

Took Premises On Rent Basis To Show That vs Was The Policy Holder Of The Vehicle And ... on 20 March, 2015

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

Dated this, the 20th day of March, 2015.

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

M.V.C.No.1926/2014

Mrs. Venkata Madhuri Paturi,
After marriage also known as,
Mrs. Paturi Madhuri Saravanan K.,
W/o Saravanan K,
Aged about 40 years,
R/at Flat No.002, Libero Apartment,
Seenappa Lay-out, RMV 2nd Stage, PETITIONER
New BEL Road,
Bangalore - 560 094.

(By Sri.Manoj Kumar M.R., Adv.,)

V/s

1. The New India Assurance Co. Ltd.,
Rep. by its Manager,
Regional Office, No.2-B,
Unity Building Annexe, Mission Road,
Bangalore - 560 027.
(Insurer of vehicle Bus bearing No.MH-
04-G-5353)
(Policy bearing
No.110601/31/10/01/00008364
Period valid from 04.06.2010 to
03.06.2011 issued by the New India
Insurance Co. Ltd., 9th Floor, New India
Center, 17/A, Cooparage Road,
Mumbai- 400 001)

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M.V.C.NO.1926/2014
(SCCH-7)

2. M/s. Neeta Tours and Travels,
Rep. by its Authorised Signatory,
Shree Prashta BLDG, No.108,
Nauasopara (W) Dist, Thane,
Maharashtra - 400603.

(Owner of vehicle Bus bearing No.MH-04-G-5353)

3. Universal Sompo General Insurance Co. Ltd.,
Rep. by its Manager,
Regd. Office - 201-208, Crystal Plaza,
Opp. Infiniti Mall, Link Road,
Andheri (West),
Mumbai - 400 058.

(Insurer of vehicle Bus bearing No.MH-09-L-7602)
(Policy bearing
No.2314/50378965/00/B00
Period valid from 21.12.2009 to
20.12.2010)

4. Sanjay Travels,
Rep. by its Authorised Signatory,
Prop 10/168, Bunglow Road,
Near Bank of Ichalkaranji, Kolhapur,
Maharastra - 416 115.

...RESPONDENTS

(Owner of vehicle Bus No.MH-09-L-7602)

(R1 - By Sri.K.Nanjunda Murthy, Adv.,)
(R2 - Exparte)
(R3 - By Sri.Ravi. S.Samprathi, Adv.,)
(R4 - By Sri. S.Sanne Gowda, Adv.,)

JUDGMENT

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 (SCCH-7) 4,00,00,000/- with interest at 12% p.a. from the date of the petition till realization, with costs.

2. The brief averments of the Petitioner's case are as follows;

a) She is at present still under treatment and on the date of filing of this claim petition, she is totally bedridden, immobilized and not able to do any work, much less, day to day activities and has to depend on attendant even for bowel and bladder clearing and is wholly confined to bed, due to the resultant of the accidental injuries sustained. The Petitioner being a native of Guntur, was hale and healthy before the accident and was very bright student all through-out her academic, had so secured First Division in Board of Secondary Education conducted by Board of Secondary Education, Hyderabad. Also, had secured Second Division in Board of Intermediate Education, conducted by Board of International Education, Andhra Pradesh and had completed her Bachelor of Commerce at Nagarjuna University, Guntur and had completed her post - graduate Diploma in

Public Relations conducted by Bharatiya Vidya Bhavan, Hyderabad, during 1999.

b) Immediately after completion of her education, was so employed at Help Age India, Hyderabad from August, 1997 having resigned the said job on 10.03.2001 was so employed at GE Capital International Services, Hyderabad from 26 th March 2001 to 31st July 2002. That, further was so employed as Dy. Manager, Student Services Department at the Institute of Chartered Financial Analysts of India, Hyderabad from 13 th February 2003 to 07th May 2004 and that, later was employed at ICICI Bank as Assistant Manager Operation with a salary of (SCCH-7) Rupees 3,57,758/- p.a., during 2005-2007. Further, was employed as a Manager (Training) at Regency Institute of Technology, Yanam (UT of Pondicherry) till her marriage being fixed, since solemnized on 22 nd March 2010 and that, had so tendered resignation and relieved as on 26.02.2010.

