

APHC010173192023



**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: 401 OF 2023

Between:

1. THE ORIENTAL INSURANCE COMPANY LTD.,, REP. BY ITS
BRANCH MANAGER, BRANCH OFFICE, NELLORE.

...APPELLANT

AND

1. KATTA SIVA NAGULU, W/O LATE K. NAGABABU, AGED 31 YEARS,
OCC. HOUSEWIFE.

2. KATTA VENKATA GOTHAM, S/O LATE NAGABABU, AGED 6 YEARS,
MINOR.

3. KATTA NAVYA, D/O LATE NAGABABU, AGED 8 YEARS, MINOR.

4. KATTA SUSEELA, W/O LATE THIRUPATHAIAH, AGED 52 YEARS.
R2 AND R3 MINORS BEING REP. BY THEIR MOTHER CUM
NATURAL GUARDIAN, RESPONDENT NO. 1 HEREIN. ALL ARE R/O
CHINALATRAPI VILLAGE, GUDLURU MANDAL, PRAKASAM
DISTRICT.

5. GANGADHAR MAHA PATRA, S/O GORACHAND MAHA PATRA,
AGED MAJOR, DRIVER OF FORCE TEMPO, R/O BASANTIA,
GOBINDABERA, BARPURBA, MEDINPUR BASINTIA, WEST
BENGAL-721442.

6. BHOLA PATTANYAK, PROPRIETOR, M/S. SNEMITA PARISHEBA,
AGED MAJOR, OWNER OF FORCE TEMPO BEARING NO. OD 01 AF
2613, C/O MAHESWAR PANDA, R/O GAJIPUR, CHANDANESWAR,
BHOGIRAI DISTRICT, BALESHWAR, ODISHA STATE.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Courtpleased to set aside Decree and Order dated 06.09.2022 passed in M.V.O.P No. 349 of 2020 on the file of III Additional Motor Vehicles Accidents Claims Tribunal cum III Addl. District Judge, Nellore and consequently dismiss the claim Petition and pass

IA NO: 1 OF 2023

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 62 days in filing the appeal against M.V.O.P No. 349 of 2020, dated 06.09.2022 on the file of Motor Accidents Claims Tribunal -Cum- III Addl. District Judge, Nellore and to pass

IA NO: 2 OF 2023

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 89 days in representing the appeal against M.V.O.P No. 349 of 2020, dated 06.09.2022 on the file of Motor Accidents Claims Tribunal -Cum- III Addl. District Judge, Nellore and to pass

IA NO: 3 OF 2023

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 grant stay of operation of Decree and Order dated 06.09.2022 passed in M.V.O.P No. 349 of 2020 on the file of III Additional Motor Vehicles Accidents Claims Tribunal cum III Addl. District Judge, Nellore and pass

Counsel for the Appellant:

1.M SOLOMON RAJU

Counsel for the Respondent(S):

1.M S R CHANDRA MURTHY

2.V SIVA PRASAD

The Court made the following Judgment :

The Insurance Company/ Respondent No.3 filed the present appeal being aggrieved by the order and decree, dated 06.09.2022 passed in M.V.O.P.No.349 of 2020 by the Motor Accidents Claims Tribunal-cum-III Additional District Judge, SPSR Nellore, whereby and whereunder the Tribunal granted compensation of Rs.20,93,000/-, as against the claim of Rs.25,00,000/-, on account of the death of Mr. Katta Nagababu (herein after referred to as 'the deceased') in a motor accident that occurred on 26.09.2020.

