

**BEFORE THE CHAIRMAN, MOTOR ACCIDENTS CLAIMS TRIBUNAL –
CUM- III ADDITIONAL DISTRICT JUDGE, TIRUPATI**

PRESENT: Y.VEERRAJU
Chairman, Motor Accidents Claims Tribunal
– cum- III Additional District Judge, Tirupati.

Tuesday, the Eleventh (11th) day of October, 2022

M.V.O.P No. 80 of 2020

Between:

1. G.Thulasiraman
2. M.Kavitha

.... Petitioners/Claimants

And:

1. J.Selvaraj
2. S.Sasikala

.... Respondents

This O.P. coming on 28.09.2022 before me for final hearing in the presence of Sri I.Surendra, Advocate for the Petitioners and of Sri Mohamed Haneefa, advocate for the respondents 1 and 2 and after hearing both the learned counsel and after considering the material available on record, this court delivered the following:

J U D G M E N T

The petition is filed by the petitioners 1 and 2 against the respondents 1 and 2 u/s.166(1)(c) of M.V.Act 1988 r/w. Rules 455 of A.P.M.V. Rules, 1989 claiming compensation of Rs.6,00,000/- on account of death of the deceased K.Govinda Chetty.

2. The brief facts of the petition are that :

a) The petitioners 1 and 2 are son and daughter of the deceased K.Govinda Chetty. The deceased Govinda Chetty was aged about 60 years at the time of the accident, he was an agriculturist, getting income of Rs.10,000/- per month and used to contribute the same to the family.

b) On 07.07.2019 at about 2.00 p.m the deceased was proceeding towards Tiruthani from Therani village and when he reached near Area Hospital, bus stop on Puttur-Tiruthani Road, Nagari the 1st respondent being the driver of Volkswagen Vento car bearing No.TN-20-AQ-1009 drove the same in a rash and negligent manner and dashed on the back side of TVS XL Moped bearing No.AP03-UD-3983, as a result the motor cyclist i.e. Govinda Chetty fell on the road along with motor cycle and sustained bleeding injuries on his head, both feet, abrasion injuries on his person. Immediately the said Govinda Chetty was shifted to Area Hospital, Nagari, but the duty doctor declared as brought dead with fatal injuries.

c) Basing on the report given by G.Thulasiraman, the station House officer, Nagari PS registered a case in Cr.No.84 of 2019 against the driver of the car i.e. 1st respondent in CC No.177 of 2019. The accident occurred due to the negligence of the driver of the car i.e. 1st respondent. 2nd respondent is the owner of the car bearing No.TN-02-AQ-1009. Therefore, the respondents 1 and 2 are liable to pay compensation.

3. The respondents 1 and 2 made their appearance through their counsel and filed common counter.

4. Brief averments of the counter filed by the respondents 1 and 2 are that:

a) There is no negligence on the part of the 1st respondent and he was driving the vehicle with due care and caution. The 1st respondent is having valid and effective driving licence to drive the vehicle as on the date of accident. The 1st respondent is the husband of the 2nd respondent and he was doing seasonal business. The respondents are having two daughters

and now they are married and respondents 1 and 2 are depending on their daughters at present.

b) At the time of accident, the deceased Govinda Chetty was not having driving licence. The deceased did not wear helmet at the time of accident and that is the main cause of the death of the deceased. Therefore, it is clearly established that the accident occurred due to the negligence of the deceased only and he has not followed the rules and regulations. The petitioners have not filed any documentary evidence to show that the deceased was an agriculturalist and used to earn Rs.10,000/- per month. The 1st petitioner is working as police home guard in Tiruthani station, Tamilnadu and he never depending on his father. The 2nd petitioner is married with one S.Moorthy and now she is living with her husband and therefore she is not depending on the deceased.

c) Nagari police falsely registered the case against A.1. But after conclusion of the trial the Judicial Magistrate of I Class, Nagari pronounced the judgment wherein the 1st respondent herein was found not guilty for the offence u/s.304-A IPC and 2nd respondent was also found not guilty for the offence punishable u/s.146 r/w 196 of MV Act and the trial court acquitted the case against the accused and thus it is established that there is no negligence on the part of the respondents 1 and 2. Therefore, the petition is liable to be dismissed.

