

**IN THE COURT OF THE CHAIRMAN, MACT-CUM- PRINCIPAL
DISTRICT JUDGE, NIRMAL**

Present: -

Sri. A. KARNA KUMAR

Chairman, MACT-cum-Principal District Judge, Nirmal

Friday, this the 04th day of April, 2025

M.V.O.P. No.04 of 2018

Between:

1. Shaik Rahmatullah, S/o. Shaik Khaja Miya,
Age: 50 years, Occ: Labour.
2. Nazim, S/o. Shaik Rahmatulla,
Age: 23 years, Occ: Coolie.
3. Shaik Nizam, S/o. Shaik Rahmatulla,
Age: 19 years, Occ: Nil.
4. Shaik Navid, S/o. Shaik Rahmatulla,
Age: 15 years (minor), under the guardinaship of
his natural father Shaik Rahmathullah/petitioner No.1.

All are R/o. H.No.3-71/2, Tanoor Village & Mandal,
Presently residing at H.No.2-4-90, Khanapur, Dist: Adilabad.

...Petitioners.

// AND //

1. Dasari Gattaiah, S/o. Rayamallu, Age:27 years,
Occ: Driver of Tipper Bearing Reg. No.AP-15-TB-5739,
R/o. H.No.1-14/1, Kundanapally Village,
Mdl: Ramagundam, Dist: Karimnagar.
2. L. Mahesh, S/o. Rajendra Prasad, Age: Major,
Occ: Owner of Tipper Bearing Reg. No.AP-15-TB-5739,
R/o. H.No.3-2-169, Sri Hanuman Nagar,
Ramagundam, Dist: Karimnagar.
3. United India Insurance Company Limited,
D.No.5-6-171 & 171/1, Main Road, NTPC,
Jyothingar, Dist: Karimnagar.

...Respondents

This Original Petition is coming before me for final hearing on 21.03.2025 in the presence of Sri. Mohammed Ghouse & Abdul Kaleem, Advocates for Petitioners and of Sri. S. Ramanna, Advocate for Respondent No.3, Respondent No.2 remained exparte and the petition against Respondent No.1 dismissed for default; and on hearing both sides and the matter having stood over for consideration till this day, this Court made the following:

:: O R D E R ::

This is a petition filed under Section 166 (1) (C) of the Motor Vehicles Act 1988 to grant compensation of Rs.30,00,000/- (Rupees Thirty Lakhs Only) to the petitioners for the death of deceased Shaik Adil @ Shaik Nisar who died in the motor vehicle accident that took place on 04.09.2016, at about 1700 hours, at Kerameri Ghat area near at Forest Board on District BT Road, due to rash and negligent driving of driver of Tipper bearing No.AP-15-TB-5739.

02. The brief averments of the petition are that on 04.09.2016 at about 0500 hours, while the deceased/Shaik Adil coming from Kerameri and proceeding towards Jainoor on his motorcycle bearing No.AP-16-AJ-9651, when they reached Kerameri Ghat near Forest Board on 04.09.2016 at evening 05:00 p.m. driver of Tipper bearing No.AP-15-TB-5739 drove the said vehicle in a rash and negligent manner and dashed to the motorcycle of the deceased. Due to which, deceased fell down and sustained grievous injuries. One Shaik Nazeem and others reached the spot and shifted injured to the Government Hospital in an Auto and from there they were referred to Utnoor Government Hospital and while they were shifting to Utnoor Government Hospital on the way

deceased died and another injured person/Danis Khan was admitted at Utnoor Government Hospital.

03. Basing on the complaint given to the Police Kerameri, Police Kerameri registered a case in Crime No.59 of 2016 for the offence punishable U/Sec.304-A and 338 of I.P.C. and filed charge sheet against the respondent No.1.

04. It is further submitted that the deceased was hale and healthy and was aged about 18 years and studying intermediate, but he was earning Rs.18,000/- by doing business. Due to sudden death of deceased, the petitioners sustained loss of income, as well as love and affection. It is further submitted that the respondent No.1 being the driver, respondent No.2 being the owner and respondent No.3 being the insurance company are jointly and severally liable to pay compensation to the petitioners.

05. Though, the petitioners initially claimed Rs.7,00,000/-, later enhanced claim to Rs.30,00,000/-.

06. Originally the case was filed in the District Court, Adilabad and numbered as MVOP No.04 of 2018 and the same was transferred to Court VII Additional District and Sessions Court (FTC), Nirmal. Thereafter from 02.06.2022 the said Court is re-designated as Principal District and Sessions Court, Nirmal.

