

In Collusion With The Police ... vs Pertaining To Canter Bearing ... on 27 January, 2015

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

Dated this, the 27th day of January, 2015.

PRESENT : SMT.INDIRA MAILSWAMY CHETTIYAR,
B.Com., LL.B. (Spl),
IX Addl. Small Causes Judge & XXXIV ACMM,
Court of Small Causes,
Member, MACT-7, Bangalore.

M.V.C.No.2835/2012

Smt. Catherine Louis A.
W/o Late Louis Joseph,
Aged about 37 years,
Residing at No.906,
B.D.A. Quarters, Austin Town,
Viveknagar Post, PETITIONER
Bangalore.

(By Sri.Cuckoo Delhi and
Sri.Vihayakumar.C., Adv,.)

V/s

1. Sri. Kengaiah
S/o Late Hanumanthaiah,
Aged about 65,
Residing at No.6, 3rd Main Road,
Near Dhanues Provision Stores,
Guruguntepalya, 4th Block,
Austin, Yeshwanthpura,
Bangalore.

(R.C. Owner of Lorry bearing
Registration No.CAW-1688)

2. Sri. Amaresh
S/o Late Yellappa,
Aged about 29 years,
Residing at No.791,
Lakshmi Reddy's House,

M.V.C. NO.2835/2012

(SCCH-7)

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9th 'B' Cross, Triveni Road,
Deewanara Palaya,
Behind Government School,

Yeshwanthpura,
Bangalore.

(At present having possession of
Lorry bearing Registration No.CAW-
1688)

3. Sri. Thiloknath B.K.
S/o Late B.K.Sadashivan,
Aged 56 years,
Residing at No.2,
Mahatma Gandhi Colony,
Veerasagara Main Road, Attur,
Vidyaranya Post,
Bangalore - 97.

(Driver of the Lorry bearing
Registration No.CAW-1688)

4. United India Insurance Company
Ltd.,
No.1872, 20th Main Road,
20th Cross, Marenahalli Main Road,
Vijayanagar,
Bangalore - 560 040.

...RESPONDENTS

(R1-By Sri.T.Seshagiri Rao and
Sri.Sunil S. Rao, Advs.,)
(R2-Exparte)
(R3-By Sri.Vijayakumar, Adv.,)
(R4-By Sri.R.S.Srikantareddy, Adv.,)

JUDGMENT

It is pertinent to note here that, initially, the Petitioner has filed the present petition only as against the Respondents No.1 to 3 and later, as per the Order dated 21.06.2013 passed on I.A.No.III, the Respondent No.4 is impleaded as party to the M.V.C. NO.2835/2012 (SCCH-7) proceedings. Hence, the present petition is pending before this Tribunal for consideration and disposal as against the Respondents No.1 to 4.

2. The petitioner has filed the present petition as against the Respondents No.1 to 4 under Section 166 of the Motor Vehicles Act, 1989 praying to award compensation of Rupees 20,00,000/- in view of death of Louis Joseph S/o Mark Joseph.

3. The brief averments of the petitioner's case are as follows;

a) On 09.12.2011 at about 8.15 p.m., the deceased Louis Joseph was riding the Luna bearing Registration No.KA- 04-K-8287 slowly and cautiously on the left side of the road, on Ayyappa Swamy Cross Road Junction of the Nala Road, observing all the traffic rules and regulations. At that time, a Canter Lorry bearing Registration No.CAW-1688 driven by its driver with high speed, rash

and negligent manner without observing the traffic rules, came from behind and hit to the Luna bearing Registration No.KA-04-K-8287. Due to that accidental impact, the rider of the Luna fell down and sustained severe head injury and injuries to the whole body.

b) The deceased was immediately shifted to St. Philomena Hospital, Bangalore, wherein, the Doctor declared that, he was succumbed to death due to the accidental injury at about 8.50 p.m. Later post mortem was conducted at Bowring and Lady Curzon Hospital, Bangalore and death ceremonies were conducted as per the religion customs. For M.V.C. NO.2835/2012 (SCCH-7) the said ceremony, they have spent huge amount of Rupees 1,00,000/-.

c) Prior to death, he was hale and healthy and was working at Williams Bakery Private Limited, Bangalore as Kitchen Helper and he was earning a salary of Rupees 10,000/- p.m. He was the only bread winner of the family. Due to his death, the family has lost the support, the income and livelihood and her companion. Hence, this Petition.

4. In response to the notice, the Respondent No.1 has appeared before this Tribunal through his Learned Counsel and has filed the written statement.

5. Though the notice was duly served on the Respondent No.2, he was remained absent and hence, he is placed as exparte on 06.07.2012.

6. Initially, though the notice was duly served on the Respondent No.3, he was remained absent and hence, he is placed as exparte on 06.07.2012. Later, as per the Order dated 26.09.2012 passed on I.A.No.I, the exparte order is set- aside and the Respondent No.3 is taken on file. Initially, inspite of giving sufficient opportunities, the Respondent No.3 had not filed the written statement. Later, as per the order dated 29.11.2012 passed on I.A.No.II, the written statement filed by the Respondent No.3 is taken on file.

7. As per the Order dated 21.06.2013 passed on I.A.No.III, the Respondent No.4 is impleaded as party to the M.V.C. NO.2835/2012 (SCCH-7) proceedings and it has appeared before this Tribunal through its Learned Counsel and has filed the written statement.

8. The Respondent No.1 inter-alia denying the entire case of the Petitioner, has further contended as follows;

a) The Petitioner by virtue of presenting the claim petition has requested this Hon'ble Court to award a compensation of Rupees 20.00 lakhs on account of the death of her husband, who died in the accident occurred on 09.12.2011. According to the Petitioner, on 09.12.2011 at about 8.15 p.m., the deceased was going on a Luna bearing Registration No.KA-04-K-8287 keeping himself on the left side of the road at Ayyappa Swamy Cross Road Junction of Nala Road. When such being the case, a Canter Lorry bearing Registration No.CAW-1688 came in the same direction driven by its driver in a rash and negligent manner, without observing the traffic rules, he came from hind side and hit the Luna at its back. Due to it, the deceased fell down and sustained severe head injuries and he was immediately, shifted to St. Philomena Hospital, Bangalore, wherein, the Doctor declared

that, he has succumbed to the injuries sustained by him in the road accident, occurred on 09.12.2011 at 8.50 p.m. Later postmortem was done and sought for a compensation of Rupees 20.00 lakhs.

b) He was the owner of Canter vehicle bearing Registration No.CAW-1688 and on 18.10.2008 itself has sold the said vehicle in favour of Respondent No.2 for consideration. The Respondent No.2 having taken delivery and possession of the said vehicle in favour of the Respondent M.V.C. NO.2835/2012 (SCCH-7) No.2 for consideration. The Respondent No.2 having taken delivery and possession of the said vehicle has executed a Sale Receipt and Delivery Note in his favour, both dated 18.10.2008. The accident happened on 09.12.2011, on which date, he was neither the owner of the said vehicle nor the person, who is in any way responsible for the accident. Consequently, question of foisting any liability on him would never arise. The said vehicle was insured with M/s. United India Insurance Company Ltd., having its Office at No.1872, 20th Main, 20th Cross, Marenahalli Main Road, Vijayanagar, Bangalore - 40 and said Insurance Company upon accepting a sum of Rupees 10,506/- by way of cash, issued a receipt on the forenoon of 09.12.2011 covering the risk and subsequently they issued a policy also.

