KABC020323162018

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
COURT OF SMALL CAUSES, AT BENGALURU.

(SCCH-24)

DATED THIS THE 16th DAY OF AUGUST 2022

Present: Miss.B.T.ANNAPOORNESHWARI
B.A., L.L.B., L.L.M.
C/c XXII ADDL., SCJ & ACMM,
MEMBER - MACT,
BENGALURU.

MVC No.7558/2018

PETITIONER/S: 1.Smt.Kenchamma
W/o late Nagappa
Aged about 65 years,

2. Sri.Veera Nagappa
S/o late Nagappa
Aged about 42 years,

Both R/at Garani village,
I.D. Halli Hobli,
Madugiri Tq,
Tumkur District.

(By Sri.K.Nisar Ahamed,
advocate.)

V/S

RESPONDENT/S 1. Sri.Mahesh N Nayak
S/o Narayan Nayak,
Aged about 43 years,
No.883, NMS Land mark,
6th cross, 13th main,
HMT layout, Gokula,
Mathikere, Bengaluru-560 054.

(RC owner of Wagnor car
bearing Reg.No.KA-04-ML-9632)

(EXPARTE)

2. The New India Insurance
Co.Ltd.,
CDU-VIII, Yashwanthpur (671600)
CDU VIII, No.42, Gopal Complex,
2nd floor, Bazar street,
Yashwanthpura,
Bengaluru-560 022.

(Policy No.671600311701000012489
valid from 25.03.2018 to 24.03.2019)

(By Smt.Geetha Raj, advocate.)

JUDGMENT

This is the Petition is filed by the Petitioners under Section 166 of Motor Vehicles Act seeking Compensation of Rs.30,00,000/- for the Death of one Shivaraj @ Shiva @ Shivaiah in a road traffic accident dated 05.05.2018.

2. The case of the Petitioners in brief is that, on 05.05.2018 at about 08.20 p.m., the deceased Shivaraj @ Shiva @ Shivaiah was standing on the left side of the NH-75 road near Yadiyuru Hobli, Kunigal Taluk, Tumkur District, at that point of time, the driver of the Maruthi Waganor car bearing Reg.No.KA-04-ML-9632 came from Bengaluru side towards Hassan side at very high speed with rash and negligent manner and came to the extreme right side of NH-75 road and dashed against the deceased and caused the accident. Due to impact the deceased sustained fatal injuries and was succumbed on the spot. After the accident body was shifted to Adi Chunchanagiri Hospital, Mandya District and body was kept in mortuary from 05.05.2018 to 15.05.2018 because address of relatives of deceased was unknown and not traced. Hence as per rules Amruthuru Police conducted inquest and requisition sent to A.C. Giri Hospital doctors to conduct postmortem on 14.05.2018 and on the same day

postmortem was conducted and body handed over to the police and it was buried in public Graveyard at Yadiyuru. On 03.06.2018 Medigeshi Police issued publications in paper with photos of deceased Shivaraj @ Shiva @ Shivaiah in surrounding of Medigeshi police circle and finally the said police traced the address of the deceased was permanent resident of Garani Village, I.D. Halli, Madhugiri Taluk and the deceased's brother is Veeranagappa and his mother is Kenchamma and other relatives came to Kunigal CPC and given statement and collected clothes of deceased and they conducted funeral ceremonies in their native village Garani and spent more than Rs.1,00,000/-.

3. It is further case of the Petitioners that before accident, the deceased was hale and healthy, 45 years old, was doing driving and gare collie and was earning a sum of Rs.1,200/- per day and they were entirely depending upon the earnings of the deceased. Now they are put to lot of mental agony and untold misery due to sudden demise of

Shiva @ Shivaiah. The Amruthuru Police registered a crime against the driver of the offending vehicle in CR No.96/2018 u/Sec.279, 304(A) of IPC. The 1st Respondent being the RC owner and the 2nd Respondent is the insurer of the offending Maruthi Waganor car are jointly and severally liable to pay compensation to them.

