

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
AND MACT-X AT TUMAKURU**

Dated this the 3rd day of October 2016.

Present: **Sri GANESHA B.**, B.Sc., LL.M.,
Prl. Senior Civil Judge and MACT-X,
TUMAKURU.

M.V.C.No.1335 OF 2014

Claimants:

1. Chandramma,
W/o late Srirangappa,
Aged about 49 years.
2. Ranganathaswamy,
S/o late Srirangappa,
Aged about 32 years.
3. Naveen Kumar,
S/o late Srirangappa,
Aged about 29 years.

All are residents of
Kannenahalli, Bellavi Hobli,
Tumkur Taluk.

(By Sri D.A.R.G., Advocate).

- versus -

Respondents:

1. A.R.Suresha,
S/o Ranganathappa,
Aged about 30 years,

R/o Ankasandra, Chelur
Hobli, Gubbi Taluk,
Tumkur District.

(Owner of Mahindra Armada
bearing Reg.No.KA-02-N-
8452).

2. The Manager,
The Oriental Insurance
Co., Ltd., Corporate and
Regd. Office, "Oriental
House", P.B.No.7037, A-
25/27, Asafali Road, New
Delhi – 110002.

For service of summons its
Branch at:

The Oriental Insurance Co.,
Ltd., Branch Office:
G.M.A.Complex, J.C.Road,
Tumkur – 1.

(Policy No.
423291/31/2014/4329
valid from 15-03-2014 to
14-03-2015).

(R1 by Sri A. Krishnamurthy,
Advocate,
R2 by Smt. B.K.
Ananthalakshmi, Advocate).

J U D G M E N T

This is a petition filed by the petitioners claiming compensation under Section 166 of M.V.Act.

2. The brief facts of the petitioners' case is as follows:

That the petitioners are the legal heirs of deceased Srirangappa who was traveling from Bugudanahalli Milk Dairy to Kannenahalli in a TVS XL Super bearing Reg.No.KA-06-Y-2071 along with milk cans and when he reached near Bugudanahalli – Tumkur road, near Venkateshwara Temple, a Mahindra Armada Jeep bearing Reg.No.KA-02-N-8452 which came from Tumakuru in a rash and negligent manner and caused the accident. Due to the accident, the said Srirangappa who has sustained multiple bleeding injuries, has succumbed to death at the spot. There afterwards he has been transported to Government Hospital, Tumakuru and after conducting Postmortem the

concerned police have handed over his body to the petitioners and thereby the petitioners have got cremated and incurred expenses to an extent of Rs.60,000/-. Therefore, the death is due to negligence on the part of the driver of the Armada Jeep bearing Reg.No.KA-02-N-8452. The deceased was hale and healthy and was earning about Rs.20,000/- per month by doing agriculture as well as by vending milk. Therefore, since the petitioners are depending upon the income of the deceased, due to his death they have been put to great hardship and they became orphan. Therefore, the petitioner No.1 who lost her companion and thereby she has suffered agony and shock. Under these circumstances, they are entitled for the compensation to an extent of Rs.20,00,000/- with interest at the rate of 12% P.A. Hence, they have prayed to allow the petition.

3. After issuance of notice to the respondents, respondent No.1 has appeared before the court, but not

filed any objection, but the respondent No.2 has filed the objection admitting that there is a valid insurance police bearing No.423291/31/2014/4329 valid from 15-3-2014 to 14-03-2015 and further contended that it is false that due to negligence on the part of Armada Jeep the accident was happened. It is also false that deceased was earning Rs.20,000/- per month. The claim made by the petitioners is too exorbitant and since the owner of the TVS XL has not been made as party, the petition is not maintainable. Under these circumstances, they have prayed to dismiss the petition filed by the petitioners with costs.

4. On the basis of the pleadings of the parties and the documents produced by them, my predecessor has framed the following:

ISSUES

1. Whether the claimants prove that they are the LRs. of deceased Srirangappa son of late Rangappa?

2. Whether claimants prove that on 27-8-2014 at about 7.20 P.M. the deceased by name Srirangappa met with an accident due to actionable negligence on the part of the driver of Armada Jeep bearing Reg.No.KA-02-N-8452, near Venkateshwara Temple, Bugudanahalli – Tumkur road and died due to accidental injuries?
3. Whether the claimants are entitled for compensation? If so, what is the quantum?
4. What order?

