

CNR No : KATK600009522019



IN THE COURT OF IV ADDL. DISTRICT JUDGE AND
M. A. C .T, TUMAKURU, SITTING AT : MADHUGIRI

Dated this : the 31st day of August, 2021.

PRESENT :

Shri. TARAKESHWARGOUDA PATIL, B.A. LL.B (Hon's) LL.M.
IV. Addl. District Judge and M.A.C.T. Tumakuru-Madhugiri.

M. V. C. No: 670/2019

- PETITIONERS** : 1. Ranganatha D. L.,
S/o Late. Linganna,
Aged about : 32 years.
2. Shivakumar D. L.,
S/o Late. Linganna,
Aged about : 26 years.
3. Chandrasekhar D. L.,
S/o Late. Linganna,
Aged about : 24 years.

All are residing at :
Dodderi Hobli,
Madhugiri Taluk,
Tumakuru District.

(By Sri. M. S. Adv)

Vs.

- RESPONDENTS :**
- 1.** D. N. Krishna Murthy,
S/o Nagappa,
Aged about : 20 years,
Residing at :
Dodderi Village,
Madhugiri Taluk.

**(Owner of the TVS Appachi
bearing Reg.No.KA-64-R-7677)**
 - 2.** Chola mandalam M. S.
General Insurance
Company Limited,
No.04, 9th Floor, Level -06,
Golden Heights Complex,
59th 'C' Cross,
Rajajinagar,
Bangalore.

**(Policy No.3361/01023111/000/00)
(Valid from 29.03.2019 to 28.03.2024)**

(R1 : By Sri. D. S. Adv)
(R2 : By Sri. N. V. N. Adv)

JUDGMENT

This Claim Petition **U/Sec. 166 of Motor Vehicle Act** has been instituted by the **petitioners** seeking the grant of **compensation** of **Rs. 25,00,000/-** with interest @ **12% p.a.** **from the respondents**, in respect of accidental death of one **D. Lakshamma**, who died in a road traffic accident occurred on **08.05.2019**, as **legal heirs / dependents**.

2. **Brief and relevant facts leading to filing of this petition could be summed up as under :** On 08.05.2019 at about 12.15 near Yeliyuru mud road at Doddagula Village, Kasaba hobli, Sira Taluk within the limits of Kallambella P. S. the petitioner's mother by name D. Lakshamma was proceeding on the T.V.S. Appachi two wheeler bike bearing Regd. No.KA-64-R-7677 as a pillion rider along with one Shashidhara, who was driving the said bike, after attending the '*Gruha Pravesha*'. At that time, the driver of said bike drove the same in high speed in a rash and negligent manner, and thereby, caused the pillion rider to fall down and suffer grievous injuries to the head and other parts of body. In the process of shifting to the hospital, she has succumbed at about 1.00 p.m. And then, the post mortem was conducted at the Govt. Hospital, Sira and the body was handed over to her family members / petitioners, who took the same to their native place in a hired vehicle and conducted the funeral and obsequies ceremony by spending Rs. 50,000/- towards all expenses. It is further claimed by the petitioners that the deceased D. Lakshamma was very hale and healthy, doing the agriculture work and used to prepare the '*Beedi*' and thereby, getting an income of Rs. 15,000/- per month and contributing to the maintenance of the family. And thus, due to her sudden and untimely death, the petitioners have suffered

mental shock and agony, lost the love and affection, earnings, and future income. It is further specific case of the petitioners that in respect of said accident caused solely due to the rash and negligent driving of the rider of the vehicle bearing Regd. No.KA-64-R-7677, the jurisdictional police have registered the criminal case in Cr. No: 95/2019 U/Sec. 279, 304 (A) of I.P.C r/w Sec. 187 of I.M.V. Act and submitted the charge sheet accordingly. It is, therefore, the petitioners having had lost the sole bread earning member of the family are before this tribunal seeking the just, fair and adequate compensation against the owner and insurer of an offending vehicle, as aforesaid.