c) The Petitioners marriage with Sri. Saravanan K., being solemnized on 22nd March 2010 had so migrated to Mumbai, since her husband was so employed as a Technical Analyst, Sushil Global Commodities Pvt. Ltd., at Mumbai, drawing salary of Rupees 14,75,319/- p.a. While she along with her husband were so traveling on their journey for a holiday to Mahabaleshwar from Mumbai in Luxury Bus bearing No.MH- 04/G-5353 enroute had met with a road traffic accident involved another Luxury Bus bearing No.MH-09/L-7602, which was since stationed near the divider at the right side of the road on 11.12.2010 at around 04.45 a.m., on Pune-Bangalore Highway, on eastern side of K.M Stone No.782/2, where from the Khandala Toll plaza is ahead. She having sustained serious and grievous injuries resultant of the accident that occurred on 11.12.2010 was so totally immobilized, hardly just eight months after her marriage, her husband Sri.Saravanan K., had so to quit the job at Mumbai, so as to take care of the medical treatment and supervision and well being of her and that left with no other alternative, her and her husband are so residing at Bangalore since July 2011. Her husband Sri Saravanan K., who since was drawing salary of Rupees 14,75,319/- p.a., at Mumbai, though being able to secure an affordable job at Bangalore, infact was so left without a permanent job and income, thus leading to unemployment and untoward (SCCH-7) miserable life without job and with responsibility of taking care of the wife, thus at the time borrowing funds from relatives and friends.

d) Further, prior to the accident, she since being aged 37 years, as well young and talent since being employed and working hard since after completion of academic career, also had so submitted her resume to various organizations, one as well being HSBC having submitted her resume on 17 th October 2010. As on date, since being totally immobilized and confined to bed, could not continue her bright career of employment, due to the said accident, as the Petitioner written statement bedridden. Due to the resultant of the injuries sustained in the accident and the severity of the same, she being young aged 37 years at the time of accident, since aged 40 years as of now, is not aware that, how many more years would be she had so to face the severity, hardship and mental trauma of the total permanent disability so suffered, since she has to be under continuous medical care and attention with round the clock attendant care and attention, which may spoil her whole life career, towards which, she claims a sum of Rupees 50 Lakhs as compensation.

e) On 11.12.2010 at about 04.45 a.m., was proceeding along with her husband Sri Saravanan K., on Pune-Bangalore Highway, in Luxury Bus bearing Reg.No.MH-04/G-5353, driven by its driver.

While the driver of Luxury Bus bearing Registration No.MH-04/G-5353 nearing almost Khandala Toll Plaza was ahead drove the Luxury Bus bearing No.MH-04/G- 5353, in a rash and negligent manner at a very high speed and dashed against the Luxury Bus bearing No.MH-09-L-7602 from (SCCH-7) behind, which was since stationed abruptly without following traffic rules and regulations, due to mechanical failure, near the divider at the right side of the road near a turning, negligently by the driver of Luxury Bus bearing No.MH-09- L7602 without any precaution as to indicates the vehicles coming from behind. Due to the impact, both the Luxury Bus bearing No.MH-04/G-5353 and Luxury Bus bearing No.MH-09-L- 7602 had sustained damages and that, one of the passenger of Luxury Bus bearing No.MH-04/G-5353 had succumbed due to the injuries and other passengers, including she had sustained serious and severe injuries all over the body.