5. In order to substantiate the case of the petitioners, petitioner No.1 examined herself as P.W.1 and another eyewitness and complainant examined as P.W.2 and got produced 11 documents and marked them as Exs.P1 to P11. However, the respondent has produced Insurance Policy and got it marked as Ex.R1.

6. Heard the arguments of counsel for petitioners and also the counsel for respondent No.2.

7. After hearing the argument canvassed by the counsel as well as counsel for respondent No.2 and after careful consideration of oral as well as documentary evidence produced by the parties, I answer the above Issues as follows:

Issue No.1: In Affirmative.

Issue No.2: In Affirmative.

Issue No.3: Petitioners are entitled for compensation of Rs.6,96,000/- from respondents No.1 and 2.

Issue No.4: As per order for the following:

REASONS

8. Issues No.1 to 3:- It is the case of the petitioners that the husband of petitioner No.1 and father of petitioners No.2 and 3 by name Srirangappa on 27-8-2014 at about 7.20 P.M. was going on to put the milk to dairy and the Armada Jeep which came from Tumakuru has dashed against him and caused the accident. Due to

the accident said Srirangappa died at the spot. Thereby, the accident is due to negligence on the part of the driver of Armada Jeep and therefore, they have filed this petition claiming compensation from the respondents. The petitioner No.1 who has been examined as P.W.1. She has reiterated the petition averments and she has stated that due to the negligence on the part of driver of Armada Jeep her husband was died at the spot and after postmortem of the body of her husband, they have carried the same to their native and cremated and she incurred expenses to an extent of Rs.60,000/-. Further her husband was hale and healthy who was aged about 53 years at the time of death and he was earning Rs.20,000/- per month by milk vending and also doing agricultural operations. Due to the death of her husband she lost her companion and she as well as her children became orphan. Therefore, she prayed to allow the petition. Even she has also examined another witness P.W.2 who was an eyewitness to the case. He has

deposed his evidence that on the date of accident he was also coming on the road and the Armada Jeep which caused the accident to the TVX XL on which the deceased was traveling and the accident is due to negligence on the part of the driver of Armade jeep. Therefore, on perusal of the documents produced by the petitioners i.e. Ex.P1 – F.I.R., Ex.P2 – Complaint, Ex.P3 – P.M.Report, Ex.P4 – Mahazar and Ex.P5 – IMV Report will disclose that the case has been registered against the driver of Armada Jeep. It is also evident that Exs.P1 and P2 will also show that due to the negligence on the part of the driver of Armada Jeep the incident was happened. The eyewitness – P.W.2 is a complainant. As per Ex.P1 the complainant has equivocally stated that after causing the accident the Armada Jeep has dragged away the TVS XL to an extent of 1 km. Even as per Ex.P5 - IMV Report the damages shown to Armada Jeep and also to TVS XL will evidence the fact. Under these circumstances, there is no shadow of doubt that the accident was due to

negligence on the part of the driver of the Armada Jeep. Having said so, on perusal of the other documents produced i.e. Exs.P9 to P11 which are Photo identity Card issued by Election Commission of India in respect of petitioners No.1 to 3 wherein these Exs.P9 to P11 show that petitioner No.1 is the wife of deceased Srirangappa and petitioners No.2 and 3 are the children of Srirangappa. Therefore, there is no shadow of doubt that the petitioners are the legal heirs of deceased Srirangappa.

9. Having said so, on perusal of Ex.P8 i.e. attested true copy of Election I.D. Card of Srirangappa, shows that on 1-1-1995 the age of deceased is 35 years. Even on perusal of F.I.R., the age of the deceased has been shown as 54 years. Ex.P2 also shows that the doctor has opined the deceased was aged about 54 years. On perusal of other documents i.e. Ex.P6 which are RTC Extracts wherein the agricultural land is standing in the

name of Srirangappa son of Rangappa. Further Ex.P7 shows that the said deceased Srirangappa was vending milk and getting income upto Rs.2,000/- per month. Therefore, even though the petitioners have not produced any documents to show that the deceased Srirangappa was getting Rs.20,000/- per month. Looking into the landed property which was held by deceased Srirangappa and was earning money by vending milk to an extent of Rs.2,000/- per month, in average he might have getting income to extent of Rs.7,000/- per month can safely be accepted and by accepting the same if the compensation is awarded, it will meet the ends of justice. Under these circumstances, I am of the clear view that the petitioner No.1 who is the wife of deceased is entitled for the compensation to the maximum extent and the other petitioners who are the sons who are major and not depending upon the income of the deceased. As per Ex.P2 age of the deceased is 54 years, the appropriate multiplier comes to 11 and $1/3^{\text{rd}}$ is deducted towards the

personal expenses of the deceased. The income of the deceased is already taken at Rs.7,000/- per month. Under these circumstances, the petitioners are entitled for compensation under various heads which are as follows:

