

APHC011020712017



IN THE HIGH COURT OF ANDHRA

PRADESH

AT AMARAVATI

[3505]

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL Nos.**522/2018****AND****MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO:****244/2021****MACMA No.522 OF 2018:-****Between:**

1. ROYAL SUNDARAM ALLIANCE INSURANCE CO. LIMITED, NOW KNOWN AS ROYAL SUNDARAM GENERAL INSURANCE CO. LTD., REPRESENTED BY ITS BRANCH MANAGER, 1ST FLOOR, KAIZEN HEIGHTS, SUNDAY MARKET, GANDHI NAGAR, NELLORE.

...APPELLANT**AND**

1. PALADUGU KOTAMMA, W/O LATE VENKATESWARLU, R/O 13TH LINE, IPD COLONY, GUNTUR DISTRICT, GUNTUR JCJC.
2. PALADUGU ASWANI, D/O. LATE VENKATESWARLU, R/O 13TH LINE, IPD COLONY, GUNTUR DISTRICT, GUNTUR JCJC.
3. PALADUGU NEELIMA, D/O. LATE VENKATESWARLU, R/O 13TH LINE, IPD COLONY, GUNTUR DISTRICT, GUNTUR JCJC.
4. PALADUGU SATYANARAYANA, S/O. LATE VENKATESWARLU, R/O 13TH LINE, IPD COLONY, GUNTUR DISTRICT, GUNTUR JCJC.
5. PALADUGU YELLAIAH, S/O. BODEIAH, R/O 13TH LINE, IPD COLONY, GUNTUR DISTRICT, GUNTUR JCJC.
6. PALADUGU AKKAMMA, W/O. YELLAIAH, R/O 13TH LINE,

IPD COLONY, GUNTUR DISTRICT, GUNTUR JCJC. RESPONDENT NOS.2 TO 4 ARE MINORS AND ARE BEING REPRESENTED BY THEIR MOTHER AND NATURAL GUARDIAN PALADUGU KOTAMMA I.E. PT RESPONDENT HEREIN)

7.MULLA GOUSE BASHA, S/O.ABDUL KHADAR, R/O.11-372A, PODILI, PRAKASAM DISTRICT

8.MADDELA RAVI, S/O VENKATESWARLU, R/O POTHAVARAM VILLAGE, PODILI MANDAL, PRAKASAM DISTRICT.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court to allow the Appeal by setting aside the Order and Decree dated 30-10-2017 made in M.V.O.P.No.683 OF 2015 on the file of The Motor Vehicle Accidents Claims Tribunal Cum II Additional District Court, Guntur and to pass such other order or Orders as this Hon'ble Court may deem fit and proper in the interest of justice.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the order and decree dated 30.10.2017 made in M.V.O.P.No.683 of 2015 on the file of the Motor Vehicle Accidents claims tribunal cum III Additional district court, Guntur, and to pass

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

Counsel for the Appellant:

1.GUDI SRINIVASU

Counsel for the Respondent(S):

1.K KOUTILYA

2.SIVA PRASAD KATAKAMSETTY

3.KOLLURI ARJUN CHOWDARY

MACMA No.244 OF 2021**Between:**

1. PALADUGU KOTAMMA, W/O. LATE VENKATESWARLU, NOW AGED ABOUT 40 YEARS, OCCUPATION. HOUSE WIFE, BEING MINOR REP. BY THEIR MOTHER AND NATURAL GUARDIAN 1ST PETITIONER, RESIDENTS OF 13TH LINE, IPD COLONY, GUNTUR CITY, GUNTUR DISTRICT, GUNTUR JO
2. PALADUGU ASWANI,, D/O. LATE VENKATESWARLU, W/O. POTU SIVA, NOW AGED ABOUT 21 YEARS, OCCUPATION. HOUSE WIFE AFTER MARRIAGE THE NAME OF THE 2ND PETITIONER WAS CHANGED AS POTU ASWANI, W/O. POTU SIVA RESIDENTS OF 13TH LINE, IPD COLONY, GUNTUR CITY, GUNTUR DISTRICT, GUNTUR
3. PALADUGU NEELIMA,, D/O. LATE VENKATESWARLU, NOW AGED ABOUT 12 YEARS, OCCUPATION. STUDENT,
4. PALADUGU SATYANARAYANA,, S/O. LATE VENKATESWARLU, AGED ABOUT 14 YEARS, OCCUPATION. STUDENT, THE PETITIONERS 2 TO 4 ARE BEING MINORS REP. BY THEIR MOTHER AND NATURAL GUARDIAN 1ST PETITIONER
5. PALADUGU YELLAIAH,, S/O. BLODEIAH, AGED ABOUT 68 YEARS, OCCUPATION. NIL
6. PALADUGU AKKAMMA,, W/O. YELLAIAH, AGED ABOUT 63 YEARS, OCCUPATION NIL, ALL ARE RESIDENTS OF 13TH LINE, IPD COLONY, GUNTUR CITY, GUNTUR DISTRICT, GUNTUR

