

IN THE COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL,  
(PRINCIPAL DISTRICT JUDGE) AT TIRUCHIRAPPALLI

PRESENT: THIRU. S. KUMARAGURU, B.L.,  
MOTOR ACCIDENT CLAIMS TRIBUNAL  
(PRINCIPAL DISTRICT JUDGE).

Tuesday, the 29<sup>th</sup> day of September 2015

**Motor Accident Claims Tribunal Original Petition No.1436/2009**

1. A.Murugesan

2. M.Kamatchi

.. Petitioners

/versus /

1. A.Lenin

2. The Branch Manager,  
M/s. National Insurance Company Limited,  
Jerome Building, 1<sup>st</sup> Floor,  
Fort station Road, Tiruchy-2.

3. M/s. Bajaj Alliance General Insurance  
Company Limited, Madurai 625010  
represented by its Branch Manager.

(3<sup>rd</sup> respondent impleaded as per order in  
I.A.No.1460/2012, dated 9.7.2012)

.. Respondents

This petition coming on 21.9.2015 before me for final hearing and upon perusing the petition, counter and other connected material records, upon hearing the arguments of Thiru M.Sivakumar advocate for the petitioners and of Thiru P.Sekar, advocate for the 2<sup>nd</sup> respondent and Thiru N.Thiagarajan advocate for the 3<sup>rd</sup> respondent and the 1<sup>st</sup> respondent having remained exparte and having stood over till this day for consideration, this court delivered the following:

**AWARD**

Petition filed under section 140, 163(A) and 166 of

Motor Vehicles Act by the parents of deceased Minor M.Raghavan claiming compensation of **Rs.6,00,000/-** for the death of their son Minor M.Raghavan in the accident took place on 27.12.2008.

**2. The petition averments in brief:**

2(i) The deceased Minor M.Raghavan is the son of the petitioners and the deceased was studying 4<sup>th</sup> standard at Panchayat Union Middle School at Alunthalaippur, Karudamangalam South. On 27.12.2008 at about 17.30 hours when the petitioners along with the deceased were waiting for the bus and standing opposite to, Sahayamadha Hospital Bus stop in Tiruchy to Chidambaram Main road, the Mahindra Van bearing registration No. TN-31/R-0160 came from east to west in a rash and negligent manner at high speed and the driver having lost control over the van dashed the vehicle against the deceased. Due to the impact of the accident the deceased was thrown away, fell down and sustained fatal injuries all over the body particularly on his right side of head, right check and chest. He was admitted in Government Hospital, Tiruchy and treated as inpatient from 27.12.2008 to 30.12.2008, but he died on 30.12.2008. A criminal case was registered against the driver of the Mahindra Van by Kallakudi police.

2.(ii) The deceased Minor M.Raghavan was 9 years old at the time of accident and he was a bright student and he was the class first student. The deceased was hale and healthy. But for the accident he would have lived for long time and after completing his studies he would have lived up to 80 years. The petitioners have lost the love and affection of their son. Due to the sudden demise of their son the

petitioners were put to untold misery and severe mental agony. The petitioners have estimated the loss at Rs.6,00,000/-. The offending vehicle belong to the 1<sup>st</sup> respondent. The petitioners showed the 2<sup>nd</sup> respondent as the insurer of the vehicle at the time of filing the petition and subsequently, the petitioner after gaining knowledge impleaded the 3<sup>rd</sup> respondent as the insurer of the vehicle and claim that the respondents 1 and 3 are jointly and severally liable to pay the compensation amount to the petitioners with interest.

**3. The averments of the counter of the 2<sup>nd</sup> respondent in brief:**

The averments made out in the petition regarding the accident are denied as false. The accident took place due to the negligence of the 1<sup>st</sup> respondent driver. The 1<sup>st</sup> respondent vehicle was not registered with this respondent and there is no insurance coverage by the 2<sup>nd</sup> respondent at the time of accident. Hence, this respondent is not liable to pay any compensation to the petitioners.

**4. The averments of the counter of 3<sup>rd</sup> respondent in brief:**

The manner of accident as set out in the petition is denied as false. The accident did not take place due to the negligence of the 1<sup>st</sup> respondent driver. The accident happened due to the contributory negligence on the part of the deceased and negligence on the part of the petitioners. The claim is arbitrary and excessive. Hence, the petition is to be dismissed.

**5. The 3<sup>rd</sup> respondent filed a petition under section**

170 of Motor Vehicles Act in I.A. No.445/2015 and the same was allowed on 26.8.2015. In order to prove the case on the side of the petitioners the 1<sup>st</sup> petitioner has been examined as P.W.1 and Ex.P.1 to P.7 have been marked. On the respondents' side no witness was examined and no document was marked.

