



**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: 212/2022

Between:

1. BOBBILI KAMALA, W/O VIJAYA KUMAR, HINDU, MALE, AGE 40 YEARS, R/O D.NO.3-122, 5TH WARD, AMBICA TEMPLE STREET, VETLURU VILLAGE, PEDAPADU MANDAL, WEST GODAVARI DISTRICT.
2. BOBBILI SUDHEER KUMAR, S/O VIJAYA KUMAR, HINDU, MALE, AGE 24 YEARS, R/O. D.NO.3-122, 5TH WARD, AMBICA TEMPLE STREET, VETLURU VILLAGE, PEDAPADU MANDAL, WEST GODAVARI DISTRICT.
3. BOBBILI KISHORE KUMAR, S/O VIJAYA KUMAR, HINDU, MALE, AGE 23 YEARS, R/O. D.NO.3-122, 5TH WARD, AMBICA TEMPLE STREET, VETLURU VILLAGE, PEDAPADU MANDAL, WEST GODAVARI DISTRICT.
4. BOBBILI PRAKASH, D/O VIJAYA KUMAR, HINDU, MALE, AGED 20 YEARS, R/O. D.NO.3-122, 5TH WARD, AMBICA TEMPLE STREET, VETLURU VILLAGE, PEDAPADU MANDAL, WEST GODAVARI DISTRICT.

...APPELLANT(S)

AND

1. KOLLURI CHENCURAMAIAH, D/O JALAI AH, HINDU, MALE, AGED 46 YEARS, DRIVER OF LORRY, R/O MUPPAVARAM, KNODEPI MANDAL, PRAKSAM DISTRICT.
2. SKLS LORRY SERVICE, REP. BY PRO., K.DHAMODHARAN, HINDU,

MALE AGED 46 YEARS, R/O D.NO.46/26/46, KRISHNALANKA,
VIJAYAWADA, KRISHNA DISTRICT.

3.THE UNITED INDIA INSURANCE COMPANY LIMITED, REP. BY ITS
DIVISIONAL MANAGER, DIVISIONAL OFFICE, R.R.PET, ELURU.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court Being
aggrieved by the Decree and Judgement dated 06-12-2021 passed by the
VIIth Additional District Court Cum Family Court, West Godavari District, Eluru
in MVOP.No.326/2014

Counsel for the Appellant(S):

1.B V KRISHNA REDDY

Counsel for the Respondent(S):

1.JAVVAJI SARATH CHANDRA

2.

The Court made the following:

JUDGMENT:

The claimants filed the present appeal challenging the order and decree 06.12.2021 passed in M.V.O.P.No.326 of 2014 on the file of the Motor Accidents Claims Tribunal-cum-VII Additional District Judge, East Godavari, Eluru, wherein the Tribunal granted compensation of Rs.9,81,000/- (Rupees Nine lakhs Eighty one Thousand only) to the claimants/appellants herein, as against the claim of Rs.21,00,000/-, on account of the death of the deceased Bobbili Vijaya Kumar in a motor accident that occurred on 06.10.2013.

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

03. The case of the petitioners is briefly as follows:

a) On 06.10.2013 at about 1.30 p.m., while the deceased was returning from Jyothi Mahal 'U' Turn Highway, Vijayawada, on his TVS Moped bearing No.AP 16 BZ 3150 after delivering pickles and proceeding towards his house for lunch, the 1st respondent, driving lorry bearing No.AP TX 7347 in a rash and negligent manner and at high speed, without blowing horn, dashed the vehicle of the deceased from behind. As a result, the deceased sustained grievous head injuries and other bodily injuries. He was immediately shifted to Sentini Super Speciality Hospital, where he underwent surgery and remained in the ICU for about sixteen days. However, he succumbed to the injuries on 20.10.2013. Based on the statement given by the deceased, Crime No.682 of 2013 was registered under Sections 337 and 338 IPC, which was later altered

to Section 304-A IPC after his death. After investigation, the police filed charge sheet against the 1st respondent-driver of the offending lorry.

b) According to the claimants, the deceased was aged about 50 years and was carrying on pickle manufacturing and selling business at Vijayawada, earning Rs.25,000/- per month. The deceased was the sole breadwinner of the family. Hence, the claimants sought compensation of Rs.21,00,000/- from respondent Nos.1 to 3, being the driver, owner and insurer of the offending vehicle respectively.

04. Before the Tribunal, respondent Nos.1 and 2 remained exparte.

05. Respondent No.3/Insurance Company filed written statement denying the material averments and contending inter alia that the accident occurred due to the negligence of the deceased himself. It was further contended that the claimants failed to establish the age, avocation and income of the deceased and that the compensation claimed was excessive.