c) He is no way responsible for the accident. Secondly, he is in no way liable to compensate the Petitioner. Thirdly, even if this Hon'ble Court passes any award in the above case, then, the liability may be foisted against the said Insurance Company since the vehicle has been insured with it. Lastly, the Petitioner without impleading the Insurance Company, has filed the present petition. This Hon'ble Court taking note of the policy issued by United India Insurance Company Limited, foist the liability against the said Insurance Company.

d) The compensation one claimed by the Petitioner is highly exorbitant and unreasonable, as he came to know that, on 09.12.2011, no accident was occurred and the Canter bearing Registration No.CAW-1688 was in no way responsible for the death of the deceased, namely, Louis Joseph. The M.V.C. NO.2835/2012 (SCCH-7) Petitioner in collusion with the Police authorities has managed to see that, a Police case is registered against the said vehicle, alleging that, the driver of the said vehicle was responsible for the accident occurred on 09.12.2011. As such, the petition one filed by the Petitioner is liable to be dismissed. Under any circumstances, the liability cannot be foisted against the insurer of the vehicle, i.e., United India Insurance Company, since the vehicle is insured with them and the policy issued by them in force as on the date of alleged accident. Hence, prayed to dismiss the petition.

9. The Respondent No.3 inter-alia denying the entire case of the Petitioner, has further contended as follows;

a) In the event of this Hon'ble Court passing as award for compensation, the rate of interest shall not exceed 6% in view of the law declared by the Hon'ble High Court of Karnataka.

b) Without prejudice to the forgoing, he is not the R.C. Owner of the Lorry bearing Registration No.CAW-1688. If this Hon'ble Court passing an award, the same will have to be borne by the owner of the vehicle.

c) He had valid and effective driving licence on the date of accident.

d) The claim of the award of compensation of Rupees 20,00,000/- is exaggerated and unrelated to the injuries sustained by the Petitioner. It is obvious that, the Petitioner is M.V.C. NO.2835/2012 (SCCH-7) trying to convert unfortunate incident into a windfall. Hence, prayed to dismiss the petition with exemplary costs.

10. The Respondent No.4 inter-alia denying the entire case of the Petitioner, has further contended as follows;

a) The petition filed by the Petitioner under Section 166 of the M.V. Act originally as against the first, second and third Respondents. It is the first Respondent, who made an application under Order 1 Rule 10(2) of C.P.C. to implead it and this Hon'ble Tribunal was allowed the said application. Accordingly, the Petitioner carried out the amendment to the claim petition. In fact, it is not necessary party to the claim petition. Hence, the claim petition is liable to be dismissed as against it.

b) The petition is bad for non-joinder of proper parties, as the owner/insured and insurer of Scooter bearing Registration No.KA-04-K-8287 are necessary parties to the petition. But, the owner of the said vehicle and insurer were not made parties by the Petitioner in the petition. Hence, the claim petition is not maintainable under law.

c) The Petitioner has not approached before this Tribunal with clean hands. The Petitioner has suppressed the material facts. In fact, as per the charge sheet, the Ashok Nagar Traffic Police have registered a case in Crime No.70/2011 under Section 279 and 304(A) of I.P.C., Section 146 R/w 196, 56 and 192, 66 R/w 192-A, 50(3) and 177 of the M.V. Act. The concern Police have clearly stated in Column No.7 of the charge sheet that, the Canter vehicle has not got M.V.C. NO.2835/2012 (SCCH-7) policy, permit and fitness certificate in force as on the date of the alleged accident. Whereas, the said facts are suppressed in the claim petition. Hence, it is not liable to pay any compensation to the Petitioner.

d) They have issued a policy bearing No.071681/31/11/02/00011180 in the name of the first Respondent pertaining to Canter bearing No.CAW-1688 for a period from 10.12.2011 to 09.12.2012. As on the date of accident, they have not issued any policy in the name of the first Respondent or for the alleged vehicle. Hence, it is not liable to pay any compensation to the Petitioner and it is not a necessary party in the claim petition. The first Respondent made them as fourth Respondent in the petition without any basis and to harass it with malafide intention to escape from the liability. Therefore, this Hon'ble Tribunal may be pleased to dismiss the claim petition against it.

e) On 09.12.2011, the driver of the said Lorry bearing No.CAW-1688 has driven the said vehicle without insurance policy, permit and fitness certificate by violating traffic rules and I.O. of the concern Police have investigation and filed charge sheet against the said Lorry driver, whose name one Thiloknath B.K. under Section 279 and 304(A) of I.P.C. and Section 146 R/w 196, 56 and Section 192, 66 and Section 192- A, 50(3) R/2 177 of the M.V. Act, which clearly shows that, the

owner/first Respondent knowingly well and intentionally entrusted the said vehicle without insurance policy, permit and F.C. to ply the said vehicle in a public place as on the alleged accident. Therefore, if any compensation or award, the first Respondent alone liable to pay to the Petitioner.

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f) The deceased Louis Joseph himself was responsible for the alleged accident. There was no negligence on the part of the driver of the said Lorry. The deceased was riding the said Luna bearing No.KA-04-K-8287 without observing moving vehicle on the road and he was not followed the traffic rules and riding the said vehicle in a high speed and he lost control of the said vehicle and he alone fell down on the said road and also he did not possessing a valid and effective driving licence to drive the said class of vehicle. Hence, the Petitioner is not entitled for any compensation.

g) The claim for compensation of Rupees 20,00,000/- in different heads is highly exaggerated, exorbitant, without any basis, whatsoever without furnishing any documentary evidence and such a claim cannot be entertained.

h) It has not issued insurance policy as on the date of alleged accident. Therefore, it is not a necessary party in the proceedings. Hence, the petition is not maintainable against it.

i) Without prejudice to the above contentions, when they have not issued any insurance policy in the name of the first Respondent or his vehicle, they are not liable to pay either award or interest in the case.

j) The Petitioner is called upon to state on oath that, she has not filed other claim petition for the alleged accident before any other Tribunal in any other place. Hence, prayed to dismiss the claim petition with costs.

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11. Based on the above said pleadings, my Learned Predecessor-in-Office has framed the following Issues;

ISSUES

1. Whether the Petitioner proves that, the accident occurred due to rash and negligent driving of the Canter Lorry bearing Registration No.CAW-1688 by its driver and in the said accident, Louis Joseph died?

2. Whether the Petitioner is entitled for compensation? If so, how much and from whom?

3. What Order or Award?

12. In order to prove her case, the Petitioner herself has been examined as P.W.1 and has also examined two witnesses as P.W.2 and P.W.3 by filing the affidavits as their examination-in-chief and has placed reliance upon Ex.P.1 to Ex.P.17. On the other hand, the Respondent No.1 himself has been examined as R.W.1 by filing an affidavit as his examination-in-chief and has placed reliance upon Ex.R.1 to Ex.R.9. On the other hand, the Respondent No.4 has examined its Officer as R.W.2 and has also examined one witness as R.W.3 and has placed reliance upon Ex.R.10 to Ex.R.18. It is pertinent to note here that, since Ex.R.3 to Ex.R.9 are marked twice, it is corrected as Ex.R.10 to Ex.R.16 with the consent of both the Learned Counsels and also placed reliance upon Ex.R.17 and 18.

