

IN THE COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL AND
III ADDITIONAL DISTRICT JUDGE, VELLORE AT TIRUPATTUR.

Present: Tmt.T.INDRANI, M.A.,M.L.

Motor Accident Claims Tribunal Judge/
Additional District Judge.

Thurs day the 27th day of February 2018.

M.C.O.P.NO 1 of 2018:-

1) Syed Imran
2) Minor Syed Rehan
3) Minor Sanyia Taskeen
Minor represented by their
N.F.Father Syed Imran

... Petitioners.

Vs

1) The Joint Director of Health Services
Tiruvallur
2) National Insurance Co.Ltd.,
Vellore.
3) S.Vinothkumar
4) ICIC Laombard General Insurance
Company, Ltd., Chennai

... Respondents.

This petition was coming for final hearing before me on 25.2.2019 in the presence of Y.Raja counsel for the petitioners and Thiru K.Nirupama counsel for the 4th respondent, and 1 to 3 respondents having been called absent remained exparte, and on hearing the arguments of both side and upon perusing the entire case records and having stood over for consideration till this day, this tribunal delivered the following:-

O R D E R:-

Petition for compensation filed by the petitioners u/s 166(A) of M.V Act against the respondents for a sum of Rs.50,00,000/-for a road accident took place on 18.10.2017 at about 4.45 PM Near Avarampalayam Bus stop, inbetween Ussoor-Vellore Adukkamparai main road and out of that accident the 1st petitioner's wife Naseeba banu died.

2. Brief averments of the petition is as follow:-

The 1st petitioner is the husband and 2nd petitioner is the minor son and 3rd respondent is the minor daughter of

the deceased Naseeba banu. The deceased aged about 32 years. The said Naseeba banu was doing bulls business and also dong beef business and she was earning more than Rs.30,000/- per month. On 18.10.2017 at about 4.45 PM near Avarampalayam bus stop inbetween Ussoor-Vellore Adukkamparai main road, the Ambulance Van bearing registration No TN 22/G 1971 belonged to the 1st respondent was driven by its driver in the course of his employment under the 1st respondent in a very rash and negligent manner towards Vellore Adukkamparai from Ussoor, at the time the Honda Shine motor cycle bearing registration No.TN 23/CC 0277 belonged to the 3rd respondent was driven by its rider in a very rash and negligent manner in the opposite direction and suddenly crossed the main road without following traffic rules and both said vehicles met with an accident and the said ambulance van was hit against the said motorcycle and then hit against the tamarind tree and then capsized. Due to the impact, the said Naseeba banu and few others who were traveling in the said Ambulance van were sustained injuries and said Naseeba banu died on the way to the hospital. A case u/s 279, 337 and 304 (A) IPC was registered by the Ariyoor Police in Cr.No:217/2017 against the rider of the Motor vehicle bearing registration NO. TN 23 CC 0277. The accident took place due to the rash and negligent driving of the both vehicles involved in the said accident. 1st respondent is the owner of the Ambulance Van bearing registration No TN 20/G/1971, 2nd respondent is the insurer of the 108 Ambulance. 3rd respondent is the owner of the motor cycle bearing registration NO. TN 23 CC 0277. 4th respondent is the insurer of the motorcycle. Hence the respondents are liable to pay compensation to the petitioners for Rs.50,00,000/-on various heads. Hence, the petition.

3. 1 to 3 Respondents are called absent remained exparte.

