

APHC010089452022



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

[3333]

MONDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 86/2022

Between:

- 1.SYED MAGBUL ALIAS SD. MABUL, W/O. SYED RIYAZ NOW AGED ABOUT 48 YEARS, MUSLIM,
- 2.SHAIK RIZWANA, W/O. ABDUL RAHIM, NOW AGED ABOUT 28 YEARS, KHAZA NAGAR,THE APPELLANTS ARE RESIDING AT KHAZA NAGAR, BUCHIREDDYPALEM VILLAGE AND MANDAL,

...APPELLANT(S)

AND

- 1.ALURU LALITHAMMA, W/O. SUBRAHMANYAM, HINDU, AGE NOT KNOWN, (OWNER OF THE AUTO BEARING REGISTRATION NO. AP 26 TT 2766) YELLAYAPALEM, KODAVALURU MANDAL, SPSR NELLORE DISTRICT
- 2.THE ORIENTAL INSURANCE CO LTD, REP. BY ITS DIVISIONAL MANAGER GUTTIKONDA ZOOM PLAZA, NEAR VINAYAKA THEATRE RING ROAD, VIJAYAWADA-10.
- 3.ALURU SUBRAHMANYAM, S/O. AUDAIAH, HINDU, AGE NOT KNOWN, (OWNER OF THE AUTO BEARING REGISTRATION NO. AP 26 TT 2766), ELLAYAPALEM, KODAVALURU MANDAL, SPSR NELLORE DISTRICT.(THE 3RD RESPONDENT IS NOT NECESSARY PARTY IN

THE APPEAL AS NO CLAIM IS MADE IN THE APPEAL AGAINST HIM)

- . SK AAMINA, W/O. AFZAL, NOW AGED ABOUT 30 YEARS, MUSLIM
SANTHI NAGAR, BUCHIREDDYPALEM VILLAGE AND MANDAL, SPSR
NELLORE DISTRICT

...RESPONDENT(S):

Counsel for the Appellant(S):

1. SIVA PRASAD KATAKAMSETTY

Counsel for the Respondent(S):

1. SAMBOJU BALA GOPAL
- 2.

The Court made the following:

THE HONOURABLE SMT JUSTICE V.SUJATHA**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 86/2022****J U D G M E N T:**

1. This Motor Accident Civil Miscellaneous Appeal (for short MACMA) has been preferred by the unsuccessful petitioners/claimants aggrieved by the Order and Decree dated 12.04.2021 passed in M.V.O.P.No.328 of 2018 by the Chairman, Motor Accident Claims Tribunal (for short MACT) -cum- Principal District Judge, Nellore, awarding compensation of Rs.3,89,000/- as against the claim of Rs.10,00,000/-.

For the sake of convenience the parties herein after are referred to as they were arrayed before the Tribunal.

2. 1st petitioner being wife, 2nd petitioner being daughter of the deceased Shaik Riyaz, filed claim petition under section 166 of the Motor Vehicles Act claiming compensation of Rs.10,00,000/- for the death of Syed Riyaz @ Shaik Riyaz in a motor vehicle accident, together with interest and costs.

3. Brief averments of the claim petition in MVOP No.328 of 2018 are that:- The deceased Shaik Riyaz was quite hale and healthy prior to the accident

and he was aged about 50 years, earning Rs.500/- per day and contributing the same to the family maintenance.

On 02.11.2009 at about 21.30 hours, when the deceased was crossing Kovur road after observing due signals and traffic, at that time, one auto bearing No.AP-26-TT-2766 being driven by its driver in a rash and negligent manner, with high speed, while proceeding towards Nellore, came and dashed against the deceased. As a result, the deceased fell down on the road and received head injury and other injuries. Immediately, he was shifted to DSR Government Headquarters Hospital, Nellore. While undergoing treatment, he succumbed to fatal injuries at about 6.00 Hours on 03.11.2009. After postmortem examination, the dead body was shifted to his village in a taxi by spending Rs.5,000/- towards transport charges.