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13. Heard the arguments by the Learned Counsels appearing for the Petitioner and the Respondents No.1 and 4. The Learned Counsel appearing for the Respondent No.3 has not addressed the arguments on merits.

14. In support of the submission, the Learned Counsel appearing for the Petitioner Sri.Vijayakumar has placed reliance upon the decision reported in,

i) 2013 Kant M.A.C. 694 (SC) SUPREME COURT (S.Iyyapan V/s M/s United India Insurance Co. Ltd., and Another), wherein, it is observed that, Motor Vehicles Act, 1988, Sections 146, 147 and 149 - Motor Accident - Third party risk

- Though driver of the vehicle had valid licence to drive light motor vehicle, but, no endorsement in the licence to drive light motor vehicle used as commercial vehicle - Effect of - Insurer cannot escape its liability on that ground - Statutory right of a third party to recover the amount of compensation so awarded from the insurer - Insurer is held to be authorized to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

15. In support of the submission, the Learned Counsel appearing for the Respondent No.1 Sri. T. Seshagiri Rao has placed reliance upon the decisions reported in,

i) 2001 ACJ 2022 HIGH COURT OF JUDICATURE AT MADRAS (C.M.A.NO.833 OF 1992 AND Cross-objection No.97 of 1995, decided on 23.07.1999) (Oriental M.V.C. NO.2835/2012 (SCCH-7) Insurance Co. Ltd., V/s Vedathal and Another), wherein, it is observed that, Motor Vehicles Act, 1988, Section 147 and Insurance Act, 1938, Section 64-VB - Motor Insurance - Policy - Commencement of -

Liability of insurance company - Policy obtained at 10.30 a.m. on the date accident, i.e., 20.05.1991 and accident occurred at 2 p.m. - Insurance company contended that, it is not liable as the date of commencement mentioned on the policy is from midnight of 21.05.1991 - Whether the date of receipt of premium by the insurance company shall be considered to be the effective date of commencement of policy and the insurance company is liable - Held: Yes.

ii) ILR 2009 KAR 3332 (National Insurance Co. Ltd., V/s Smt. Bhadramma and Others), wherein, it is observed that, Motor Vehicles Act, 1988 - Accident claim

- Claimant's appeal for enhancement -

Insurer's Appeal seeking avoidance of liability on the ground that there was no coverage of policy on the date of accident - Whether the risk of the insurer would commence from the time of acceptance of premium or whether it commences from the time of issue of the policy/cover note - Held, The risk to a later point of time other than from the time of acceptance of premium - The insurer cannot defer the assumption of risk to a later point of time other than from the time of receipt of the premium - In the instant case, the insured had paid the premium on 13.07.1994. The insurer of course, issue a receipt to that effect and also issued a policy, however, w.e.f. 14.07.1994. -

M.V.C. NO.2835/2012 (SCCH-7) FURTHER HELD, Section 46 of the M.V. Act mandatorily insists insurance against third party risk. Section 64-VB mandates that, the insurance company can assume risk only on receipt of premium. A provision is made that, the insurance company can also issue policy against the issue of cheque also. - ON FACTS, HELD, There is no material to show exactly at what point of time the premium was remitted and received. Therefore, it is not established that, the premium is paid subsequent to the accident. Hence, the ratio laid down in Sunitha Rani's case would apply to the case and it is to be inferred that, the policy is effective from the mid night of 13.07.1994. - The finding of the Tribunal that, the insurer is liable to pay compensation is sound and proper. - The claimants are entitled to a total compensation of Rupees 3,03,000/-. The Tribunal has awarded higher compensation of Rupees 3,12,498/-. Hence, both the appeals are dismissed.

16. In support of the submission, the Learned Counsel appearing for the Respondent No.4 Sri. R.S.Sriknatareddy has placed reliance upon the decisions reported in,

i) 2014(2) AKR 269 (Nazeer alias Nazeer Ahmed V/s Chandrashekar Gowda and Another), wherein, it is observed that, (C) Motor Vehicles Act, (59 of 1988) Ss- 147,56,39/- -Liability of insurer-Claimant sustained two grievous injuries and one simple injury-offending vehicle did not have valid fitness certificate at time of accident-As per Section 56 of Act, a transport vehicle shall not be deemed to be vehicle shall not be deemed M.V.C. NO.2835/2012 (SCCH-7) to be validly registered for purpose of Section 39, unless it carries a certificate of fitness- insurer not liable to pay compensation.

ii) 2005(2) T.A.C. 6 (All) High Court of Allahabad (Chandresh Kumar Agarwal V/s Yogendra Kumar Srivastava and Another), wherein, it is observed that, Motor Vehicles Act, 1939, Sections 96(2) and 110 Defendant-Section 149 (2) and 173 of Act 59 of 1988)-Motor insurance-Policy-Liability of Claimant proved by reliable evidence that, accident was caused by offending truck-Driver of truck apprehended on spot-Offending truck driven in an unauthorised manner and against the terms and conditions of policy-Plying of vehicle on road without valid permit and certificate of fitness prohibited under law- Whether Tribunal committed error of law in fastening liability to pay compensation on owner of vehicle-Held-(No)-Owner of vehicle held liable to pay compensation to the claimant.

iii) 2009 ACJ 2440 High Court of Kerala (Thara V/s Syamala), wherein, it is observed that, Motor Vehicles Act, 1988, section 149 (2)

(a) (i) and (c) Motor insurance- Goods vehicle- permit and fitness certificate-Liability of insurance company-Accident occurred on 05.06.2001-Insurance company disputed the liability on the ground that, goods vehicle was being plied by the insured without any permit or fitness certificate-Vehicle involved in the accident did not have a valid fitness certificate or permit at the time of accident-whether insurance company is exempted from liability- Held: yes; goods carriage can be used on the M.V.C. NO.2835/2012 (SCCH-7) road only after obtaining the permit and the use of vehicle without fitness certificate or permit will entitle the insurance company to avoid its liability under the policy.

iv) M.F.A No.7723/2011 (MV) High Court of Karnataka (Smt.Kempamma V/s Ramesh and Another), wherein, it is observed that, Tribunal on appreciation of evidence tendered by the insurer has found as per Exhibit R-3 the permit condition stipulating that, offending vehicle ought to have replied within the jurisdiction of Channapatna Taluk and at the time of accident it was plying at Malavalli Taluk. Hence, there was violation of permit condition. In that, view of the matter tribunal was fully justified in absolving the insurer of its liability and there is no error much less material irregularity committed by tribunal calling for interference at the hands of this court.

v) M.F.A No.8742 of 2008 (MV) High Court of Karnataka (Oriental Insurance Co., Ltd V/s K.C.Papanna and Another), wherein it is observed that, In view of the violation of the terms of the permit necessarily the insurer would not be held liable to satisfy the award. Hence on this ground I am of the considered view that, the appeal requires to be allowed. Consequently the appeal is allowed. The order dated 31.12.2007 passed in MVC No.74/2005 by the Additional Civil Judge (Senior Division), MACT, Ramanagara, is set aside in so far as it pertains to foisting the liability on the insurer is concerned. The appellant is absolved of its liability to satisfy the award. The claimants are M.V.C. NO.2835/2012 (SCCH-7) at liberty to pursue their remedy against the owner of the vehicle.

