

APHC010043602023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

TUESDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 41 OF 2023

Between:

1. BEHARA SWATHI @ JYOTHI, W/O LATE BEHARA SANTOSH, AGED 23 YEARS, OCC HOUSEHOLD, R/O HNO 1-130, DIGIVEEDHI, THOTAVADA VILLAGE, BURJA MANDAL, -SRIKAKULAM DISTRICT.
2. BEHARA MANGAMMA, W/O SATYANARAYANA, AGED 46 YEARS, OCC HOUSEHOLD, R/O HNO 1-130, DIGIVEEDHI, THOTAVADA VILLAGE, BURJA MANDAL, SRIKAKULAM DISTRICT.
3. BEHARA SATYANARAYANA, S/O THAVITINAIDU, AGED 51 YEARS, R/O HNO 1-130, DIGIVEEDHI, THOTAVADA VILLAGE, BURJA MANDAL, SRIKAKULAM DISTRICT.

...APPELLANT(S)

AND

1. DODDA RAMESH, S/O PRAKASH RAO, AGED 39 YEARS, OCC LORRY DRIVER, R/O MORSUMALLI VILLAGE, MYLAVARAM MANDAL, SRIKAKULAM DISTRICT.
2. SHAIK INNUS, S/O JALEEL, AGED MAJOR, OCC LORRY OWNER, R/O HNO 1-174, TADIGADAPA, PENAMALURU, KRISHNA DISTRICT.
3. THE NEW INDIA ASSURANCE CO LTD, REP. BY ITS BRANCH MANAGER, R/O DNO 5-1-74, NEAR KRISHNA PARK, BESIDE PRIYA DARSHINI LODGE, PALAKONDA ROAD, SRIKAKULAM DISTRICT.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court pleased to set aside Decree and Award dated 21.10.2022 passed in M.V.O.P No. 38 of 2021 on the file of Motor Accidents Claims Tribunal cum I Addl. District Judge, Srikakulam and consequently allow the claim Petition filed by the Appellants and pass

Counsel for the Appellant(S):

1.SRINIVAS AMBATI

Counsel for the Respondent(S):

1.V V N NARASIMHAM

2.

The Court made the following Judgment:

The Claimant filed the present appeal seeking enhancement of compensation, being aggrieved by the order and decree, dated 21.10.2022 passed in M.V.O.P.No.38 of 2021 by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Srikakulam, whereby and whereunder the Tribunal granted compensation of Rs.50,000/-, under no fault liability under sub-section (4) of Section 140 of Motor Vehicles Act, as against the claim of Rs.20,00,000/-, on account of the death of Mr. Behara Santhosh (herein after referred to as 'the deceased') in a motor accident that occurred on 24.07.2018.

2. For the purpose of convenience, the parties will be referred to as they are arrayed before the Tribunal.

3. The case of the claimants is briefly as follows:

On 24.07.2018 at 6.30 p.m, the deceased was going to Palakonda to see Radhayatra on his Royal Enfield Motor bike bearing No. AP 30 AQ 3922. When the deceased reached Ramannapeta Village at about 7.30 p.m, the Respondent No.1, the driver of lorry, bearing No. AP 16 TD 9289 drove the same in a rash and negligent manner, moving the lorry from right to left and left to right and without indication to the deceased, who was coming on the motor bike, following the lorry, applied breaks and thus, the lorry touched the motor bike and the deceased fell under the rear wheels of the lorry and died at the spot. Basing on the report given by father of the deceased, the Police registered a case in Crime No. 86 of 2018 as against the Respondent No.1 for the offence punishable under Section 304-A of IPC. Hence, the claim petition filed by the Claimants seeking compensation from the Respondents.

4. The Respondents 1 and 2 remained exparte.

5. Before the Tribunal, the Respondent No.3 filed Written Statement denying all material averments made in the claim petition and *inter alia* contended that the lorry bearing No. AP 16 TD 9289 was not involved in the accident. The accident occurred due to the sole rash and negligence of the deceased as he had no valid driving license. The deceased did not wear the helmet at the time of accident. The Respondent No.1 did not possess valid driving license as on the date of accident. The compensation claimed by the Claimant is excessive and exorbitant. Hence, it was prayed to dismiss the claim petition.