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

“1. Whether the Vijaya Kumar sustained injuries in a road accident on 06.10.2013 and succumbed to the same and the accident was occurred due to rash and negligent driving of 1st respondent who drove the lorry bearing No.AP 16 TX 7347 and 2nd respondent is the owner and 3rd respondent is insurer of the said crime vehicle?

2. Whether the petitioners are entitled for compensation as prayed for? If so from whom and to what extent?

3. *To what relief?"*

07. On behalf of the claimants, P.Ws.1 to 5 were examined and Exs.A1 to A11 were marked. On behalf of respondent No.3, R.W.1 was examined and Exs.B1 and B2 were marked.

08. After hearing both parties and after considering the oral and documentary evidence on record, the Tribunal allowed the claim petition in part against respondent Nos.1 to 3, awarding compensation as follows:

"In the result, the petition is allowed in part. The respondent Nos.1 to 3 are jointly and severally liable to pay the compensation amount of Rs.9,81,000/- (Rupees Nine lakhs Eighty One Thousand only) to the petitioners 1 to 4 along with interest @ 7.5% per annum with proportionate costs from the date of petitioner till the date of deposit. The 1st petitioner wife is entitled to get Rs.5,31,000/- towards compensation including loss of consortium. The petitioners 2 to 4 are entitled to compensation of Rs.1,50,000/- each. The 3rd respondent is directed to deposit the entire compensation amount of Rs.9,81,000/- with proportionate costs and interest within 30 days from this day.

On such deposit, the 1st petitioner is entitled to withdraw an amount of Rs.4,00,000/- and balance compensation amount of Rs.1,31,000/- along with proportionate costs and interest shall be kept in fixed deposit in any Nationalized bank for a period of one year. The petitioners 2 to 4 are permitted to withdraw their entire compensation amount of Rs.1,50,000/- each awarded to them. Rest of the claim of the petitioners is dismissed without costs. The Advocate fee is fixed at Rs.5,000/-."

09. Aggrieved by the said award, the claimants preferred the present appeal contending that the Tribunal failed to consider the income of the deceased at Rs.25,000/- per month despite the evidence of P.Ws.2 and 3; that the deceased was carrying on pickle manufacturing and selling business

at Vijayawada; that the Tribunal failed to properly appreciate Ex.A8 certificate issued by the Secretary, Gram Panchayat, Bapulapadu Mandal, which corroborated the evidence of P.Ws.2 and 3; and that the Tribunal failed to add any amount towards future prospects though the deceased was aged about 50 years at the time of the accident, apart from other grounds.

10. On the other hand, learned counsel for respondent No.3/insurance company herein has supported the impugned award and prayed to dismiss the appeal.

11. Heard Mr.B.V.Krishna Reddy, learned counsel for the appellants/claimants and Mr.J.Sarath Chandra, learned counsel for respondent No.3./insurance company.

12. Now the point for consideration is:

“Whether the compensation awarded by the Tribunal is just and reasonable, or requires enhancement in this appeal; if so, to what extent?”

POINT:

13. On a perusal of the impugned award, it is evident that the 1st claimant, being the wife of the deceased, examined herself as P.W.1 and marked Exs.A1 to A11. In support of her case, the claimants also examined P.W.5, an eyewitness to the accident, who categorically deposed that on 06.10.2013 at about 1.30 p.m., while he was standing near Jyothi Mahal ‘U’ turn point, the deceased, namely Bobbili Vijaya Kumar, was proceeding cautiously on his

TVS Moped bearing No.AP 16 BZ 3150. At that juncture, the driver of the lorry bearing No.AP TX 7347, proceeding from Varadhi side towards Benz Circle, drove the vehicle in a rash and negligent manner and at high speed, without blowing horn and without following traffic rules, and dashed against the moped of the deceased. As a result, the deceased fell on the road and sustained bleeding injuries. Immediately thereafter, he was shifted to Sentini Super Speciality Hospital in a 108 ambulance and, while undergoing treatment, succumbed to the injuries sustained in the accident. Considering the evidence of P.Ws.1 and 5, coupled with Ex.A1/FIR in Crime No.682 of 2013 of Krishnalanka Police Station and Ex.A2/Inquest Report, the Tribunal rightly answered Issue No.1 in favour of the claimants.

