

KABC020275172023



IN THE COURT OF THE IX ASCJ. SMALL CAUSES AND
ADDL. MACT, BENGALURU, (SCCH-7)

Dated this the 31st day of January 2025

BEFORE: **Sri. SHYAM PRAKASH**

B.A.L, LLB.,
IX Addl. Small Causes Judge,
Court of Small Causes,
Member, MACT-7, Bengaluru.

M.V.C. No.5980/2023

Petitioners : 1. Smt.Ramadevi
W/o Late Balaraju
Aged about 58 years,

2. Smt. K.Himabindu
W/o Chandrashekara Kalikivae,
Aged about 36 years,

3. Smt.B.Yagnasindhu,
W/o M.Jalandhar Naidu,
Aged about 34 years,

4. Smt.B.Monalisa
W/o Jeevarathnam
Aged about 32 years,

All are residing at
Flat No.673, Kotigunta housing colony,
Murkambattu, Chittoor Dist,
Andhra Pradesh 517127.

(By Sri.T.V.Ramesh, Advocate)

-VERSUS -

Respondents : 1. Sri.Manikantan .K.
S/o K.Kaniyappan, Major,
R/o No.4-1/1, Vengamuthu street 75,
Doddipalli, Chittoor Urban Dist.
Andhra Pradesh 517001

(Exparte)

2. The Oriental Insurance
Company Limited,
Regional Office, No.44/45,
4th floor, Leo shopping complex,
Residency road cross, Bangalore – 25.

(By Sri.Udayakrishna, Advocate)

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: J U D G M E N T :

1. This petition is filed u/s.166 of M.V.Act 1989 for claiming compensation on account of death of Sri.Balaraju S/o late K.M.Muneppa.

2. The brief facts of the case is that, on 05-08-2023 at about 11-20 a.m., within the jurisdiction of Chittoor Taluk Police Station, near Murakambattu – Bengaluru old bypass road, in front of Hyundai showroom at Venngannapalli cross, when the deceased/Balaraju riding the unoffending Motor Cycle bearing Reg. No.AP-39-RE-5427, at that time the accused/K.Manikantan/ Respondent No.1 drove the offending lorry bearing Reg. No.AP-04-W-2948 from Murakambattu in a high speed, rash or negligent manner so as to endanger human life and dashed against the unoffending Motor Cycle and caused the accident. As a result the rider/deceased of the unoffending vehicle fell down and sustained grievous bleeding injuries to head, backside of the shoulder, scratched injuries at back side and died at the spot. Thereafter, the daughter of the deceased Smt.Monalisa/ Petitioner No.4 lodged complaint before the Chittoor Taluk police station. Accordingly, a case was registered in their Crime No.104/2023 and prepared F.I.R. for the offence punishable under sections 304A of IPC R/w Section 134(A and B) R/w section 147 of MV Act and submitted to the jurisdictional judicial magistrate and the superior officers and investigation was taken up by the investigating Officer.

3. It is contended that the Petitioner No.1 is the wife and Petitioners No.2 to 4 are the children of the deceased Sri.Balaraju and as on the date of the alleged accident the said deceased was aged about 65 years and working as Agriculturist and also Pensioner and earning income was Rs.35,000/- p.a. The petitioners have claimed compensation of Rs.50,00,000/- under different head of loss of dependency, funeral and obsequies expenses, loss of filial love, loss of consortium, loss of estate.
4. It is contended that the accident is due to the rash and negligent driving of the driver of the offending vehicle offending lorry bearing Reg. No.AP-04-W-2948. The respondent No.1 is the R.C. Owner and respondent No.2 is the Insurer of the offending vehicle offending lorry bearing Reg. No.AP-04-W-2948. Hence, the respondents are jointly and severally liable to pay the compensation
5. In response to the notice, the respondent No.2 has appeared through their counsel and filed its written statement and Respondent No.1 placed exparte.
6. In the written statement of Respondent No.2, Insurance Company has admitting that the offending vehicle was duly insured with it and the same is valid on the date of the accident and denying the petition averments in part and contended that the Petitioner has not furnished the particulars of the vehicle including the driving licence of

the driver of the offending vehicle. Further it is denied having insured the vehicle involved in the accident. The insurer liability is subjected to validity of the DL, permit and other documents as per the law. Further it is alleged that there is no compliance of provision under Section 134(C), 158 of M.V. Act. Further it is alleged that the alleged accident is occurred due to negligence and fault of the deceased and no fault of the driver of the offending vehicle. The driver of the offending vehicle is not possessing valid DL, FC and effective permit at the time of alleged accident. As such the insurance company is not liable to pay any compensation and in order to obtained compensation the Petitioners have constrained to filed the present claim petition. Further it is denied that the age, income and occupation of the deceased and further period that the petition is false and frivolous in the eye of law and the quantum of compensation claimed by the claimants is exorbitant and reserves the right u/s.170 of M.V.Act. Hence sought for dismissal of the petition.