**6. The points for consideration are:**

- 1) Whether the accident happened due to the rash and negligent act of the driver of the 1<sup>st</sup> respondent's vehicle Mahindra van?
- 2) Whether it is true that the 2<sup>nd</sup> respondent is not necessary party to the case?
- 3) Whether the petitioners are entitled to claim compensation? If so what is the quantum ?

**7. Point Nos.1 & 2:**

The learned counsel for the petitioners has contended that the accident was happened due to rash and negligent driving of the 1<sup>st</sup> respondent vehicle's driver. At the time of accident the 1<sup>st</sup> respondent had insured the vehicle with the 3<sup>rd</sup> respondent insurance company and at the time of accident the insurance was in force. Further, the learned counsel for the petitioners has contended that the said accident has taken place only due to negligence on the part of the 1<sup>st</sup> respondent vehicle's driver. Therefore, the respondents 1 and 3 are jointly and severally liable to pay the compensation to the petitioners. Hence, the petition is to be allowed.

8. On the other hand on the side of the respondents, the counsel for the 3<sup>rd</sup> respondent has contended

that the said accident was happened only due to negligence on the part of the first petitioner, father of the deceased. Further his contention is that the first petitioner has brought his child to the road in negligent manner. Due to his negligence alone the accident had occurred. Therefore, the 3<sup>rd</sup> respondent is not liable to pay any compensation to the petitioner.

9. In respect of the 2<sup>nd</sup> respondent it is contended that the 2<sup>nd</sup> respondent is not a necessary party to the petition because the first respondent has insured the vehicle only with the 3<sup>rd</sup> respondent. Therefore, the 2<sup>nd</sup> respondent's contention is that the petition is to be dismissed against the 2<sup>nd</sup> respondent.

10. After taking into consideration of both the Counsels' arguments and on perusal of oral and documentary evidence this Court has to decide whether the petitioners' counsel's contention is acceptable one in this regard. On perusal of FIR Ext.P1, it shows that the said accident was happened only due to negligence on the part of the first respondent vehicle's driver. On perusal of the contention of Ext.P1, it shows that at the time of accident the first petitioner and the deceased child were walking on the left side of the road in order to board the bus near the occurrence place. At that time on the backside of them the 1<sup>st</sup> respondent vehicle came in rash and negligent manner and dashed against the deceased minor boy. Due to the said accident the said minor boy died on the spot. The contention of Ext.P1 is corroborative to the evidence of P.W.1.

11. Further, the court has gone through the contention of Ext.P2, it is altered F.I.R. The same version

of Ext.P1 is incorporated in Ext.P2. From both documents it reveals that the said accident was happened only due to negligence on the part of the 1<sup>st</sup> respondent vehicle driver. Further, the Court has gone through the motor vehicle report in which it is found that the said accident was not happened due to any mechanical defect. Therefore, the contents of the documents established that the accident took place only due to negligence on the part of the 1<sup>st</sup> respondent vehicle driver.

12. Then, on perusal of the contents of Ext.P5 it is found that at the time of accident the 1<sup>st</sup> respondent has insured the vehicle with the 3<sup>rd</sup> respondent insurance company and the insurance was in force. Further, on perusal of entire case records it shows that the said accident was happened due to rash and negligent driving of the 1<sup>st</sup> respondent vehicle driver. The Counsel for the 3<sup>rd</sup> respondent has contended that the said accident happened only due to negligence on the part of the father of minor deceased. The above said aspect was not proved by the 3<sup>rd</sup> respondent through oral or documentary evidence. Therefore, this Court opined on the basis of available records in this case and came to the conclusion that the accident was happened only due to the negligent driving of the 1<sup>st</sup> respondent vehicle driver and that the first respondent's vehicle was insured with the 3<sup>rd</sup> respondent at the time of accident and the insurance coverage was in force at the time of accident.

13. The next contention of the petitioners is that the first respondent vehicle was insured with the 3<sup>rd</sup> respondent insurance company and the insurance for the vehicle was in force at the time of accident, the 1<sup>st</sup> and 3<sup>rd</sup>

respondents are liable to pay compensation to the petitioners. The learned Counsel for the 3<sup>rd</sup> respondent argued that the petitioner has impleaded the 3<sup>rd</sup> respondent only in the year of 2012. Therefore, the 3<sup>rd</sup> respondent is not liable to pay interest upto the period of impleading the party to the proceedings. In this regard, this court has gone through the case records and it is found that the petitioners have impleaded the 3<sup>rd</sup> respondent as per I.A. 1460/2012 on 9.7.2012. This contention is not acceptable. The offending vehicle was insured with the 3<sup>rd</sup> respondent and it was also not disputed. Therefore, the 3<sup>rd</sup> respondent is liable to pay interest from the date of petition. At the same time this main petition was dismissed for default on 17.9.2009 and restored on 4.7.2011 and again dismissed for default on 19.12.2012 and restored on 20.1.2015. The petitions were allowed on waiver of interest for the default period. So, the petitioners are not entitled to any interest for the period from 17.9.2009 to 3.7.2011 and from 19.12.2012 to 21.1.2015.