f) The accident is a severe tragedy to her. She is undergoing irreparable loss, damage and untold misery and will have to face throughout her life. that as a resultant of the impact, she having sustained Traumatic Paraplegia with bowel and bladder involvement, fracture T/F Lower 1/3 rd, Fracture Metatarsal's and since being admitted as inpatient on nearly five occasions at various Hospital, is still bed ridden confined to bed with Total Permanent Disability. Wherein, an amount of around Rupees 26,51,697.03 was spent towards Hospital inpatient expenses and treatment, in addition had so incurred Rupees 5,00,992.67 towards medicines and ambulance charges. She had her own plans for future, was undergoing fertility treatment, But, for the accidental injuries, she would have led happy married life. In view of the injuries sustained and the permanent disability sustained her future is wholly jeopardized. She is still under bed rest and treatment, thus incurring future medical expenses towards treatment and so to be submitted during trial.

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g) For the treatment of physiotherapy by the Doctor of M.S.Ramaiah Hospital, since being taken care of as Home care as to that, her hospitalization at M.S.Ramaiah Hospital would cost more, her husband Sri.Saravanan K., had to take accommodation as stated in the cause title, on rent near to M.S.Ramaiah Hospital at a rent of Rupees 18,191/- to accommodate her for better medical treatment and care and is still under the care of Doctors on regular basis.

h) All along during the treatment of her at various Hospitals, her husband, who was employed at Mumbai and gainfully employed, had to travel along with her, thereby resigning his job at Mumbai, had settle at Bangalore, residing jobless.

i) Even after discharge from the various Hospitals and being under the care and attention of Doctor's visit to her resident at Bangalore, she thus having suffered total permanent Disability, is still under regular treatment under care and attention of Doctors incurring daily medical and attendant expenses towards physiotherapy treatment and attendant charges for an unascertained and continuous period as per Doctor's advice and further Doctors have opined that, she requires major surgeries scheduled in future course of time towards, which sum of exceeding more than Rupees 20 lakhs would be incurred.

j) As she having remained bedridden and confined to bed since from the date of accident, i.e., 11.12.2010 and that, at present as well being under the same conditions, for most of the time due to Traumatic Paraplegia with bowel and bladder (SCCH-7) involvement, therefore, round the clock of domestic nursing maid/employee had to be employed to look after her and as well cooking, for a sum of Rupees 25,000/- p.m., till she regains her normalcy, which itself is an uncertainty.

k) She reserves liberty to claim future medical expenses and that, the medical bills would be submitted at appropriate time before this Hon'ble Court and that, as well in regard to facilities for better living of her for the remaining rest of her life time, in the very same existing condition of health, had to procure to opt for the latest technology so as to lead a much more rather independent life, without any assistance of 2nd person and claims compensation under the following heads.

l) (i) She having suffered Traumatic Paraplegia with bowel and bladder involvement, Fracture T/F Lower 1/3 rd, Fracture metatarsal's and that, for her to be more independent in performing her daily chores without the help of a 2 nd person had as well is in the process of procuring standing wheelchair, actual cost of which excluding shipment, transportation etc., being around Rupees 4,50,000/-

l(ii) In addition, Doctors have as well advised that, she has to wear stockings, for the rest of life time as to avoid any blood clots in the lower limbs, which usually causes because of lack of movements of the lower limbs, which costs around Rupees 2,500/- per pair, wherein, she has to purchase atleast 6 pairs an year, as the stockings has to be changed once they are loosened. And that, since she being aged 40 years as on date of filing above petition, will probably has to use the (SCCH-7) stocking for the remaining life time, say another 20 years or so amounting to Rupees 3,00,000/-.