4. Brief contents of counter of the 4th respondent is as follow:

The allegations contained in the petition are false and the petition is not maintainable. The said accident had caused due to the negligence of the Ambulance driver, one Anandan the Ambulance driver drove the vehicle in a rash and negligent manner, without following the traffic rules and with an uncontrollable speed, he lost his control and dashed against the 3rd respondent's Honda Shine motorcycle and then dashed against the road side tamarind tree and capsized. Since the 3rd respondent's Motor cycle rider was minor the Ariyoor Police registered a case as against the rider of the motorcycle. But originally the accident had occurred due to negligence of the Ambulance driver. Hence 1 and 2 respondents alone liable to pay the compensation. Without prejudice to the above the driver of the respondent's Ambulance was at least guilty of contributory negligence of major extent. The 3rd respondent's motorcycle Minor Harish Kumar was not possessed driving licence hence it is violation of the policy condition. Hence this respondent is not liable to pay compensation. The petitioners are put to strict proof of the manner of accident, dependency on the deceased, transportation and funeral expenses. The age, occupation and income of the deceased mentioned in the petition is denied as false. The claim on various heads are excessive. Hence, this respondent is not liable to pay any compensation and the petition is liable to be dismissed.

5. During enquiry on the side of the petitioners PW1 to PW3 were examined and Ex.P1 to Ex.P.13 were marked. On the side of the 4th respondent RW1 and RW2 were examined and ExR1 to Ex.R7 exhibits were marked.

6. On the above said pleadings, the following point arise for consideration.

1. Whether the petitioners are entitled for compensation? If so, from whom and how much?

7.On Point:-

Records perused. With a view to prove the case of the petitioners, the 1st petitioner has been examined himself as PW1 and through him F.I.R. copy in Cr.No:217/2017 against the rider of the Motor vehicle bearing registration NO.TN 23 CC 0277 u/s 279, 337 and 304 (A) IPC of Ariyoor Police station is marked as Ex.P1, Ex.P13 is the copy of charge sheet, Ex.R2 is the Investigation report marked on the side of the 4th respondent. Ex.P1, Ex.P13 and Ex.R2 reveal that the 3rd respondent's rider of the Hero Honda Shine motorcycle bearing registration NO. TN 23 CC 0277 by name Harishkumar has been shown as accused. To prove the same PW3 Kumar the Special Inspector of Police, Ariyoor has been examined and he deposed that the Ex.P13 charge sheet filed against the the rider of the Hero Honda and at the time of accident the Harishkumar is the minor the age of the Harishkumar was 17. Further in Ex.P1 FIR it is clearly mentioned that the 3rd respondent's rider of the Hero Honda Shine motorcycle bearing registration NO. TN 23 CC 0277 by name Harishkumar rode the vehicle at Avarampalayam bus stop inbetween Ussoor-Vellore Adukkamparai main road, in a very rash and negligent manner in the opposite direction and suddenly crossed the main road without following traffic rules and both said vehicles met with an accident and the said ambulance van was hit against the said motorcycle. The Ambulance Van driver Anandhan has been examined as PW2 he admits in his cross examination that the ambulance van was hit against the said motorcycle and then hit against the tamarind tree and then capsized. The two wheeler was not crossed the road but came in the opposite direction. Further the Ambulance dashed against the two wheeler and then came to right side and dashed a tree and then capsized. Hence both are equally responsible for the accident. Hence both the 1st respondent's driver and 3rd respondent's driver are held liable for each 50% contributory negligence.

8. Ex.P5 is the copy of the driving license of the 1st respondent's Ambulance Van Driver. It reveals that the Ambulance Van bearing registration No TN 22/G 1971 got valid driving licence at the time of accident. Ex.P3 copy R.C. it reveals that the 1st respondent is the owner of the Ambulance Van bearing registration No TN 22/G 1971. Ex.P4 is the copy of Insurance police it reveals that Ambulance Van bearing registration No.TN 22/G 1971 was having insurance policy under the second respondent and the said insurance was in force at the time of accident. Hence the 2nd respondent is liable to pay 50% of compensation if any paid to the petitioners.

9. Ex.P6 is the copy of R.C. of two wheeler it reveals that the 3rd respondent is the owner of the Hero Honda Shine motorcycle bearing registration NO.TN 23 CC 0277. Ex.P7 is the copy of Insurance police it reveals that Hero Honda Shine motorcycle bearing registration NO.TN 23 CC 0277 was having insurance policy under the 4th respondent and the said insurance was in force at the time of accident.