6. Basing on the pleadings, the Tribunal framed the following issues for trial:

“1. Whether the deceased- Behara Santosh, S/o Satyanarayana died in a motor vehicle accident, which occurred on 24.07.2018 at about 7.30 p.m, on CSP road at Ramanapeta village in Burja Mandalam, Srikakulam district due to the rash and negligent driving of the respondent No.1 as driver of Lorry bearing No. AP 16 TD 9289, owned by 2nd respondent ?

2. Whether the petitioners are entitled for the compensation for the death of deceased in the accident, if so to what amount and from whom?

3. To what relief?”

7. On behalf of the Petitioners/Claimants, P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the Respondent No.3, RW 1 was examined and Exs.B1 to B4 were marked.

8. After hearing both parties and after considering the oral and documentary evidence on record, the Tribunal partly allowed the claim petition against Respondent No.2 and 3, awarding compensation of Rs.50,000/- under no fault liability with subsequent interest at 9% per annum on the said amount from the date of filing of the petition till the date of realization and Respondents No.2 to 3 were jointly and severally held liable to deposit the said amount within one month from the date of the order.

9. Aggrieved by the said award, the Claimants/ Appellants preferred this appeal contending that the Tribunal failed to consider that the Claimants proved the accident by filing Exs.A1 to A6 viz., FIR, Charge Sheet, Postmortem Report, M.V.I.Report, Driving license of the deceased and

Inquest Report. The Tribunal failed to consider that Ex.A1 and A2 clearly prove that the accident occurred due to rash and negligent driving of the lorry driver and in fact charge sheet was filed against the lorry driver. The Tribunal failed to consider that the application of the Claimants filed under Section 166 of Motor Vehicles Act, however, the Tribunal following the decision of Hon'ble Apex court in Oriental Insurance Company Ltd., v. Sarada G and Others and held that under Section 140 of Motor Vehicles Act, the Claimants are entitled for Rs. 50,000/- only along with other grounds.

10. On the other hand, learned counsel for the Respondent No.3/ Insurance Company herein has supported the impugned award and prayed to dismiss the appeal.

11. Now the point for consideration is:

Whether the order of the Tribunal needs any interference?

POINT:

12. On perusal of Award, it can be observed that the Claimant No.1 is the wife, who got examined herself as PW-1, who deposed with regard to nature of the accident and in support of her case she got marked Ex.A1 to Ex.A6. Apart from the evidence, she also got examined PW-2, who is an eye witness to the accident, who categorically deposed that on 24.07.2018 evening while he was present near Ramalayam, which is side by Srikakulam and Palakonda Thar road at 19.30 hrs, one lorry bearing No. AP 16 TD 9289 driven by Respondent No.1 in a rash and negligent manner without taking any

precautionary measures moved his lorry from right to left and left to right, applied breaks and touched the motorcycle bearing No. AP 30 AQ 3922, due to which the deceased fell down under the back tyre of the lorry and sustained bleeding injuries over his head and left hand and that he died on the spot. The driver of the offending vehicle left the place after that one of the villager came to the spot and identified the deceased, who informed the same to the father of the deceased over phone. Thereafter, the body of the deceased was shifted to area hospital at Palakonda for conducting autopsy. In spite of evidence of PW-2, who claims to be an eye witness to the accident, who was also shown as LW-8 the Charge Sheet in the list of witnesses, who deposed under similar lines before the Police and thereafter, Charge Sheet was filed against the driver of the lorry for his rash and negligent driving. However, he was acquitted in the criminal case registered against him.

13. Instead of considering the evidence of PW-2 and copy of Ex.A2 i.e Charge Sheet, the Tribunal relied upon Ex.A1 i.e FIR, which in fact was registered basing on the report given by the father of the deceased, who is not an eye-witness to the accident is basing on the information received through phone call from one of the villagers namely C. Ravi.

14. Admittedly, father of the deceased was not an eye witness to the said accident. Only on receipt of information from one C. Ravi, he visited the spot and came to know about the accident. It is nothing but hearsay evidence. In the present case, PW-2 is the eye-witness to the said accident. When there is an eye witness to the said accident, whose evidence cannot be denied and

even in the Charge Sheet his name is shown as LW-8 and said D. Venkatesh, who was also along with him at the time of accident and who is also an eye witness is shown as LW-9 in the said Charge Sheet.