l(iii) She having suffered Traumatic Paraplegia with bowel and bladder involvement, Fracture T/F Lower 1/3 rd, Fracture Metatarsal's with total lack of movements of the lower limbs, presently she had to be lifted by the caretaker leading to causing any injury for the caretaker, since she being obese, wherein, due to which fact, who had already suffered shoulder pain, which since lasted for almost one and half year, leading to peri-arthritis. Wherein, resultant of which she had already undergone physiotherapy spending around Rupees 75,000/- as well with complete bed rest. That, in regular course, she since being paraplegic, even a slightest movement of her, is thus so dependent on her shoulder, much less, the shoulders are her now legs and life of the her, which shoulder should be taken care and as to avoid all the above probabilities, she will and definitely opt for lifter, basically to lift her in order to reduce the risk of falling, saving the upper limbs to a greater extent and also avoid causing any injury for the caretaker who is lifting her, which lifter costs around Rupees 1900 excluding the transportation and fixation charges as on the date of presentation of the above petition and that, would be submitting the bills/broachers to this Hon'ble Court at the time of leading oral evidence.

m) Keeping in view the total permanent disability, physical stress/pain, mental trauma, agony, loss to anatomy, cosmetic beauty, career prospect, marriage prospects and leading a healthy life prospects, she cannot be although compensated in the form of monetary wise, but, still she claims (SCCH-7) a total sum of Rupees 4,00,00,000/- including the cost, expenses incurred upon her and

physical and mental agony suffered by her, as well herewith furnished the below mentioned amount being entitled to under various heads.

- 1) Hospitalization treatment incurred various Hospitals. Rs. 26,51,697-03 Amount spent Ambulance charges from Pune to Hyderabad, Hyderabad to Guntur, Guntur to Bangalore, Bangalore to Vellor Vellor to Bangalore Rs.1,00,000-00
- 2) Loss of salary of her husband while employed at Mumbai Rs.5,00,000-00
- 3) House rent for 36 months since shifted to Bangalore from Mumbai Rs. 6,54,876-00
- 4) Compensation for loss of her employment career and marriage prospectus Rs.97,00,000-00
- 5) Future medical expenses Rs.30,00,000-00
- 6) Mental agony, pain and suffering Rs.25,00,000-00
- 7) Medical expenses incurred at Bangalore since August 2013 to April 12th 2014 Rs. 1,98,717-00
- 8) Attendance charges since date of Accident till date of presentation of Petition at Rs.15,000/- p.m. Rs. 5,70,000-00
- 9) Towards past, present and future Physiotherapy treatment Rs.10,00,000-00
- 10) Towards domestic nursing maid/ Employee had to be employed to look after her and as well cooking, for a Sum of Rs.25,000/- p.m., till she (SCCH-7) regains her normalcy Rs.63,00,000-00
- 11) Towards procuring wheelchair, lifter etc., as stated at Para m(i) to m(iii) Rs.4,50,000-00 Rs.3,00,000-00 Rs.1,50,000-00 Total Rs. 2,80,75,290- 00
- n) The cause of the accident is the reckless, rash and negligent driving by the drivers both Luxury Buses bearing No.MH-04-G-5353 and MH-09-L-7602. In this regard, a case has been registered by Khandala Police Station, Khandala, under Fatal Motor Accident Register No.95/2010 U/s 279, 304-A- 337, 338 of IPC, 1860 and U/s 184, 134/187 of M.V. Act, 1988 for offences punishable U/s 279, 337 and 304 A of I.P.C.
- o) The 2nd and 4th Respondents are the RC Owners of the Luxury buses bearing No.MH-04-G-5353 and MH-09-L-7602 and 1st and 2nd Respondents are the insurers of Luxury Buses bearing No.MH-04-G-5353 and MH-09-L-7602 respectively. Hence, all the Respondents are jointly and severally liable to pay the compensation to her. Hence, this Petition.

3. In response to the notice, the Respondent No.1 has appeared before this Tribunal through its Learned Counsel. But, initially, inspite of giving sufficient opportunities, the Respondent No.1 had not filed the written statement. Later, as per the Order dated 29.09.2014 passed on I.A.No.I, the

written statement filed by the Respondent No.1 is taken on file.

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4. Though the notice was duly served on the Respondent No.2, it was remained absent and hence, it is placed as exparte on 25.02.2015.

5. In response to the notice, the Respondent No.3 has appeared before this Tribunal through its Learned Counsel. But, inspite of giving sufficient opportunities, the Respondent No.3 has not filed the written statement.