10. 4th respondent's plea is that the 3rd respondent's rider of the Hero Honda Shine motorcycle bearing registration NO. TN 23 CC 0277 was not having valid driving licence at the time accident and he was 17 years old minor boy at the time of accident. To prove the same the Junior assistant of the RTO Office, Vellore has been examined as RW1 through him a letter has been marked as Ex.R7. It reveals that the rider of the two wheeler got no valid driving licence at the time of accident to ride two wheeler. It is violation of policy condition. 3rd respondent has to prove that the rider was having licence to ride the two wheeler but he remained exparte. Further Ex.R3 and R4 are the letters sent by R4 to R3 asking him to produce driving licence of Harish kumar but he has not produced the same. Hence it proves that Harish kumar was not having driving licence. Hence 3rd respondent is liable to pay

compensation since he allowed the person who has got no valid licence to ride. However the deceased is a third party hence the 4th respondent has to pay the 50% compensation and then recover the same from the 3rd respondent.

11. The petitioners contention is that they are the legal heirs and dependents of deceased the 1st petitioner is the husband and 2nd petitioner is the minor son and 3rd petitioner is the minor daughter of the deceased Naseeba banu. Ex.P11 is the copy of legal heir certificate filed by the petitioners side. It reveals that, the petitioners are the husband and minor son and daughter of the deceased Naseeba banu. Petitioners are the dependents of the deceased Naseeba banu. The petitioners claim that the age of the deceased at the time of accident was 32 years. Ex.P2 is the copy of Postmortem certificate of the deceased. As per Ex.P2 the age of the Naseeba banu was 32. Hence, the age of the deceased is fixed as 32 years at the time of accident. The petitioners claim in the petition that the deceased Naseeba banu was doing bulls business and also doing beef business and she was earning more than Rs.30,000/- per month. To prove the same there is no documentary evidence is filed. Further in cross examination PW1 himself has admitted that he does the bull and beef business and the deceased would come and sit at cash box. So taking into consideration of the same the income of the deceased Naseeba banu is to be arrived notionally. As per the decision of our Honourable High Court, Madras, reported in 2016 (2) TNMAC, 611 (DB). The notional income of the deceased can be fixed as Rs.9,000/-per month. Now the petitioners are 3 members. Therefore, 1/3th is to be deducted from the deceased income for his personal expenses. After deduction of 1/3rd from the total income of Rs.9,000/-the actual income to the family comes to Rs.6000/-. The age of the deceased was 32 years at the time

of accident. Therefore, the proper multiplier under the Motor Vehicles schedule 2009 ACJ 1298, Sarla Verma case is 16. After taking into the income, the age and the multiplier the actual loss of income from the deceased Naseeba banu to the petitioners' comes to Rs.6000 x 12 x 16 = Rs.11,52,000/-. The age of the deceased was 32 years at the time of accident hence the future prospects of the deceased also to be taken for consideration by following the principle laid down in the judgment of Hon'ble Supreme court in National Insurance company limited-Vs-Pranay Sethi and others case dated 31.10.2017. By applying the said principles the age of the deceased is 32 years hence the future prospects is 40%. The deceased income would come to the family is fixed as Rs.6,000/-per month. Hence 40% is added as a future prospects for the deceased. The monthly future prospects comes to Rs.2400/- x 12 x 16= Rs.4,60,000/-

12. The petitioners are entitled to Rs.5,000/-for transportation expenses. Further, the petitioners are granted Rs.15,000/-towards funeral expenses as per afore said Apex court Judgment. Further, the petitioners claim on various heads. Considering the case for loss of consortium of Rs.40,000/-is awarded to the 1st petitioner as per the above said Apex Court Judgments. For loss of love and affection to the 2nd and 3rd minor petitioners are entitled to each Rs.20,000/-. In total Rs.40,000/-.In total the petitioners are entitled to Rs.17,12,000.00 as compensation.