1.	Loss of dependency	Rs.6,16,000/-
2.	Loss of love and affection	Rs.0,20,000/-
3.	Transportation of dead body	Rs.0,10,000/-
4.	Funeral expenses	Rs.0,25,000/-
5.	Loss of Estate	Rs.0,15,000/-
6.	Loss of Consortium	Rs.0,10,000/-
	Total	Rs.6,96,000/-

Petitioners in all they are entitled for Rs.6,96,000/-.

10. The Respondent No.2 who has taken the contention that owner of the TVS vehicle has not made as party to the proceedings, therefore, the petition is not maintainable. In this aspect of the matter, the case registered and the charge sheet filed against respondent No.2 has not been challenged. Under these circumstances, this line of contention raised by the respondent No.2 is not tenable and acceptable. Under

these circumstances, I am of the clear view that the respondents are jointly and severally liable to pay the compensation to the petitioners.

Respondent No.2 being the indemnifier of respondent No.1 wherein the Insurance Policy is in force as on the date of accident and thereby the respondent No.2 is liable to pay the compensation on behalf of respondent No.1. Hence, by these observations, I proceed to hold the above Issues No.1 and 2 in the Affirmative and Issue No.3 petitioners are entitled for compensation of Rs.6,96,000/- from respondents No.1 and 2 jointly and severally.

11. Issue No.4:- For the reasons assigned in the foregoing issues, I proceed to pass the following:

ORDER

Petition filed by the petitioners
under Section 166 of I.M.V.Act is
partly allowed.

Petitioners are entitled for compensation to an extent of Rs.6,96,000/- (Rupees Six Lakh Ninety Six Thousand only) along with interest at 6% P.A. from the date of petition till the date of this order.

Respondents No.1 and 2 are jointly and severally liable to pay the compensation amount to the petitioners and Respondent No.2 is hereby directed to deposit the compensation amount within one month failing which the petitioners are entitled for the interest at the rate of 9% P.A. from the date of this order till realization.

If the respondent No.2 deposits the compensation, the petitioner No.1 is entitled for compensation of Rs.6,76,000/- and petitioners No.2 and 3 are entitled for compensation to an extent of Rs.10,000/- each.

Out of the compensation amount awarded to the petitioner No.1, 50% is ordered to be deposited as F.D. in her name in any Nationalized Bank of her choice for a period of three years and remaining 50% is ordered to be released in her favour.

Entire compensation amount awarded to petitioner Nos.2 and 3 are ordered to be released in their respective names on proper identification.

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

Draw award accordingly.

(Dictated to the Stenographer, computerized transcript revised and then pronounced by me in open court on this the 3rd day of October 2016).

(GANESHA B.)

Prl. Senior Civil Judge & MACT-X,
TUMAKURU.

ANNEXURE**List of witnesses examined on behalf of petitioners:**

P.W.1 – Chandramma.

P.W.2 – Krishnappa.

List of documents exhibited on behalf of claimants:

Ex.P1 – True copy of F.I.R. with complaint.

Ex.P2 – True copy of Postmortem Report.

Ex.P3 – True copy of Inquest Mahazar.

Ex.P4 – True copy of Mahazar.

Ex.P5 – True copy of MVA Report.

Ex.P6 – RTC Extracts.

Ex.P7 – Bills issued by Milk Producer's Co-operative Society.

Ex.P8 – Attested true copy of Election ID Card of deceased Sreerangappa.

Ex.P9 - Attested true copy of Election ID Card of P.W.1.

Ex.P10 - Attested true copy of Election ID Card of petitioner No.2.

Ex.P11 - Attested true copy of Election ID Card of petitioner No.3.

List of witnesses examined on behalf of respondents:

None.

List of documents exhibited on behalf of respondents:

Ex.R1 – Copy of Policy.

**Prl. Senior Civil Judge & MACT-X,
TUMAKURU.**