...APPELLANT(S)**AND**

1. MULLA GOUSE BASHA, (OWNER OF THE AUTO AP 27 TW 3518) S/O. ABDUL KHADAR, 11-372 A, PODILI PRAKASAM DISTRICT.
2. ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD, REP. BY ITS BRANCH MANAGER, 1ST FLOOR KAIZEN HEIGHTS, SUNDAY MARKET, GANDHI NAGAR, NELLORE POLICY NO. VGC 0319633000100 VALID

FROM. 29-6-2013 TO 28-6-2014

3.MADDELA RAVI, S/O. VENKATESWARLU, (AUTO DRIVER), POTHAVARAM VILLAGE, PODILI MANDAL, PRAKASAM DISTRICT

...RESPONDENT(S)

Appeal filed under Order 41 of CPC before the High Court to set aside the Judgment and decree passed in M.V.O.P. 683 of 2015 on the file of the III Addl. District Judge, Guntur dated 30-10-2017 and enhance the compensation to Rs.12,50,000/- as claimed together or more than claimed with interest @ 12percent per annum from the date of filing the Original Petition till the date of realization besides costs and pass

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to declare the 2nd petitioner herein as major by discharging her mother who is the 1st petitioner herein from the guardianship on her behalf, so as to enable her to proceed with the matter independently and to pass

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of days in filing this MACMA against the judgment and award in MVOP No. 683/2015 on the file the Motor Accidents Claims Tribunal-cum-III Addl. District Judge, Guntur dated 30-10-2017 and to pass

Counsel for the Appellant(S):

1.SIVA PRASAD KATAKAMSETTY

Counsel for the Respondent(S):

1.K KOUTILYA
2.GUDI SRINIVASU
3.KOLLURI ARJUN CHOWDARY

The Court made the following:

JUDGMENT:

1. As these two appeals arise out of order dated 30.01.2017 in MVOP No.683 of 2015, they are being disposed by this common order.

2. MACMA No.522 of 2018 was filed by the Insurance Company questioning the quantum of compensation awarded by the Tribunal by contending that the same is excessive and the claimants are not entitled to receive the same.

3. Whereas, MACMA No.244 of 2021 was filed by the claimants seeking to enhance the compensation awarded by the Tribunal.

4. For the sake of convenience, the parties are referred to, as they were referred before the Tribunal.

5. The petitioners filed claim petition under Section 166 of Motor Vehicles Act r/w. Rules made thereunder seeking to pay compensation of Rs.12,50,000/- on account of the death of Paladugu Venkateswarlu (herein after referred as the deceased), in the accident that occurred on 18.08.2013, in which the offending auto bearing Registration No.AP27TW 3518 was involved.

6. It was the case of the petitioners that on 18.08.2023, while the deceased was travelling on motorcycle bearing Registration No.AP27AU 1765 along with another person, Gude Subba Rao, when they reached Addanki-Darsi Road, near Thimmayapalem Village, Addanki Mandal, the 3rd respondent driver of the offending Auto came in opposite direction at highspeed in rash and negligent manner and dashed the motor cycle. As a result of which, the deceased succumbed to injuries instantaneously and Mr.Gude Subba Rao sustained severe injuries. A case in Crime No.215 of 2013 was registered on the file of Addanki Police station under Sections 304-A and 338 IPC.

7. It was the specific case of the petitioners that the deceased was running a provision store and used to earn Rs.10,000/-. It was further stated that the deceased was aged 36 years as on the date of accident. He was contributing his entire earnings to maintain the family and in view of the sudden demise of the deceased, the petitioners lost their only source of income and also future financial support. In those circumstances, the present petition came to be filed. The respondent Nos.1 & 3 i.e., the owner and driver of the offending Auto remained ex-parte. The 2nd respondent filed counter affidavit denying the averments

made in the claim petition. It was further contended that the accident was occurred due to rash and negligent driving of the motorcycle by the deceased. It was further contended that driver of the offending Auto had no valid driving license. Further the petitioners failed to implead the insurer and the insured of the motorcycle, whose presence is necessary to decide the issue in the claim petition and sought to dismiss the claim petition on the ground of non-joinder of necessary parties *Inter alia* it was also contended that the claim made by the petitioners was excessive.

8. In order to substantiate the case of the petitioners, the wife of the deceased was examined as PW-1 and Gude Subba Rao was examined as PW-2. The documents filed by the petitioners were marked as Ex.A1 to A4. On the other hand, the 2nd respondent examined RWs.2 & 3 filed documents, which were marked as Exs.B1 to B4. Copy of the authorization letter was marked as Ex.X1 through RW-2.

