

Shri Sagheer Shariff Doda vs Shri Pradeep Kumar A on 22 July, 2015

Before the Motor Accident Claims Tribunal at Bangalore
(SCCH-8)

Present: Shri P.J. Somashekar B.A., LL.B.,
XII Additional Small Causes Judge
and Member, M.A.C.T., Bangalore.

Dated this the 22nd day of July 2015

M.V.C.No.1237/2013

Petitioners

Shri Sagheer Shariff Doda,
Son of Late Ibrahim Shariff,
Aged about 48 years,

2. Smt.Asma,
Wife of Sagheer Shariff,
Aged about 40 years,

3.Smt.Asisha Siddiq,
Daughter of Sagheer Shariff Doda,
Aged about 19 years,

4.Shri Rohi Fathima,
Daughter of Sagheer Shariff Doda,
aged about 13 years,

5.Shri Shahezan Shariff,
Son of Sagheer Shariff Doda,
Aged about 13 years,

The petitioner Nos. 4 & 5 being minors are
represented by natural guardian father first
petitioner Mr.Sagheer Shariff.
All the petitioners are residing at No.347, 3rd
cross,
Tippunagar, Chamarajpet, Bengaluru.

(Shri A.V.Raghavendra, Advocate)

V/s

Respondents

1. Shri Pradeep Kumar A.,
Son of Anjinappa,
(SCCH-8)

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M.V.C.No.1237/2013

Residing at No.335, Bazar Street,

Kengeri,
Bengaluru-560 060.
(Shri Mohammed Wazeer and
Association)

2. The Oriental Insurance Co.Ltd.,
D.O. 9, Bengaluru, having its office at
No.70/5, Suvarna Tower 1st floor, near
Vijayanagara BDA Complex,
Govindarajnagar, Vijayanagar,
Bengaluru-560 040.
Vide policy No.421900/31/2013/1187
valid from 21.4.2012 to 20.4.2013

(Shri R.Purushothama, Advocate)

3. Syed Ismail,
Son of Syed Pyarejan,
Residing at No.6, 2nd main road,
Ganganagar Extension,
Bengaluru-560 032.
(Shri Anjanappa, Advocate)

4. The New India Assurance Co.Ltd.,
Branch-671 602,
2nd floor, Shankar House No.1, RMV
Extension, Mekhri Circle,
Bengaluru-560 080.
(Shri N.Basava Reddy, Advocate)

5. Shri G.Jagadish,
Plot No.13, Near Mahalakshmi Kalyan
Mandir, Padarayanapura Main Road,
Pipeline, Vijayanagar,
Bengaluru-40.
(Shri T.K.Kumar, Advocate)

JUDGMENT

This is a claim petition filed by the petitioners against the respondents under section 166 of Motor Vehicles Act, 1989, for 3 (SCCH-8) M.V.C.No.1237/2013 seeking compensation of Rs.50,00,000/- for the death of Shri Amanullah Shariff, in a road traffic accident.

2.The brief facts of claim petition are as under; The petitioners are said to be the financial dependants and legal heirs of the deceased Amanullah Shariff in their claim petition were alleged that, on 30.11.2012 Amanulla Shariff and his friends had been to hospital to see his friend sister after seeing were proceeding towards their home side in a Honda City car bearing registration No.KA-01-MA-8182 at about 12.15 a.m., the driver of the said car was driving the same by observing the traffic rules and regulations, but suddenly front tire was burst and hit the divider and the driver of the Swaraj Mazda bearing registration No.KA-17-A- 3827 was came in a rash and negligent manner without observing the traffic rules and regulations and dashed against the car. Due to the

said impact, Amanulla Sharieff was sustained grievous injuries and died on the spot. So, dead body was shifted to the hospital for post mortem, after the post mortem they shifted the dead body to their house for performing the funeral and obsequies and they conducted the funeral obsequies by spending huge amount.

