

APHC010158212019



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

[3333]

THURSDAY, THE NINETEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

CIVIL MISCELLANEOUS APPEAL NO: 162/2019

Between:

1. UNITED INDIA INSURANCE, REP BY ITS DIVISIONAL
MANAGER, SRIKAKULAM

...APPELLANT

AND

1. TUMARADA JAGADISWARI, W/O, LATE SANKARA RAO AGED ABOUT
48 YEARS, DANGIDI STREET, PARVATHI PURAM SRIKAKULAM DT.

2. TUMRARADA SANDHYA KUMARI, D/O SANKARA RAO AGED ABOUT
25 YEARS,

3. TUMARADA SUDHA RANI, D/O LATE SANKARA RAO AGED ABOUT 23
YEARS,

4. TUMARADA ARUN KUAMR, S/O LATE SANKARA RAO AGED ABOUT
21 YEARS,

5. TUMARADA SRI LAKSHMI, AGED ABOUT 19 YEARS ALL ARE
RESIDING AT DANGIDI STREET, PARVATHI PURAM SRIKAKULAM
DT.,

6. TUMARADA ARUN KUAMR, S/O LATE SANKARA RAO AGED ABOUT
21 YEARS DANGIDI STREET, PARVATHI PURAM SRIKAKULAM DT.,

...RESPONDENT(S):

Counsel for the Appellant:

1. AMANCHARLA SATISH BABU

Counsel for the Respondent(S):

1. G SAI NARAYANA RAO

The Court made the following:

THE HONOURABLE SMT JUSTICE V.SUJATHA**CIVIL MISCELLANEOUS APPEAL NO: 162/2019****J U D G M E N T:**

1. This is an appeal preferred by the 2nd Respondent i.e., United India Insurance Company Limited, represented by its Divisional Manager, Srikakulam, challenging the Judgment dated 29.12.2018 passed in W.C.No.5 of 2017 by the Commission for Employees Compensation and Assistant Commissioner of Labour at Parvathipuram.

The parties hereinafter are referred to as they were arrayed before the Tribunal.

2. The wife and children of Thumarada Sankara Rao (hereinafter referred as deceased) filed a claim application under Employees Compensation Act, 1923 (hereinafter called the Act) for compensation of Rs.10,00,000/- with interest and costs for the death of Tumarada Sankara Rao.

3. Brief facts of the application before the Tribunal are that: the deceased – Thumarada Sankara Rao was worked as driver at O.P.No.1 i.e., owner of vehicle i.e., Auto bearing No. AP35 V 3761. On 24.03.2011 at about 7.30 p.m., the deceased Thumarada Sankara Rao was driving the said auto from Komarada Village to Parvathipuram. After dropping passengers at Komarada, when he reached near Komarada Government Junior college, he met with an accident, as a result, Sankara Rao received sever injuries. Immediately he was

shifted to Government Area Hospital, Parvathipuram, after first-aid he was shifted to K.G.H., Visakhapatnam for better treatment, where while undergoing treatment he died on 29.03.2011 at about 11.45 p.m.,. There the doctors conducted postmortem examination over the dead body of the deceased and handed over to the petitioners.

4. The applicants further submitted that the deceased was quite hale and healthy prior to and at the time of the accident, he was discharging his duties as a driver in the vehicle bearing No. AP 35 V 3761 under the opposite party No.1. As a driver of the vehicle the deceased used to draw of Rs.8,000/- per month (including batta). The Applicants states that the deceased is only earning member in their family and he used to spent all his earnings to maintain the applicants and they are depending upon the earnings of the deceased.

5. The accident occurred during the course of the employment under opposite party No.1, while discharging his duties, hence all the opposite parties are jointly and severally liable to pay the compensation amount of Rs.10,00,000/- under the Act together with interest at the rate of 12% per annum from the date of petition till the date of realization of the amount and for costs of the petition.