4. In response to service of notice issued by this court/tribunal, the Respondent No.1 remained absent and hence placed exparte and the respondent No.2 has appeared through their counsel and filed objection statement.

5. The Respondent No.2 in the written statement submitted that there is non compliance of Section 158(6) of M.V. Act and Rule 232 of K.M.V. Rules 1989 and denied the averments made in columns 1 to 14A and 17 to 21 of the petition as false and submitted that the petitioner hand in glove with the police authorities falsely foisted/implicated the insured vehicle in order to make

unlawful monetary gain and there is also no compliance of Section 134(c) of M.V. Act. Further submitted that as per the crime records the deceased at the time of the alleged accident was trying to cross the Highway road without observing the vehicular movements as such had contributed for the alleged accident. The deceased is a stray destitute who was living his life having food at Temples and wedding halls in the vicinity of Yadiyuru and was also doing petty works at the road side hotels on the highway. The claimants though are not related to the deceased in any manner have come up with this frivolous petition to make unlawful gain in connivance with the jurisdictional police. Therefore, prayed for dismissal of the petition.

6. On the basis of the above pleadings the following issues are framed**:**

1. Whether the petitioners prove that, on 05.05.2018 at about 08.20 p.m., near Beergonahalli, Opp. to Keralapura Hotel, on NH-75, Yadiyuru Hobli, Kunigal

Taluk, Tumkur District, the driver of the Wagon R car bearing No.KA-04-ML-9632 driven it rash and negligently and dashed against the deceased by name Shivaraj, who was standing on the side of the road and caused his death ?

2. Whether the Petitioners are entitled for compensation? If so, how much and from whom payable

3. What Order or Award?

7. On perusal of the pleadings carefully, it is clear that the respondent No.2 strongly disputes the relationship between the petitioners and the deceased in the accident, therefore as there is no issue is framed with regard to relationship of the parties and hence the additional issue needs to be framed. Accordingly, the additional issue is framed as under;

ADDL. ISSUE

1) Whether the petitioners prove that they are the mother and brother of the deceased Shivaraj @ Shiva @ Shivaiah?

8. In order to prove their case, the Petitioners have examined Petitioner No.1 – Smt.Kenchamma – alleged to be

mother of the deceased as PW.1 and got marked 17 documents as per Exs.P.1 to P.17. They have examined eye witness-Sri.Venkatesh as PW.2 and produced 2 documents as per Ex.P.18 and 19. On the other side, the Respondent No.2 did not examine any witness nor produced any documents on their behalf.

9. Heard the arguments of the learned counsel for both the parties and perused the materials on record. The counsel for the petitioners has relied upon decisions reported in, 2017 ACJ 2700 : National Insurance Co.Ltd., and Pranay Sethi & Ors..

10. On hearing both sides and perusal of the evidence on record this court answers the above issues as follows:-

Addl.Issue No.1 : In the negative,

Issue No.2 : Partly in the affirmative,

Issue No.3 : In the negative,

Issue No.4 : As per final order, for the Following:

REASONS

11. **ADDL. ISSUE NO.1:-**

It is the case of the Petitioners that, the Petitioner No.1 is the mother and Petitioner No.2 is the brother of the deceased – Shivaraj @ Shiva @ Shivaiah who died in the accident. The respondent No.2 strongly deny the relationship of the petitioners with the deceased in the alleged accident pointing on the documents produced by the petitioners which are contrary to each other themselves. The Petitioners to prove this relationship have examined 1st Petitioner as PW.1. PW.1 has specifically deposed this relationship in her chief-examination. Apart from that, to prove the relationship, the Petitioners have also produced affidavit for G-Tree, G-tree document issued from Tahasildar, Affidavit of the deceased, School record of the deceased, Ration card and copies of Aadhar cards of the petitioners as per Exs.P.12 to P.17. In the cross-