5. Basing on the respective pleadings the following issues are settled for trial .

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| 1) Whether the deceased K.Govinda Chetty died due to rash and negligent driving of the driver of the crime vehicle Volkswagen Vento bearing Regn.No.TN02-AQ-1009? |
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2) Whether the petitioners are entitled to claim compensation from the respondents as claimed in the petition ?
3) To what relief ?

6. At the trial, on behalf of petitioners, PW.1 and PW.2 were examined and Ex.A.1 to A.4 were marked. The 1st petitioner G.Thulasiraman was examined as PW.1. One P.Suresh was examined as PW.2. The certified copies of criminal case records like FIR, charge sheet, postmortem certificate and Aadhar cards of the petitioners are marked as Exs.A.1 to A.4.

7. As against the evidence adduced by the petitioners, the 1st respondent J.Selvaraj was examined as RW.1 and the certified copy of driving licence and certified copy of judgment in CC No.177 of 2019 on the file of Judicial Magistrate of I Class, Nagari are marked as Exs.B.1 and B.2.

8. Heard arguments of learned counsel for the petitioners and the learned counsel for the respondents 1 and 2.

9. **ISSUE No.1 :-**

The claim application is filed by the legal heirs of the deceased K.Govinda Chetty against the driver and owner of the crime vehicle i.e. Volkswagen Vento car bearing Regn.No.TN02-AQ-1009. At the first instance the station house officer, Nagari registered the case in Cr.No.84 of 2019 under section 304-A IPC against the 1st respondent. According to the petitioners the deceased T.Govinda Cetty was aged about 60 years at the time of accident and he was hale and healthy and the accident occurred due

to the negligence of the driver of the crime vehicle i.e. the first respondent. In support of their respective contentions, both parties have adduced oral and documentary evidence. The 1st petitioner Thulasiraman was examined as PW.1. According to PW.1 the 2nd petitioner is his sister. What all averred and pleaded in the petition have been reiterated in the chief affidavit of PW.1. It is in the cross-examination of PW.1 that he did not witness the accident personally. In spite of that he further deposes in his cross examination that the accident occurred near Government Hospital, Nagari at the time of accident his father was proceeding on two wheeler and his father was the owner of the said two wheeler. The registration certificate in respect of the two wheeler is not filed into court. It is also in the cross-examination of PW.1 that his father has got driving licence but he did not file the same into court. It was suggested to PW.1 that his father has no valid driving licence and that due to the own negligence of the deceased only he fell down and the deceased died due to his own negligence but he denied the same.

10. One P.Suresh resident of Nagari was examined as PW.2. The purpose of examination of PW.2 is to establish and prove the manner of accident. According to the petitioners PW.2 happened to be an eye witness to the accident. It is in the chief affidavit of PW.2 that the accident occurred due to the negligence of the driver of the crime vehicle. The evidence of PW.2 was tested by way of cross-examination. It is in the cross-examination of PW.2 that he is working as auto driver, himself and PW.1 are not friends, he has not seen the deceased prior to the accident and he has no prior acquaintance with him. It is also in the cross-examination of PW.2 that at the time of accident he was proceeding on bike from Nagari towards Puttur

side, the deceased was proceeding on two wheeler from Puttur side towards Nagari. Finally it was suggested to PW.2 that he did not witness the accident and that he is not an eye witness and as PW.1 is resident of his neighbouring village therefore, he is speaking false but he denied the same.

11. As against the evidence adduced by the petitioners, to rebut the same the first respondent was examined as RW.1. It is in the chief affidavit of RW.1 that there is no negligence on his part and he was driving the vehicle in a cautious manner, he is having valid driving licence, there is contributory negligence on the part of the deceased and hence the 1st respondent is not liable to pay compensation. At the time of accident, the deceased was not having two wheeler driving licence, the deceased did not wear helmet and that is the main cause of the death of the deceased. It is also in the chief affidavit of RW.1 that a criminal case filed against him was ended in acquittal.