Sl.No .	Under which head compensation awarded	Amount Rs.
1.	Loss of income	11,52,000.00
2.	Future prospects	4,60,000.00
3	Funeral expenses	15,000.00
4.	loss of consortium	40,000.00
5.	Love and affection	40,000.00
6.	Transportation	5,000.00
	Total	17,12,000.00
	in which each 50% of compensation is Rs. 8,56,000/-	

13. In the result, the petition is partly allowed with cost. The petitioners are entitled for Rs.17,12,000.00 (Rs. Seventeen lakhs twelve thousand only) as total compensation with interest. The 1st petitioner is entitled for Rs.5,12,000/-. 2nd and 3rd minor petitioners are each entitled for Rs.6,00,000/-. In which The 2nd respondent is directed to pay 50% said compensation Rs.8,56,000/- to the petitioners and the 4th respondent is directed to pay 50% compensation of Rs.8,56,000/- to the petitioners and to recover the same from the 3rd respondent. The 2nd and 4th respondents are directed to deposit the award amount in this court in the court's E-payment Account No.36100596411 (Current account No)(I.F.S Code No.SBIN 0000934) within three months from this day with interest at 7.5% per annum from the date of filing of this petition till the date of deposit and to give intimation to the court after deposit of the amount and the 1st petitioner is entitled to receive now Rs.1,12,000/- with full cost and interest and the remaining amount of Rs.4,00,000/- to be deposited in a nationalized bank for three years. The 2nd and 3rd minor petitioner's amount to be deposited in a Nationalized Bank in fixed deposit till they are attaining majority or for three years whichever happens later and for the maintenance of minors the monthly accrued interest may be withdrawn by the 1st petitioner from the deposit of 2nd and 3rd minors once in three months. The petitioners shall pay the balance of court fee on the award amount within 30 days from the date of this order. The Advocate fee is fixed at Rs.4,000/-

Dictated to the Steno-Typist directly, typed by her through computer, corrected and pronounced by me in the open court this the 27th day of February 2019.

Motor Accident Claims Tribunal Judge/
III Additional District Judge,
Vellore @ Tirupattur.

Petitioner's side Witnesses:

- 1) Syed Imran (1st Petitioner)
- 2) Anandan.
- 3) Kumar, Special Sub.Inspector of Police Ariyur.

Petitioner's side Exhibits:

Ex.P1,	18.10.2017	Copy of FIR.
Ex.P2,	19.10.2017	Copy of Postmortem certificate.
Ex.P3,	-	Copy of R.C of Ambulance.
Ex.P4,	-	Copy of insurance policy of Ambulance
Ex.P5,	-	Copy of driving licence Ambulance.
Ex.P6,	-	Copy of R.C. of the motorcycle.
Ex.P7,	-	Copy of Insurance of motorcycle
Ex.P8,	-	Copy of trip sheet.
Ex.P9,	-	Copy of death certificate.
Ex.P10,	-	Copy of Aadhar cards of petitioners.
Ex.P11,	-	Copy of legal heir certificate,
Ex.P12,	-	Copy of Aadhar card of deceased.
Ex.P13,	-	Copy of charge sheet.

Respondent side Exhibits:

Ex.R1	-	copy Insurance policy of two wheeler.
Ex.R2	-	Copy of Investigation report.
Ex.R3	22.1.2018	Copy of notice.
Ex.R4	-	Copy of notice.
Ex.R5	-	Copy of MV.report of two wheeler.
Ex.R6	18.10.2017	Copy of wound certificate.
Ex.R7	-	Letter of RTO.

Respondent side Witnesses:-

RW1	Ramkumar
RW2	Vardan

MACJ/III ADJ,
Vellore @ Tirupattur.

**IN THE COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL AND
III ADDITIONAL DISTRICT JUDGE, VELLORE AT TIRUPATTUR.**

Present: Tmt.T.INDRANI, M.A.,M.L.