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 26.09.2020 at about 2.50 p.m, the deceased along with his cousin Katta Audi came to Nellore on motorcycle bearing No. AP 39 AN 8936, for purchasing material for ducklings. After completion of their work, while returning, when reached near Thummalapenta Flyover Bridge on NH-16 on Nellore – Ongole road, the Respondent No.1 drove the Force Temple Van bearing No. OD 01 AF 2613 from Nellore to Ongole negligently and in a rash and negligent manner, came from their behind, and hit on the right side of the motorcycle. Due to which, both the riders on the motorcycle fell down on the road, and received injuries. While undergoing treatment he succumbed to the injuries and died. The Kavali Rural Police registered a case in Crime No.295

of 2020 for the offence punishable under Section 304-A and 337 of IPC against the driver of the offending vehicle/ tempo van. Hence, the legal representatives of the deceased filed the claim petition 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 there is no negligence on the part of the driver of the offending vehicle and as the deceased, without observing traffic, was riding the motorcycle in an irregular manner, the accident took place. The driver of the offending vehicle was not possessing valid and effective driving license as on the date of accident. The compensation claimed by the Claimants 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 alleged accident occurred on 26.09.2020 at 14.50 hours on NH-16, near Thummalapenta Flyover Bridge, Nellore to Ongole Road, Kavali Rural, SPSR Nellore District, was due to rash and negligent act of the driver of the Force Tempo Van bearing No. OD -1 AF 2613 and whether it resulted to the death of the deceased/ Katta Nagababu?

2. Whether the claimants are entitled for compensation? If so, to what amount and from which of the respondents?

3. To what relief?”

7. On behalf of the Petitioners/Claimants, P.Ws.1 to 3 were examined and Exs.A1 to A4 were marked. On behalf of the Respondent No.3, none was examined and with consent Ex.B1 was 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.1 to 3, awarding compensation of Rs.20,93,000/- 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.1 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 Insurance Company preferred this appeal on the ground that in the absence of any evidence to prove the income of the deceased, the Tribunal ought to have fixed the income of the deceased notionally at Rs. 3,000/- instead of Rs. 10,000/- in the present case. That the Tribunal failed to consider the evidence of PW-2, who is cousin of the deceased and PW-3 who is paternal uncle, thus their evidence cannot given any waitage. The Tribunal failed to consider that the deceased was riding the motorcycle bearing No. AP 39 AN 8936 and on account of his negligence, the accident occurred. Thus, there is contributory negligence on the part of the deceased among also other grounds urged.

10. On the other hand, learned counsel for the Respondents No.1 to 4/ Claimants 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 of the deceased got herself examined as PW-1, who deposed with regard to nature of the accident and got marked Exs.A1 to A4. In support of her claim, she also got examined another injured as an eye witness as PW-2, who categorically deposed that while himself and deceased was proceeding from Nellore to Ongole on NH-16, near Thummalapenta Flyover Bridge, the driver of the offending vehicle, proceeding from Nellore towards Ongole, drove the same in a rash and negligent manner, and hit on the right side of their motorcycle, from behind; consequently, they received injuries; the deceased sustained head injury, and while undergoing treatment, he succumbed to the injuries. PW-2 was the pillion rider, the deceased was riding the motorcycle, that they were proceedings on the left side of the road, and the van came from their behind. Though, the junior paternal uncle of the deceased by name Katta Chinna Venkateswarlu, is examined as PW-3. Admittedly, he is not an eye witness to the said accident.

13. Considering the evidence of PWs 1 and 2, coupled with Ex.A1 – FIR and Ex.A4 – Charge Sheet filed in Crime No. 295 of 2020 of Kavali Rural Police Station against the driver of the offending vehicle. The Tribunal answered the issue No.1 in favour of the Claimants holding that the Claimants have established their case by examining PWs 1 and 2, coupled with Ex.A1 to Ex.A4 and that the Respondents failed to discharge the burden shifted on them.

14. Coming to the quantum of compensation payable to the Claimants is concerned, as per evidence of PWs 1 and 3, the deceased was doing poultry business in ducks and used to earn Rs. 20,000/- per month, besides doing mason work on odd days earning Rs. 500/- per day. Admittedly, there is no evidence to that effect. In the absence of any documents evidence, the Tribunal fixed the notional income as Rs. 10,000/- per month.

