15000/- per month. Even in the above referred case law the Hon'ble Supreme Court applied the ratio of ***Kishan Gopal and another Vs. Lala and others reported in 2014 (1) SSC 244*** where the Notional Income was fixed as Rs.30,000/-. In the present case almost the entire cross-examination of PW1 is only by way of suggestions. The suggestions do not take the place of evidence. As such, we hold that it would be just and proper to fix the Notional Income of the deceased as **Rs.15,000/- per month.**

Annual income of the deceased = Rs.15,000/- x 12 = Rs.1,80,000/-.

20. As per the discussion made above only the parents are entitled for compensation. As such, as per the case law of Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranaya Sethi and Others reported in 2017 ACJ 2700***, when there are only parents as dependents half of the income should be deducted towards personal expenses of the deceased. Therefore, after half of the deductions in monthly income of the deceased comes to **Rs.90,000/-** i.e. $(1,80,000 - 90,000 = \text{Rs.}90,000/-)$.

21. ***P.Sarala Varma Vs. Delhi Transport Corporation reported in 2009 (6) SCC 121*** the Hon'ble Apex Court fixed the multiplier of the persons in between the age group of 15 to 20 years as '18'. In the present case, the deceased is aged about 17 years, so the multiplier '**18**' should be taken for calculation of compensation.

Loss of Dependency:- Yearly income of the deceased x multiplier 18 which comes to $\text{Rs.}90,000 \times 18 = \text{Rs.}16,20,000/-$.

22. **Future prospects:-** As per the same case law, when the deceased is below 40 years 40% should be added as future prospects.

$16,20,000 \times 40\% = \text{Rs.}6,48,000/-$.

23. **General and Non-Pecuniary Damages:-**

In this case, a young girl aged about 17 years died and the parents who made her study and brought up for 17 years were shattered because of her death due to the accident. Under the given circumstances of the case, it is just and proper to grant following compensation:

Loss of Estate Rs.15000/-
Funeral Expenses Rs.15,000/-
Filial compensation Rs.50,000/-
In Total **Rs.80,000/-**.

In view of my aforesaid discussion, the petitioners are entitled for total compensation of **Rs.23,48,000/-** i.e., Rs.16,20,000 + 6,48,000 + 80,000 = 23,48,000/-.

24. The respondent No.3 has filed a case law in ***Civil Appeal No.1540 of 2022***. The facts and circumstances discussed in the said case law are totally different from the present case on hand for the reason that in the said case law the petitioner has suffered multiple severe injuries, totally bed ridden and still in Coma and it is with respect to injuries to the petitioner. Where as the present case on hand is for the death of the deceased.

25. The respondent has also filed another case law in ***2020 law suit SC 559*** in which consortium is only payable as spousal consortium and consortium is not payable for children and parents. In the said case law the Hon'ble supreme Court held that there cannot be any consortium for parents or for children but in the said case law certain amount has been granted to the petitioner towards the loss of her minor daughter. The Hon'ble High Court in the said case law reduced consortium from 20,000/- to 10,000/-. In para 42 of the judgment of the Hon'ble Supreme Court in the above referred case law said that there cannot be any ratio deciphered from the above judgment that this Court (Supreme Court) held

that consortium is only payable as spousal consortium and consortium is not payable for parents and children.

26. The Hon'ble Supreme Court also referred another case law in ***M.H.Uma Maheshwar and others Vs. United India Insurance Company*** in which case the tribunal granted Rs.1,00,000/- towards loss of consortium to wife and Rs.3,00,000 for the appellants towards loss of love and affection. The High Court reduced the amount and held that the Tribunal committed error while awarding Rs.1,00,000/- to first appellant under the head of Loss of love and affection. The Hon'ble Supreme Court allowed the Appeal filed by claimant by maintaining the order of the MACT. The entire reading of the judgment of the Hon'ble Supreme Court supplied by the respondent gives the clear picture that there are certain circumstances under which the Hon'ble Supreme Court has not questioned the award of compensation to the parents under the head of loss of love and affection.

27. In a case law in ***Civil Appeal No.2612 of 2020*** the Hon'ble Supreme Court has granted interest @ 7.5% per annum from the date of filing the petition till the date of realization by referring to the judgment of ***National Insurance Company Limited Vs. Pranay Sethi and other***. In view of the said case law of the Hon'ble Supreme Court in the above referred Civil Appeal, this case filed by respondent in MSCApp 378/2017 passed by Gowhati High Court get over ruled by the above referred case law of the Hon'ble Supreme Court. In view of the above discussion, the case laws filed by respondent is not applicable to the present case on hand.

28. **Liability:-** PW1 stated that respondent No.1 being driver-cum-owner of the crime vehicle and respondent No.2 being insurer of the crime motorcycle is liable to pay compensation to the petitioners. Issue No.1 is answered fixing the liability on Respondent No.1/driver-cum-owner of the crime vehicle and consequently, Respondent No.2 who is the insurer of the crime vehicle is also Vicariously liable to pay compensation to the petitioners for the reason that the crime vehicle was insured with them and they got marked the policy under Ex.B1. Ex.B1 shows that policy was in force as on the date of accident and the deceased is clearly third party. Therefore, Respondents 1 and 2 are jointly and severally liable to pay compensation to the petitioners.

29. **ISSUE NO.3:-** In the result, the petition is allowed and award is passed by granting compensation of **Rs.23,48,000/-** along with costs and accrued interest @ 6% per annum from the date of filing of the petition till the date of deposit with costs as follows:-

(i) Respondents 1 to 2 are jointly and severally liable to pay compensation to the petitioners with accrued interest and costs.

(ii) Respondents are directed to deposit the above said compensation with accrued interest and costs within 30 days from the date of this award.

(iii) Upon such deposit, Petitioners 1 and 2 are entitled to **Rs.11,74,000/- each** with costs and interest and they are permitted to withdraw the entire compensation amount falling to their share at once with accrued interest and costs.

(iv) Advocate fee is fixed at Rs.20,000/-. Deficit Court fee if any shall be paid within 10 days from the date of this award, then office is directed to prepare the award forthwith.

Typed to my dictation, corrected and pronounced by me in the open Court on this the 24th day of September, 2024.

**XII Addl.Chief Judge,
City Civil Court, Secunderabad.**

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR PETITIONERS:

PW1 : Khamarunnisa Begum

PW2 : Mohd.Ibrahim

FOR RESPONDENTS:

- None -

EXHIBITS MARKED

FOR PETITIONERS :

Ex.A1 : Certified copy of FIR

Ex.A2 : Certified copy of Inquest Report

Ex.A3 : Certified copy of Charge Sheet along with case dairy Part-II

Ex.A4 : Certified copy of Crime Details Form with Rough Sketch

Ex.A5 : Certified copy of PME Report

Ex.A6 : Certified copy of MVI Report

Ex.A7 : Original ID card of the deceased of Shadan Junior college

Ex.A8 : Original Intermediate 1st year Marks Memo

Ex.A9 : Copy of Aadhar Cards of the petitioners

Ex.A10 : Copy of Aadhar Card of the deceased

FOR RESPONDENTS:

Ex.B1 : Copy of Insurance Policy

**XII Addl.Chief Judge,
City Civil Court, Secunderabad.**