3. In response to notice, respondent No.1 has marked his appearance through learned counsel of choice, and filed the written statement by denying the petition averments in *toto* including the age, occupation and income of the deceased, the occurrence and mode of the alleged accident and death. It is alternatively contended that the said two wheeler bearing Regd. No. KA-64-R-7677 was duly insured with 2nd respondent, and the policy was in force at the time of alleged accident and therefore, sought to direct the 2nd respondent to pay the compensation, if any. It is, therefore, from among other

grounds more fully set out in the objection statement, the 1st respondent has prayed for dismissal of the claim petition.

4. In response to notice, the respondent No. 2 : Insurer of an offending vehicle has marked its appearance through the learned counsel and filed the written statement by denying the petition averments in *toto* including the age, occupation and income of the deceased, the occurrence and mode of alleged accident and death, and the relationship of petitioners with deceased inmate of accident. It is specifically contended that the the rider and pillion rider of insured vehicle were not wearing helmet, and due to the negligence of Lakshamma in not wearing helmet and sustaining head injuries, the death has occurred and therefore, it is not liable to pay any compensation. It is further contended that the driver of insured vehicle was not holding the valid and effective driving license and thereby, violated the policy conditions. It is further contended that the petitioners are the major children of deceased and therefore, not entitled for any compensation. It is further contended that the compensation claimed by the petitioners is highly excessive, exorbitant, arbitrary, unreasonable and baseless. It is, therefore, from among other grounds more fully set out in the objection statement, the 2nd respondent has prayed for dismissal of the claim petition.

5. In view of the rival contentions raised in the form of petition and written statement, this tribunal has framed the following issues : -

ISSUES

1. Whether petitioner proves that, On: 08-05-2019 at about 12.15 p.m, near Yeliyuru, Mud road, at Doddagula Village, Kasaba hobli, Sira: when the mother of petitioner's by name D. Lakshmamma was going on TVS apachi vehicle, the driver of TVS Apachi bearing Reg No.KA-64-R-7677 had caused Road Traffic Accident, by rash or negligent driving. ?
 2. Whether respondent No.2 proves that, the driver of TVS Apachi bearing Reg. No.KA-64-R-7677 was not holding the valid and effective driving license to drive the insured vehicle, as on the date of accident. ?
 3. Whether the petitioners being dependents of deceased are entitled for the compensation. ? If Yes, how much, and from whom. ?
 4. What order ?
6. In order to establish the case of petitioners, the 1st petitioner has entered into the witness box and got himself examined as PW.1. Petitioners have also got examined one eye witness by name Ramakka as P.W.2. Petitioners have relied upon the documents marked at Ex.P1 to P.6 ; Ex.P1 F.I.R, Ex.P2 Complaint, Ex.P3 Spot mahazar along with Sketch, Ex.P4 :

P.M. report, Ex.P5 I.M.V. Report, Ex.P6 Charge Sheet and closed their side.

7. Per contra, the 2nd respondent has got examined its official by name Sagar G. L. as R.W.1 and got marked the document at Ex.R1 i.e, Ex.R1 is Insurance Policy and closed the side.
8. Learned counsel for petitioners has filed list with the following documents and decisions, reported in :-
 1. Copy of Inquest
 2. Copy of statement of blood relatives and others.
 3. Copy of bike Registration Certificate
 4. Copy of Insurance
 5. Driving License
 6. Copies of Aadhar card of petitioners
 7. Copy of judgment in M.F.A.No.7074/2016 : in between : The Oriental Insurance Co. Ltd vs. Sri Naresh Babu N. and another.
 8. Copy of judgment in M.F.A.No.10273/2005 : in between : Oriental Insurance Company Ltd vs. Shivamma and others.
 9. Copy of judgment in M.F.A.No.8697/2015 : in between : Smt. H. K. Manjula vs. Sri. Nagaraju H. L.

