

KABG010006742022



Presented on : 31.1.2022
Registered on : 3.2.2022
Decided on : 9.2.2023
Duration : 1 years 0 months 9 days

**IN THE COURT OF IV ADDITIONAL DISTRICT JUDGE
AND MACT-V, BELAGAVI, AT BELAGAVI**

-:PRESENT:-

Sri Mohan Prabhu

M.A. LL.M.

**IV Additional District Judge
& MACT-V, Belagavi**

M.V.C. No.204/2022

Dated: 9th day of February-2023

Petitioner

Smt. Rupali Sambhaji Bhuimbar,
(Rupali D/O Krishna Aagam)
Age : 31 years, Occ: House wife
R/o: Wagrati, Hebbal, At present
C/o: Krishna Kadukar, Shastri Nagar,
Belagavi. Tal & Dist: Belgavi 590 001

[R/by Smt.Haripriya M. Shahapurkar, Adv.]

Vs

Respondents

[1] Madhukar Shamrao Kamble,
Age : Major, Occup: Business
R/O : At post Tamdalge,
Tal : Shirol, Dist: Kolhapur,
Maharashtra PIN 416103.

(Owner of vehicle MH -09/CU-6897)

[2] The Divisional Managar, United India
Insurance Co. Ltd., 1568, 2nd floor,
Maruti Galli, Belgavi - 590 002
Issuing Off: Sri Ram mandir Building,
Subhash road, Jaisingpur, Maharashtra.

(Insurer of vehicle MH -09/CU-6897)

[Respondent No.1:- Sri S.L. Magadum, Adv.]

[Respondent No.2:-Exparte Adv.]

JUDGMENT

The petitioner has filed this petition under S.163-A of M.V. Act against the respondents, claiming compensation of Rs.15,00,000/- on account of death of Shri Amrut Krishna Agam in the road traffic accident occurred on 10.4.2021.

(2) The petition averments briefly stated as follows:-

On 10.04.2021 the brother of petitioner deceased Amrut was on duty as a driver on vehicle No.MH -09/CU-6897 under the respondent no.1 and coming from Haveri towards Belagavi side on Pune-Bangalore road and when he reached Tarihal limits, near Hawa Valves Factory Hubli-Dharwad at that time, one Lorry came from opposite direction with rash and negligent manner totally wrong side of the deceased vehicle and to avoid the accident between two vehicle the deceased Amrut Krishna Aagam took his vehicle right side and dashed to the vehicle No.MH-14/ HG-5968. In the said accident the deceased

sustained grievous injuries to head, chest, face with heavy bleeding and injuries on vital organs of the body and succumbed to the injuries while he was in transit in 108 Ambulance going towards KIMS Hospital, Hubli for treatment. This accident was caused due to arising out of use and involvement of vehicle No. MH -09/CU-6897. After post mortem, the body was handed over the petitioner and the petitioner has spent Rs.30,000/- for funeral expenses and Rs.20,000/- for transportation of dead body from Hubli to Bhairewadi. The mother and father of the deceased Amrut are already expired. The petitioner is only legal representative of the deceased and the deceased was living along with the petitioner. Prior to the accident the deceased Amrut Krishna Aagam was hale and healthy aged about 24 years and was doing Driver work with respondent no.1 and getting salary of Rs.110/- per day i.e. Rs.3,300/- per month from his avocation and out of the said income the deceased was maintaining himself, and family members of the petitioner etc.. Due to the said accidental unexpected untimely death of the brother of petitioner deceased Amrut Krishna Aagam, the petitioner lost income, loss of love and affection, loss of estate and suffered

physically, mentally and financially. Hence, on these grounds, the petitioner prays to allow the petition.

(3) The respondent No.2 remained ex-parte. The respondent No.1 appeared before the court by engaging his counsel, resisted the claim of the petitioner by filing objections which is briefly stated as follows:-

The date, time and place of accident is denied. The age, occupation and income of the deceased is denied. The compensation claimed by the petitioner is excessive, arbitrary and beyond the earning capacity of the deceased. All the averments made in para no.22 of the petition are denied as false. It is admitted that mother and father of deceased are already expired. But it is denied that petitioner was the only legal heir of the deceased and living with the petitioner during his life time. It is denied that the respondent No.1 being the owner and the respondent No.2 being the insurer are jointly and severally liable to pay compensation to the petitioner. The deceased was driver on the vehicle of the respondent No.1 and the respondent No.1 vehicle was insured with the respondent No.2 on the date of accident. Hence liability of the respondent No.1 to pay