7. On the basis of above pleadings, this tribunal framed the following:-

:: I S S U E S ::

- (1) Whether the Petitioners prove that deceased K.M.Balaraju S/o Late K.S.Muneppa sustained injuries due to rash and negligent act of driving of

offending lorry bearing Reg. No.AP-04-W-2948 dated 07.08.2023 at about 12-40 p.m. and succumbed to injuries?

- (2) Whether the Petitioners prove the age and earnings of the deceased as stated in the claim petition?
- (3) Whether the Petitioners prove that they are legal heirs of deceased K.M.Balaraju S/o Late K.S.Muneppa?
- (4) Whether petitioners are entitled for compensation? If so, what is the quantum? from whom?
- (5) What order or award?

8. In support of the case of the petitioners, the petitioner No.4 is examined as PW-1 and got marked Exs.P-1 to P-16 documents and got examined one witness as PW.2 and got marked one document as Ex.P17 and closed their side. In spite of granting sufficient time, the Respondent No.2 not adduced its evidence, but one document got marked as Ex.R1.

9. Heard the arguments of both side.

10. My findings to the above referred Issues are as under;

Issue No.1	:-	In the affirmative
Issue No.2	:-	Partly in the affirmative
Issue No.3	:-	In the affirmative
Issue No.4	:-	Partly in the affirmative
Issue No.5	:-	As per final order for the following:-

: R E A S O N S :

11. **Issue No.1** : This petition is filed u/s.166 of M.V. Act 1989 for seeking compensation for the death of the deceased K.M.Balaraju S/o Late K.S.Muneppa.
12. The petitioners' in the petition have contended that on 05-08-2023 at about 11-20 a.m., within the jurisdiction of Chittoor Taluk Police Station, near Murakambattu – Bengaluru old bypass road, in front of Hyundai showroom at Venngannapalli cross, when the deceased/Balaraju riding the unoffending Motor Cycle bearing Reg. No.AP-39-RE-5427, at that time the accused/K.Manikantan/Respondent No.1 drove the offending lorry bearing Reg. No.AP-04-W-2948 from Murakambattu in a high speed, rash or negligent manner so as to endanger human life and dashed against the unoffending Motor Cycle and caused the accident. As a result the rider/deceased of the unoffending vehicle fell down and sustained grievous bleeding injuries to head, backside of the shoulder, scratched injuries at back side and died at the spot. It is contended that the accident was occurred due to rash and negligent driving of the driver of the offending vehicle. The Respondent No.2 admitted the alleged accident and its version is that, the alleged accident occurred due to the negligence, fault and rash and

negligent driving of the rider of the offending Motor Cycle and the driver of the offending vehicle. As such both the rider and driver of the respective vehicles were negligent. Therefore the alleged accident occurred due to fault of the rider of the unoffending vehicle and no fault of the driver of the offending vehicle and therefore the driver of the offending Motor Cycle cannot be held to be negligent. In case of composite negligence the claimant is entitled to sue both or any one of the joint tortfeasor and to recover the entire compensation as liability of joint tort-feasors is joint and several. Further it is alleged that the driver of the offending vehicle is not possessing valid DL, FC and effective permit at the time of alleged accident. As such the insurance company is not liable to pay any compensation and in order to obtained compensation the Petitioners have constrained to filed the present claim petition. Further it is denied that the age, income and occupation of the deceased and further period that the petition is false and frivolous in the eye of law and the quantum of compensation claimed by the claimants is exorbitant and sought for dismissal of the petition.