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

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

a) The claim petition is not maintainable either in law or on facts.

b) The policy particulars furnished by the Petitioner is insufficient. The liability of it, if any, is subject to the confirmation of the policy from the Branch Office or from the Divisional Office, which has issued the same and also subject to the terms, conditions, clauses and provisions of the M.V. Act.

c) This Hon'ble Tribunal has no territorial jurisdiction to try the present claim petition as per Section 166(2) of M.V. Act, as, the Petitioner in the claim petition states that, she was resident/native of Guntur throughout her education carrier and was worked at Hyderabad till she resigns, the accident took place on Pune-Bangalore Highway near (SCCH-7) Khandala Maharashtra State on 11.12.2010 and the owner of the luxury Bus No.MH-04-G-5353 is the resident of Thane Maharastra and other owner of the luxury Bus No.MH-09-L- 7602 is the resident of Kolhapur Maharastra and the policies of insurance for both the buses were issued at Mumbai. The petition could have filed at Mumbai or at Guntur and not at Bangalore. Further the Petitioner had furnished two different addresses of Bangalore, whereas she had stated in Column No.22(g) that, for treatment purpose, the accommodation was taken on rent basis and one more flat at RMV 2 nd Stage, Bangalore. This clearly shows that, the Petitioner was not at all residing at Bangalore, it is only after the accident, the Petitioner took premises on rent basis to show that, she is residing at Bangalore. The petition ought to have filed at Guntur or at Mumbai, wherein, the Petitioner has to pay the Court fee and where as at Bangalore, there is no Court fee. Hence, it is called upon the Petitioner to prove the residential address proof by furnishing the ration card, voters list or I.D card issued by the Election Commissioner and prays to dismiss the claim petition as per the judgment of the Hon'ble High Court of Karnataka. Further on the point of limitation also the claim petition is liable to be dismissed. When the M.V. Act does not speak about limitation of time, then the provisions and Law of Limitation Act, 1963 will automatically applies. In the present case, she is highly educated and she should know the law of the land and she should have filed the case well

within limitation time. But, the Petitioner has filed the above case after a lapse of 3 and 1/2 years.

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d) The alleged accident was not within its knowledge and the same was not intimated by the owner of the Luxury Bus No.MH-04-G-5353 as per the terms, conditions and clauses of the policy of the insurance issued, if any. It is only after the receipt of the summons from this Hon'ble Court only the alleged accident was came to be known to it. Immediately, it wrote a registered letter dated 10.06.2014 to the owner of the Bus to furnish all the RTO documents, such as RC book, Tax, Claim, permit, fitness certificate, Insurance Policy and the driving licence of the driver at the time of alleged accident. But, the owner of the bus has failed to comply the requirements called for. As there is a breach of policy conditions of the policy issued if any, it is not at all liable to pay any compensation.

e) As per Section 158(6) of M.V. Act 1988, it is mandatory duty of the concerned Police Station to forward all the relevant documents to the concerned insurer within 30 days from the date of the information. But, the concerned Police have failed to forward all the documents and not complied with the statutory duty.

f) It reliably learns and as per the petition averments and as per the Police documents and without prejudice submits that, the alleged accident was not due to the rash and negligent driving by the driver of the bus No.MH-04-G- 5353 and it is on the other hand, it is by the other bus was at negligent and in driving the other bus No.MH-09-L-7602, which was stationed abruptly without giving any indication, or precaution to the vehicles coming from behind and due to which, the bus, which was going from behind hit the bus and (SCCH-7) the Petitioner, who was a passenger as she was in a deep sleep and was not holding anything might have fell on the floor of the bus and might have sustained some minor and negligible injuries and that, the owner of the bus along with the Petitioner colluded each other along with the jurisdiction Police have filed the present false case against the driver of the bus No.MH-04-G-5353 just to have a wrongful gain at the hands of this Hon'ble Court.