The amount in-deposit is directed to be refunded to the appellant.

17. My answers to the above said Issues are as follows;

Issue No.1 : In the Affirmative,

Issue No.2 : Partly in the Affirmative,

The Petitioner is entitled for a sum of Rupees 7,75,100/- as compensation from the Respondent No.2.

Issue No.3 : As per the final Order,

for the following;

REASONS

18. ISSUE NO.1 :- The P.W.1, who is the Petitioner No.1 has stated that, her husband deceased Louis Joseph, on 09.12.2011 at about 8.15 p.m., met with an accident, who was riding the Luna bearing Registration No.KA-04-K-8287, slowly and cautiously on the left side of the road and when he reached Ayyappa Swamy Cross Road Junction of Nala Road, observing all the traffic rules and regulations, at that time, the driver of the Canter Lorry bearing Registration No.CAW-1688 drove the same with high speed, in a rash and negligent manner without observing the traffic rules and regulations and dashed behind the Luna bearing Registration No.KA-04-K-8287 from behind. She has further stated that, due to the sudden impact, her deceased husband fell down from Luna and sustained severe head injury and injuries to the whole body M.V.C. NO.2835/2012 (SCCH-7) and immediately after the accident, he was shifted to St.Philomena's Hospital, Bangalore, wherein, the Doctor's have declared that, her husband was succumbed to death due to that accidental injuries at about 8.50 p.m., and subsequently, the post mortem was conducted at Bowring and Lady Curzon Hospital, Bangalore. She has further stated that, the concerned jurisdictional Ashok Nagar Traffic Police have filed a Criminal Case in Crime No.70/2011 for the offences punishable under Section 279 and 304(A) of IPC as against the driver and owner of Lorry bearing Registration No.CAW-1688 and the accident was taken place due to rash and negligent driving of the driver of the said Lorry.

19. No doubt, the P.W.1 in her cross-examination has admitted that, she was not present at the spot at the time of accident and she doesn't know how the accident occurred. But, she has clearly stated in her cross-examination itself that, she saw the deceased Louis Joseph in the Hospital, when he was dead and she is not an eye witness to the said alleged road traffic accident. Further to corroborate her oral version, the Petitioner has produced Ex.P.1 FIR, Ex.P.2 Complaint, Ex.P.3 Charge Sheet, Ex.P.4 Spot Hand Sketch, Ex.P.5 Spot Panchanama, Ex.P.6 Inquest Panchanama, Ex.P.7 MVI Report, Ex.P.8 Post Mortem Report, Ex.P.9 Death Certificate relating to her deceased husband, Ex.P.12 Receipt Relating to Cemetery Charges and Ex.P.14 Bill issued by Scared Hall, which clearly disclosed about the death of Louis Joseph in the road traffic accident on 09.12.2011 itself in the road traffic accident, which is clear from the following discussion.

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20. The contents of Ex.P.1 FIR and Ex.P.2 Complaint clearly disclosed that, one Sri Yesu Kristhu Raj has lodged Ex.P.2 Complaint before the Ashok Nagar Traffic Police alleged that, when himself and his friend Muttu were talking together in the Junction Road, Ayyappa Swamy Temple at Cross Nala Road, one Luna was proceeding by its rider from BDA Complex towards Infant Jesus Church and at that time, the driver of the Canter Lorry came from Corporation School towards Infant Jesus Church with high speed and dashed behind the said Luna and due to the said impact, the rider of the said Luna fell down and had sustained grievous injuries to his head, stomach hands and legs and with the help of the public, he was shifted to the nearest Hospital through an Auto and when he saw the number of the said Luna, it is found that, its number was KA-04-K-8287 and the number of the offending Canter Lorry was CAW-1688 and the Police came to the spot and seized the said vehicles and on enquiry, it is found that, when the said injured was shifted to St. Philomina's Hospital for

treatment, the Doctor declared that, he is dead and the name of the said deceased is Louis Joseph, aged about 44 years and the said road traffic accident was taken place due to the negligence on the part of the driver of the said Canter Lorry bearing Registration No.CAW-1688 and based on the said Ex.P.2 Complaint, the said Police have registered a Criminal case as against the driver of the said offending Lorry for the offences punishable under Section 279 and 304(A) of IPC under Crime No.70/2011. The offending Canter number as well the Luna, wherein, the deceased was proceeding and the name of the deceased are clearly mentioned in Ex.P.1 FIR. Further, it is clear from the contents M.V.C. NO.2835/2012 (SCCH-7) of Ex.P.1 FIR and Ex.P.2 Complaint that, there is no delay as such, in lodging the said Ex.P.2 Complaint before the concerned jurisdictional Police.

21. It is clear from the contents of Ex.P.4 Spot Hand Sketch and Ex.P.5 Spot Panchanama and Ex.P.7 MVI Report that, the said offending Canter bearing Registration No.CAW- 1688 as well as its driver are very much involved in the said road traffic accident, wherein, the deceased Sri.Louis Joseph succumbed to the injuries in view of dashed to his Luna bearing Registration No.KA-04-K-8287 by the driver of the said offending Canter Lorry from its behind and at the time of accident, the said deceased was proceeding along with his Luna extremely on the left side of the road and there was no negligence on the part of the deceased, but, the entire negligence is on the part of the driver of the offending Canter bearing Registration No.CAW-1688. Further, it is clearly mentioned in Ex.P.7 M.V.I Report about the damages caused to both the vehicles, which clearly disclosed about the terrific impact of the said accident. It is also clearly mentioned in Ex.P.7 that, the said accident was not occurred due to any mechanical defects of the said Motor Vehicles.

22. It is clear from the contents of Ex.P.6 Inquest and Ex.P.8 Post Mortem Report that, due to the fatal injuries sustained in the road traffic accident, the said deceased expired and his death is due to shock and hemorrhage as a result of multiple injuries sustained.

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23. Ex.P.9 Death Certificate clearly disclosed that, on 09.12.2011, the said Louis Joseph expired and his death is registered in the death register in accordance with law.