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3.Prior to the accident Amanulla Shariff was hale and healthy working as a Machine Operator by getting monthly salary of Rs.15,000/- and they were depending on the income of the deceased as he was contributing the entire earnings to the family. Due to the untimely death of Amanulla Shariff they were put to deep mental shock and agony and lost the earning member of the family and they were also lost their loving son. The accident in question was taken place on the rash and negligent driving of the driver of the Swaraj Mazda bearing registration No.KA-17-A-3827 as he drove the same in a rash and negligent manner. Thereby Kengeri Traffic Police have registered a case against the driver of car in their police station crime No.27/2012 for the offences punishable u/s 279, 337 and 304(A) of IPC. The respondent Nos. 1 & 5 being the owner of the Honda City car involved in the accident and the respondent No.2 is the insurer of the said car, Swaraj Mazda belongs to 3rd and 4th respondents and 5th respondent being the insurer of the Swaraj Mazda. So they were jointly and severally liable to pay the compensation and prays for allow the claim petition. 5 (SCCH-8) M.V.C.No.1237/2013

4.In response of the notice, the respondents were appeared through their respective counsel and the respondent Nos. 3 & 5 did not file their written statement. So, written statement of the respondent Nos. 3 & 5 taken as not filed. The respondent Nos. 1 & 2 and 4 were filed their independent written statement.

5.The respondent No.1 in his written statement has alleged that the claim petition filed by the petitioner is not maintainable in law or on facts and he has denied that the petitioner was traveling in a Honda City car bearing registration No.KA-01-MA-8182, after visiting the hospital towards their home side, the driver of the car has drove the same on the correct side by observing all the traffic rules and regulations and front right tire was got burst and hit the divider, suddenly the driver of the Swaraj Mazda was came in a rash and negligent manner without observing the traffic rules and regulations and dashed against the car, as a result, Amanullah Sharieff was died on the spot. So, the dead body was shifted to Victoria hospital for post mortem, after conducting the post mortem body was handing over to the petitioners and the petitioners were shifted the dead body to their house and performed the funeral and obsequies by spending huge amount and he has no knowledge about the averments made in column No. 2 of the claim petition and he has denied that the driver of the car has caused the accident and he has also denied the age, 6 (SCCH-8) M.V.C.No.1237/2013 avocation and income of the deceased. But he has admitted the averments made in column no.4 that the accident was taken place due to the rash and negligent driving of the driver of the Swaraj Mazda bearing No.KA-17-A-3927 belongs to the third respondent and the fourth respondent is the insurer of the said vehicle and the accident was not taken place on the rash and negligent driving of the driver of the Honda City car bearing No.KA-01-MA-8182. So, he is not liable to pay the compensation and prays for reject the claim petition.

6.The respondent No.2 being the insurer of the car bearing registration No.KA-01-MA-8182 in its written statement has admitted about the issuance of the Act policy in respect of offending vehicle infavour of respondent No.5 and its liability is subject to terms and conditions of the policy and the owner of the car has entrusted the vehicle to the person who was not holding valid and effective driving license. So, owner of the offending vehicle has violated the terms and conditions of the policy. So, he is not liable to pay any compensation and the owner of the vehicle has not contributed the premium in respect of the inmates of the car. So, question of indemnifying the occupants of the car does not arise and as on the date of alleged accident the driver of the car was traveling in the car had consumed alcohol, as such the driver of the car has violated the terms and conditions of the policy 7 (SCCH-8) M.V.C.No.1237/2013 and he has denied the age, avocation and income of the deceased and has also denied the column Nos. 1 to 6, 10 to 14 of the claim petition and he has denied that the petitioner was traveling in a car and the driver of the car has drove the same in a moderate speed, front wheel of the car was burst, then dashed against the road median, they hit the Swaraj Mazda and caused the accident and either the owner of the vehicle nor the jurisdictional police have not complied the mandatory provisions of S.134© and 158(6) of M.V. Act in furnishing the better particulars and prays for reject the claim petition.