13. The burden to prove the framed issues lies on the Petitioners. Hence, in order to prove their case, the Petitioner No.4 herself examined as P.W.1 and she has

reiterated the entire petition averments and contentions taken in the course of claim petition in her evidence before this Court and also produced as many as Exs.P.1 to P.16 documents. Therefore, there is no necessity to repeat those facts again. I have gone through the documents produced by the PW-1. Ex.P-1 is the True copy of FIR in Crime No.104/2023, Ex.P-2 is the True copy of complaint dated 07-08-2023, Ex.P-2(a) is the Translation copy of complaint dated 07-08-2023, Ex.P.3 is the Motor Vehicle Accident Report, Ex.P.4 is the Accident information Report, Ex.P.5 is the Inquest Mahazar, Ex.P.5(a) is the Translation copy of Inquest Mahazar, Ex.P.6 is the Postmortem report, Ex.P.7 is the Charge Sheet, Ex.P.8 is the Family Member Certificate, Ex.P.9 is the Pension certificate of the deceased, Ex.P.10 is the Bank statement copy, Ex.P.11 is the Copy of Payment slip. Ex.P.12 to 17 Notarized copies of Aadhaar cards.

14. In the cross-examination of PW-1 by counsel for Respondent No.2 she has deposed that the Petitioner No.1 is the wife and Petitioners No.2 to 4 are the daughters of the deceased and all daughters are married. At the time of accident her father was aged about 70 years and she has not seen the alleged accident and but heard about the same. Further she

has denied that the alleged accident occurred due to negligence and fault of the rider of the unoffending vehicle and no fault of the driver of the offending vehicle. Further she has deposed that her deceased father was retired on 2018 and getting Rs.48,000/- pension. Further she has denied that now her mother is getting pension of her father as such they were not facing financial crunch. Further she has denied that the Petitioners are not dependents of the deceased. Further she denied that they have not incurred Rs.50,000/- expenditure towards the funeral. Further she has denied that in order to get more compensation in collusion with the police they have falsely implicated the offending vehicle and filed false case against the offending vehicle and filed false evidence affidavit and produced concocted created documents and deposing falsely. During the cross examination Pw.1 has consistently deposed on the lines of the petition/prosecution case and he has made those versions, which could not be shattered in cross examination.

15. In the cross-examination of PW-2 he has deposed that he is the eye witness of the alleged accident. Further he has deposed that, near Murakambattu – Bengaluru old bypass road, in front of Hyundai showroom at Venngannapalli cross, when the deceased/Balaraju

riding the unoffending Motor Cycle bearing Reg. No.AP-39-RE-5427, at that time the accused/K.Manikantan/Respondent No.1 drove the offending lorry bearing Reg. No.AP-04-W-2948 from Murakambattu in a high speed, rash or negligent manner so as to endanger human life and dashed against the unoffending Motor Cycle and caused the accident. As a result the rider/deceased of the unoffending vehicle fell down and sustained grievous bleeding injuries to head, backside of the shoulder, scratched injuries at back side and died at the spot. Further he has denied that the alleged accident occurred due to negligence and fault of the rider of the unoffending vehicle.

16. On going through the Ex.P-6/Postmortem report it is seen that Doctor opined that cause of death of deceased is due to hypovolamic neurogenic shock leading to cardio respiratory arrest in the alleged road traffic accident.
17. The Respondent No.2 contended that the accused is innocent and falsely implicated by the police and in order to prove its version the Respondent No.2 has neither stepped into the witness box nor produced documents and any how the Respondent No.2 cross-examined the PW-1.

18. On going through the Ex.P-2/Complaint & Ex.P2(a) Translation copy of complaint it is seen that on 05-08-2023 at about 11-20 a.m., within the jurisdiction of Chittoor Taluk Police Station, near Murakambattu – Bengaluru old bypass road, in front of Hyundai showroom at Venngannapalli cross, when the deceased/Balaraju riding the unoffending Motor Cycle bearing Reg. No.AP-39-RE-5427, at that time the accused/K.Manikantan/Respondent No.1 drove the offending lorry bearing Reg. No.AP-04-W-2948 from Murakambattu in a high speed, rash or negligent manner so as to endanger human life and dashed against the unoffending Motor Cycle and caused the accident. As a result the rider/deceased of the unoffending vehicle fell down and sustained grievous bleeding injuries to head, backside of the shoulder, scratched injuries at back side and died at the spot.
19. The Counsel for Respondent No.2 claimed the said driver of offending vehicle/Accused to be innocent and further the counsel for Respondent No.2 contended that, the alleged accident occurred due to no fault of the accused, slowly he may be driving and therefore he cannot be held to be negligent. On going through the prosecution papers, FIR, Complaint, IMV Report, Inquest mahazar, Postmortem report and Charge Sheet and the evidence of PW-1 are specific to the effect that,