12. In support of the contentions of the 1st respondent, the copy of driving licence and the certified copy of judgment in CC No.177 of 2019 on the file of Judicial Magistrate of I Class, Nagari are marked as Exs.B.1 and B.2. A perusal of Ex.B.2 now it is made clear that the criminal case filed against the 1st respondent Selvaraj in connection with the accident i.e. the case in Cr.No.84 of 2019 was ended in acquittal. It is not the case where that PW.2 Suresh herein is not an eye witness to the accident and he is not cited as eye witness in the list of witnesses annexed to the charge sheet in Cr.No.84 of 2019. On the other hand a perusal of the recitals of Ex.A.2, now it is made clear that PW.2 Suresh is shown as LW.4 as an eye witness and he was also examined before the criminal court as a witness.

13. The evidence adduced by the petitioners and the respondents in so far as the manner of accident is concerned is nothing but oath against oath. As I already stated supra that both the parties relied on the documentary evidence apart from the oral evidence. The oral and documentary evidence available on record has clearly and categorically established and proved that at the first instance police issued FIR against the 1st respondent, after completion of investigation they filed charge sheet against the first respondent for the offence u/s.304-A IPC. According to the evidence of RW.1 coupled with the recitals of Ex.B.2, now it is made clear that the criminal case filed against the first respondent in respect of the accident was ended in acquittal.

14. Now it has to be considered, whether the finding of the criminal court under Ex.B.2 judgment is directly binding on the Tribunal or not. It is not the case where that the petitioners have not at all adduced any evidence in so far as the manner of accident is concerned. On the other hand, as I already stated supra that one of the eye witness by name Suresh was examined as PW.2. If the evidence of RW.1 is taken into consideration, it appears that he is an interested witness but at the same time the evidence of RW.1 coupled with Ex.B.2 goes to show that the criminal case filed against him was ended in acquittal. Therefore, in view of the settled proposition of law and basing on the judgment of the criminal court under Ex.B.1, the entire evidence of petitioners more particularly the evidence of PW.2 cannot be brushed aside.

15. It is not the case of the 1st respondent that no accident had occurred at all as the vehicle was not at all involved in the accident. On the other

hand it is categorically mentioned in the chief affidavit of RW.1 that there is a contributory negligence on the part of the deceased and therefore he is not liable to pay any compensation. So it appears from the recitals of the counter averments and also the chief affidavit of RW.1, the respondents have not been disputing the very factum of the accident, but according to them there was no negligence on the part of the 1st respondent.

16. In a case of this nature, the tribunal has to independently adjudicate the manner of the accident basing on the available evidence on record and to record a finding whether there was negligence on the part of the first respondent or not. In such circumstances, the documentary evidence relied on by the first respondent i.e. Exs.B.1 and B.2 can be taken into consideration as piece of evidence. A careful perusal and scrutiny of the evidence of PW.2, it appears that PW.2 is an independent witness and his evidence before this tribunal has with stood in the test of cross examination. In other words a careful perusal of evidence of PW.2, it is made clear that nothing was picked out from the testimony of PW.2 so as to doubt the same. As I already stated supra that PW.2 has also cited as a witness in criminal case. In such a case, it cannot be said that PW.2 is a planted witness. Having considered the evidence of PW.2, I am of the opinion that his evidence with stood in the test of cross-examination and inspired confidence. In such a case, I see no reason to disbelieve the evidence of PW.2. The accepted evidence has clearly established and proved before the tribunal that the accident occurred due to the negligence of the first respondent in driving the crime car.

17. The evidence on record has clearly established and proved that at the time of accident the deceased was proceeding on his two wheeler and the car came in a rash and negligent manner and hit the deceased, as a result the deceased fell down and succumbed to injuries. In such a case, it can be safely said that the deceased is a third party to the crime vehicle. Therefore, in the absence of any such convincing evidence, it is highly difficult to accept the contentions of respondents 1 and 2 that the accident occurred due to the negligence of the deceased only. On the other hand the oral and documentary evidence adduced by the petitioners has clearly and categorically established and proved that the accident occurred due to the negligence of the first respondent and accordingly issue No.1 is answered.