7.The respondent No.4 being the insurer of the Swaraj Mazda bearing registration No.KA-17-A-3827 has filed its written statement, in which he has alleged that the claim petition filed by the petitioners is not maintainable in law or on facts as the accident was taken place on the sole rash and negligent driving of the driver of the car driver, who is the deceased, as the driver of the car has drove the same under the influence of alcohol in a rash and negligent manner and hit the road divider and dashed against cement pole and proceeded further and dashed to the Swaraj Mazda bearing No.KA-17-A-3827 which was coming from opposite direction on the left side of the road slowly and cautiously by observing all the traffic rules and regulations, the police documents clearly reveals that the accident was taken place on the 8 (SCCH-8) M.V.C.No.1237/2013 sole rash and negligent driving of the car driver. So, Swaraj Mazda vehicle driver was not at all responsible for the accident said to have been taken place on 30.11.2012 and he has denied the age, avocation and income of the deceased and he has also denied the column Nos. 10 to 14 and 19 of the claim petition. But he has admitted about the issuance of the policy in respect of the Swaraj Mazda and its liability subject to terms and conditions of the policy and the driver of the Swaraj Mazda was holding valid and effective driving license as on the date of alleged accident. Either the owner of the vehicle nor the jurisdictional police have not complied the mandatory provisions of S.134© and 158(6) of M.V. Act in furnishing the better particulars and he has denied that the driver of the car has drove the same on the correct side of the road and front tier of the car burst and the Swaraj Mazda driver was came in a rash and negligent manner and dashed against the car, as a result, Amanulla Sheriff was died on the spot and prays for reject the claim petition.

8.On the basis of the pleadings of the parties, my Predecessor has framed the following issues;

1. Whether the petitioners prove that deceased Amanulla Shariff died in a road traffic accident on 30.11.2012 at about 00.15 p.m. near Nice road fly over, Mysore road, Bengaluru due to the rash and negligent driving of the driver of the 9 (SCCH-8) M.V.C.No.1237/2013 Swaraj Mazda bearing registration No.KA-17-A- 3827?

2. Whether petitioners are entitled for any compensation? If so to what extent and from whom?

3. What Order or Award?

9.The petitioners in order to prove the claim petition, the petitioner No.1 has examined himself as P.W.1 and got marked the documents as Ex.P1 to Ex.P11 and they have not examined any witness on their behalf. The respondent No.2 has examined its administrative officer as RW1 and got marked the documents as Ex.R1 to Ex.R5.

10.Heard arguments on both side.

11.My finding on the above issues are as under:

Issue No.1: Negative Issue No.2: Does not survive for court consideration Issue No.3:
As per the final order for the following.

REASONS

12.Issue No.1;

The petitioners are said to be the financial dependants and legal heirs of the deceased Amanulla Sharieff were approached the court on the ground that on 30.11.2012 at about 12.15 a.m. i.e., 10 (SCCH-8) M.V.C.No.1237/2013 mid night, the Amanulla Shariff and his friends had been to hospital to see friend sister, after that they were traveling in a Honda City car bearing registration No.KA-01-MA-8182 towards their home side, the driver of the said car was driving the same by observing the traffic rules and regulations, but suddenly front tire was burst and hit the divider and the driver of the Swaraj Mazda bearing registration No.KA-17-A-3827 was came in a rash and negligent manner without observing the traffic rules and regulations and dashed against the car. Due to the said impact, he was sustained grievous injuries and died on the spot. So, the dead body was shifted to Victoria hospital after post mortem, dead body was handing over to them and they were shifted the dead body to their house and performed funeral and obsequies by spending huge amount. Thereby the petitioners have filed the instant claim petition against the respondents.

