BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL-CUM-I ADDL. DISTRICT JUDGE AT: KHAMMAM

Dated this the 03rd day of March, 2025

Present: **Smt. K.Uma Devi,**
Chairman, Motor Accidents Claims Tribunal-cum-I Addl. District Judge, Khammam.

MVOP No.319 of 2023

BETWEEN:

Shaik Zoya Tabasum, D/o.Shaik Riyaz Pasha, Age:12 years, occu:student, R/o.H.No.9-54, Karthikeya Township, Khammam Rural Mandal, Khammam District (minor being represented by her father and natural guardian Shaik Riyaz Pasha).

…Claim Petitioner

And

01 Sk.Jaleel Pasha S/o.Hussain Sahib, Age:28 years, Occu:Driver of Lorry bearing No.AP27-TZ-1256, R/o.Captain Banjara Village, Kamepally Mandal, Khammam District.

02 Gadde Nagamani, W/o.Rama Koteswara Rao, Age:Adut, Occu:Owner of Ashok Leyland Limited bearing No.AP27-TZ-1256, R/o.H.No.1-49/2, O.C.Area, Mulapadu, Ibrahimpatnam, Vijayawada-521456.

03 M/s.The National Insurance Company Limited, Vijayawada through Local Branch, Khammam represented by its Branch Manager, Khammam, R/o.D.No.2-1-368/1, near D.E.O.Office, Rama Hotel Complex, Trunk Road, Khammam town and District (issued policy bearing No.56090031226360001376 valid from 24.08.2022 to 23.08.2023).

….Respondents

This petition is coming before me for final hearing on 06.02.2025 in the presence of Sri ***Syed Amjad Pasha,*** *Advocate for the claim petitioner; and of Sri* ***P.Sanjay Kumar,*** *Advocate for the respondent No.1; Respondent No.2 set* ***exparte****;* *Sri* ***K.Ram Prasad,*** *Advocate for the Respondent No.3; upon perusal of the material papers on record and having stood over for consideration till this day, this Tribunal delivered the following:*

:: O R D E R ::

1. This is a petition filed by the petitioner under Section 166 of the Motor Vehicles Act, praying to award an amount of Rs.1,00,000/- (Rupees one Lakh only) to the petitioner, towards compensation with future interest at the rate of 24% per annum from the date of accident till the date of realization and costs of the petition.

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

i) On 17.02.2023 evening at about 7.00 hours, father of the claim petitioner waiting at weighing machine, HP Petrol Bunk, Yedulapuram X road on is Honda Activa bearing No.TS 04 EE 2520, meantime, driver of the Lorry in a rash and negligent manner from backside of the father of claim petitioner, dashed him from his back side to Honda Activa bearing No.TS 04 EE 2520, as a result, father of the claim petitioner fell down from the vehicle, received severe injury on his right leg, became unconscious and due to impact, vehicle of the claim petitioner was completely damaged and also owner of the vehicle sustained injuries all over the body and that the accident took place due to rash and negligent driving of driver of the crime vehicle.

ii) It is further submitted that on complaint, P.S. Khammam Rural registered a case in Cr.No.110/2023 under section 337 IPC against driver of the crime vehicle namely, Sk.Jaleel Pasha and the police filed charge sheet.

iii) It is further submitted that after the accident, the damaged Honda Activa bearing No.TS 04 EE 2520 was shifted to the Authorized Dealer of the Honda Motors Shafi Automobiles, Khammam for its repair, the Dealer estimated the Bill worth Rs.60,280/-. The claim petitioner got repaired by incurring the amount by taking hand loans from third parties and get repaired the same. The vehicle is essential for her family day to day life such as dropping the children to the school, tutions, bringing vegetables from the Market and house-hold utensils. The damaged vehicle was kept at the Dealer for about two months and out of these two months, the claim petitioner and her family members suffered a lot for arrangement of day to day life and also suffered mental agony. As such, she is filing this petition for damages caused to her vehicle worth Rs.1 lakh.

iv) It is further submitted that Respondents No.1 to 3 are owner, Insurer of the Ashok Leyland Limited bearing No.AP 27-TZ-1256, as such, all the respondents are jointly and severally liable to pay compensation to the claim petitioner, as the petitioner is owner of Honda Activa bearing No.TS 04 EE 2520. The c rime vehicle was insured at the time of accident who issued policy bearing No.56090031226360001376 valid from 24.08.2022 to 23.08.2023.

Hence, the petition.