compensation has to be saddled on the respondent No.2. This Tribunal has no territorial jurisdiction to try this petition as the place of accident is at Tarihal within territorial jurisdiction of Hubli Courts and the petitioner is resident of Wagrale Hebbal in Maharashtra State. The owner respondent No.1 and policy issuing authority are also in Maharashtra State. The petition is bad for non joinder of necessary parties i.e. owner of vehicle no.MH-14/HG-5968 which caused the accident. The tortfeasor cannot claim for the act of his own negligence. The petition filed under section 163A of M.V. Act claim is to be restricted to Rs.5,00,000/- but the claimant has claimed compensation of Rs.15,00,000/-. Hence, on this court also the petition is not maintainable. Hence, on these grounds, the respondent No.1 prayed for dismissal of the claim petition.

(4) Based on the pleadings of the parties the following issues have been framed:-

Issue no.1:- Whether the petitioner proves that Shri. Amrut Krishan Aagam died due to Road traffic accident occurred on 10-04-2021, on Pune-Bangalore road, Tarihal limits, Near Hawa Walves Factory, Hubballi, within the

jurisdiction of Hubballi Rural P.S. due to use and involvement of vehicle bearing no. MH-09/ CU-6897?

Issue No.2:- Whether the petitioner is entitled for compensation? If so, what is the quantum and from whom?

Issue No.3:- What order or award?

(5) In order to prove the case of petitioner, petitioner examined herself as P.W.1 and documents Ex.P.1 to 15 are marked and Ex.P.8[a], 9[a], 11[a], 14[a] and 15[a] are marked. The respondent No.1 has not stepped into the witness box but got marked insurance amount paid receipt by consent as Ex.R.1 for having paid the insurance premium. During the course of cross-examination of P.W.1 document Ex.R.1 D.L. Extract of deceased marked.

(6) I have heard arguments on the side of The learned counsel for the petitioner and the The learned counsel for the respondent No.2.

(7) The learned counsel for the petitioner relied on the decision [1] 2018 ACJ 1-United India Insurance Co., Ltd., Vs Sunil Kumar & anr, [2] 2019 ACJ 427- New India Assurance Co Ltd., vs S. Muana & anr, [3] 2021 [5] KCCR SN 187 [DB] Raju Singh Vs Sharanappa and others.

(8) My findings to the above issues are as under:-

Issue No.1:- In the affirmative

Issue No.2:- Partly in the affirmative

Issue No.3:- As per the final order, for the following

REASONS

(9) **ISSUE NO.1:-** P.W.1 in her affidavit filed for examination-in-chief has reiterated the petition averments and deposed that on the date of accident i.e. on 10.04.2021 her brother Amrut was on duty as a driver on vehicle No.MH-09/CU-6897 under the respondent no.1 and coming from Haveri towards Belagavi side on Pune-Bangalore road and when he reached Tarihal limits, near Hawa Valves Factory Hubli-Dharwad, at that time, one Lorry came from opposite direction with rash and negligent manner totally wrong side of the deceased vehicle and to avoid the accident between two vehicle the deceased Amrut Krishna Aagam took his vehicle to the right side and dashed to the vehicle No.MH-14/HG-5968. In the said accident, her brother sustained grievous injuries to head, chest, face with heavy bleeding and injuries on vital organs of the body and succumbed to the injuries while he was in transit in 108 Ambulance going towards KIMS Hospital,

Hubli for treatment. P.W.1 deposed that this accident was caused due to arising out of use and involvement of vehicle No.MH-09/CU-6897. She has deposed that after post mortem, the body of her brother was handed over her and she has spent Rs.30,000/- for funeral expenses and Rs.20,000/- for transportation of dead body from Hubli to Bhairewadi Wagrale Hebbal.

(10) In order to substantiate her contention, she has produced and got marked documents Ex.P.1 to 15. Ex.P1 is the Certified Copy of F.I.R.,in Crime NO.84/2021 registered by Hubli Rural P.S. for the offence U/s.278, 337, 338, 304[a] of I.P.C. against the accused deceased Amrut Krishna Aagam. Ex.P.2 is the Certified Copy of F.I.S. lodged by Sampat S/o.Bajirao shinde based on which case in Crime No.84/2021 came to be registered. Ex.P.3 is the Certified Copy of spot mahazar of place of accident. Ex.P.4 is the Certified Copy of inquest panchanama conducted on deceased Amrut Krishna Aagam by Hubli Rural P.S. Ex.P.5 is the MVI Report of truck bearing NO.MH14/HG-5968 and truck no.MH-09/CU-6897. Ex.P.6 is the Certified Copy of P.M.Report of deceased. Ex.P.7 is the charge sheet filed by investigating officer of Hubli Rural Police Station against