examination of the PW.1 it is brought out that she is aged 70 years, she does not remember her marriage date, she has four children in which two sons and two daughters who are married, she is resident of Garani village at Madhugiri Taluk, her husband was doing agricultural work who expired about 15 to 16 years ago, she has two acres of land, her children born at home, she had admitted her children to school, photographs were taken at the time of marriage of her daughters, her son's name is Eranagappa who is residing separately with his wife and children, she is residing alone at her native place, all her family members have adhaar cards and voter ID cards. Further it is elicited that she came to know about the death of Shivaiah after one week of the accident, station people informed her about the said accident and only then she came to know about the death of Shivaiah, soon after she came to know about the said fact she went to Kunigal police station wherein she was shown the photographs of

the deceased and she had given statement before the police.

12. From the above evidence of the PW.1 she came to know about the death of Shivaiah after one week but it is not so as the petition itself shows that police kept the dead body for 10 days and thereafter proceeded to bury it. If at all the deceased was the son of the petitioner No.1 and brother of the petitioner No.2 then there was no any chance of they being not got information about the death of the deceased in accident. Apart from the above oral evidence now the documentary evidence needs to be appreciated. The Ex.P.12/affidavit of genealogy, the said document has no much evidentiary value under law as it is self declaration by one and hence it does not helpful to the petitioners. The Ex.P.13 is the genealogical certificate issued by the Deputy Tahasildhar of Itakadibbanahalli Hobli, which only shows the name of the first petitioner and no other names of her family survival members are

appearing in it and hence the Ex.P.13 is also not supporting to the case of the petitioners to prove their relationship with the deceased. Again the Ex.P.14 is the affidavit of the first petitioner, it has no much evidentiary value under law as it is only a self declaration by the first petitioner and is not considered in favour of the petitioners. The Ex.P.15 is the school admission certificate issued by Head Master of Govt. Higher Primary School, Garani, I.D. Halli Hobali of Madhugiri Taluk, on 07.06.2018 which shows the student name as 'N.Shivraju', his father's name shown as 'D.Nagappa', the mother's name is not mentioned there, the date of birth shown as '01.06.1973'. The Ex.P.15 again do not show the name of the first petitioner. The Ex.P.16 is the notarized copy of the ration card of the first petitioner and in that her son's name is mentioned as Shivarju and his age shown as 30 years but the second petitioner's name does not finds place there even though he is also son of the first petitioner. Further the another

point to be noted is that in the Ex.P.16 the age of Smt.Kenchamma is shown as 40 years and age of Shivraju shown as 30 as on 25.4.2009, the difference between the ages of Smt.Kenchamma and Sri.Shivaraju and non-mentioning of second petitioner's name give raise to doubt that the said document is not pertaining to the family of the petitioners. Under the Ex.P.17 only adhaar cards of the petitioners are produced and the adhaar card of the deceased is not produced and hence they are only helpful to prove the identity of the petitioners 1 and 2 but not helpful to prove the alleged relationship between the petitioners and the deceased of this case and hence the said document is also not much helpful to the case of the petitioners to establish the relationship.

13. As per the discussion made above the Exs.P.12 to P.16 are not helpful to the petitioners in proving the alleged relationship with the deceased. Then, what the police records show needs to be appreciated. On perusal

Ex.P.1/FIR which was registered on the basis of the first information given by one Sri.Srinivas K.T. as per Ex.P.2. The Ex.P.2/first information lodged by Sri.Srinivas K.T. on 06.5.2018 at 06.20 p.m. stating that on 05.05.2018 at 08.25 p.m. when he was working in his Keralapur Hindu Miltry Hotel upon hearing noise/galata in the highway came and saw the infront of their Hotel on NH-75 road one car caused accident to one person who died on the spot and on seeing he came to know that the deceased was the person who was doing petty works in Choultries, Hotels and also used to come to his hotel for petty works but he does not know the actual address of the deceased as the deceased was not working in one place permanently and the deceased used to each in Yadiyuru temple and Choultry and used to sleep anywhere and on enquiry to the gathered people he came to know that the deceased while crossing the NH-75 one car bearing No:KA-04-MN-9632 dashed him and caused accident and he shifted the dead