13.The petitioners in order to prove the claim petition, the petitioner No.1 has filed his affidavit as his chief-examination in which he has stated that deceased is none other than his son and the petitioner No.2 is his wife and the petitioner Nos. 2 to 5 are their children. That, on 30.11.2012 his son Amanulla Sherieff and his friends had been to hospital to see his friend sister thereafter were proceeding in a Honda City car bearing registration No.KA- 01-MA-8182 towards their home side at about 12.15 a.m., the 11 (SCCH-8) M.V.C.No.1237/2013 driver of the said car was drove the same by observing the traffic rules and regulations, but suddenly front tire was burst and hit the divider, suddenly the driver of the Swaraj Mazda bearing registration No.KA-17-A-3827 was came from opposite direction without observing the traffic rules and regulations and hit the car. As a result, his son was sustained grievous injuries and died on the spot. Immediately dead body was shifted to post mortem, after conducting the post mortem, they were shifted the dead body to their house and

performed the funeral and obsequies. The accident in question was taken place on the rash and negligent driving of the driver of the Swaraj Mazda bearing registration No.KA-17-A-3827. Thereby, Kengeri Traffic police have registered the case against the car driver in their police station Cr.No.27/2012 for the offences punishable u/s 279, 337 and 304(A) of IPC. PW1 in his cross-examination has admitted that the petitioner Nos. 3 & 5 are none other than his children and he was maintaining them out of his income and as on the date of alleged accident his son was aged about 21 years and he has admitted that about 12.20 a.m. the accident was occurred when his son was proceeding in Honda City car and he has also admitted that there is a road divider in the Centre of the Mysore road and he has stated that I.O. after conducting the investigation has charge sheeted against the Swaraj Mazda driver and the car driver and he 12 (SCCH-8) M.V.C.No.1237/2013 has also admitted that the police have charge sheeted against the car driver only but he has died in the road traffic accident and he has admitted that as on the date of alleged accident the car driver Sachin Setty has drove the said vehicle by consuming the alcohol and the same is reflects in the post mortem report conducted by the doctor.

14.RW1 being the Administrative Officer of the respondent No.2 in his evidence has stated that the petition filed by the petitioners is not maintainable as Sachin Setty was the driver of the car has drove the same in a rash and negligent manner and hit the left side road divider then dashed against the Swaraj Mazda and he has drove the said vehicle by consuming alcohol and the same is reflected in the post mortem report and he has issued Act policy infavour of the respondent No.5 who is the owner of the car bearing registration No.KA-01-MA-8182 as such petition is not maintainable against him. The petitioners have not cross- examined the RW1.

15.The petitioners in support of oral evidence have produced the documents marked as Ex.P1 to Ex.P11. Ex.P1 is the information filed by one Syed Rahim @ Vasim Son of Syed Mohammed has stated that on 29.11.2012 himself and his friends were went to Kengeri Upanagara Shreya hospital to see relatives of Sachin Setty, his brother Syed, Sachin Setty, Aman, Devaraj and 13 (SCCH-8) M.V.C.No.1237/2013 Syed Saleem were proceeding in a Honda City car bearing registration No.KA-01-MA-8182 towards Daba to have a meals, himself and Manoj as well as Rithish were proceeding in a separate Maruthi Alto car. When they were reached near Mysore road bridge, the driver of the car has drove the same in a rash and negligent manner, as a result the front wheel of the car has punctured and dashed against the road divider and later on hit the pole which is on the bridge and later on Swaraj Mazda which was coming from opposite direction, as a result the car got split into two pieces, Sachin setty, Syed Saleem were lying on the road, Devaraj, Aman were lying on the left side of the foot path and Syed Abeebe, Sachin Setty, Aman and Devaraj were died on the spot and Syed Saleem and Syed Abeebe were shifted them to BGS Global hospital through their car for treatment. So, based on the information the Kengeri Upanagara Police have registered the case against the car driver in their police station Cr.No.27/2012 for the offences punishable u/s 279, 337 and 304(A) of IPC. The learned counsel for the respondent has cross-examined the PW1, in his cross-examination though initially has denied that the charge sheet has filed against the car driver, later on he has admitted that police after conducting the investigation have charge sheeted against the car driver. So, one thing is clear from the evidence of PW1 that I.O. after conducting the investigation has charge 14 (SCCH-8) M.V.C.No.1237/2013 sheeted against the car driver i.e., Sachin Setty only. Even Ex.P1 nowhere discloses that the accident in question was taken place on the