07. On the other hand, the case against respondent No.1 was dismissed for default. The respondent No.2 remained exparte. The respondent No.3 insurance company filed counter and additional counter.

08. The brief averments of the counter filed by the respondent No.3 are that the driver of offending vehicle did not drove his vehicle in a rash and negligent manner, he neither drove in rash and negligent manner nor dashed to the vehicle of the deceased. The accident was occurred due to rash and negligent riding of motorcycle. It is further submitted that 2 vehicles were involved in the accident, but the petitioners have not made owner and insurer of the motorcycle as parties to the petition, hence petition is bad for non joinder of necessary parties. It is denied that petitioner is earning of Rs.5,000/- per month by way of doing business.

09. It is further submitted that the offending vehicle was got implicated in this case in order to claim compensation. The respondent No.2 has not insured his vehicle with this respondent nor this respondent issued any policy. It is further submitted that the driver of Tipper i.e. respondent No.1 was not having valid driving license, hence this respondent is not liable to pay compensation as there are violations of terms and conditions of policy by the respondent No.2. This petition is filed in collusion with the respondents No.1 and 2, hence this

respondent is not liable to pay compensation. The claim of the petitioners is excessive.

10. The brief averments of the additional counter filed by the respondent No.3 are that proposed enhancement of claiming compensation is ill founded and after thought at belated stage. The petitioners playing the delay tactics in disposal of the matter. The petitioners did not make out any case for enhancement of compensation. Therefore, prayed to dismiss the petition.

11. Basing on the above rival contentions the following issues are settled for trial:

- 1. *Whether the deceased died due to negligent driving of the Driver of Tipper bearing No.AP-15-TB-5739?***
- 2. *Whether the petitioners are entitled for compensation if so, at what amount and from whom?***
- 3. *To what relief?***

12. In order to prove the case of the petitioners, **PW1 to PW3** examined and **Ex.A1 to Ex.A11** were marked. On behalf of respondent No.3, **RW1 and RW2** examined and **Ex.B1 to Ex.B4** were marked.

13. Heard arguments of both sides.

ISSUE No.1:

14. The burden lies on the petitioners to prove that the accident was occurred due to rash and negligent driving of driver of Tipper bearing No.AP-15-TB-5739 and death of deceased/Shaik Adil in the said accident.

15. In order to prove the same, the petitioners relied on the evidence of PW1 and PW2. PW1 who is the third petitioner herein, brother of the deceased and circumstantial witness. He deposed that the accident was occurred due to rash and negligent driving of Tipper by the respondent No.1.

16. PW2 is the injured who was traveling in the motorcycle as a pillion rider, he deposed that the accident was occurred due to rash and negligent driving of Tipper bearing No.AP-15-TB-5739 by the respondent No.1.

17. PW1 denied that the accident was occurred due to rash and negligent act of the deceased. PW2 who is the injured and eye witness, he also denied that accident was occurred due to rash and negligent act of the deceased.

18. Apart from evidence of PW1 and PW2, the petitioner relied on Ex.A1 and A2 which reveals that the accident was occurred due to rash and negligent driving of Tipper by the respondent No.1. The Police, Kerameri registered a case under Section 304-A and 337 of IPC

against the respondent No.1 and filed charge sheet under Section 304-A and 338 of IPC. The then Investigation Officer i.e. S.I. of Police, Kerameri Police Station examined as RW2 who deposed that accident was occurred due to rash and negligent driving of Tipper by the respondent No.1. He denied that the accident was occurred due to rash and negligent driving of motorcycle bearing No.AP-16-AJ-9651 by the rider of the said motorcycle i.e. deceased herein.

19. On the other hand, respondent No.3 which is insurance company main contention is that the accident was occurred due to rash and negligent act of deceased and that the case registered against the respondent No.1 driver of offending vehicle ended into acquittal. The respondent No.3 relied on the evidence of RW1 who is the Administrative Officer of respondent No.3 company who has no personal knowledge about the accident and he admitted during cross examination that the OP No.222 of 2017 filed by PW2 on the file of Special Judge of Prevention of Atrocities against SC/ST Court, Adilabad was allowed vide OP No.222 of 2017. The respondent No.3 has relied on Ex.B2 which is copy of judgment in CC No.278 of 2016, admittedly the Criminal Case registered against the respondent No.1 under Section 304-A and 338 of IPC was ended into acquittal vide judgment dated 31.07.2019 by the learned Additional Judicial First Class Magistrate, Asifabad.

20. Now, it has to be decided whether judgment in said criminal case is having any bearing on this Tribunal or not. The learned counsel for the petitioners relied on a decision in between **N.K.V. Bros. (P) Ltd., Vs. M. Karumai Ammal** reported in **1980 ACJ page 435 (SC)** wherein it was held that:

“Criminal case ended in acquittal has no bearing and was rejected by the Courts below”.