3. Inspite of summons served on Respondent No.2, he was called absent, no representation. Hence, he was set *exparte.*

4. Respondent No.1 filed counter denying the averments of the petition submitting that Respondent No.1 is driver of the crime vehicle at the time of alleged accident is false. He is having competent driving licence to driver the crime vehicle and followed all precautions as per the Motor Vehicles Act.

ii) It is further submitted that he admitted that Respondent No.3 is Insurer of the crime vehicle. This Respondent obtained policy from Respondent No.3, which was in force at the time of accident. Respondent No.3 had undertaken to indemnify the Respondent No.2 for all liabilities arising out of usage of crime vehicle during period of insurance. As such, Respondent No.3 alone liable to pay compensation to the claim petitioner, if the OP is decreed.

iii) It is further submitted that the claim of the petitioner is highly excessive; finally prayed to dismiss the petition.

5. Respondent No.3 submitted counter denying the averments of the petition submitting that the accident took place due to own negligence of father of claim petitioner who drove the Activa Scooter negligently without valid driving licence and experience and

contributed negligence for cause of accident, as such, R.3 is not liable to pay compensation to the claim petitioner.

ii) It is further submitted that there is no information to it about the accident either from the police or from 2nd respondent/owner of the crime vehicle as per Sec.158 (6) of the Motor Vehicles Act.

iii) It is further submitted that Respondent No.2 did not furnish vehicular documents and driving licence particulars of driver of the crime vehicle to it in collusion with the claim petitioner, which is violation of policy condition. This Respondent is protected under section 170 of the M.V.Act and is entitled to contest the claim on all the grounds which are available to R.2. Hence, the court may pleased to give permission for the same.

iv) It is further submitted that the amount of compensation claimed by the petitioner is highly exaggerated and the petitioner is not entitled to claim any interest on pecuniary loss/expenses and that the compensation if any payable to the petitioners is subject to Motor Vehicles Act and Rules thereunder.

v) It is further submitted that Respondent No.3 did not issue any policy to the Lorry bearing No.A 27 TZ 1256, as such, it is not liable to pay compensation to the claim petitioners. The interest claimed by the petitioner is exaggerated and not tenable.

vi) It is further submitted that the Respondent company seeks protection under section 147 and 149 of the M.V.Act. and this

Respondent Company may be permitted to file an additional counter if necessary; finally prayed to dismiss the petition with exemplary costs.

6. Basing on the above pleadings, the following issues have been settled for trial by my learned predecessor:

1. Whether the driver of Lorry Ashok Leyland Limited bearing No.AP27-TZ-1256 drove the said vehicle in a rash and negligent manner and caused the accident, due to which, the Honda Activa bearing No.TS 04 EE 2520 was completely damaged, which took place on 17.02.2023 at 07.00 p.m., at Yedulapuram X road, Khammam Rural Mandal, Khammam District?
2. Whether the petitioner spent an amount of Rs.1,00,000/- towards repairs and other charges of the Honda Activa bearing No.TS 04 EE 2520"
3. Whether the petitioner is entitled for compensation amount from the R.1 to R.3, as prayed for?
4. To what relief?

7. During the course of trial, on behalf of the petitioner, Shaik Riyaz Pasha being father of the claim petitioner represented on behalf of his daughter was examined as P.W.1 and got marked Exs.A.1 to A.4. P.W.1 also got examined one Ajmal Rafi who is Bike Mechanic as P.W.2. On behalf of Respondent No.3, one G.Venkata Chary is examined as R.W.1 and got marked Ex.B.1/Copy of Insurance Policy.

8. Heard arguments and perused the record.

<u>**ISSUE No.1**</u>:

9. On behalf of the claim petitioner, the father of the claim

petitioner/Sk.Riyaz Pasha was examined as P.W-1 and has filed an affidavit in lieu of his chief examination. His evidence is nothing but replica of petition pleadings. In his cross-examination by the counsel for Respondent No.1, P.W.1 narrated that he does not know whether Respondent No.1 is having valid driving licence and he also does not know whether the crime vehicle was having valid insurance, as such, the Insurance Company is liable to pay compensation not by R.1.

ii) In his cross examination by the Counsel for Respondent No.3 that he get repaired his motor cycle in Shafi Auto Mobiles. He does not know whether the said Shafi automobiles is a dealer or not, he made google search and get repair the motor cycle. He admitted that Ex.A.4 bill not disclosing that Shafi Automobile is an authorised dealer. He admitted that his Scooter is 2015 model. He has not claimed any damages from his own Insurance Company for damages caused to his scooter. His scooter is having insurance, but policy was not filed before the court and he does not know the details of the policy. He has not filed any document that he did not claim any damages from the Insurance Company of his scooter. He does not now whether the motor cycle of 2015 model is having depreciation value in market as on that day on the date of accident. He filed driving licence of lorry driver and he fled driving licence before the court. Further, except denials, nothing was elicited from the mouth of P.W.1.