24. The contents of Ex.P.3 Charge Sheet further clearly disclosed that, since during the course of investigation, it is found that, due to high speed, rash and negligent manner of driving of the said offending Canter Lorry bearing Registration No.CAW-1688 by its driver, who is the Respondent No.3, the said road traffic accident was taken on 09.12.2011 at 8.15 p.m., in which, the deceased succumbed to the injuries at 8.50 p.m. on the same day itself and the said accident was taken place at Junction Nala Road, Sri Ayyappa Cross Road, when the deceased was proceeding on his Luna bearing Registration No.KA-04-K-8287 on the left side of the said road and at the time of accident, the offending Canter was not having insurance, permit and F.C. and though the Respondent No.1 has sold the said offending Canter to the Respondent No.2, the Respondent No.2 has not registered the said offending Canter in his name and as such, the Investigating Officer has filed a charge sheet as against the Respondents No.1 to 3, who are the earlier owner, subsequent owner and driver respectively, at the time of accident, relating to the said offending Canter bearing Registration No.CAW-1688, for the offences punishable under Section 279 and 304(A) of IPC, Section 146 R/w

Section 196, 56 R/w Section 192, 66 R/w Section 192-A, 50(3) R/w 177 of the M.V. Act. The very involvement of the said Canter Lorry bearing Registration No.CAW-1688 as well as its driver i.e., the Respondent No.3, are very much clear from the contents of Ex.P.3 Charge Sheet.

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25. The contents of Ex.P.1 to Ex.P.9 are not disputed by the Respondents 1, 3 and 4 while cross-examining the P.W.1. From this, it is made crystal clear that, the offending Canter Lorry bearing Registration No.CAW-1688 and its driver i.e., the Respondent No.3 are very much involved in the road traffic accident, wherein, the deceased Louis Joseph S/o Mark Joseph succumbed to the injuries.

26. Under the above said facts and circumstances as well as the reasons given, this Tribunal has come to the conclusion that, the Petitioner has clearly established her specific case by adducing acceptable material evidence, both oral and documentary that, the accident occurred due to rash and negligent driving of the Canter Lorry bearing Registration No.CAW-1688 by its driver, who is the Respondent No.3 and in the said road traffic accident, Louis Joseph died due to the injuries sustained. Accordingly, I answered Issue No.1 in the Affirmative.

27. ISSUE NO.2 :- As this Tribunal has already come to the conclusion that, the husband of the Petitioner succumbed to the injuries in the road traffic accident on 09.12.2011 at 8.15 p.m. From this, it appears that, the Petitioner is a wife of the said deceased. The P.W.1 in her cross-examination has stated that, since, her parent-in-laws are no more and since she is not having any issues, she alone has filed the present petition. The Petitioner has also produced Ex.P.10 Election Identity Card relating to her and Ex.P.11 Ration Card. From the contents of the said documents, it is further made clear that, the Petitioner is a wife of the deceased Louis Joseph S/o Mark Joseph. From this, M.V.C. NO.2835/2012 (SCCH-7) it is made crystal clear that, the Petitioner is a wife of Late Louis Joseph S/o Mark Joseph and she alone is a legal representative of the said deceased. Since the Petitioner is a wife of the deceased, she is a dependent of the said deceased.

28. The P.W.1 has stated that, earlier to the accident, her husband Louis Joseph was hale and healthy. The P.W.1 has not disclosed the age of the deceased at the time of accident. Even, the Petitioner has not produced any authenticated document to show the actual age of the deceased at the time of accident. Ex.P.1 FIR, Ex.P.3 Charge Sheet, Ex.P.6 Inquest and Ex.P.8 Post Mortem Report produced by the Petitioner clearly disclosed that, at the time of accident, the deceased was aged 45 years. Therefore, based on the said material evidence, this Tribunal has considered that, at the time of accident, the deceased was 45 years old.

29. The P.W.1 has stated that, her deceased husband was working at Williams Bakery Private Limited, situated at No.16, Kashi Vishwanatha Temple Street, Vannerpet Main Road, Bangalore-560047, as kitchen helper and earning a sum of Rupees 5,117/- per month and his working hours were 6.00 a.m. to 2.30 p.m. and also he was running a fancy stores having a rented commercial shop at No.129, Bazaar Street, Vannerpet Viveknagar, Bangalore-560047 from 5.00 p.m. to 10.00 p.m. and he was also earning additional income of Rupees 6,000/- per month, totally

he was earning Rupees 11,117/- per month. In this regard, the Petitioner has produced Ex.P.13 Pay Slip for the month of November 2011 M.V.C. NO.2835/2012 (SCCH-7) relating to her husband and Ex.P.15 Letter issued by Williams Bakery Private Limited, which disclosed that, the deceased was under the employment of Williams Bakery Private Limited from 04.12.2010 to 09.12.2011 as a kitchen helper i.e., till his death and at the time of accident, he was drawing a gross salary of Rupees 5,117/- and net salary of Rupees 4,293/- from the said Williams Bakery Private Limited. The Petitioner has also examined the P.W.2, who has stated in his examination-in-chief that, deceased Sri Louis Joseph was known to him, who died in the road traffic accident and he was working in Sweet Chariot Bakery and he was tenant under him who was running the shop after his office hours from 08.06.2009 doing business of fancy items, watch, bangles, toys etc. He has further stated that, he is the owner of the property bearing No.129 at Viveknagar and the deceased had paid an advance of Rupees 65,000/- to him and monthly he was paying Rupees 2,000/- as rent and he was running the business successfully. The P.W.2 has produced Ex.P.16 Shop Rent Agreement entered into between himself and the deceased. The Petitioner has also examined Manager-HR of the said Williams Bakery Private Limited as P.W.3, who has stated in his examination-in-chief that, deceased Sri. Louis Joseph was working in their Bakery as helper in kitchen section and as per the records, he was appointed on 04.12.2010 and was getting salary of Rupees 5,359/- per month and if at all future income of the deceased is taken and if he would have survived till at the age of 58 years, till the retirement, he would have got usual annual increments.

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30. The P.W.3 has also produced Ex.P.17 Salary Slip of deceased Louis Joseph, which also corroborated with the contents of Ex.P.13 Pay Slip for the month of November 2011 relating to the said deceased. The P.W.3 has also clearly stated in his cross-examination that, every month they have been issuing the salary slips and on the basis of the records available in their office, he is stating that, the deceased Louis Joseph was working till the date of the accident. From the contents of Ex.P.13 and Ex.P.17 Pay Slip for the month of November 2012 relating to the deceased and Ex.P.17 Letter issued by Williams Bakery Private Limited as well as the oral version of P.W.1 to P.W.3, it is made crystal clear that, since 04.12.2010 till the date of his death, the deceased was working as a kitchen helper in Williams Bakery Private Limited and he was getting a net salary of Rupees 4,293/- per month. No doubt, Ex.P.16 Shop Rental Agreement disclosed that, the deceased was taken the residential premises on rental basis from the P.W.2. But, only based on the said oral version of P.W.2 and also the contents of Ex.P.16, it cannot be believed and accept that, at the time of accident, the deceased was also running a fancy stores in the rented commercial shop from 5.00 p.m. to 10.00 p.m. and was earning additional income of Rupees 6,000/- per month, as, Ex.P.16 Shop Rental Agreement is relating to the residential premises and is not a commercial premises and except that oral version of P.W.1 and Ex.P.16, no other material documents is produced by the Petitioner to show that, from 5.00 p.m. to 10.00 p.m., the deceased was running a fancy store in the premises shown in Ex.P.16 Shop Rental Agreement and was earning additional income of Rupees 6,000/- per month from the said business.