9. After enquiry, the Tribunal by impugned order, partly allowed the claim petition by awarding Rs.12,00,000/- as compensation together with interest @ 7.5% per annum from the date of filing of the petition till the date of deposit and directed the 2nd respondent-Insurance Company to pay the said amount and

to recover the same from respondent Nos.1 & 3 later, inasmuch as, the driver of the offending auto had no valid license.

10. Heard Sri Gudi Srinivasu, counsel appearing for the Insurance Company and Sri Siva Prasad Katakamsetty, counsel appearing for the claimants.

11. Perused the record.

12. The counsel appearing for the Insurance Company would strenuously contend that the Tribunal ought not to have awarded compensation of Rs.12,00,000/-, inasmuch as the petitioners have not placed anything on record to show that the deceased was earning an amount of Rs.5,000/- per month. It was also contended that there was no negligence on the part of the driver of the offending Auto and the accident was occurred due to the negligence of the rider of the motorcycle.

13. On the other hand, it was contended by the counsel for the claimants that the deceased was running provision store and earning Rs.10,000/- per month. To substantiate the same, the wife of the deceased was examined as PW-1. A perusal of the evidence of PW-1, it was categorically deposed that the deceased was running a provision store and used to contribute his entire income to the family.

14. Further, the petitioners have also examined Gude Subba Rao as PW-2, who was eyewitness to the accident. The evidence of PW-2 is corroborated with the evidence of PW-1. Despite the same, the Tribunal did not give any reason as to why the same is disbelieved. In this connection, it is pertinent to note that the Government of Andhra Pradesh has issued Gazettee Notification No.349, dt.23.05.2013, whereby and where under, the minimum wages were revised by exercising powers conferred under Minimum Wages Act, 1948. A perusal of the said notification would go to show that the store keeper was placed under covered establishments in the schedule appended thereto.. Further the minimum wage of a store keeper was revised and it was fixed as Rs.7,020/- per month in the said notification. By taking into consideration of the said notification coupled with the evidence of PW-1 and PW-2, it can be held that the income fixed by the Tribunal was unreasonable and therefore the same has to be fixed in accordance with the Gazetted Notification No.349, dt.23.05.2013 issued by the Government of Andhra Pradesh. In such circumstances, the finding of the Tribunal in fixing the income of the deceased as Rs.5,000/- per month is liable to be

interdicted and the income of the deceased is fixed as Rs.7,020/- per month.

15. Be that as it may, the counsel for the Insurance Company would submit that while awarding compensation, the Tribunal had granted an amount of Rs.3,00,000/- towards loss of love and affection and loss of estate. He would further submit that another sum of Rs.1,00,000/- was awarded towards loss of consortium to the 1st petitioner. Apart from the same, he would also submit that a sum of Rs.25,000/- was awarded towards funeral expenses. At this juncture the counsel appearing for the claimants would submit that the Tribunal failed to award compensation under head of future prospects. He would further submit that the Tribunal without following the guidelines prescribed in the Judgment rendered by Hon'ble Supreme Court in the case of National Insurance Company Vs. Pranaysethi awarded compensation. This Court finds sufficient force in the argument advanced by the counsel for Insurance Company, inasmuch as the same is not in accordance with the judgment of the Hon'ble Apex Court as mentioned above.

16. Having considering the rival submissions of the counsel on either side, the income of the deceased is fixed as

Rs.7,020/- per month and accordingly the compensation payable to the respondents is computed as under:

S.No.	Head	Compensation Awarded
1	Net monthly Income	Rs.7,020 x 12 = Rs.84,240/-
2	Future Prospects (age the age of 36 years)	Rs.33,696/- (i.e., 40% of the income)
3	Total Income (Net monthly)	Rs.1,17,936/-
4	Deduction towards personal expenditure (i.e., 1/4 th)	Rs.29,484/-
5	Total annual loss of dependency	Rs.88,452/-
6	Multiplier of 15 for the age of 36	Rs.13,26,780/- =Rs.88,452 x 15
7	Conventional Heads	
	(i) Loss of consortium	Rs.2,40,000/- (Rs.40,000 x 6)
	(ii) Loss of Estate	Rs.15,000/-
	(iii) Funeral expenses	Rs.15,000/-
	Total	Rs.15,91,807/-

17. For the foregoing reasons, the Insurance Company is directed to pay compensation of Rs.15,91,807/- together with interest @ 7.5% per month from the date of petition till the date of realization.

18. Further the Insurance Company is directed to pay said compensation, within a period of two (02) months from the date of receipt of this order.

19. In the result, MACMA No.522 of 2018 is dismissed and MACMA No.244 of 2021 is allowed. There shall be no order as to costs.

As a sequel, all pending miscellaneous petitions, if any, shall stand closed.

JUSTICE T.C.D.SEKHAR

23.04.2026
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THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

M.A.C.M.A.No.522 OF 2018
AND
MACMA No.244 OF 2021
Date: 23.04.2026

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