the driver of the offending vehicle/accused is the reason for the said incident and at his instance, the incident took place. The alleged accident was occurred due to rash and negligent driving of the offending vehicle and fault of the accused. The evidence of Pw.1 and PW-2 are corroborated to the case of the prosecution and they have supported the manner of occurrence in their evidence in the court and the manner of occurrence is the same as alleged in the Ex.P2/complaint. It seems that Pw.1 and PW-2 have clearly made those versions, which could not be shattered in cross examination. Therefore, considering the above discussed aspects collectively, it is the considered opinion of the Court that, the incident having been taken place in the manner asserted by the prosecution and the same being proved to have been taken place in the manner alleged by the prosecution, the accused drove the offending vehicle in a rash and negligent manner so as to endangering to human life and at the spot dashed to the deceased Balaraju S/o late K.S.Muneppa, as a result of which, he sustained grievous injury and died at the spot due to alleged accident. In view of the police records, it clearly establishes that the alleged accident occurred at the spot. It is not in dispute as to the aspect that, the deceased Balaraju S/o late K.S.Muneppa, died due to injuries sustained in the alleged accident.

Because, for the above reasons collectively it is clear that, the accident happened due to rash and negligent act of the accused. It is evident that injuries and cause of death of deceased Balaraju S/o late K.S.Muneppa, noted in the Ex.P6/PM report would be caused by a road accident. At the same time, it has come out in evidence that the alleged accident was occurred due to rash or negligent driving of the offending vehicle and fault of the accused. Matters being so, the acts of the accused person clearly constitute the offences punishable under sections 304A of IPC. Thus because of such negligent act of the accused/driver of the offending vehicle, it resulted in the death of the innocent senior citizen Balaraju S/o late K.S.Muneppa, aforesaid, as the driver of offending vehicle/accused drove the said offending vehicle very rashly and negligently on the spot. Therefore, the alleged accident occurred due to the fault of the accused/driver of the offending vehicle. **Accordingly I have answered Issue No.1 in the Affirmative.**

20. **Issue No.2 to 4:-** The Learned Counsel for the Petitioners contended that the deceased was aged about 65 years at the time of accident and he was Agriculturist by profession and also he was Pensioner and earning an income of Rs.35,000/- p.m. The Petitioner No.1 is wife and Petitioners No.2 to 4 are the children of the

deceased. Further the Counsel of the Petitioners contended that as per the Judgment of the Hon'ble Supreme Court in the case of ***Magma General Insurance Co. Ltd., V/s Nanu Ram reported in 2018 ACJ 2782***, the Petitioners being legal heirs and dependents of deceased, each of the Petitioners are entitled for compensation under the head of loss of love and affection consortium and prays to award the compensation as prayed in the petition.

21. On the other hand the learned Counsel for Respondent No.2 insurance company contended that even though the Petitioners claimed that the deceased was earning Rs.35,000/- p.m., the same is not established by the claimants by producing the documents. Since the Petitioners have not established the income of the deceased, they are not entitled for compensation towards future prospects and hence prays dismissal of the petition.
22. On going through the Ex.P-12 to Ex.P.16/Adhar Cards of the deceased and Petitioners it is seen that the Petitioner No.1 is the wife and Petitioners No.2 to 4 are the children of the deceased. Hence on the strength of Ex.P-12 to Ex.P-16 it is crystal clear that the Petitioners are the legal representatives and dependents of the deceased.

23. The petitioners have contended that as on the date of the accident the deceased was aged about 65 years and he was Agriculturist by profession and also he was Pensioner and earning an income of Rs.35,000/- p.m. The petitioners relied on the Ex.P-11/ Payment slips of the deceased, wherein the date of birth of the deceased is shown as 01-10-1958 and this accident was taken place on 07-08-2023. Hence it is clear that as on the date of the accident the deceased was aged about 65 years. Hence the age of the deceased is considered as 65 years.
24. It is not in dispute that the deceased died in the road traffic accident occurred due to rash and negligent driving of the offending vehicle by its driver. In the instance case the petitioners claimed that deceased was Agriculturist by profession and also he was Pensioner and earning an income of Rs.35,000/- p.m. The petitioners have produced Ex.P11 Copies of Payment slips to prove the actual income of the deceased. As per the payment slip for the month of July -2023, the total gross pension of the deceased is Rs.28,300/-. Hence, this tribunal considered the monthly income of the deceased at Rs.28,300/-