rash and negligent driving of the driver of the Swaraj Mazda bearing registration No.KA-17-A-3827. Even the petitioners have not examined any witness as cited in the charge sheet to show that the accident in question was taken place on the rash and negligent driving of the driver of the Swaraj Mazda vehicle. If that is so, the matter would have different. So, one thing is clear that Syed Rahim @ Vasim has filed the information who is none other than the friend of Amanulla Sheriff. If at all the accident was taken place on the rash and negligent driving of the driver of the Swaraj Mazda vehicle nothing is prevented to the informant who is Syed Rahim to file the complaint against the driver of the Swaraj Mazda vehicle also. Ex.P1 nowhere appears that the accident was taken place on the rash and negligent driving of the driver of the Swaraj Mazda vehicle. In the absence of the materials on record, it is clear that the accident in question was taken place on the rash and negligent driving of the driver of the car. But the reasons best know to the petitioners have not at all stated in their claim petition that the accident in question was taken place on the rash and negligent driving of the car driver. According to them, the deceased was proceeding in a Honda City car bearing registration No.KA-01-MA-8182 and the right tire of the car was got burst and 15 (SCCH-8) M.V.C.No.1237/2013 hit the divider, the driver of the Swaraj Mazda was came from Daba side in a rash and negligent manner without following the traffic rules and regulations dashed against the car, as a result the accident was occurred. But the petitioners have not placed any materials to substantiate their claim as alleged in the claim petition. So, one thing is clear from the admission of PW1 and recitals as appeared in the Ex.P1 that the accident in question was taken place on the rash and negligent driving of the car driver i.e., Sachin Setty. Ex.P8 is the final report filed by the I.O. in which it is clear that I.O. after conducting investigation has charge sheeted against one Sachin setty Son of Raguram setty was the driver of the Honda City car bearing registration No.KA-01-MA-8182. If at all the accident was also taken place on the rash and negligent driving of the driver of the Swaraj Mazda the I.O. would have charge sheeted against the driver of the Swaraj Mazda. But Ex.P8 nowhere appears that I.O. after conducting the investigation has charge sheeted against the driver of the Swaraj Mazda vehicle. In the absence of the materials on record, it is clear that the I.O. has charge sheeted against the Sachin setty was the driver of the Honda City car only. Ex.P3 & P4 are the spot mahazar and sketch drawn by the I.O. clearly reflects that accident in question was taken place on the rash and negligent driving of the car driver. But the reasons best known to the petitioners have made 16 (SCCH-8) M.V.C.No.1237/2013 allegations against the driver of the Swaraj Mazda in their claim petition knowing fully well that the charge sheet and the police papers discloses that the accident in question was taken place on the rash and negligent driving of the car driver. So, the petitioners have failed to establish the oral and documentary evidence as the petitioners have filed the instant application u/s 166 of the Motor Vehicle Act. Therefore, the initial burden on the petitioners to establish their case through oral and documentary evidence that the accident in question was taken place on the rash and negligent driving of the driver of the Swaraj Mazda vehicle. But nothing is placed on record to substantiate their allegation as alleged in the claim petition. If the petitioners were filed the petition u/s 163(A) of M.V. Act the matter would have different. So, by virtue of S. 163(A) (2) the petitioners need not required to plead or establish that the death or permanent disability in respect of which claim has been made was due to any wrongful act or neglect or owner of the vehicle or vehicles concerned. But whereas, if petition is filed u/s 166 of the M.V. Act, the initial burden of the claimant to prove that the accident in question was taken place on the rash and negligent driving of the driver of the Swaraj mazda vehicle. But the petitioners were not establish their case through oral and documentary evidence that the accident in question was taken

place on the rash and negligent driving of the Swaraj Mazda vehicle 17 (SCCH-8) M.V.C.No.1237/2013 driver. Even the police papers nowhere appears that the accident in question was taken place on the rash and negligent driving of the driver of the Swaraj Mazda vehicle. Therefore, looking from any angle the petitioners have failed to establish their case through oral and documentary evidence that the death was caused out of the rash and negligent driving of the driver of the Swaraj Mazda. Therefore, this court drawn its attention on the decision reported in 2007 ACJ 1928 in between Oriental Insurance Co. Ltd., vs. Premlata Shukla and others reads like thus;