15. Learned counsel for the Appellant argued that in the absence of any documentary evidence to prove the income of the deceased, the Tribunal ought to have fixed the notional income of the deceased as Rs. 3,000/- per month as per decision of ***“Sarla Verma and Others v. Delhi Transport Corporation and Another”*¹**.

16. Admittedly, in the present case, the accident occurred on 26.09.2020. As per decision of Hon’ble Apex Court where there is no evidence with regard to income of the deceased, the wages shall be paid as per Minimum Wages

¹ 2009 LawSuit (SC) 613

Act applicable as on the date of accident should be taken into consideration. If the minimum wages payable to an unskilled labour as on the date of accident is considered, it would be Rs. 360/- per day and the monthly income of the deceased would be at Rs.10,800/- (Rs.360/- x 30 days). However, the Tribunal has fixed notional monthly income at Rs. 10,000/- by rounding of the number, which in the opinion of this Court is well reasoned. As the deceased was aged 35 years as on the date of accident, he is entitled an additional 40% towards his future prospects as per decision of “**National Insurance Company Limited v. Pranay Sethi and Others**”². If the same is added, it would come to Rs. 14,000/-(Rs. 10,000/- x 40%). As there are four dependents in the present case, the Tribunal had rightly deducted 1/4th towards persona and living expenditure. After deducting the same, it would come to Rs. 10,500/-. After applying appropriate multiplier to the age group of 35 years as per “**Sarla Verma and Others v. Delhi Transport Corporation and Another**”³ is ‘16’ the loss of earnings would come to Rs. 20,16,000/- (Rs. 10,500/- x 12 x 16). Apart from the same, the Tribunal awarded compensation under conventional heads viz., Rs. 16,500/- towards funeral expenses; Rs. 44,000/- towards loss of consortium to the Claimant No.1 alone and Rs. 16,500/- towards loss of estate.

17. Admittedly, the Claimants No.2 and 3 are minor children, who are also entitled under the head of loss of parental consortium, therefore, this Court is awarding Rs. 40,000/- each i.e Rs. 80,000/- (Rs. 40,000/- x 2) and

² (2017) 16 SCC 680

³ 2009 LawSuit (SC) 613

Respondent No.4 being the mother of the deceased is also entitled towards filial consortium at Rs. 40,000/-. Over all, the total compensation arrived is Rs. 22,13,000/-.

18. As per decision of High Court of Patna in “**Branch Manager, Oriental Insurance Company Ltd., and Another v. Sushma Devi and Others**”⁴, wherein it was held as follows:-

10. On the other hand, learned counsel for the respondent- claimant has challenged the quantum of the compensation awarded by learned Tribunal without filing cross-appeal placing reliance on a decision of the Apex Court in the case of Surekha v. Santosh, 2020 SCC OnLine SC 1312, wherein, the Hon’ble Apex Court has held that “the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants”.....

19. In the light of above decision, even in the absence of cross appeal by Claimants, compensation can be enhanced.

20. 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.	Loss of earnings	20,16,000/-	20,16,000/-
2.	Funeral expenses	16,500/-	16,500/-
3.	Loss of consortium (Rs.44,000 + 80,000)	44,000/-	1,24,000/-
4.	Filial consortium	----	40,000/-
4.	Loss of estate	16,500/-	16,500/-
	Total	Rs. 20,93,000/-	Rs.22,13,000/-

⁴ 2024 SCC OnLine Pat 3333

21. In the result, Motor Vehicles Civil Miscellaneous Appeal is dismissed, while enhancing the compensation from Rs.20,93,000/- to **Rs.22,13,000/-** with interest at 9% p.a from the date of filing of the Petition till the date of realization. The Insurance Company is liable to pay compensation to the Claimants. 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.

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

JUSTICE V.SUJATHA

Date: 21.04.2026

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