M.V.C. NO.2835/2012 (SCCH-7) Furthermore, the P.W.2 in his cross-examination has clearly stated that, he had not obtained licence to run the business in the premises and he has not produced any

document to show that, the subject matter of Ex.P.16 is owned by me. Even, the P.W.2 has not produced any rent receipts. In this regard, he has clearly stated that, there is no separate receipt for having paid Rupees 65,000/- as advance from the said deceased and he used to pay rent at the rate of Rupees 2,000/- per month. Therefore, the said oral version of P.W.2 as well as Ex.P.16 no way helped to the Petitioner to consider the additional income of the deceased of Rupees 6,000/- per month from fancy store business. As this Tribunal has already come to the conclusion that, at the time of accident, the deceased was getting a net salary of Rupees 4,293/-. Therefore, it is considered that, at the time of accident, the deceased was getting a salary of Rupees 4,293/- per month.

31. The P.W.1 has stated that, her late Husband was the only bread earner of the family and due to sudden death, she lost the support and her life partner and suffering from mental agony and due to un-natural death, her husband future prospects is disturbed.

32. As per the decision reported in 2013 ACJ 1403 (Rajesh and Others V/s. Rajbir Singh and others), as the deceased was aged 45 years, towards future prospects 30% of the income has to be added. So, 30% of Rupees 4,293/- comes to Rupees 1,287-90. Therefore, the income of the deceased comes to Rupees 5,580-90 p.m. (Rs.4,293/- + Rs.1,287-90).

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33. As this Tribunal has already observed that, the Petitioner, who is a wife of the deceased, is only a dependent of the deceased. Therefore, deceased left behind one dependent. As per the principles laid down in Sarala Varma's Case, considering the number of the dependent i.e., 1, 1/3 rd of the income has to be deducted towards personal expenses of the deceased i.e., Rupees 1,860-30 (1/3 rd of Rs.5,580-90). Therefore, loss of dependency comes to Rupees 3,720-60 (Rs.5,580-90 (-) Rs.1,860-30). The multiplier corresponding to the age of the deceased i.e., 45 years is 14 as per Sarala Varma's Case. Therefore, loss of dependency would be Rupees 34,25,907.60 (Rs.3,720-60 x 12 x 14). Therefore, the Petitioner is entitled for Rupees 6,25,060-80, which is rounded off to Rupees 6,25,100/- towards loss of dependency due to death of Louis Joseph S/o Mark Joseph.

34. The Petitioner has produced Ex.P.12 General Transaction Receipt dated 10.12.2011, which discloses that, a sum of Rupees 8,000/- is spent for Grave Bookings-Non Parishner-Full Masonary and Ex.P.14 Cash Bill dated 09.02.2011, which disclosed that, a sum of Rupees 8,000/- was spent for Coffin and Hearse.

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35. As per the principles laid down in the decision reported in 2013 ACJ 1403, loss of consortium to the Petitioner, who is a wife of the deceased, should be Rupees 1,00,000/- and funeral expenses would be Rupees 25,000/-.

36. Considering the facts and circumstances of the case, towards loss of love and affection, Rupees 10,000/- is awarded.

37. Rupees 5,000/- is awarded towards expenses of transportation of dead body and Rupees 10,000/- is awarded towards loss of estate.

38. In this way, the petitioner is entitled for the following amount of compensation:-

Sl.No Compensation heads Compensation . amount

1. Loss of Dependency Rs. 6,25,100-00
2. Loss of Consortium Rs. 1,00,000-00
3. Funeral Expenses Rs. 25,000-00
4. Expenses of transportation Rs. 5,000-00 of dead body
5. Loss of Love and affection Rs. 10,000-00
6. Loss of Estate Rs. 10,000-00 TOTAL Rs. 7,75,100-00

39. In all, the Petitioner is entitled for total compensation of Rupees 7,75,100/- along with interest at the rate of 6% per annum on the above said sum from the date of Petition till payment.

40. While answering Issue No.1, this Tribunal has already come to the conclusion that, the offending Canter M.V.C. NO.2835/2012 (SCCH-7) bearing Registration No.CAW-1688 as well as its driver, i.e., Respondent No.3, are very much involved in the said road traffic accident, wherein, deceased Louis Joseph, S/o Mark Joseph succumbed to the injuries.

41. It is alleged in Ex.P.3 Charge Sheet that, at the time of accident, the said offending Canter was not having valid insurance policy, permit and FC and the Respondent No.1, who was earlier owner had sold the said offending Canter to the Respondent No.2, but, the Respondent No.2 has not registered the said offending Canter in his name and as such, the Investigating Officer has inserted Sections 146 R/w Section 196, 56 R/w Section 192, 66 R/w Section 192-A, 50 (3) R/w Section 177 of the Motor Vehicles Act. It is also clear from the contents of Ex.P.3 Charge Sheet that, the present Respondent No.1, who was the earlier owner is shown as Accused No.2 and the Respondent No.2, who has purchased the offending Canter from the Respondent No.1, is shown as Accused No.1 in the said Criminal case. The P.W.1, who is the Petitioner shown her ignorance in her cross-examination that, as on the date of alleged accident, on 9.12.2011, the Respondent No.1 was not a owner of the Canter Lorry bearing Registration No.CAW-1688, but,, the Respondent No.2 was the owner of the said the offending Canter Lorry and it was not having any Insurance Policy issued by the Respondent No.4. The R.W.1, who is the Respondent No.1 has clearly stated that, he was the owner of the said offending Canter bearing Registration No.CAW-1688 and he has sold the same in favour of Respondent No.2 on 18.10.2008 itself for consideration and the Respondent No.2 having taken the delivery and possession of the said vehicle, has executed the sale receipt M.V.C. NO.2835/2012 (SCCH-7) and delivery note dated 18.10.2008 and the accident had happened on 18.12.2011, on

which date, he was neither owner of the said vehicle nor the person, who is responsible in any way for the said accident. In support of the same, the Respondent No.1 has produced Ex.R.1 Sale Receipt and Ex.R.2 Delivery Note. He has also produced Ex.R.3 Insurance Policy, Ex.R.4 Order Sheet relating to C.C.No.688/2012, Ex.R.5 Indemnity Bond, Ex.R.6 Requisition filed by the Policy to the Magistrate, Ex.R.7 Statement of Respondent No.2, Ex.R.8 Letter written by him to the Policy and Ex.R.9 Affidavit filed by the Respondent No.2. He has further clearly stated in his cross examination that, on the date of accident, he was not an owner of the vehicle bearing Registration No. CAW-1688 and he had insured the said vehicle with the Insurance Company and not deposited Rupees 10,506/- to the Insurance Company towards premium on 09.10.2011 and according to him, the Ex.R.3 Policy and Receipt has been taken up by some person to deceive him. No doubt, he has further stated that, he has not intimated the RTO about the fact of sale of the said vehicle in favour of the Respondent No.2. He has further clearly admitted that, Ex.R.3 Insurance Company standing in his name. Merely, on the ground that, Ex.R.3 Insurance Policy relating to the offending Canter is standing in the name of Respondent No.1, it cannot be said that, at the time of accident, the Respondent No.1 was a Registered owner of the said offending Canter bearing Registration No.CA-1688, as Ex.R.1 Sale Receipt and Ex.R.2 Delivery Note clearly disclosed that, on 18-10-2008 itself, the Respondent No.1 has sold the said offending Canter in favour of the Respondent No.2 and the possession of the said offending Canter was delivered by M.V.C. NO.2835/2012 (SCCH-7) the Respondent No.1 to the Respondent No.2 by virtue of the said Ex.R.1 and Ex.R.2. Further, the name of the Respondent No.1 does not disclosed in Ex.R.5 Indemnity Bond and Ex.R.9 Affidavit. The Respondent No.2, who was in possession of the said offending Canter at the time of accident, has clearly narrated in Ex.R.5 Indemnity Bond, Ex.R.7 Statement and Ex.R.9 Affidavit that, he has purchased the said offending Canter from the Respondent No.1 and as such, he is the owner and in possession of the said offending Canter at the time of accident and as such, he has released the said seized offending Canter from the custody in the said Criminal case. From the contents of the said material documents, it is made crystal clear that, on 18.10.2008, the Respondent No.1 has sold the offending Canter bearing Registration No.CA-1688 in favour of the Respondent No.2 and from the said date, it has been in possession and enjoyment of the Respondent No.2 and as such, the Respondent No.2 being the owner of the said offending Canter, has released the said vehicle, which seized in the Criminal case. To deny or to discard the same, nothing is available on record on behalf of the Respondent No.2.