9. I have heard both side and perused the entire material placed on record including the decisions duly relied upon by the petitioners and written arguments submitted by R2.
10. Having heard and perused, as aforesaid, my findings on the above issues are as under : -

Issue No.1 : In the **negative.**

Issue No.2 : In the **negative.**

Issue No.3 : In the **negative.**

Issue No.4 : As per **final order,**
for the following :-

: REASONS :

11. **Issue No.1 to 3 :-** Since these points are inter linked and inter connected with each other, they are taken up together for common discussion.
12. Case of the petitioners is that on 08.05.2019 at about 12.15 near Yeliyuru mud road at Doddagula Village, Kasaba hobli, Sira Taluk within the limits of Kallambella P. S. the petitioner's mother by name D. Lakshamma was proceeding on the T.V.S. Appachi two wheeler bike bearing Regd. No.KA-64-R-7677 as a pillion rider along with one Shashidhara, who was driving the said bike, after attending the '*Gruha Pravesha*'. At that time, the driver of said bike down the same in high speed

in a rash and negligent manner, and thereby, caused the pillion rider to fall down and suffer grievous injuries to the head and other parts of body. In the process of shifting to the hospital, she has succumbed at about 1.00 p.m. And then, the post mortem was conducted at the Govt. Hospital, Sira and the body was handed over to her family members / petitioners, who took the same to their native place in a hired vehicle and conducted the funeral and obsequies ceremony by spending Rs. 50,000/- towards all expenses. It is further claimed by the petitioners that the deceased D. Lakshamma was very hale and healthy, doing the agriculture work and used to prepare the '*Beedi*' and thereby, getting an income of Rs. 15,000/- per month and contributing to the maintenance of the family. And thus, due to her sudden and untimely death, the petitioners have suffered mental shock and agony, lost the love and affection, earnings, and future income. It is further specific case of the petitioners that in respect of said accident caused solely due to the rash and negligent driving of the rider of the vehicle bearing Regd. No.KA-64-R-7677, the jurisdictional police have registered the criminal case in Cr. No: 95/2019 U/Sec. 279, 304 (A) of I.P.C r/w Sec. 187 of I.M.V. Act and submitted the charge sheet accordingly. It is, therefore, the petitioners having had lost the sole bread earning member of the family are before this tribunal seeking the just, fair and

adequate compensation against the owner and insurer of an offending vehicle, as aforesaid.

13. In order to establish the said *factum* of accident, the 1st petitioner got himself examined as P. W. 1 and filed the affidavit in lieu of examination in chief, whereby, he has categorically reiterated the petition averments. In the cross examination, it was suggested that the deceased mother of this P.W. was not wearing helmet when travelling as a pillion rider at the time of accident, which he admits and denies rest of the suggestions made by the counsel for R2. Petitioners have also adduced the evidence of one of the eye witnesses to the accident namely Ramakka W/o Manjunatha examined as P.W.2 attributing the rash and negligent driving on the part of rider of an offending vehicle on 08.05.2019 at about 12.15 p.m at the spot. In the cross examination, this witness admit that she is also one of the daughter of deceased Lakshmamma, and she was given in marriage about 09 years back. She further admit the suggestion that her mother when travelling as a pillion rider was not wearing the helmet at the time of accident. Both P.W.1 and 2 categorically denied rest of the suggestions regarding the rash or negligent driving of rider of an offending vehicle, and the age of deceased, and the non dependency of the claimants.

14. Petitioners have strongly based their claim upon the documents marked at Ex. P1 to 6.
15. In that connection, from the plain perusal and appreciation of the documents marked at Ex.P1 and 2: FIR and Complaint, it is evident that the criminal law was set into motion against one Shashidhara, the rider of motor bike bearing Regd. No: KA-64-R-7677, attributing the rash and negligent driving and the resultant accidental death caused to the deceased- Lakshamma as on 08.05.2019 at about 12.15 p.m near Yeliyuru Mud road at Doddagula Village, Kasaba Hobli, Sira Taluk. Ex. P3 : Spot mahazar and sketch, Ex. P4: Post mortem report would clearly show head injuries and other parts of the body to the deceased. Ex.P5 I.M.V. Report would disclose the accident occurred. And charge sheet marked at Ex.P6 would show that the jurisdictional police, after thorough investigation, charge sheeted the driver of an offending vehicle for offenses punishable U/Sec. 279 and 304 (A) of I.P.C r/w Sec. 187 of I. M. V. Act.
16. In order to rebut the case of petitioners ; the respondent No.2 has got examined one of its official by name : Sagar G. L. as R.W.1, whereby, the written statement contention as to rash and negligent riding of offending vehicle, without following the traffic rules, DL and helmet were reiterated and thereby,

deceased fell down from the bike due to her self negligence. In the cross examination, this witness admit that he has not visited the spot and not personally aware of the accident particulars. He further admits that all the vehicle of insured vehicle were valid but deny rest of the suggestions made by the learned counsel for petitioners. Respondent No. 2 has got marked the policy in question at Ex. R1.