21. In another decision in **Delhi Transport Corporation Vs. Harbans Kaur** reported in **1983 ACJ page 110 (Del.)** wherein it was held that:

“The fact that the driver was acquitted by the criminal Court is no ground to hold in a civil case that he was not negligent”.

22. In view of above two decisions, it is clear that the judgment in Criminal Case under Ex.B2 has no bearing on this Tribunal, because the respondent No.1 was ended into acquittal in Criminal Case, the claim made by the petitioners cannot be rejected. The judgment of learned Additional Judicial First Class Magistrate at Asifabad in CC No.278 of 2016 dated 31.07.2019 is not binding on this Tribunal.

23. The respondent No.3 though award has been passed in MVOP No.222 of 2017 basing on the claim made by the PW2, the respondent No.3 did not challenge the said Award/Order and company had deposited compensation amount and PW2 has withdrawn the

amount deposited by respondent No.3 company and Ex.A10 is the copy of Cheque petition file by the PW2 established the same. In order to prove the death of deceased, the petitioners have relied on the evidence of PW1 who is the brother of deceased and petitioner No.3 herein, PW2 who is the injured and eye witness, Ex.A6 is the postmortem examination report and Ex.A7 is the inquest panchanama established that the deceased died in the accident that took place on 04.09.2016 at about 1700 hours at Kerameri Ghat near Forest Board on District BT Road. So, in view of the evidence of PW1, PW2, RW2, Ex.A1, A2, A9, A10, A6 and A7 I hold that the petitioners established rash and negligent driving of Tipper i.e. offending vehicle bearing No.AP-15-TB-5739 by the respondent No.1 and death of the deceased in the accident. The respondent No.3 failed to prove that accident was occurred due to rash and negligent act of deceased. Accordingly, I answer issue No.1 in favour of the petitioners and against the respondents.

ISSUE No.2:-

24. The petitioners able to prove that the accident was occurred due to rash and negligent driving of Tipper i.e. offending vehicle bearing No.AP-15-TB-5739 by the respondent No.1, causing death of the deceased. Now, it has to be decided what is the just compensation payable to the petitioners for the death of deceased Shaik Adil @ Shaik Nisar and from whom.

25. As per decision reported in **2009 © SCC Page 121** between **Sarla Verma Vs. Delhi Transport Corporation**, the Hon'ble Apex Court held that:

"Basically only three facts need to be established by the claimants for assessing compensation in the case of death: (a) age of the deceased; (b) income of the deceased; and the (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased."

26. The burden lies on the petitioners to prove the age of the deceased at the time of accident to apply multiplier for loss of dependency. According to claim of the petitioners, the age of the deceased was 18 years at the time of accident and unmarried. The petitioners have not filed any proof of age, however they have relied on Ex.A6 and Ex.A7 which clearly established that the age of the deceased at the time of accident was 18 years. There is no contrary pleaded by the respondent No.3 company regarding age of the deceased at the time of accident. So, it is established by the petitioners that the deceased was aged 18 years at the time time of accident. The multiplier to be applied in this case as per **Sarla Verma case (supra)** is **'18'** as the deceased was in the age group of above 15-20 years.

27. The petitioners have to prove income of the deceased at the time of accident. As per the contention of the petitioners and averments of the petition, the petitioners contended that the deceased was aged about 18 years and he was intermediate student and used to earn Rs.5,000/- per month. The petitioners got amended claim petition on 16.10.2023 vide IA No.263 of 2023 mentioned that the deceased was earning Rs.18,000/- by doing business. The petitioners have not mentioned what business the deceased was doing at the time of death. Ex.A6 and A7 reveals that deceased was intermediate student, if it all the deceased was doing business, the same could have been mentioned in both Ex.A6 and A7. The occupation of the deceased got amended only after thought. The petitioners have filed Ex.a8 salary certificate issued by Famous Bakery, Main Road, Jainoor dated 02.01.2023.

28. The petitioners also examined PW3 who said to be proprietor of said Bakery and he stated that he used to pay Rs.18,000/- to the deceased per month and the deceased was part time worker in his Bakery since from 2016. Admittedly, Ex.A8 does not contain registration particulars of Bakery, GST numbers and other particulars. PW3 though stated that he used to pay Rs.18,000/- per month, but he has not filed any record to show that he paid Rs.18,000/- per month to the deceased and deceased worked as part time master. The petitioners did not plead in the claim petition that the deceased worked

under PW3 and PW3 used to pay Rs.18,000/- to him and deceased worked as a part time master. So, evidence of PW3 and Ex.A8 is not acceptable and not believable and same are rejected.