g) Without prejudice to the contentions taken above, the compensation claimed is too excessive, exorbitant, fanciful and highly disproportionate besides being without any basis.

h) The alleged accident took place purely due to the self negligence on the part of that Petitioner and on the part of the driver of the other luxury bus No.MH-09-L-7602 themselves and that, there was no iota of negligence on the part of the driver of the Luxury bus No.MH-04-G-5353. The Petitioner and the driver of another bus No.MH-09-L-7602 have contributed 100% self negligence to the alleged accident.

i) The driver of both the Buses did not possess valid and effective driving licence to drive the Buses as on the date of the alleged accident.

j) It seeks leave under Section 170 of M.V. Act to defend on all the grounds available, if the owner of the luxury bus No.MH-04-G-5353 fails to appear, placed exparte or seriously not contesting.

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k) The interest payable over the amount directed may be restricted to 6% p.a. as per the decision of the Hon'ble Supreme Court of India in R.D.Hattangadi V/s Pest Control Pvt. Ltd., A.I.R. 1995 and S.C. 755.

l) This Hon'ble Court be pleased to direct the Petitioner to confirm that, no other petition/petitions have been filed arising out of the same accident either before MACT or any other VACT/Courts within the Country. The Petitioner may also be directed to give undertaking to this Hon'ble Court that, such petition if pending before any other Tribunal/Courts be withdrawn. Hence, prayed to dismiss the claim petition with exemplary costs.

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

a) He is being a RC owner of the Luxury Bus bearing No.MH-09-L7602, the said luxury Bus was driven by a person holding a valid and an effective driving licence to drive that, class of vehicle along with keeping Insurance Policy on effectively, Police No.2314/50378965/00/Boo, the third Respondent was the policy holder of the vehicle and the subject to the vehicle documents being valid and in order at the material time.

b) The Petitioner has suppressed the material facts before this Hon'ble Court, which renders her guilty of suppressio-vari and suggestio falsi.

c) Without prejudice, the claim of compensation of Rupees 4,00,00,000/- is exorbitant, excessive, imaginary and (SCCH-7) fanciful and without any basis and has no nexus to the age of the Petitioner and to the nature of injuries allegedly suffered by her.

d) The Petitioner to strict proof that, she has not filed any other similar claim petition for the alleged accident before any Hon'ble Court at any place. Hence, prayed to dismiss the claim petition with exemplary costs.

9. Based on the above said pleadings, I have framed the following Issues;

ISSUES

1. Whether this Tribunal has jurisdiction to entertain and try the present petition filed by the Petitioner?

2. Whether the Petitioner proves that, the accident occurred due to rash and negligent driving of the Luxury Bus bearing Registration No.MH-04-G-5353 and Luxury Bus bearing No.MH-09-L-

7602 by its drivers and in the said accident, she sustained injuries?

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

4. What Order?

10. Since, the very maintainability of the present petition is in question as per the defence taken by the Respondents No.1 in its written statement with regard to the jurisdiction of this Tribunal, the Issue No.1 is taken first for consideration.

(SCCH-7)

11. Heard the arguments.

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

Issue No.1	:	In the Negative,
Issue No.2	:	Does not survive and arise for consideration at all,
Issue No.3	:	Does not survive and arise of consideration at all.
Issue No.4	:	As per the final Order,

for the following;