body to the hospital and as no relatives turned up and hence lodged the first information. As per this Ex.P.2 the first informant clearly stated that the deceased was destitute and was not having permanent residence and used to petty works and stay anywhere and used to eat in temples and marriages. As per spot mahazar drawn after receipt of the Ex.P.2 which shows the deceased Shivaiah aged about 47 years. The Ex.P.5 inquest mahazar drawn on 14.5.2018 also shows the deceased Shivaiah aged 47 years is unknown person and the statements of panchas taken at the time of said mahazar also shows that the deceased was an unknown person. The Ex.P.6 shows that as the relatives of the deceased were not found and hence the dead body was buried by the police by drawing the Ex.P.6. The Ex.P.7 seizure mahazar also shows that the deceased was destitute and his clothes were seized before panchas. The Ex.P.8/P.M. report also clearly shows that the deceased body is of a unknown (Shivaiah).

14. The Ex.P.10 are the statement of witnesses given by the present petitioners and two others. As per statement of second petitioner before police who is shown as aged 47 years stated that the deceased Shivraj @ Shivaiah @ Shiva was doing all vehicles driving work, further stated that said Shivraj also working as water tank driver at Tumukuru, about six months back working as driver in Adhichunchanagiri and informed them that prior to this he was doing petty works in Choultry and Hotel and was coming to meet them once in 3-4 months and was giving money to the first petitioner, said Shivraju was aged about 45 years and he was unmarried. Further stated that on 3.6.2018 Midigesh police shown the paper publication of Amruthuru police and on seeing it they came to know that the said photo was of their Shivaiah and they went to police and shown the ration card and identified the photo of Shivaiah in the police station who died in the accident. The first petitioner also given similar statement before the

police. The other two witnesses namely Govindaraju S/o late Thimmaiah and Govindaiah S/o late Doddanna also given the almost similar statements. The Ex.P.11 is the chargesheet filed by the police, wherein the petitioners are also shown in the witness list.

15. When the petitioners are claiming that they are the mother and brother of the deceased of this case which is clearly denied by the respondent No.2 pointing out the documents and facts and circumstances of the case then the burden is on the petitioners to prove their relationship with the deceased by leading evidence. As per the evidence of PW.1 she got married her two daughters and at that time photos were taken. If the deceased was the son of the first petitioner and brother of the second petitioner then definitely he might have attended the said marriage functions of the daughters and also the second petitioner as he is also married, then what is the hurdle for the petitioners to produce the marriage photographs wherein

the deceased's photo is also taken alongwith them but the petitioners have not produced any such photographs for the reasons best known to them. Further, the entire case of the petitioners revolves on the paper publication issued by the Amruthuru police but no such papers publication in which the photo of the deceased is printed is produced before the court. Further, no evidence lead or explanation offered as to why Midigeshi police informed the death of Shivaiah to them only and what special interest they had to do so. The adhaar card or voter ID or any kind of documents pertaining to the deceased are not produced by the petitioners. The deceased is aged about 47 years and not a child so as to hold that he had no single document at all in his name. Therefore, the deceased being a 47 years old person alleged to be son and brother of the petitioners definitely there could have been documents to this effect such as family ration card, addhaar card of the deceased and voter ID of the deceased. As discussed above the

ration card produced at Ex.P.16 does not show the name of the second petitioner and even if considered that second petitioner was married and living separate as on the date of issuance of Ex.P.16 then also the age mentioned for the mother and son cannot be believed as it is only having 10 years difference and hence Ex.P.16 is not considered. As per the evidence of PW.1 they have agricultural land and if at all her husband died about 15-16 years back then definitely the said lands would have been transferred into the names of the petitioners and the alleged Shivaraju, no such documents are produced. The name of the person shown as son appearing in Ex.P.16 his name is Shivaraju and the deceased's name is Shivaiah and except self serving statement of the petitioners there is no document to prove that the Shivarju is only the Shivaiah. When the petitioners state that the deceased was working as driver under various persons as stated in their statements then they could have examined the employers of the deceased

also produced the DL of the deceased, but the petitioners have not made any efforts in this regard.