25. As per decision reported in ***AIR 2017 SC 5157 in the case of National Insurance Co. Ltd., V/s Pranay Sethy*** deduct $1/4^{\text{th}}$ of the income towards personal and living expenses of the deceased and the remaining amount, i.e., Rs.21,225/- (Rs.28,300/- X $1/4$ = Rs.7,075/-), (Rs.28,300/- - 7,075/- = Rs.21,225/-) has to be taken as his/deceased contribution to the family. The deceased was aged about 65 years at the time of accident and multiplier applicable to his age group is '7'. Thus the claimants are entitled to compensation of Rs.17,82,900/- (Rs.21,225/- x 12 x 7) on account of loss of dependency.
26. In addition, the Petitioners are entitled to compensation of Rs.15,000/- on account of Loss of estate and compensation of Rs.15,000/- on account of Funeral expenses. In view of the law laid down by the Hon'ble Supreme Court in ***2018 ACJ 2782 in the Case of Magma General Insurance Co. Ltd., V/s Nanu Ram***, Petitioners No.2 to 4 are the children of the deceased are entitled for compensation of Rs.40,000/- each under the head of loss of filial consortium and also entitled for compensation of Rs.50,000/- each under the head of love and affection. Thus the Petitioners are entitled to the following compensation:
27. The details of compensation I propose to award are as under:

Sl. No.	Compensation under different heads	Amount in (Rs)
1	Loss of dependency	17,82,900.00
2	Funeral Expenses	15,000.00
3	Loss of Estate	15,000.00
4	Loss of filial consortium	1,60,000.00
5	Loss of love and affection	2,00,000.00
	Total	21,72,900.00

28. The Petitioners are entitled to a total compensation of **Rs. 21,72,900/-**.
29. Hence, the respondents No.1 and 2 are jointly and severally liable to pay the award amount. However, the primary liability to pay the compensation amount is fixed on the respondent No.2/Insurance Company and it is directed to deposit the compensation amount. Thus I conclude that, the Insurance company/Respondent No.2 is directed to deposit the compensation amount along with interest at 6% p.a., from the date of filing of the claim petition. **Hence, I answer issue No.2 and 4 are partly in the Affirmative and Issue No.3 in the Affirmative.**

30. **Issue No.5:-** In view of my above discussions and findings on above Issues, I proceed to pass the following:

: O R D E R :

The petition filed by the petitioners is allowed in part.

The petitioners are entitled for compensation of Rs.**21,72,900/-** (Rupees Twenty One Lakhs Seventy Two Thousand and Nine Hundred only) with interest at the rate of 6% per annum from the date of petition till realization.

The Insurance company/Respondent No.2 is directed to deposit the compensation amount within two months from the date of this order.

Compensation amount is apportioned as follows:-

Petitioner No.1 – Wife	-	40%
Petitioners No.2 to 4 – Daughters	-	20% each

After deposit, entire share of compensation amount with interest allotted to the Petitioners No.1 to 4 shall be released in their favour through E-payment with proper verification and identification.

Advocate's fee is fixed at Rs.1,000/-.

Draw an award accordingly.

(Dictated to the Stenographer directly on computer, typed by him, corrected and signed by me and then pronounced in the Open Court on 31st day of January 2025)

(SHYAM PRAKASH)

IX ADDL. JUDGE & ACJM,
Court of Small Causes,
Bengaluru.

: ANNEXURE :

List Of Witnesses Examined For Petitioner/s.

PW-1 : Smt.Monalisa
PW-2 : Sri. R. Murali Naidu

List of exhibited documents marked for Petitioner/s.

Ex.P-1 : True copy of FIR
Ex.P-2 : True copy of complaint
Ex.P-2(a) : Translation copy of complaint
Ex.P.3 : Motor Vehicle Accident Report
Ex.P4 : Accident information report,
Ex.P.5 : Inquest Mahazar
Ex.P.5(a) : Translation copy of nquest Mahazar
Ex.P.6 : Postmortem report
Ex.P.7 : Charge Sheet
Ex.P.8 : Family Member Certificate

Ex.P.9 : Pensioner certificate
Ex.P.10 : Copy of bank statement
Ex.P.11 : Copy of Pay slips
Ex.P.12
to 17 : Adhar Cards of Deceased, Petitioner No.1 to 4
and also Pw.2.

List Of Witnesses Examined For Respondent/s.

- NIL -

List of exhibited documents marked for Respondent/s.

Ex.R1 : Copy of Insurance policy.

(Shyam Prakash)
IX ADDL. JUDGE & ACJM,
Court of Small Causes,
Bengaluru.