#### **14. Point No.3:**

At the time of accident the minor boy was aged about 9 years and he was studying in 4<sup>th</sup> standard. The deceased is a non-earning member. The learned counsel for the petitioners relied the decision reported in 2009(1) TN MAC 593 (SC) wherein the Honourable Supreme Court has held that in respect of non earning members, minor child between the age upto 9 years compensation has to be calculated considering the pecuniary and non pecuniary loss and under the head of pecuniary loss the probable annual income has to be treated as Rs.15,000/- and after deducting one third amount towards the personal expenses of the deceased. The

pecuniary loss has to be taken as Rs.10,000/- per annum and applying multiplier 15, the total pecuniary loss is to be taken as Rs. 1,50,000/-. Further, it is held that under the head of non pecuniary loss of Rs. 75,000/- also to be awarded.

15. The learned Counsel for the 3<sup>rd</sup> respondent Counsel relied on reported case reported in 2009 (1) TNMAC 593(SC),

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/vs./

Kiran Pal and Others ..Respondents

The above said case law is applicable to the facts of the present case. In this case the deceased is aged 9 years. Taken into consideration of the observation of the Honourable High Court in the above referred case compensation for pecuniary loss is arrived at (Rs.15,000 x 2/3 is Rs.10,000/- x 15) = **Rs.1,50,000/-** and a sum of **Rs.75,000/-** is awarded towards non-pecuniary loss. The total sum of **Rs.2,25,000/-** is awarded as compensation to the petitioners and the petitioners are also entitled to get interest at the rate of 7.5% per annum from the date petition to till deposit of amount excluding the default period from 17.9.2009 to 3.7.2011 and from 19.12.2012 to 21.1.2015. The 2<sup>nd</sup> petitioner is the mother of the deceased and the 1<sup>st</sup> petitioner is the father. The father is not a dependent on his son. Therefore, the 1<sup>st</sup> petitioner is entitled to **Rs.75,000/-** and the 2<sup>nd</sup> petitioner is entitled to **Rs.1,50,000/-**.

In the result, this petition is partly allowed with proportionate costs and the 1<sup>st</sup> and 3<sup>rd</sup> respondents are

directed to pay a sum of Rs.2,25,000/- (Rupees two lakhs twenty five thousand only) as compensation to the petitioners with interest at the rate of 7.5% per annum from the date petition till the date of deposit of compensation amount excluding the default period from 17.9.2009 to 3.7.2011 and from 19.12.2012 to 21.1.2015. Time for deposit of amount two months. From out of the award amount the first petitioner is entitled to Rs.75,000/- and the 2<sup>nd</sup> petitioner to Rs.1,50,000/-. On deposit the petitioners are permitted to withdraw 50% of their respective share amount with interest and cost. The balance amount has to be deposited in anyone of the Nationalised bank for a period of three years and the petitioners are directed to get the interest directly from the bank once in 3 months. The petitioners are directed to pay the necessary court fee within 10 days. Advocate fee is Rs.7,500/-. In respect of the 2<sup>nd</sup> respondent, the petition is dismissed.

Dictated to the Stenographer, transcribed by her, Corrected and pronounced by me in open court on this 29<sup>th</sup> day of September 2015.

**Principal District Judge,  
Tiruchirappalli.**

**Petitioners' Documents :**

|          |            |                                           |
|----------|------------|-------------------------------------------|
| Ex.P.1/  | 28.12.2008 | Certified copy of F.I.R.                  |
| Ex.P.2/  | -          | Certified copy of altered F.I.R           |
| Ex.P.3/  | 31.12.2008 | Certified copy of Postmortem Certificate. |
| Ex.P.4 / | -          | Certified copy of sketch                  |
| Ex.P.5/  | -          | Certified copy of MVI report              |
| Ex.P.6/  | 30.12.2008 | Death Certificate of Minor Raghavan       |
| Ex.P.7/  | 5.03.2009  | Legal heir Certificate.                   |

**Respondents' Documents:** NIL

**Petitioners' witnesses:**

P.W.1/ A.Murugesan

**Respondents' witnesses:** NIL

**P.D.J.**

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