17. It is the most respectful submission on the part of learned counsel for respondent no.2 that the P.W.1 and 2 when examined have clearly admitted that the deceased was not wearing helmet as on the date, time and place of accident, though she is shown to have been travelling as a pillion rider. Under the circumstances, the injuries caused to the head may not have been caused, if she were wearing the helmet and therefore, the company is not liable to pay any compensation. In support of the submission, the reliance is placed on the following decision delivered by the Hon'ble High Court of Karnataka, Bengaluru in **M.F.A.No: 7074/2016 (MV)** : in between : **The Oriental Insurance Co. Ltd. V/s Sri Naresh Babu N. and another**, wherein, it has been observed at relevant para 18 of the judgment as under :

Before parting with this matter it is proper to observe that the claims Tribunals while dealing with claims for compensation shall have to record a finding as to

rider or a pillion rider wearing a helmet of a required standard in case of two wheeler and occupants of the car wearing seat belts in order to be entitled for compensation. If it is found that there is violation in not wearing proper headgear or seat belts, such claimants should be denied compensation.

18. Counsel for petitioner has not chosen to make any submission regarding the above question of law raised by the respondent no.2 and submitted to pass suitable orders by taking the matter as heard.
19. Thus, to conclude, after over all appreciation of the oral and documentary evidence placed on record, though, it could be safely inferred from the documents marked at Ex. P1 to P6 that the accident in question occurred due to the rash and negligent driving of an offending vehicle, and the 2nd respondent has failed to establish the non possession valid driving license by the driver of insured vehicle, but however, in view of clear and unequivocal admissions of P. W. 1 and 2 regarding non wearing of helmet by the pillion rider – the deceased Lakshamma and in view of the decision in M.F.A.No: 7074/2016 (MV) referred *supra*, this tribunal is left with no option but to dis entitle the claimants for compensation. In that view of the matter, after giving the anxious attention to the petition, objection statement, and the over all oral and documentary evidence placed on record ; this

tribunal is of the further considered opinion that the petitioners have failed to make out necessary ground for grant of compensation as dependents of deceased in view of non wearing of helmet by the deceased pillion rider Lakshmamma as on the date, time and place of accident. **With the above observation and for the reasons stated supra, I am inclined to answer issue No. 1 to 3 in the negative.**

20. **Issue No. 4 : -** In view of my reasoning and finding on the preceding issues, the petition of petitioners fails and accordingly, I proceed to pass the following :

: O R D E R :

Claim Petition U/Sec. 166 of M. V. Act filed by the petitioners is hereby **dismissed**.

Under the peculiar facts and circumstances, there shall be no order as to costs.

Office to draw an award accordingly.

(Computerized by the stenographer directly on the computer under my dictation. Judgment then, revised and corrected by me, printed by the steno, signed and pronounced by me in open Court on this the 31st day of August, 2021)

Sd/-

(TARAKESHWARGOUDA PATIL)

**IV. ADDL. DISTRICT JUDGE & M.A.C.T,
MADHUGIRI.**

|| ANNEXURE ||**List of witnesses examined for the petitioners:**

P.W.1: Ranganatha D. L.
P.W.2: Ramakka

List of documents marked for the petitioners:

Ex.P1 : FIR
Ex.P2 : Complaint
Ex.P3 : Spot mahazar and sketch
Ex.P4 : Postmortem report
Ex.P5 : I.M.V. Report
Ex.P6 : Final Report

List of witness examined for the respondents :

R.W.1 : Sagar G. L.

List of document marked for the respondents :

Ex.R1 : Insurance Policy

Sd/-

**IV. ADDL. DISTRICT JUDGE & M.A.C.T,
MADHUGIRI.**