REASONS

13. ISSUE NO.1 :- It is contended by the Respondent No.12 in its written statement that, this Hon'ble Tribunal has no territorial jurisdiction to try the present claim petition as per Section 166(2) of M.V. Act, as, the Petitioner was resident/native of Guntur throughout her education carrier and was worked at Hyderabad till she resigns and the accident took place on Pune-Bangalore Highway near Khandala Maharashtra State on 11.12.2010 and the owner of the Luxury Bus No.MH-04-G-5353 is the resident of Thane Maharastra and other owner of the Luxury Bus No.MH-09-L-7602 is the resident of Kolhapur Maharastra and the policies of insurance of both the Buses were issued at Mumbai. It is further contended that, the petition could have filed at Mumbai or at Guntur and not at Bangalore and the Petitioner had furnished two different addresses of Bangalore, whereas she had stated in Column No.22(g) of the petition that, for treatment purpose, the accommodation was taken on rent basis and one more flat at RMV 2 nd Stage, (SCCH-7) Bangalore, which clearly shows that, the Petitioner was not at all residing at Bangalore. It is further contended that, the petition ought to have filed at Guntur or at Mumbai, wherein, the Petitioner has to pay the Court fee and where as at Bangalore, there is no Court fee.

14. It is pertinent to note here that, the Petitioner not yet adduced her evidence. Since the very maintainability of the petition is involved in the Issue No.1, i.e., jurisdiction of this Tribunal to entertain and try the present petition, this Issue No.1is taken first for consideration.

15. On perusal of the petition averments, it appears that, she is native of Guntur and she has completed her education, till Post-graduation at Hyderabad and after completion of her education, she was employed at Hyderabad from August, 19997 and then she was employed as a Manager (Training) at Regency Institute of technology, Yanam, (UT Pondicherry) till her marriage, i.e., 22.03.2010 and after her marriage, she had migrated to Mumbai, since her husband was employed at Mumbai. It also appears that, on 11.12.2010, when the Petitioner and her husband were travelling to Mahabaleshwara from Mumbai in Luxury Bus bearing Registration No.MH-04-G-5353, at about 4.45 A.M, on Pune - Bangalore Highway, the alleged road traffic accident was taken place, wherein, she had sustained injuries.

16. From the said averments, it appears that, the Petitioner is a permanent resident at Mumbai and the accidental spot is Pune - Bangalore Highway Road, which is coming under the jurisdiction of Kandala Police Station, (SCCH-7) Maharashtra State, wherein, the Fatal motor accident case is registered under Crime No.95/2010 under Section 279, 304-A, 337, 338 of IPC, Section 184, 134 and 187 of M.V. Act. On perusal of cause title of the petition, it appears that, the Respondents No.2 and 4 are the owners of the said respective Bus bearing Registration No.MH-04-G-5353 and MH-09-L-7602, who are also residing at Maharashtra State. The Respondents No.1 and 3, who are the Insurance Companies of the said respective Bus, also residing at Mumbai, Maharashtra State. From this, it is made crystal clear that, the Petitioner and the Respondents No.1 to 4 are residents at Mumbai, Maharashtra State.

17. No doubt, on perusal of the records, it appears that, to show her residential address at Bangalore, the Petitioner has produced xerox copies of Adhar Card and rental agreement dated 21.04.2014. Admittedly, the said documents disclosed that, the Petitioner is residing at Bangalore, which is coming within the territorial jurisdiction of this Tribunal. But, based on the same, it cannot be said that, the Petition filed by the Petitioner before this Tribunal is maintainable and this Tribunal has territorial jurisdiction to entertain and try the present petition, as, the said Adhar Card relating to the Petitioner is issued on 25.05.2013 and the said rental agreement is executed on 21.04.2014, but, the alleged accident was occurred on 11.12.2010. Except the said xerox copies of Adhar Card and rental agreement, no authenticated documents is produced by the Petitioner to show that, at the time of accident, she was residing at Bangalore. From this, it is made crystal clear that, as on the date of the accident, i.e., on (SCCH-7) 11.12.2010, the Petitioner is not residing at Bangalore, but, she was a permanent resident of Mumbai and all the Respondents No.1 to 4 are also residents at Mumbai, which is the outside territorial jurisdiction of this Tribunal. More so, the place of accident is also situated at Maharashtra State, which is coming under the jurisdiction of Khandala Police Station, Maharashtra State. Therefore, there are merits in the contentions taken by the Respondent No.1 in its written statement in respect of the territorial jurisdiction of this Tribunal to entertain and try the present petition filed by the Petitioner and the very maintainability of petition filed by the Petitioner before this Tribunal.