18. **ISSUE NO.2:**

According to the petitioners, they are the son and daughter of the deceased Govinda Chetty. Whereas it is the specific case of the respondents 1 and 2 that the petitioners are not the dependents on the deceased and in fact the deceased was aged about 60 years and he himself depending on the petitioner. According to the petitioners the deceased was aged about 60 years, the petitioners filed the certified copy of postmortem report and it is marked as Ex.A.3. A perusal of Ex.A.3, now it is made clear that the age of the deceased Govinda Chetty is shown as 60 years. According to the petitioners, the deceased was an agriculturalist and he was getting an income of Rs.10,000/- per month. For which except the bald statement of PW.1, there is no other convincing material or evidence on record. Therefore in the absence of such convincing evidence, it is highly difficult to accept the contention of the petitioners in so far as the income of the deceased is concerned.

19. According to the petitioners they are the son and daughter of the deceased, which fact is not in dispute. In such a case, it cannot be said that the petitioners are not entitled to claim compensation. Even according to the petitioners the deceased was aged about 60 years. According to the petitioners the deceased was aged 60 years and he was hale and healthy, there is no other convincing material or evidence on record contrary to the same. It is not the case where that the deceased was prevented from doing any work and he is unable to do any work. Taking into consideration of the facts and circumstances of the case on hand more particularly the age of the deceased, I am of the opinion that it is a fit case to consider the notional income of the deceased and thus this court has considered the notional income of the deceased at Rs.36000/- per annum and accordingly this issue is answered.

QUANTUM OF COMPENSATION:

Age of the deceased	60 years
Annual income of the deceased	Rs.36,000/-
Personal expenses :Rs.36,000/- x 1/3 =	Rs.12,000/-
Rs.36,000/- - Rs.12,000/- =	Rs.24,000/-
The multiplier applicable is "9"	
Rs.24,000/- x 9 =	Rs.2,16,000/-

CONVENTIONAL HEADS

Loss of consortium	40,000-00
Loss of estate	15,000-00
Funeral expenses	15,000-00
T O T A L ::	2,86,000/-

20. Therefore the petitioners 1 and 2 are entitled to claim compensation of **Rs.2,86,000/-** against the respondents 1 and 2 with interest at 9% p.a.. from the date of petition. Accordingly issue No.3 is answered.

21. In the result, the petition is **partly allowed** with proportionate costs and interest.

That an amount of **Rs.2,86,000/- (Rupees Two lakhs eighty six thousand only)** is awarded to the **petitioners 1 and 2** towards compensation with interest at 9% P.A from the date of petition i.e. 20.02.2020 till realization payable by the **respondents 1 and 2** within the period of **60 days** from the date of this award.

That an amount of **Rs.1,43,000/- (Rupees One lakh forty three thousand only)** is awarded to the **1st petitioner- G.Thulasiraman (Son)** with proportionate costs and interest.

On such deposit, the **1st Petitioner** is permitted to **withdraw entire share of his compensation with** interest and proportionate costs.

That an amount of **Rs.1,43,000/- (Rupees One lakh forty three thousand only)** is awarded to the **2nd petitioner- M.Kavitha (Daughter)** with proportionate costs and interest.

On such deposit, the **2nd Petitioner** is permitted to **withdraw entire share of her compensation with** interest and proportionate costs.

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

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in Open court, this the 11th day of October, 2022.

**Chairman,
MACT-cum- III ADJ,
Tirupati.**

Appendix of evidence

Witnesses examined

For Petitioners :

P.W.1 G.Thulasiraman
P.W.2 P.Suresh

For Respondents:

RW.1: J.Selvaraj

Exhibits marked on behalf of the Petitioners :-

- Ex.A1 Certified copy of FIR in Cr.No.84/2019 of Nagari PS.
Ex.A2 Certified copy of charge sheet.
Ex.A3 Certified copy of postmortem report.
Ex.A4 Certified copies of Aadhar cards of the petitioners.

Exhibits marked on behalf of the Respondents :

- Ex.B1 Driving licence of the first respondent.
Ex.B2 Certified copy of judgment in CC No.177 of 2019 on the file of
Judicature Magistrate of I Class, Nagari.

**Chairman,
MACT-cum- III ADJ,
Tirupati.**

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..... fair judgment.....