14. Coming to the quantum of compensation, it is the evidence of P.W.1 that the deceased was carrying on pickle manufacturing and selling business at Vijayawada and was earning not less than Rs.25,000/- per month. In support of her case, Ex.A8/certificate dated 18.10.2016 issued by the Secretary, Gram Panchayat, Bapulapadu Mandal, was marked and P.W.2, the Sarpanch of the village, and P.W.3, the Panchayat Secretary who issued Ex.A8, were examined. Both P.Ws.2 and 3 categorically stated in their cross-examination that they could not speak about the avocation and income particulars of each and every individual in the village and that Ex.A8 was issued after conducting an enquiry and recording statements from certain villagers. However, they admitted that neither the enquiry report nor the statements allegedly recorded during such enquiry were filed before the

Tribunal and that they were only relying upon Ex.A8 issued by P.W.3. In view of the same, the Tribunal did not place reliance upon the evidence of P.Ws.2 and 3 or Ex.A8 for determining the income of the deceased. In the absence of any reliable documentary evidence regarding the income of the deceased, the Tribunal assessed the monthly income of the deceased at Rs.5,000/-.

15. Learned counsel for the appellants strongly contended that the Tribunal ought to have relied upon the evidence of P.Ws.2 and 3 coupled with Ex.A8. However, this Court is also of the considered opinion that the evidence of P.Ws.2 and 3 cannot be fully relied upon, inasmuch as P.W.2 is only an agricultural labourer and P.W.3, being the Panchayat Secretary, is not competent to issue any authenticated income certificate. Moreover, both of them admitted that they had no personal knowledge regarding the avocation and income of the deceased and that Ex.A8 was issued only on the basis of an alleged enquiry, the records of which were not produced before the Tribunal. In such circumstances, this Court is of the opinion that the income of the deceased has to be assessed on the basis of the wages payable under the Minimum Wages Act prevailing during the year 2013. Admittedly, the daily wage payable to a coolie at the relevant point of time was Rs.141/-, which would come to Rs.4,230/- per month ($\text{Rs.141} \times 30 \text{ days}$). However, considering the nature of work of the deceased, this Court is of the opinion that the Tribunal has rightly assessed monthly income of the deceased at Rs.5,000/- per month, which needs no interference. As the deceased was aged about 50 years at the time of the accident, an addition of 25% towards

future prospects is warranted in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company v. Pranay Sethi**¹. Accordingly, the monthly income of the deceased comes to Rs.6,250/- (Rs.5,000/- + Rs.1,250/-). Since there are four dependants, 1/4th of the income is to be deducted towards personal and living expenses of the deceased. After such deduction, the monthly contribution to the family comes to Rs.4,688/- (Rs.6,250 – Rs.1,562). Applying the multiplier of '13' applicable to the age group of the deceased, the loss of dependency works out to Rs.7,31,328/- (Rs.4,688 × 12 × 13).

16. Apart from the above, the Tribunal awarded an amount of Rs.2,97,000/- towards medical expenses, as the deceased sustained injuries in the accident that occurred on 06.10.2013 and succumbed to the said injuries on 20.10.2013 while undergoing treatment, having survived for about sixteen days after the accident. The Tribunal also awarded Rs.40,000/- towards loss of consortium to the 1st petitioner. However, this Court is of the considered opinion that petitioner Nos.2 to 4, having lost their father, are also entitled to compensation under the head of loss of love and affection at Rs.40,000/- each, totalling Rs.1,20,000/- (Rs.40,000/- × 3). Further, the Tribunal awarded only Rs.20,000/- towards conventional heads such as loss of estate and funeral expenses. In the opinion of this Court, the same deserves to be enhanced to Rs.30,000/-. Accordingly, the total compensation payable to the claimants works out to Rs.12,18,328/-.

¹2017 ACJ 2700

17. Thus, to sum up, the amounts awarded by the Tribunal and the amounts granted in the present appeal, in the light of the computations made above, are as follows:

Head	Amount granted by the Tribunal	Amount now awarded by this Court
Loss of dependency	Rs.6,24,000/-	Rs. 7,31,328/-
Medical expenses	Rs.2,97,000/-	Rs.2,97,000/-
Loss of consortium to petitioner No.1	Rs.40,000/-	Rs.40,000/-
Love and affection to petitioner Nos. 2 to 4	--	Rs.1,20,000/-
Loss of estate and funeral expenses	Rs.20,000/-	Rs.30,000/-
Total	Rs.9,81,000/-	Rs.12,18,328/-

18. Accordingly, the Motor Accident Civil Miscellaneous Appeal is partly allowed, enhancing the compensation from Rs.9,81,000/- to Rs.12,18,328/- 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.

As a sequel, pending interlocutory applications, if any, shall stand closed.

JUSTICE V. SUJATHA