the deceased Amrut Krishna Aagam and against Madhukar Shamrao Kamble for the offence U/s.279, 338, 304[A] r/wsec.3 r/w.sec.180 and 185 of M.V. Act. Ex.P.8 is the Notarised attested true copy of birth certificate of Amrut Krishna Aagam wherein his date of birth is shown as 22.7.1996. Ex.P.8[a] is translated document of Ex.P.8, Ex.P.9 is the school leaving certificate of deceased and Ex.P.9[a] is the translated document of Ex.P.9, Ex.P.10 Notarised attested true copy of Aadhar Card of deceased. Ex.P.11 is the Notarised attested true copy of school leaving certificate, Ex.P.11[a] is the translated document of Ex.P.11, Ex.P.12 is the Notarised attested true copy of PAN Card of petitioner, Ex.P.13 is the Notarised attested true copy of Aadhar Card of petitioner, Ex.P.14 is the Notarised attested true copy of death certificate of mother of P.W.1 Ex.P.14[a] is the translated document of Ex.P.14, Ex.P.15 is the Notarised attested true copy of death certificate of father of P.W.1. Ex.P.15[a] is the translated document of Ex.P.15.

(11) During the course of cross-examination of P.W.1 by the learned counsel for the respondent No.1 She has denied the suggestion that she was not dependent on

the deceased. She has admitted the suggestion that her brother is having D.L. She has admitted the suggestion that Ex.R.1 copy of extract of D.L. of her brother. Hence same is marked as Ex.R.1 in her cross-examination. She has admitted the suggestion that she has not produced any documents to show that she alone is the legal heir of her deceased brother. She has denied the suggestion that as she was not the dependent on her brother, she is not entitled for compensation. She has deposed that at the time of death of her brother Amrut Krishna Aagam there was none on their side to file complaint, some one filed the complaint and as such the police has registered false case against her brother Amrut Krishna Aagam.

(12) In this case, on perusal of cross-examination portion of P.W.1 by respondent No.1, she has admitted the fact that her brother Amrut Krishna Aagam died in road traffic accident due use and involvement of truck bearing No.MH-09/CU-6897. In this case, the respondent No.2 remained ex-parte.

(13) The learned counsel for the petitioner relied on the decision of Hon'ble Supreme Court reported in 2018 ACJ 1 United India Insurance Co., Ltd., Vs Sunil Kumar

and another, wherein it is held that insurance company cannot raise defence of negligence in a petition filed U/s.163A of M.V.Act. She relied on the decision of Hon'ble High Court of Gauhati at Aizwal Bench, reported in 2019 ACJ 427- New India Assurance Co Ltd., vs S. Muana and another. Since the petition is filed U/s.163A of M.V.Act this Tribunal cannot go into find out whether the deceased himself caused this accident due to his negligence. What is necessary to decide is whether accident is due to use and involvement of vehicle No/MH-09/CU-6897 or not. In order to substantiate this contention taken by the petitioner she has relied on the police records which are marked at Ex.P.1 to 7 which would go to show that her brother Amrut Krishna Aagam died in the road traffic accident occurred on 10.4.2021 on P.B. Road within the limits of Tarihal, Hubballi Rural P.S. due to use and involvement of truck bearing No.MH-09/CU-6897. Hence, I answered issue no.1 in the affirmative.

(14) **ISSUE NO.2:-** P.W.1 has deposed that prior to the accident her brother Amrut Krishna Aagam was hale and healthy, aged 24 years and he was doing driver work under respondent No.1 and getting income of Rs.110/-per

day i.e. Rs.3300/-per month from his avocation. Regarding avocation of deceased is concerned, the respondent No.1 has not disputed the same in the cross-examination of P.W.1. The age of the deceased is also not disputed by the respondent No.1 during the course of cross-examination of P.W.1. In order to show the age of deceased, the petitioner has produced and got marked Ex.P.8 birth certificate of Amrut Krishna Aagam wherein his date of birth is shown as 22.7.1996. In Ex.P.9 school leaving certificate, date of birth of deceased is shown as 22.7.1996. Ex.P.10 Notarised attested true copy of Aadhar Card of deceased his date of birth is shown as 22.7.1996. The accident in question occurred on 10.4.2021. Hence, it can be safely said that the deceased was aged 24 years at the time of accident.