Due to the sudden death of the deceased, the petitioners, who are depending upon the earnings of deceased, lost their earning member and they are suffering both mentally and financially.

Since the accident occurred due to rash and negligent driving of the driver of auto bearing No.AP-26-TT-2766, the 3rd respondent being its driver, and 1st respondent being its owner, and 2nd respondent being its insurance company, all are jointly and severally liable to pay the compensation amount to the petitioners.

4. The 2nd Respondent filed counter contending that as per report, unknown Auto driver caused the accident, but, the owner and driver of auto bearing No.AP-26-TT-2766 colluded with the petitioners and with the help of police, falsely implicated the said vehicle as it is involved in the accident, for wrongful gain and that the said auto was never involved in the accident. Hence, the insurance company is not proper and necessary party. The accident relates to the year 2009 and Petition is filed after lapse of 9 years and petitioners failed to explain the reason for abnormal delay of 9 years, in filing the petition. The matter of accident is not reported by the insured in collusion with the petitioners, with a view to cause loss to 2nd respondent and as such, 2nd respondent is not liable to pay any compensation to the petitioners and the policy number mentioned in the claim application does not tally with the series of policies issued by 2nd respondent company. 2nd respondent does not admit that the petitioners are only legal heirs on death of deceased. 3rd respondent was not having valid driving license. The compensation and interest claimed by the petitioners is excessive. Hence prayed to dismiss the petition.

5. 3rd respondent filed counter while denying petition averments, contended that the 3rd respondent possessed valid and effective driving license and the liability of 1st respondent has to be indemnified by the 2nd respondent, as the vehicle was validly insured with 2nd respondent. The accident was occurred

due to the negligence of the deceased only. Compensation claimed by the petitioners is excessive and prayed to dismiss the petition with costs.

6. Counter filed by 3rd respondent was adopted by 1st respondent by filing adoption memo.

7. 4th respondent remained *ex-parte*.

8. Basing on the above averments, the following issues were settled for trial by the Tribunal -

- 1) Whether the accident occurred due to negligent driving of the auto by the 3rd respondent?
- 2) Whether the Petitioners and the 4th respondent are entitled to compensation, and if so, to what amount and from whom?
- 3) To what relief?

9. On behalf of petitioners, 1st petitioner got examined himself as P.W.1 and an eyewitness to the accident got examined as P.W.2 and also got marked – Ex.A.1 - attested photocopy of F.I.R in Crime No.184 of 2009 of Kovur Police Station, Ex.A2 – attested photocopy of inquest report, Ex.A.3 – attested photocopy of Postmortem examination certificate, Ex.A.4 – attested photocopy of charge sheet on the file of Additional Judicial magistrate of I Class, Kovur, Ex.A.5

- Original Aadhar card of 1st claimant, Ex.A.6 – attested photocopy of income-tax returns.

On behalf of 2nd respondent, Sri Ch. Krishna Reddy, Sub-Inspector of Police, Kovur Police Station got examined as R.W.1 and got marked attested photocopy of M.V.I report as Ex.X.1, and one Sri S.Siva Kumar, Administrative Officer of 2nd respondent insurance company got examined as R.W.2 and got marked Ex.B.1 – Office copy of legal notice issued by 2nd respondent to Respondents No.1 and 3, Ex.B.3 – acknowledgment of 1st respondent and Ex.B.4 – acknowledgment of 3rd respondent.

10. After hearing and considering the oral and documentary evidence adduced on behalf of both parties, the Tribunal awarded total compensation of Rs.3,89,000/- with interest at 7.5% p.a from the date of petition till the date of deposit, with proportionate costs, directing Respondents No.1 to 3 jointly and severally to deposit the compensation amount within one (01) month from the date of order. After such deposit, 2nd respondent is permitted to recover the same from respondents No.1 and 3.