42. The R.W.2, who is the Officer of the Respondent No.4 has stated in his examination-in-Chief that, they have issued an act liability only Policy No.071681/31/11/02/00011180 in the name of Respondent No.1 pertaining to the offending Canter bearing Registration No.CAW-1688 for a period from 10.12.2011 to 9.12.2012 only. The Respondent No.4 has also produced Ex.R.11 Insurance Policy relating to the said offending Canter, Ex.R.12 Charge Sheet, Ex.R.13 'B' Register Extract, Ex.R.14 Goods Carrier M.V.C. NO.2835/2012 (SCCH-7) Permit, Ex.R.15 Postal Acknowledgement, Ex.R.16 Letter dated 01.04.2013. No doubt, the said Ex.R.3 and Ex.R.11 Insurance Policy is standing in the name of Respondent No.1. But, this Tribunal has already come to the conclusion that, the Respondent No.1 has sold the offending Canter in favour of the Respondent No.2 on 18.10.2010 itself and thereafter, the Respondent No.2 is in possession and enjoyment of the said offending Canter and as such, he has released the said vehicle in the Criminal case. Hence, even though, the name of the Respondent No.1 is shown as owner in the said Insurance Policy, it no way helped to the

Respondent No.2 to escape from his liability to pay compensation to the Petitioner. It is pertinent to hear that, as per Ex.P.1 FIR and Ex.P.2 Complaint, the date of accident is on 9.12.2011 at 8.15 p.m. On Perusal of contents of Ex.R.3 and Ex.R.11 Insurance Policy, it appears that, the effective date of commencement of Insurance for the purpose of act from 14.55 Hrs i.e., 2-55 p.m. on 10-12-2011 and the date of expiry of the insurance is mid night on 9.12.2012. On perusal of the period of Insurance shown in the said insurance policy, it prima-facie appears that, at the time of accident, the Insurance Company of the said offending Canter was not having a valid insurance policy. No document is available on record to show that, at the time of accident, the Insurance Policy of the said offending vehicle is valid. Further, it is clear from the contents of Ex.R.13 and Ex.R.14 that, at the time of accident, the said offending Canter was also not having a valid permit and FC. The same has been clearly narrated in Ex.P.3 Charge Sheet. From this, it is made crystal clear that, at the time of accident, the said offending Canter was not having a valid insurance policy, permit and FC.

M.V.C. NO.2835/2012 (SCCH-7) Even though, there is no allegation leveled as against the driver of the offending Canter i.e., Respondent No.3, in Ex.P.3 Charge Sheet that, at the time of accident, he was not having a valid and effective driving licence to drive the said offending Canter, since the said offending Canter was not having a valid insurance policy, permit and FC, it no way helped to the Respondent No.2, to escape from his liability to pay compensation to the Petitioner. From this, it is made crystal clear that, as on the date of accident, all the vehicular documents relating to the offending Canter are not valid. Therefore, the rule of pay and recovery is not at all applicable. Hence, the Respondent No.2, who being an owner of the said offending Canter at the time of accident, is only liable to pay the above said compensation and interest to the Petitioner. In view of the said reasons, the Respondent No.1, who was an original owner, the Respondent No.3, who was a driver and Respondent No.4, who was an insurer, are not liable to pay any compensation to the Petitioner. Therefore, the petition filed by the Petitioner as against the Respondents No.1, 3 and 4 is liable to be rejected. The Respondent No.2 being an owner is liable to pay the compensation and interest to the petitioner. In view of the said reasons, the principles enunciated in the decision cited by the Learned Counsel appearing for the Petitioner are not applicable to the present facts and circumstances of the case on hand. On the other hand, the principles enunciated in the decisions cited by the Learned Counsels appearing for the Respondent No.1 and 4 are aptly applicable to the present facts and circumstances of the case on hand. Hence, Issue No.2 is answered accordingly.

M.V.C. NO.2835/2012 (SCCH-7)

43. ISSUE NO.3 :- For the aforesaid reasons, I proceed to pass the following, ORDER The petition filed by the Petitioner under section 166 of the Motor Vehicles Act, 1989, is hereby partly allowed with costs as against the Respondent No.2.

The petition filed by the Petitioner under section 166 of the Motor Vehicles Act, 1989, is hereby rejected as against the Respondents No.1, 3 and 4.

[The petitioner is entitled for compensation of Rupees 7,75,100/- with interest at the rate of 6% p.a. from the date of the petition till the date of payment, from the Respondent No.2.

The Respondent No.2 shall deposit the said compensation and interest in this Tribunal, within one month from the date of this order.

In the event of deposit of compensation and interest, 50% shall be released in favour of Petitioner through account payee cheque, on proper identification.

Remaining 50% shall be kept in FD in the name of the petitioner, in any nationalized bank of her choice, for a period of 3 years.

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

M.V.C. NO.2835/2012 (SCCH-7) Draw award accordingly.

(Dictated to the Stenographer, transcribed and typed by her, corrected and then pronounced by me in the open Court on this the 27th day of January, 2015.) (INDIRA MAILSWAMY CHETTIYAR) IX Addl.Small Causes Judge & XXXIV ACMM, Court of Small Causes, Member, MACT-7, Bangalore.