29. In view of Ex.A6 and A7, I hold that the deceased was a intermediate student at the time of accident and there is no income proof of the deceased. So, notional income has to be taken for deciding monthly income of the deceased. In a decision in **Civil Appeal No.6724 of 2021** in between **Meena Pawaia and Others Vs. Ashraf Ali and Others, dated 18.11.2021**. The Hon'ble Supreme Court taken the income of Engineering student as Rs.10,000/- per month observing that labourers/skilled labourers were getting Rs.5,000/- per month under the Minimum Wages Act in the year 2012. the said case accident was occurred in the year 2012 and in the present case the petitioner was aged about 18 years and he is intermediate student. Since, the deceased was intermediate student, the notional income is taken as Rs.6,000/- per month considering the above decision.

30. Now, it has to be decided what percentage of amount should be deducted towards personal and living expenses of the deceased. Admittedly, the deceased is a bachelor, the claim petition was filed by the 4 petitioners. Out of them, petitioner No.1 is the father and petitioners No.2 to 4 are the brothers of deceased. The petitioner No.2 was aged about 23 years, petitioner No.3 was aged about 19

years and petitioner No.4 was aged about 15 years. The petitioner No.3 was examined as PW1, he deposed that he has been running Chinese Fast Food Centre and earning Rs.40,000/- to 50,000/- per month. So, in view of evidence of PW1, PW1 was not depending on the deceased as deceased was only a intermediate student and non earning member of the family. The petitioners No.2 and 4 also brothers, they were not depending on the deceased at the time of accident and death of the deceased. The petitioners No.2 to 4 depending on petitioner No.1 who is the father of the deceased. In view of **Sarla Varma case (supra)**, the petitioners No.2 to 4 are not entitled for any compensation as they are not depending on the deceased at the time of accident. The petitioner No.1 alone is entitled for compensation to be awarded in this case and claim of the petitioners No.2 to 4 is liable to be rejected. Since, there is only one dependent on the deceased at the time of accident and the deceased was bachelor 1/2 of established income should be deducted towards personal and living expenses.

After deducting 1/2 towards personal and living expenses, the actual income of the deceased come to $\text{Rs.}6,000 \times 12 = 72,000/-$ ($72,000 - 1/2 = 36,000$) ($72,000 - 36,000 = 36,000$). Thus the annual contribution of the deceased to his family comes to Rs.36,000/-. After applying the '**18**' multiplier, the loss of dependency comes to $\text{Rs.}36,000 \times 18 = 6,48,000/-$.

31. The petitioners also claimed damages under the head of loss of estate, loss of consortium and funeral expenses. As per the **2018 SAR (Civil) 81 between National Insurance Company Ltd., Vs. Pranay sethi and Others**, the petitioners are entitled Rs.16,500/- towards loss of estate, Rs.16,500/- towards funeral expenses and Rs.44,000/- towards loss of consortium.

32. The petitioners also claimed damages under the head of future prospects for the death of deceased as per decision reported in **2018 SAR (Civil) 81 between National Insurance Company Ltd., Vs. Pranay sethi and Others**, the future prospects can be granted if the deceased was either permanent job holder or self-employed or on a fixed salary. The petitioners failed to prove that the deceased was getting fixed salary or doing permanent job to grant compensation under the head of future prospects. Therefore, the petitioner No.1 is not entitled for future prospects as contended by the petitioners as per the decision of **Pranay Sethi case supra**.

33. Thus, the petitioner No.1 is entitled for compensation under the following heads:

Sl. No.	Nature of head	Amount (in Rupees)
1.	Loss of dependency	6,48,000-00
2.	Loss of estate	16,500-00

3.	Funeral expenses	16,500-00
4.	Loss of Consortium	44,000-00
	TOTAL	Rs.7,25,000-00

(Rupees Seven Lakhs and Twenty Five Thousand Only).

34. Now, it has to be decided what is the interest rate, the petitioner No.1 is entitled. In a decision reported in **2019 ACJ page 1849** between **National Insurance Company Ltd., Vs. Mannat Johal** wherein it was held that:

“13. The aforesaid features equally apply to the contentions urged on behalf of the claimants as regards the rate of interest. The Tribunal had awarded interest at the rate of 12% p.a. but the same had been too high a rate in comparison to what is ordinarily envisaged in these matters. The High Court, after making a substantial enhancement in the award amount, modified the interest component at a reasonable rate of 7.5% p.a. and we find no reason to allow the interest in this matter at any rate higher than that allowed by High Court”.