(15) There is no dispute regarding income of deceased. Since the petition is filed U/s.163A of M.V. Act, hence, we have to follow schedule-II to Section 163A of old M.V Act. In schedule II, proper multiplier to the age of 24 years is 17. Further 1/3rd is to be deducted towards personal and living expenses of the deceased and the 2/3rd is to be considered as contribution to the family. Since this Tribunal has restricted the income of deceased

as Rs.40,000/-per year, no amount can be added towards future prospects. 1/3rd of the notional income of deceased is taken into consideration as his personal and living expenses. Hence, the loss of dependency can be calculated as below:-

$$\text{Rs.3300} \times 12 = \text{Rs.33,960} \times 17 \times \frac{2}{3} = \text{Rs.4,52,880/-}$$

(16) Thus the petitioner is entitled for compensation of Rs.452,880/- towards loss of dependency.

(17) Further, the petitioner is also entitled for Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. The petitioner is also entitled for Rs.5,000/- towards loss of consortium.

(18) Thus the petitioner is entitled for compensation as below:-

1	Loss of dependency	Rs.4,52,880/-
2	Funeral expenses	Rs.2,000/-
3	Loss of estate	Rs.2,500/-
4	Loss of consortium	Rs.5,000/-
	Total	Rs.4,62,380/-

LIABILITY:-

(19) In this case, ExR.2 is the receipt for having paid insurance premium is marked by consent. For the obvious

reasons best known to the respondent No.2, the respondent No.2 has remained ex-parte. As the respondent No.2 company Divisional Office is situated at Belagavi though this accident occurred within the limits of Hubballi Rural P.S., this Tribunal at Belagavi has got territorial jurisdiction to entertain and try this petition. More over the P.W.1 in her examination-in-chief itself she has deposed that she is residing at Kadukar Shastri Nagar, Belagavi. Since the respondent No.2 issued insurance policy to the vehicle of the respondent No.1, the respondent No.1 and 2 are jointly and severally liable to pay compensation to the petitioner. The respondent No.2 being the insurer shall indemnify the respondent No.1 and pay compensation to the petitioner.

(20) So far as rate of interest is concerned, the petitioner has sought to award interest @ 12% p.a. However, considering the present rate of interest of nationalised banks and considering the year of accident, this Tribunal is of the considered view that if interest @ 6% p.a. from the date of petition till its realisation is awarded, it would meet the ends of justice and equity. Accordingly, issue no.2 is answered partly in the affirmative.

ISSUE NO.3:-

(21) In view of my findings on the above issues no.1 and 2, this Tribunal proceeds to pass the following

ORDER

The petition filed by the petitioner under S.163-A of M.V. Act is allowed in part with costs.

The respondent no.1 and 2 are jointly and severally liable to pay compensation of Rs.4,62,380/- (Rupees Four Lakh Sixty Two Thousand Three Hundred Eighty only) with interest @ 6% p.a. from the date of petition till its realization.

The respondent No.2 is directed to deposit the entire compensation with interest in the office within 1 month from the date of this judgment.

On deposit of compensation amount, 40% shall be kept under F.D. in the name of the petitioner in any nationalized or schedule bank of her choice for a period of 3 years with liberty to withdraw periodical interest accruable thereon from time to time. Remaining 60% of the compensation is ordered to be released in favour of the petitioner through her bank account by following due procedure and due identification.

On deposit of compensation amount,

the office shall intimate the concerned bank manager that the F.D. is free from lien or charge or from withdrawal except with the prior permission of this Tribunal.

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

Draw award accordingly.

[Dictated to the stenographer, transcribed and typed by him, transcript revised and modified and then pronounced by me in the open court on this the 9th day of February-2023]

[Mohan Prabhu]

**IV Addl District Judge &
MACT-V, Belagavi**

ANNEXURE

Witnesses examined for the petitioner:-

P.W. 1 Smt.Rupali Sambhaji Bhuimbar

Documents marked for the petitioner:-

Ex.P1 Certified Copy of F.I.R.

Ex.P.2 Certified Copy of F.I.S.

Ex.P.3 Certified Copy of spot mahazar of place of accident.

Ex.P.4 Certified Copy of inquest panchanama

Ex.P.5 MVI Report of trucks

Ex.P.6 Certified Copy of P.M.Report of deceased.

Ex.P.7 charge sheet

Ex.P.8 Notarised attested true copy of birth certificate

Ex.P.8[a] translated document of Ex.P.8,

Ex.P.9 school leaving certificate of deceased

Ex.P.9[a] translated document of Ex.P.9,

Ex.P.10 Notarised attested true copy of Aadhar