18. Further in a decision reported in ILR 2013 KAR 102 (Circuit Bench at Gulbarga) (Subhadra and others V/s Pankaj and Another), our Hon'ble High Court of Karnataka has held that, "the claim petition cannot be instituted before the Tribunal within whose local limits the Insurance Company carries on business, unless the other requirements contemplated by sub-Section (2) of Section 166 of

the Motor Vehicles Act, 1988, stand complied with and a claimant can institute a claim petition before the Tribunal within whose local limits, the Respondent resides, such as, driver or owner of the vehicle. Further, as per Section 166(2) of the Motor Vehicles Act, 1988, the claimant can file a claim petition either before the claims Tribunal having jurisdiction over the area in which the accident occurred or before the Claims Tribunal within the local limits whose jurisdiction, the claimant resides or carries on business or within the local limits of whose jurisdiction, the defendant, i.e., Respondents resides. The said provision does (SCCH-7) not confer jurisdiction to the Tribunal within the local limits of whose jurisdiction, the Defendant, that is, Insurance Company carries on business."

19. Therefore, merely on the ground that, the Petitioner has mentioned her address at Bangalore in the cause title of the Petition, it cannot be said that, this Tribunal has jurisdiction to entertain and try the present petition. When the Respondents No.2 and 4, who are the owners of the offending vehicles are residing at Maharashtra State, the Petitioner has no locus-standi to file the present claim petition before this Tribunal, which is clearly outside the territorial jurisdiction of this Tribunal. The principles enunciated in the said decision are aptly applicable to the present facts and circumstances of the case on hand.

20. In view of the above reasons, this Tribunal has come to the conclusion that, this Tribunal has no territorial jurisdiction to entertain and try the present petition filed by the Petitioner. Accordingly, I answered Issue No.1 in the Negative.

21. ISSUES NO.2 AND 3 :- While answering Issue No.1, this Tribunal has already come to the conclusion that, this Tribunal has no territorial jurisdiction to entertain and try the present petition filed by the Petitioner. When such being the situation, the above said Issues No.2 and 3 do not survive and arise for consideration at all. Hence, it is just, proper and necessary to return the petition to the Petitioner to present it before the competent Tribunal. Hence, Issues No.2 and 3 are answered accordingly.

(SCCH-7)

22. ISSUE NO.4 :- 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, is hereby dismissed as not maintainable before this Tribunal.

The petition is returned to the Petitioner to present it before the competent Tribunal.

Office is hereby directed to return the petition to the Petitioner to present it before the competent Tribunal.

No order as to costs.

(Dictated to the Stenographer, transcribed and typed by him, corrected and then pronounced by me in the open Court on this the 20th day of March, 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 :-

-NIL-

(SCCH-7)

2. DOCUMENTS MARKED BY THE PETITIONER :-

-NIL-

3. WITNESSES EXAMINED BY THE RESPONDENTS :-

- NIL -

4. DOCUMENTS MARKED BY THE RESPONDENTS :-

- NIL -

(INDIRA MAILSWAMY CHETTIYAR) IX Addl. Small Causes Judge & XXXIV ACMM, Court of Small Causes, Member, MACT-7, Bangalore.

(SCCH-7) Judgment pronounced in open Court (vide separate Order) The petition filed by the Petitioner under Section 166 of the Motor Vehicles Act, 1988, as against the Respondents No.1 to 4 is hereby dismissed as not maintainable before this Tribunal.

The petition is returned to the Petitioner to present it before the competent Tribunal.

Office is hereby directed to return the petition to the Petitioner to present it before the competent Tribunal.

No order as to costs.

(INDIRA MAILSWAMY CHETTIYAR) IX Addl. Small Causes Judge & XXXIV ACMM, Court of Small Causes, Member, MACT-7, Bangalore.

(SCCH-7)