16. Sri.Venkatesh, eyewitness is examined as PW.2. He deposed only about the manner of accident and himself alongwith first informant witnessing the accident and hence his evidence in no way helpful to the petitioners to prove the relationship between them and the deceased. Therefore, on over all appreciation of the evidence on record makes it clear that the deceased was a destitute and the petitioners have failed to prove their relationship with the deceased as alleged. **Accordingly, Addl. Issue No.1 is held in the negative.**

17. **Issue No.1:-**

The Petitioners to prove that the accident was occurred due the actionable negligence on part of the driver of the Maruthi Waganor car bearing Reg.No.KA-04-ML-9632 have examined Petitioner No.1 as PW.1 and

produced 11 documents as per Exs.P.1 to P.11. As per the discussion made above the petitioners have failed to prove their relationship with the deceased and hence evidence of PW.1 is not considered in this regard. The documents produced by the Petitioners such as the FIR in Cr.No.0096/2018 of Amruthur Police Station, FIS, Spot mahazar, Rough sketch, Inquest mahazar, the mahazar prepared at burial ground, seizure mahazar, PM report, IMV report, statement of the 4 witnesses and charge sheet as per Exs.P.1 to P.11, which are all public documents which have got initial presumptive value under law clearly proves that the driver of the offending Maruthi Waganor car bearing No.Reg.No.KA-04-ML-9632 driven it with high speed and in a rash and negligent manner, so as to endangering to human life and caused the accident, result of which deceased Shivaiah sustained grievous injuries and succumbed to the injuries on the spot. The very same documents that too the first information, spot sketch and

inquest mahazar also show that the deceased was crossing the highway and it is clear that without observing the vehicular movements the deceased was crossing the road in the night which contributed to the accident which can be assessed at 25%. **Accordingly, I answer Issue No.1 is partly in the affirmative.**

18. **ISSUE No. 2:-**

As per the discussion made above it is held that though as per the police documents it is clear that the accident occurred due to the rash or negligent act of the offending vehicle but there was contributory negligence on the part of the deceased. Further this Tribunal held that the petitioners have failed to prove their relationship with the deceased and hence even though the alleged accident is proved by the documentary evidence but as the relationship is not proved. Therefore, the decision relied upon by the counsel for the petitioners is not applicable to the present case and hence the petitioners are not entitled

to get any compensation as claimed. **Accordingly I answer Issue No.2 is in the negative.**

19. **Issue No.3:-**

In view of the findings of the above issue Nos.1 to 3, I proceed to pass the following:

ORDER

The Petition filed by the Petitioners under Section 166 of Motor Vehicles Act is dismissed.

No order as to cost.

Draw Award accordingly.

(Dictated to the stenographer on line, revised, corrected and then pronounced in the open court this the 16th day of AUGUST 2022.)

(Miss.B.T.ANNAPOORNESHWARI)
C/c XXII Addl. Small Causes
Judge, Bangalore.

ANNEXURE

List of witnesses examined on behalf of the Petitioners:

P.W.1 Smt.Kenchamma

P.W.2 Sri.Venkatesh

List of witnesses examined on behalf of the Respondents:

-Nil_

List of documents marked on behalf of the Petitioners:

Ex.P-1 - True copy of FIR

Ex.P.2 - True copy of Complaint

Ex.P-3 - True copy of Spot Mahazar

Ex.P-4 - True copy of Rough Sketch

Ex.P-5 - True copy of Inquest Mahazar

Ex.P-6 - True copy of Mahazar prepared at burial ground

Ex.P-7 - True copy of seizer mahazar

Ex.P-8 - True copy of PM report

Ex.P.9 - True copy of IMV report

Ex.P.10 - True copy of Statements of the 4 witnesses

Ex.P.11 - True copy of Chargesheet

Ex.P.12 - Affidavit for G-Tree

Ex.P.13 - G-Tree document issued from Tahasildar

Ex.P.14 - Affidavit of deceased

Ex.P.15 - Copy of school record of the deceased

Ex.P.16 - Notarized copy of ration card

Ex.P.17 - Notarized copies of Aadhar cards (2 in no's)

Ex.P.18 - True copy of Vekatesh statement in CR.No.96/2018 of Amruthur Police Station.