Motor Vehicles Act, 1988, section 166 - Claim application - Maintainability of - Negligence - Proof of rashness and negligence of driver of offending vehicle is sine qua non for maintaining claim application - Collision between a van and truck and a passenger in van sustained fatal injuries - Registration number of truck could not be noted - On the basis of F.I.R. lodged by a passenger in van, criminal case against driver of truck was initiated but had to be closed as the truck and its driver could not be traced -

Claimants filed claim against driver, owner and insurance company of van - Tribunal on the basis of evidence including F.I.R. held that van driver was not driving rashly and negligently and dismissed the claim application - High Court relied upon the deposition of two witnesses and observed that as F.I.R. was not legally proved, driver of van should 18 (SCCH-8) M.V.C.No.1237/2013 be held guilty of rash and negligent driving - F.I.R. had been relied upon by the parties on both sides and the claimants had made a reference to it in their claim application - F.I.R. was marked as an exhibit as both the parties intended to rely upon it

- Whether the Tribunal was justified in relying upon the F.I.R. irrespective of the fact that contents of the document have been proved or not

- Held: yes; judgment of High Court set aside and claim application dismissed.

16. On careful perusal of the above said decision, in the said decision the deceased Shivanandan Prasad Shukla was traveling in a tempo trax for going to Allahabad from Bhopal. The accident was occurred in between the tempo trax and truck, but the registration number of truck could not be noticed and the truck also could not be traced out. A first information report was lodged by one of the occupants of tempo trax. The investigation was conducted based on the information for the offences punishable under Section 304(A) of the Indian Penal Code, as the case was registered against the truck driver, during the investigation the truck could not be traced out. So, the case was closed. The legal heirs of Shivanandan were filed the claim petition before the Motor Accident Claims Tribunal and the same was dismissed by the Tribunal on the ground the first information report has been filed against the truck 19 (SCCH-8) M.V.C.No.1237/2013 driver and the case was registered against the driver of the truck. So, there is no rash and negligent driving on the part of the tempo trax driver, as the claimants were filed the claim petition against the driver, owner and insurer of the tempo trax. So, the claimants were filed the appeal before the Hon'ble High Court and the Hon'ble High Court held that there is a rash and negligent driving of the tempo trax driver. So, the insurance company has challenged the judgment of the Hon'ble High Court before the Hon'ble Supreme Court and the Hon'ble Supreme Court held that the Tribunal on the basis of the evidence

including the F.I.R. held that the tempo trax driver was not driving rashly and negligently and dismissed the claim application, but the High Court relied upon the deposition of two witnesses and observed that as F.I.R. was not legally proved, driver of the tempo trax should be held guilty of rash and negligent driving, F.I.R. had been relied upon by the parties on both sides and the claimants had made a reference to it in their claim application, F.I.R. was marked as an exhibit as both the parties intended to rely upon it. The tribunal was justified in relying upon the F.I.R. irrespective of the fact that contents of the document have been proved or not. The judgment of High Court set aside and claim application was dismissed.

17. In the instant case admittedly one Syed Rahim @ Vasim has filed the information in which he has categorically stated that 20 (SCCH-8) M.V.C.No.1237/2013 the accident in question was taken place on the rash and negligent driving of the car driver in which no where appears that the accident in question was taken place on the rash and negligent driving of the driver of the Swaraj Mazda vehicle. So, based on the information Kengeri Traffic police have registered the case against the car driver in their police station Cr.No.27/2012 for the offences punishable u/s 279, 337 and 304(A) of IPC. So, one thing is clear that the based on the information against the car driver only I.O. after conducting investigation has filed the final report against the car driver only. Therefore, decision as stated above is directly applicable to the case on hand. Though the petitioners have impleaded the owner, insurer of the Swaraj Mazda, but the petitioners have failed to prove the rash and negligent driving of the driver of the Swaraj Mazda vehicle. The learned counsel for the respondent No.2 while canvassing his arguments has submitted that the owner of the car has not paid premium of the occupants and he took the Act policy and relied the following decisions;