35. Therefore, the petitioner No.1 is entitled to simple interest @ 7.5% per annum for the said awarded amount.

36. The claim petition was dismissed on 09.04.2021 and later restored on 21.07.2023 as per the orders in IA No.35 of 2022, dated 21.07.2023. So, the petitioner No.1 is not entitled interest during said period on the compensation awarded in this case.

37. Now, it has to be decided, who has to pay the compensation awarded to the petitioner No.1. In this case, admittedly the respondent No.1 is the driver, respondent No.2 is the owner and respondent No.3 is the insurance company of offending vehicle bearing No.AP-15-TB-5739. The claim petition against respondent No.1 was dismissed for default. Hence, the respondent No.1 not liable to pay compensation. However, the respondent No.2 is the owner and respondent No.3 is the insurance company. Though, the respondent No.3 company contended that the respondent No.1 was not holding valid driving license, but there is no evidence to prove the same. Ex.A3 is the driving license issued to the respondent No.1 established that respondent No.1 was holding valid driving license at the time of accident. Ex.A4 is the Registration Certificate of offending vehicle showing that respondent No.2 is the owner of the offending vehicle. Ex.A5 is the copy of Insurance. RW1 who is the Administrative Officer admitted that at the time of accident, the insurance policy, RC of offending vehicle and driving license of driver were in force. So, in view of admission made by RW1, Ex.B3 and B4. I hold that there are no violations of terms and conditions of policy. The policy was in force at the time of accident. Therefore, the respondents No.2 and 3 are jointly and severally liable to pay compensation awarded in this case to the petitioner No.1. Accordingly, I answer this issue.

ISSUE No.3:-

38. In the result, the petition is allowed in part awarding a total compensation of **Rs.7,25,000/- (Rupees Seven Lakhs and Twenty Five Thousand Only)** to the petitioner No.1 with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of deposit against the respondents No.2 and 3.

The respondents No.2 and 3 are directed to deposit the awarded amount within (30) days from the date of this order.

On such deposit, the petitioner No.1 is permitted to withdraw Rs.5,00,000/- (Rupees Five Lakhs Only) with proportionate costs and interest and remaining amount shall be kept in F.D.R in any Nationalized Bank for a period of Two Years.

The original petition was dismissed on 09.04.2021 and later restored on 21.07.2023. So, the petitioners are not entitled interest during said period on the compensation awarded in this case.

The claim of the petitioners No.2 to 4 is dismissed.

Rest of the claim of the petitioners is dismissed without costs.

The Advocate's fee is fixed at Rs.10,000/- (Rupees Ten Thousand Only).

Dictated to Stenographer, transcribed by him and after correction pronounced by me in open Court on this the 04th day of April, 2025.

**CHAIRMAN
MACT-CUM-PRL. DISTRICT JUDGE
NIRMAL**

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR PETITIONERS:

PW1: Shaik Nizam
PW2: Md. Danish Khan
PW3: Mohd. Zubair

FOR RESPONDENTS:

RW1: Jadhav Pruthviraj
RW2: K. Sathyanarayana

EXHIBITS MARKED

FOR PETITIONERS

Ex.A1: Certified Copy of FIR in Cr. No.59/2016 of PS Kerameri, dt.05.09.2016.
Ex.A2: Certified Copy of Charge sheet.
Ex.A3: Certified Copy of Driving License of Respondent No.1.
Ex.A4: Certified Copy of Registration Certificate of Crime Vehicle of Respondent No.2.
Ex.A5: Certified Copy of Insurance.
Ex.A6: Certified Copy of PME.
Ex.A7: Certified Copy of Inquest.

- Ex.A8:** Salary Certificate, dt. 02.01.2023 issued by Famous Bakery, Jainoor Village.
- Ex.A9:** Attested Copy of Judgment and Decree passed in MVOP. No.222/2017, Dt:26.12.2022.
- Ex.A10:** Certified copy of Cheque petition filed in MVOP. No.222/2017.
- Ex.A11:** Certified Copy of Docket Order in I.A No.145/2023 in MVOP. No.222/2017.

FOR RESPONDENTS

- Ex.B1:** Copy of Policy of Tipper.
- Ex.B2:** Copy of Judgment in CC No.278/2016 (Downloaded from e-court Services).
- Ex.B3:** Certified Copy of Crime Details Form in Cr. No.59/2016 of PS. Kerameri.
- Ex.B4:** Certified Copy of deposition of PW17 S.I of Police/Kerameri.

**CHAIRMAN
MACT-CUM-PRL. DISTRICT JUDGE
NIRMAL**