6. The opposite party No.1 was set ex parte.

7. The opposite party No.2 filed its counter denying the averments of the application and stated that the petitioners did not file any document to prove

that the deceased worked under opposite party No.1 and any document regarding his appointment or regarding wages or salary paid by the owner if any. The opposite party No.2 further stated that the deceased was a passenger travelling in the auto and he is a 3rd party and he is not a work man. Hence, the petition is not maintainable under the provisions of the Act and this court has no jurisdiction to entertain this application and the petition is liable to be dismissed in limini, with costs.

8. Basing on the above pleadings, the following issues were settled for consideration by the Tribunal –

- 1) Whether the deceased is a workman and he died arising out of employment and whether the accident occurred in the course of employment or not?
- 2) What are the wages and age particulars to determine the quantum of compensation and whether all the opposite parties are liable to pay compensation or not?

9. During enquiry/trial Smt. Thumarada Jagadeeswari who is 1st applicant examined as A.W.1 and got marked Ex.A.1 – copy of F.I.R in Cr.No.11 of Komarada police station, Ex.A.2 – true copy of postmortem report, Ex.A.3 – true copy of Inquest report, Ex.A.4 – true copy of Motor Vehicle Inspection report, Ex.A.5 – attested copy of final report, Ex.A.6 - driving license of deceased, Ex.A.7 - copy of insurance policy, Ex.A.8 – copy of vehicle registration; and Ex.A.9 – Xerox copy of ration card.

On behalf of Opposite Party No.2 none were examined but, marked Ex.B.1 – copy of insurance policy.

10. Upon hearing both sides and upon considering the oral and documentary evidence placed on record, the Tribunal awarded compensation amount of Rs.3,97,400/- with interest at 7.5% p.a, from the date of application i.e., from 28.10.2017 directing the opposite parties jointly and severally to pay the compensation amount to the applicants within 30 days by way of demand draft drawn in favour of “Commissioner for Employees” Compensation and the Joint Commissioner of Labour, Visakhapatnam.

11. Being aggrieved by the said Judgment, the Opposite Party No.2 – Insurance Company has preferred the present appeal on the ground that there is delay of 1435 days in filing the application and the Station House Officer, Komarada police station filed final report dated 27.02.2011 under Section 304A of the Indian Penal Code before the Hon’ble Magistrate Court, Parvathipuram stating that the accident was occurred due to negligence of the driver of the Auto, hence, granting compensation to the claimants is bad and arbitrary.

12. Heard both counsel and perused the material in record.

13. On a perusal of the order passed by the Commissioner, it can be observed that the 1st applicant got examined herself as A.W.1 and reiterated the contents as stated in her chief examination affidavit and got marked Exs.A.1 to

A.9. The opposite party No.2 filed the policy copy and got marked as Ex.B.1. However, the opposite party No.2 did not adduce any oral evidence, except marking the policy copy. As per Ex.B.2, the policy was in force as on the date of accident.

14. In the absence of any contra evidence adduced on behalf of the respondents, the Commissioner, after considering the evidence of A.W.1 and Exs.A.1 (copy of FIR), A.3 (inquest report) and A.5 (final report), held that the deceased worked as a driver of the alleged crime vehicle bearing No.AP35 V 3761 belonging to the 1st opposite party and held that the deceased died in the course of employment and accordingly, answered issued No.1 in favour of the applicant.

15. Now coming to the quantum of compensation, the Commissioner considered the minimum wages of the driver as on the date of accident i.e., 24.03.2011 as Rs.8,000/- [Rs.5,138/- (basic) + Rs.2,862/-(V.D.A.)], as fixed by the Government of Andhra Pradesh vide G.O.Ms.No.83, Labour, Employment, Training and Factories (Lab-II) Department, dated 22.11.2006. Considering the age of the deceased as 65 years as per Ex.A.2, the Commissioner calculated the quantum of compensation as $'99.35 \times 50/100 \times 8,000 = \text{Rs.}3,97,400/-$, which in the considered opinion of this Court is neither excessive nor deficit and the same need not be interfered with by this Court.

16. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

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

SMT JUSTICE V.SUJATHA

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Dated 19.02.2026.

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THE HONOURABLE SMT JUSTICE V.SUJATHA

CIVIL MISCELLANEOUS APPEAL NO: 162/2019

DATED 19.02.2026

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