2007(2) AIR Kar R 490 in between Oriental Insurance Co.Ltd., Vs. Smt.Jhuma Saha and others 2009 ACJ 1993 in between New India Assurance Co.Ltd., Vs. Putul Nazir and others 21 (SCCH-8) M.V.C.No.1237/2013 2009 ACJ 1995 in between Meghawati Vs. Raja Ram Yadav and others 2013 ACJ 194 in between New India Assurance Co.Ltd., Vs. Palamoni Suresh and another 2014 ACJ 2606 in between National Insurance Co.Ltd., Vs. Kesari Ravi and another 2014 ACJ 1022 in between New India Assurance Co.Ltd., Vs.Diongre Sanjeev 2014 ACJ 2473 in between Siyaram Vs. Devkuwar and others

18. It is an admitted fact that the injured who were traveling in Honda City car were sustained injuries and filed the claim petition in MVC 3109/2013 and 3110/2013 in which they took up the contention that the driver Sachin Setty has drove the car in a rash and negligent manner on his own negligence the accident was occurred and they sustained injuries. Thereby the said claim petitions are came to be allowed against the owner of the car.

In the instant case also the deceased was traveling in the same car, but the reasons best known to the petitioners have taken up the contention that the accident in question was taken place on the rash and negligent driving of the Swaraj Mazda vehicle bearing registration No.KA-17-A-3877. That is the reason why the petition filed by the petitioners is not maintainable since the petitioners have not proved the rash and negligent driving of 22 (SCCH-8) M.V.C.No.1237/2013 the driver of the Swaraj Mazda. If the petitioners were filed the instant claim petition against the driver of the car the matter would have different. The petitioners have not proved through oral and documentary

evidence that the accident in question was taken place on the rash and negligent driving of the driver of the Swaraj Majda bearing registration No.KA-17-A-3827. So, question of considering the other aspects nor to decide the issue No.2 does not arise as the issue No.2 does not survive for court consideration. Hence, I am of the opinion that the issue No.1 is answered as Negative and the Issue No.2 does not survive for court consideration.

19.Issue No.3:

In view of my answer to the issue Nos.1 & 2, I proceed to pass the following:

ORDER The petition filed by the petitioners under section 166 of M.V. Act against the respondents is hereby dismissed. No order as to costs.

Dictated to the stenographer, transcript thereof, corrected and then pronounced by me in the open court on this 22nd day of July 2015.

(P.J.Somashekar), XII Addl. Judge-Member, MACT, Bangalore.

23 (SCCH-8) M.V.C.No.1237/2013 ANNEXURE List of the witnesses examined on behalf of petitioner:

P.W.1, Shri Sagheer Shariff Daba 6.6.2015 List of the documents exhibited on behalf of petitioner:

Ex.P1	True copy of Complaint
Ex.P2	True copy of FIR
Ex.P3	True copy of panchanama
Ex.P4	True copy of sketch
Ex.P5	True copy of Seizure mahazar
Ex.P6	True copy of IMV report
Ex.P7	True copy of P.M.report
Ex.P8	True copy of charge sheet
Ex.P9	Ration card
Ex.P10	True copy of the Inquest mahazar
Ex.P11	Salary certificate

List of the witnesses examined on behalf of respondents:

RW1 Nagesh R. 14.7.2015 List of the documents marked on behalf of respondents:

Ex.R1	Charge sheet
Ex.R2	PM Report
Ex.R3	Policy copy
Ex.R4	Copy of the Order sheet in MVC No.3109/2013
Ex.R5	Award copy in MVC No.3109/2013

(P.J.Somashekar),
XII Addl. Judge-Member, MACT,
Bangalore.