Ex.P.19 -Notarized copy of Aadhar card of Venkatesh (Original compared and returned)

List of documents marked on behalf of the Respondents:

- NIL -

(Miss.B.T.ANNAPOORNESHWARI)
C/c XXII Addl. Small Causes
Judge, Bangalore.

MVC No.7558/2018
SCCH-24

16.08.2022
P-NA
R1-Exparte
R2-GR
For Judgment-

Pronounced vide separate judgment with following operative portion:

ORDER

The Petition filed by the Petitioners under Section 166 of Motor Vehicles Act is dismissed.

No order as to cost.

Draw Award accordingly.

(Miss.B.T.ANNAPOORNESHWARI)
C/c XXII Addl. Small Causes
Judge, Bangalore.

AWARD

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL METROPOLITAN AREA: BANGALORE CITY

(SCCH-24)

MVC No.7558/2018

PETITIONER/S: 1.Smt.Kenchamma
W/o late Nagappa
Aged about 65 years,

2. Sri.Veera Nagappa
S/o late Nagappa
Aged about 42 years,

Both R/at Garani village,
I.D. Halli Hobli,
Madugiri Tq,
Tumkur District.

(By Sri.K.Nisar Ahamed, advocate.)

V/S

RESPONDENT/S 1. Sri.Mahesh N Nayak
S/o Narayan Nayak,
Aged about 43 years,
No.883, NMS Land mark,
6th cross, 13th main,
HMT layout, Gokula,
Mathikere, Bengaluru-560 054.

(RC owner of Wagnor car bearing Reg.No.KA-04-ML-9632)

(EXPARTE)

2. The New India Insurance Co.Ltd.,
CDU-VIII, Yashwanthpur (671600)
CDU VIII, No.42, Gopal Complex,
2nd floor, Bazar street,
Yashwanthpura,
Bengaluru-560 022.

(Policy No.671600311701000012489 valid from 25.03.2018 to 24.03.2019)

(By Smt.Geetha Raj, advocate.)

WHEREAS, this petition filed on by the Petitioner/s above named U/sec.166 of the M.V.C. Act, praying for the compensation of Rs.

(Rupees)

for the injuries sustained by the Petitioner/Death of

in a Motor Accident by Vehicle No.

WHEREAS, this claim petition coming up on

for final disposal before Miss. B.T.Annapoorneshwari,

C/c XXII Addl.Judge, Member, Bangalore, in the presence

of Sri/Smt. Advocate for Petitioner/s and

of Sri/Smt. Advocate for

Respondent.

ORDER

The Petition filed by the Petitioners under Section 166 of Motor Vehicles Act is dismissed.

No order as to cost.

Given under my hand and seal of the Court this 16th day of August 2022.

MEMBER
MOTOR ACCIDENT CLAIMS TRIBUNAL,
METROPOLITAN AREA BANGALORE.

By the

Petitioner/s Respondent

Court fee paid on petition 10-00

Court fee paid on Powers 00-00

Court fee paid on I.A.

Process

Pleaders Fee

Total Rs.

Decree Drafted Scrutinised by MEMBER,
M.A.C.T.METROPOLITAN:
BANGALORE

Decree Clerk SHERISTEDAR

ADDITIONAL ISSUE

1. Whether the petitioners prove that they are the mother and brother of the deceased Shivaraj @ Shiva @ Shivaiah?

Date: 16.08.2022 C/c **XXII ASCJ**