15. In such a case, the evidence of PW-2 cannot be ruled out. After due investigation, the Police filed Charge Sheet filed as against the driver of the offending lorry. Apart from the same, the Tribunal also considered two rough sketches filed by the Respondent No.3/ Insurance Company. As per the first rough sketch, the rider of the bike having seen the opposite vehicle, in his attempt to avoid collision, hit the body of the lorry and fell under the back wheels. In the second rough sketch, it was shown that the rider of the bike came and hit the body of the lorry himself and fell under the back wheels. Both the rough sketches were filed by the Insurance Company to draw inference that the accident might have occurred because of negligence of the rider of the bike himself. However, the evidence of PW-2 supported by Ex.A2 is totally contrary to the same. The evidence of PW-2 is specific that he saw the accident and stated that the driver of the lorry drove the same in a rash and negligent manner from left to right side and right to left side and came in contact with the deceased, who was just behind the lorry, fell down on the back side of the lorry. Considering the evidence of PW-2, coupled with Ex.A2 Charge Sheet, this Court is of the opinion that the deceased died because of rash and negligent driving of the driver of the offending vehicle. As such, this Court answered the issue No.1 in favour of the Claimants.

16. Now coming to the quantum of compensation awarded by the Tribunal. As per evidence of PW-1, the deceased was aged about 25 years at the time of accident and he was hale and healthy and doing transport business and other seasonal business by raising paddy, green gram and earning Rs. 30,000/- per month. In the absence of any documentary evidence to that extent, this Court is of the opinion that the wages payable under Minimum Wages Act as on the date of accident has to be taken into consideration. If the same is considered as per the decision of Hon'ble Apex Court, the wages payable to the un-skilled labour in the year 2018 is Rs. 318/- per day, it would come to Rs. 9,540/- per month. As the deceased was aged 25 years as on the date of accident, 40% is to be added towards future prospects, it would come to Rs. 13,356 (Rs. 9,540 + 40%). As there are three dependents in the present case, Claimant No.1 is the wife and Claimant Nos. 2 and 3 are the parents of the deceased. Therefore, 1/3rd is to be deducted towards personal and living expenses. If the same is deducted, the income of the deceased would come to Rs. 8,904/-. After applying relevant multiplier for the age group of 25 years is '18', the loss of earnings would come to Rs. 19,23,264/- (Rs. 8,904/- x 12 x 18). As the Claimant No. 1 is the wife of the deceased, she is entitled for an amount of Rs. 40,000/- under the head of loss of consortium, as she lost her husband in the accident. The Claimants No. 2 and 3 are the parents of the deceased, as such, they are entitled for an amount of Rs. 40,000/- each i.e Rs. 80,000/- under the head of filial consortium. Apart from the same, they are also entitled for an amount of Rs. 15,000/- towards loss of

estate and Rs. 15,000/- towards funeral expenses under conventional heads. Thus, the total compensation would come to Rs. 20,73,264/-, which the Claimants are entitled to from the Respondents.

17. The compensation awarded by the Tribunal under different heads and the amounts enhanced by this Court, are as follows:

S.No.	Head of the claim	Compensation awarded by the Tribunal	Amounts now enhanced by this Court
1.	No fault liability	50,000/-	---
2.	Loss of earning	---	19,23,264/-
3.	Loss of consortium	---	1,20,000/-
4.	Loss of estate	---	15,000/-
5.	Funeral expenses	---	15,000/-
	Total	Rs.50,000/-	Rs.20,73,264/-

18. As the Claimants filed the Claim Petition, claiming compensation of Rs. 20,00,000/- alone, this Court feels it appropriate to restrict the Claim to the extent of Rs. 20,00,000/- only.

19. Accordingly, the Motor Vehicles Civil Miscellaneous Appeal is allowed. The Respondents 2 and 3 are directed to deposit an amount of Rs. 20,00,000/- with further interest at the rate of 7.5% p.a from the date of petition till the date of depositing the same. The compensation amount shall be apportioned among the Claimants in the same manner and ratio as ordered by the Tribunal. There shall be no order as to costs.

20. Pending miscellaneous applications, if any, shall stand closed.

JUSTICE V.SUJATHA

Date: 21.04.2026

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