10. It is not in dispute that the Police, Khammam Rural registered a case in Crime No.110/2023 under Section 337 of IPC against driver of the crime vehicle, which is evident by the certified copy of First Information Report (Ex.A-1).

11. Further, a perusal of certified copy of charge sheet (Ex.A-2), it is clear that on completion of investigation, the Investigating Officer, has filed Charge Sheet (Ex.A-2) against driver of the Lorry, for the offence under Section 338 of IPC, which *prima facie* reveals that the accident occurred due to rash and negligent driving of driver of crime Lorry Ashok Leyland Limited bearing No.AP27-TZ-1256, due to which, Honda Activa bearing No.TS 04 EE 2520 was damaged. In the evidence of P.W.1, it is revealed in his examination-chief-affidavit, it discloses that Dealer of Honda Motors Shafi Automobiles, Khammam for repair of his Honda Activa issued Estimate Bill for Rs.60,280/-, he get repaired the same by incurring amounts by taking hand loans from third parties. He filed this petition for an amount of Rs.1,00,000/-. As per Exs.A.1 and A.2/Certified copies of First Information Report and Certified copy of Charge-sheet, due to rash and negligent driving of driver of the crime Lorry Ashok Leyland Limited bearing No.AP27-TZ on 17.02.2023 at Yedulapuram X road, Khammam Rural Mandal, Khammam District, dashed the vehicle of the claim petitioner i.e., Honda Activa bearing No.TS 04 EE 2520, which was completely damaged. In this regard, Respondents No.1 and 3 did not disprove the said occurrence of accident by adducing any oral or documentary

evidence. Accordingly, Issue No.1 is answered in favour of the claim petitioner and against the Respondents.

ISSUE No.2:

12. P.W.1 also got examined one Ajmal Rafi, Mechanic, who deposed that on receipt of summons from the court for giving evidence, he is working as Bike mechanic works, running a shop under the name and style of "Shafi Automobiles", being run by his father, as he is also working in the said shop, which was situated opposite to Union Bank of India, Old Bus Stand, Khammam. He further narrated that an Activa Bike bearing No.TS04EE-2520 met with an accident, brought to their shop for repair. On due check, he found choice, Front for, total fibre parts were damaged, except engine. It was kept in their shop for a period of one month for its repair. For repair of the said Bike, he issued Bill consisting of 3 pages, having serial Nos.1 to 34 parts (Ex.A.4), total worth Rs.60,200/-. The photo shown to him is condition of the vehicle at the time of production before him (Ex.A.3).

ii) In his cross-examination by the counsel for Respondent No.1, except denials, nothing was elicited from him.

iii) In his cross examination by the counsel for Respondent No.3, he narrated that he is senior mechanic in the shop, not eye witness to the accident. Their shop is not an authorized service station. 2015 Activa would be valued at Rs.25,000/- in market for its sale. Further, except denials, nothing was elicited from the mouth of P.W.2.

iv) On perusing the evidence of P.W.2, the claim petitioner spent an amount of Rs.60,200/- for getting repair of Honda Activa bearing No.TS 04 EE 2520 from his Mechanic shop which is reflected as per Ex.A.4, which is not authorized and they issued bills for that amount, which shows that the claim petitioner did not spent an amount of Rs.1,00,000/- as stated by the claim petitioner in his petition and his chief-examination affidavit. But P.W.1 paid an amount of Rs.60,200/- as per evidence of P.W.2. As such, the Issue No.2 is partly answered in favour of the claim petitioner.

ISSUE NO.3:

13. On behalf of the Respondent No.3, it got examined one G.Venkata Chary, who is its Senior Asst, National Insurance Company Limited, Branch Office at Khammam as R.W.1, who filed his Chief-examination affidavit, wherein he reiterated the contents of its counter and got marked Ex.B.1 Copy of Insurance Policy.

ii) In his cross-examination by the counsel for Respondent No.1, except denial, nothing was elicited from the mouth of R.W.1.

iii) In his cross-examination by the counsel for the Claim petitioner, he admitted that policy I s in force as on the date of alleged accident and Lorry is the crime vehicle and Insurance policy was obtained on lorry and that the police filed charge-sheet against the accused for the offence under section 338 IPC without any provision of the Motor Vehicles Act. As per Ex.A.2/Charge sheet, it was stated that the vehicle bearing No.TS04 EE 2520 was totally damaged. He has not secured any document from RTO to show the damaged vehicle would be value of Rs.10,000/- as he stated. He further admitted that the O.P.No.184 of 2023 was filed by the injured before this court seeking claim for injuries sustained by him. He further stated that damaged vehicle was in shed for three to six months. Further except denials, nothing was elicited from the mouth of R.W.1.