**Motor Accident Claims Tribunal Judge/
Additional District Judge.**

Mon day the 7th day of January 2018.

M.C.O.P.NO 138 of 2017:-

- 1) Jaya w/o Late Ravi aged about 28 years.
- 2) Minor Thisathkumar aged about 2 years Minor represented by his N. F.guardian mother 1st petitioner w/o Ravi both are residing at No.2/345 Sunambukalai Vattam, Pudupettai Village and Post, Natrampalli Taluk, Vellore District.,

... Petitioners.

Vs

- 1) B. Iyappan s/o Boopathy, No.176/73A Kommampattu Village, Govindapuram Post, Uthangarai Taluk, Krishnagiri District.,
- 2) The Divisional Manager, Reliance General Insurance Company, Ltd., Adams Road, Numgampakkam Chennai.32.
- 3) Ani Bauri * w/o Monu age 42, North Dhakar Bauri Para, Asansol (m Corp) Dakshin Dhaka, West Bangal. (* 3rd respondent impleaded as per order in I.A. 618/2018 dated 27.9.2018 and petition amended as per order in I.A. 742/2018 dated 4.10.2018)

... Respondents.

Petition for compensation filed by the petitioners u/s 166(A) of M.V Act against the respondents for a sum of Rs.30,00,000/-for a road accident took place on 17.1.2017 at about 11.00 AM Pudupettai-Natrampalli road near Akragaram Thendral Nagar Raj Auto Workshop opposite and out of that accident the 1st petitioner's husband Ravi died.

Petition filed on 13.2.2011.

Petition for compensation filed by the petitioners u/s 166(A) of M.V Act against the respondents for a sum of Rs.30,00,000/-and the court fee paid under 24(1) of TNMV Rule of Rs.372.50.

This petition was coming for final hearing before me on 20.12.2018 in the presence of S.Sundarrajan counsel for the petitioners and Thiru K.Nirupama counsel for the 2nd respondent, and 1st respondent having been called absent remained exparte, Thiru M.Suresh counsel for the 3rd respondent and on hearing the arguments of both side and upon perusing the entire case records and having stood over for consideration till this day, this tribunal doth the following:-

Decree:-

- 1) that the petition is partly allowed with cost. The petitioners are entitled for Rs.17,12,000.00 (Rs. Seventeen lakhs twelve thousand only) as total compensation with interest.

2) that the 1st petitioner is entitled for Rs.8,12,000/- .2nd minor petitioner is entitled for Rs.7,00,000 /- .3rd respondent is entitled for Rs.2,00,000/- .

3) that the 2nd respondent is directed to pay the said compensation to the petitioners.

4) that the 2nd respondent is directed to deposit the award amount in this court in the court's E-payment Account No.36100596411 (Current account No) (I.F.S Code No.SBIN 0000934) within three months from this day with interest at 7.5% per annum from the date of filing of this petition till the date of deposit and to give intimation to the court after deposit of the amount and the 1st petitioner is entitled to receive now Rs.1,00,000/- with full cost and interest and the remaining amount of Rs.7,12,000/- to be deposited in a nationalized bank for three years. 3rd respondent is entitled to receive now Rs.50,000/- with full interest and the remaining amount of Rs.1,50,000/- to be deposited in a nationalized bank for three years.

5) that the 2nd minor petitioner's amount to be deposited in a Nationalized Bank in fixed deposit till he is attaining majority or for three years whichever happens later and for the maintenance of minor the monthly accrued interest may be withdrawn by the 1st petitioner from the deposit of 2nd minor once in three months.

6) that the petitioners shall pay the balance of court fee on the award amount within 30 days from the date of this order.

7) that the Advocate fee is fixed at Rs.4,000/-

Given under my hand and the seal of this court this the 7th day of January 2019.

Motor Accident Claims Tribunal Judge/
III Additional District Judge,
Vellore @ Tirupattur.