11. Being aggrieved by the said Order and Decree the claimants have preferred the present appeal on the ground that no amount has been awarded towards future prospectus and also that as per Ex.A.3 the age of the deceased is 43 years, but the Tribunal wrongly considered the age of the deceased as 50

years and on the other hand the Tribunal has failed to grant any compensation under the head of consortium to the 2nd Appellant herein. Hence, prayed to allow the appeal by enhancing compensation under the above heads.

12. Heard the learned Counsel for Appellant and Respondents No.1 &2.

13. Now the point for consideration is:

Whether the order of the Tribunal needs any interference?

14. POINT: On perusal of the award passed by the Tribunal, it can be observed that the 1st claimant, who is the wife of the deceased, got examined herself as P.W.1 and to prove the manner of accident got examined P.W.2. Hence, relying upon the evidence of P.W.1, P.W.2 coupled with Ex.A.1 Attested photocopy of FIR in Cr.No.184 of 2009 of Kovur Police Station, Ex.A.4 – Attested photocopy of the charge sheet on the file of I Additional Judicial First Class Magistrate, Kovur, which shows that after due investigation, it was established that the accident had occurred due to the negligence of respondent No.3, resulting the death of the deceased, the Tribunal safely concluded that the accident had occurred due to the negligence of respondent No.3 resulting the death of the deceased which needs no interference.

15. A perusal of the Award, it can be observed that P.W.1 is none other than the wife of the deceased, has categorically deposed that the age of the deceased is 50 years as on the date of accident. Though it is the case of the

claimants that the deceased was working as electrician and earning Rs.500/- per day, in the absence of the documentary evidence, the Tribunal notionally fixed the monthly income of the deceased as Rs.3,000/- as the accident relating to the year 2009. Accordingly, annual income would come to Rs.36,000/- (Rs.3,000 X 12). As there are 2 dependents in the present case, 1/3rd has to be deducted towards his personal expenses. After deducting 1/3rd, the annual income of the deceased would come to Rs.24,000/- (Rs.36,000 – Rs.12,000). The Tribunal failed to award any amount towards future prospects. As the age of the deceased is 50 years as on the date of the accident, this Court is of the opinion that he is entitled for an additional amount of 10% of his income towards his future prospects as held by the Apex Court in “**National Insurance Company Vs. Pranay Sethi**¹”, as such the annual income of the deceased would come to Rs.26,400/. (Rs.24,000+Rs.2,400). After applying the appropriate multiplier i.e. ‘13’ for the age group of 46 to 50 years, as per the decision of the Hon’ble Apex Court in “**Sarla Verma Vs. Delhi Transport Corporation**²”, the loss of dependency would come to (Rs.26,400 X13) Rs.3,43,200/-.

16. In addition to the above, the Tribunal also awarded a sum of Rs.44,000/- towards consortium to claimant No.1-wife of the deceased, Rs.16,500/- towards loss of estate, Rs.16,500/- towards funeral expenses, which

¹ 2018 ACJ 2782

² 2009 ACJ 1298

needs no interference. In total, the appellants - claimants are entitled for an amount of Rs.4,20,200/- towards compensation for the death of the deceased.

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

Sl. No.	Head of the claim	Compensation awarded by the Tribunal in Rs. Ps.	Amounts now awarded by this Court Rs. Ps.
1.	Loss of dependency	3,12,000-00	3,43,200-00
2.	Towards consortium	44,000-00	44,000-00
3.	Towards funeral expenses	16,500-00	16,500-00
4.	Towards loss of estate	16,500-00	16,500-00
	Total	3,89,000-00	4,20,200-00

18. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed enhancing the compensation from Rs.3,89,000/- to Rs.4,20,200/- with interest at 7.5% P.A. from the date of filing of the petition till the date of realization. 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.

Consequently, pending miscellaneous applications, if any, shall stand closed.

SMT JUSTICE V.SUJATHA

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Dated 09.02.2026.

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THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 86/2022

DATED 09.02.2026

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