14. On perusing the evidence of R.W.1, the vehicle is model of 2015 and that the **policy against the crime vehicle was in force at the time of accident**. He did not secure any document from the RTO to show that the damaged vehicle would be value of Rs.10,000/-. Further on going through the evidence of P.W.2/Bike Mechanic, the claim petitioner spent **Rs.60,200/-** by him for repairs of Activa Honda from the Shaffi Auto mobile Shop as reflected under Ex.A.4. As such, the claim petitioner is entitled for Rs.60,200/- towards repair Charges of the Honda Activa involved in the accident, towards compensation. As such, **the claim petitioner is entitled to claim compensation at the rate of Rs.60,200/- (Rupees Sixty thousands and two hundred only) from the Respondents Nos.1 to 3, as they are jointly and severally liable to pay compensation to the petitioner, as**

the Ex.B.1/Copy of Insurance policy was in force at the time of accident. Accordingly, Issue No.3 is answered in favour of the claim petitioner.

<u>INTEREST</u>:

15. The present claim petition is filed under section 166 of M.V.Act, 1988. It is pertinent to mention here is that in claim petition under section 163-A or 166 of M.V.Act, the Motor Accident Claims Tribunal is empowered by Section 171 of M.V.Act to award interest, in the eventuality of claim petition being allowed from the date of making the claim at such rate as may be entitled by it.

16. In ***Puttamma and others Vs. K.L.Narayana Reddy and another 2014 (1) RCR (Civil) 443, (2013) 15 SCC 45 Hon'ble Apex Court*** observed in Para 62 as under:

> *"This Court in **Abati Bezbaruah Vs. Deputy Director General Geological Survey of India and another (2003) 3 SCC 148** noticed that varying rates of interest are being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life, etc.,"*

17. In ***Benson George Vs. Reliance General Insurance Company Limited and another 2022 ACJ 948*** the Hon'ble Supreme Court reduced rate of interest from 9% to 6% per annum awarded by the Hon'ble High Court. By placing reliance on the above judgments discussed, this tribunal is of considered view to award interest at the rate of **6%** per annum.

ISSUE NO.4:

18. In view of my finding arrived in Issues No.1 to 3, the petitioner is entitled for compensation towards damages of the Honda Activa bearing No.TS 04 EE 2520 @ Rs.60,200/- as per Ex.A.4/Certified copy of original cash bill as claimed by the claim petitioner. Hence, the petition is liable to be allowed in part, with proportionate costs.

RESULT:

19. In the result, the petition is allowed in part with proportionate costs. The Claim Petitioner is awarded for a sum of ***Rs.60,200/- (Rupees Sixty thousands and two hundred only)*** with interest at the rate of 6% per annum from the date of filing of the petition till realization.

ii) The Respondents No.1 to 3 are jointly and severally liable to pay compensation.

iii) The Respondents No.1 to 3 are directed to deposit the awarded amount within 30 days from the date of this order.

iv) On such deposit of above said compensation, Petitioner No.1 being minor represented by her father, her share of compensation shall be kept in Fixed Deposit Receipt in any Nationalized Bank, till she attains majority. After attaining her majority, the claim petitioner is at liberty to withdraw her share of compensation with proportionate costs.

v) The rest of the claim is dismissed without costs.

vi) The Advocate fee is fixed at Rs.5,000/-.

Typed to my dictation, corrected and pronounced by me in the open court on this 03rd day of March, 2025.

Chairman, Motor Accidents Claims Tribunal-cum-I Addl. District Judge, Khammam

::APPENDIX OF EVIDENCE::

WITNESSES EXAMINED ON BEHALF OF PETITIONER

P.W.1 Shaik Riyaz Pasha (father of claim petitioner).

P.W.2. Ajmal Rafi (Bike Mechanic)

WITNESSES EXAMINED ON BEHALF OF RESPONDENT No.1

- none -

WITNESSES EXAMINED ON BEHALF OF RESPONDENT No.3

R.W.1 G.Venkata Chary (Senior Asst., of R.3 Insurance Company.

DOCUMENTS EXHIBITED ON BEHALF OF PETITIONER

Ex.A-1	Certified copy of First Information Report in Cr.No.110 of 2023,
Ex.A-2	Certified copy of Charge sheet in C.C.No.388 of 2023 on the file of II Addl. JMFC, Khammam.
Ex.A.3.	Certified copy of photos damaged vehicle along with DVD.
Ex.A-4	Certified copy of original cash bills.

DOCUMENTS EXHIBITED ON BEHALF OF R.W.1

Ex.B.1	Copy of Insurance Policy.

Chairman, Motor Accidents Claims Tribunal-cum-IAddl. District Judge, Khammam.