ANNEXURE

1. WITNESSES EXAMINED BY THE PETITIONER :-

P.W.1	:	Smt. Cathrine Louis
P.W.2	:	Sri. C. Murali
P.W.3	:	Sri. Anand kumar

2. DOCUMENTS MARKED BY THE PETITIONER :-

Ex.P.1	:	True copy of FIR
Ex.P.2	:	True copy of Complaint
Ex.P.3	:	True copy of Charge Sheet
Ex.P.4	:	True copy of Hand Sketch
Ex.P.5	:	True copy of Spot Panchanama
Ex.P.6	:	True copy of Inquest Panchanama
Ex.P.7	:	True copy of MVI Report
Ex.P.8	:	True copy of P.M.Report
Ex.P.9	:	Death Certificate
Ex.P.10	:	Notarized copy of Election ID Card
Ex.P.11	:	Notarized copy of Ration Card
Ex.P.12	:	Receipt relating to cementary charges
Ex.P.13	:	Pay slip
Ex.P.14	:	Bill issued by sacred hall
Ex.P.15	:	Letter issued by employer of deceased
Ex.P.16	:	Shop Rental Agreement
Ex.P.17	:	Salary slip related to Louis Joseph

3. WITNESSES EXAMINED BY THE RESPONDENTS :-

M.V.C. NO.2835/2012 (SCCH-7) R.W.1 : Sri. Kengaiah R.W.2 : Sri.N.Nagaraj R.W.3 :
Sri. A.V.Channareerappa

4. DOCUMENTS MARKED BY THE RESPONDENTS :-

Ex.R.1	:	Sale Receipt
Ex.R.2		Delivery Note
Ex.R.3		Insurance Policy
Ex.R.4		Certified Copy of Order Sheet of C.C.No.688/2012
Ex.R.5		Certified Copy of Indemnity Bond
Ex.R.6		Requisition filed by the Police
Ex.R.7		Statement of Amaresh
Ex.R.8		Letter
Ex.R.9		Certified Copy of Affidavit filed by Respondent No.2
Ex.R.10		Authorisation Letter dated 07.05.2014
Ex.R.11		Insurance Policy
Ex.R.12		Charge Sheet
Ex.R.13		B' Register Extract
Ex.R.14		Goods Carrier Permit
Ex.R.15		Postal Acknowledgement
Ex.R.16		Letter dated 01.04.2013
Ex.R.17		Authorisation Letter dated 02.09.2014
Ex.R.18		B' Register Extract

(INDIRA MAILSWAMY CHETTIYAR)

IX Addl. Small Causes Judge & XXXIV ACMM, Court of Small Causes, Member, MACT-7, Bangalore.

M.V.C. NO.2835/2012 (SCCH-7) SCCH-7 AWARD BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL METROPOLITAN AREA: BANGALORE CITY M.V.C.No.2835/2012 Smt. Catherine Louis A. W/o Late Louis Joseph, Aged about 37 years, Residing at No.906, B.D.A. Quarters, Austin Town, Viveknagar Post, PETITIONER Bangalore.

(By Sri.Cuckoo Delhi and Sri.Vihayakumar.C., Adv.,) V/s M.V.C. NO.2835/2012 (SCCH-7)

1. Sri. Kengaiah S/o Late Hanumanthaiah, Aged about 65, Residing at No.6, 3rd Main Road, Near Dhanues Provision Stores, Guruguntepalya, 4th Block, Austin, Yeshwanthpura, Bangalore.

(R.C. Owner of Lorry bearing Registration No.CAW-1688)

2. Sri. Amaresh S/o Late Yellappa, Aged about 29 years, Residing at No.791, Lakshmi Reddy's House, 9th 'B' Cross, Triveni Road, Deewanara Palaya, Behind Government School, Yeshwanthpura,

Bangalore.

(At present having possession of Lorry bearing Registration No.CAW-

1688)

3. Sri. Thiloknath B.K. S/o Late B.K.Sadashivan, Aged 56 years, Residing at No.2, Mahatma Gandhi Colony, Veerasagara Main Road, Attur, Vidyananyapura Post, Bangalore - 97.

(Driver of the Lorry bearing Registration No.CAW-1688)

4. United India Insurance Company Ltd., No.1872, 20th Main Road, 20th Cross, Marenahalli Main Road, Vijayanagar,RESPONDENTS Bangalore - 560 040.

M.V.C. NO.2835/2012 (SCCH-7) (R1-By Sri.T.Seshagiri Rao and Sri.Sunil S. Rao, Advs.,) (R2-Exparte) (R3-By Sri.Vijayakumar, Adv.,) (R4-By Sri.R.S.Srikantareddy, Adv.,) WHEREAS, this petition filed on by the petitioner/s above named U/s.166 of the M.V.Act praying for the compensation of Rs. (Rupees) for the injuries sustained by the petitioner/ Death of in a Motor Accident by Vehicle No. WHEREAS, this claim petition coming up before Indira Mailswamy Chettiyar, IX Addl.Small Causes Judge & XXXIV ACMM. Judge, Member, Bangalore, in the presence of Sri./Smt. Advocate for petitioner/s and of Sri./Smt. Advocate for respondent.

ORDER The petition filed by the Petitioner under section 166 of the Motor Vehicles Act, 1989, is hereby partly allowed with costs as against the Respondent No.2.

The petition filed by the Petitioner under section 166 of the Motor Vehicles Act, 1989, is M.V.C. NO.2835/2012 (SCCH-7) hereby rejected as against the Respondents No.1, 3 and 4.

The petitioner is entitled for compensation of Rupees 7,75,100/- with interest at the rate of 6% p.a. from the date of the petition till the date of payment, from the Respondent No.2.

The Respondent No.2 shall deposit the said compensation and interest in this Tribunal, within one month from the date of this order.

In the event of deposit of compensation and interest, 50% shall be released in favour of Petitioner through account payee cheque, on proper identification.

Remaining 50% shall be kept in FD in the name of the petitioner, in any nationalized bank of her choice, for a period of 3 years.

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

Given under my hand and seal of the Court this
of 2014

day

MEMBER
MOTOR ACCIDENT CLAIMS TRIBUNAL
METROPOLITAN AREA: BANGALORE.

	Petitioner/s	By the	Respondent/s
		No.1	No.2
Court fee paid on			
Petition			
Court fee paid on Power			
Court fee paid on I.A.,			
Process			
Pleaders Fee			
Total Rs.			
		M.V.C. NO.2835/2012	
	(SCCH-7)		

Decree drafted Scrutinized by MEMBER, MACT,
METROPOLITAN AREA: B'LORE

Decree Clerk SHERISTEDAR M.V.C. NO.2835/2012
(SCCH-7)

27.01.2015.

Judgment pronounced in open Court

(vide separate Order)

The petition filed by the Petitioner under section 166 of the Motor Vehicles Act, 1989, is hereby partly allowed with costs as against the Respondent No.2.

The petition filed by the Petitioner under section 166 of the Motor Vehicles Act, 1989, is hereby rejected as against the Respondents No.1, 3 and 4.

The petitioner is entitled for compensation of Rupees 7,75,100/- with interest at the rate of 6% p.a. from the date of the petition till the date of payment, from the Respondent No.2.

The Respondent No.2 shall deposit the said compensation and interest in this Tribunal, within one month from the date of this order.

In the event of deposit of compensation and interest, 50% shall be released in favour of Petitioner through account payee cheque, on proper identification.

Remaining 50% shall be kept in FD in the name of the petitioner, in any nationalized bank of her choice, for a period of 3 years.

Advocate's fee is fixed at Rupees 1,000/-. Draw award accordingly.

M.V.C. NO.2835/2012 (SCCH-7) (INDIRA MAILSWAMY CHETTIYAR) IX Addl.Small Causes Judge & XXXIV ACMM, Court of Small Causes, Member, MACT-7, Bangalore.