

APHC010269102019



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

[3505]

FRIDAY, THE TWENTIETH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO:
860/2019

Between:

1. MAGMA HDI GENERAL INSURANCE COMPANY
LIMITED, REP BY ITS THE MANAGER, TP
CLAIMS, MAGMA HOUSE, 24 PART STREET, KOLKATA

...APPELLANT

AND

1. SUNKARA CHINA LAKSHMI, W/O LATE SUNKARA
MODAYYA, AGE AROUND 25 YEARS, CAST
KAPU, HOUSEWIFE, RESIDENT OF 5-30,
BUCHAYYAPETA VILLAGE/MANDAL, VISAKHAPATNAM
RURAL DISTRICT.

2. SUNKARA HAREESH, S/O LATE SUNKARA MODAYYA,
AGE AROUND 9 YEARS, MINOR, STUDYING 5TH CLASS,
RESIDENT OF 5-30, BUCHAYYAPETA
VILLAGE/MANDAL, VISAKHAPATNAM RURAL DISTRICT.

3. SUNKARA SANTHI, D/O LATE SUNKARA MODAYYA,
AGE AROUND 8 YEARS, MINOR, STUDYING 4TH
CLASS, RESIDENT OF 5-30, BUCHAYYAPETA
VILLAGE/MANDAL, VISAKHAPATNAM RURAL DISTRICT.

(THE RESPONDENTS/PETITIONERS 2 AND 3 BEING MINOR, HENCE 1ST RESPONDENT/1ST PETITIONER AS NATURAL GUARDIAN/MOTHER REPRESENTS ON THEIR BEHALF)

4. THATIKONDA THATA BABU TATA RAO, S/O MAHA LAKSHMI, AGE AROUND 44 YEARS, CASTE BY KAPU, RESIDENT OF BUCHAYYAPETA VILLAGE/ POST AND MANDAL, VISAKHAPATNAM RURAL DISTRICT. (DRIVER OF OFFENDING VEHICLE TRACTOR ENGINE BEARING NO.AP-37-AR-3096).

5. BUDIREDLA APPANNA, S/O NOOKARAJU, AGE AROUND 40 YEARS, RESIDENT OF KANDIPUDI VILLAGE, BUTCHAYYAPETA POST AND MANDAL, VISAKHAPATNAM RURAL DISTRICT. (OWNER OF OFFENDING VEHICLE TRACTOR ENGINE BEARING NO.AP-37-AR- 3096)

...RESPONDENT(S):

Appeal filed under Order 41 of CPC praying that the Highcourt may be pleased toMemorandum of Civil Miscellaneous Appeal against the Order and Decree Dated06-03-2019 passed in M.V.O.P.943/2016 on the file of the Motor Accidents Claims Tribunal-Cum- Additional District Judge, Visakhapatnam,FTC IX Addl Dist andSessions Judge,Chodavaram

IA NO: 1 OF 2019

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 of the Appeal against the Decree and Judgment dated 22.02.2019 in M.V.O.P.No. 943of 2016 Sn file of the Hon'ble Chairman, , Motor Accidents Claims Tribunals_Cum 4"--tj Additional District Judge Visakhapatnam,FAC IX Addl District Judge, Chodavaram

IA NO: 2 OF 2019

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 all further proceedings of the Decree and Judgment dated 22.02.2019 in M.V.O.P.No. 943 Of 2016 On file of the Hon'ble Chairman, Motor Accidents Claims Tribunals_Cum_XII Additional District Judge : Visakhapatnam, FAC IX Addl District Judge, Chodavaram

Counsel for the Appellant:

1. SRINIVASA RAO KAMARAJUGADDA

Counsel for the Respondent(S):

1. K SAIRAM MURTHY

The Court made the following:

HON'BLE SRI JUSTICE T.C.D. SEKHAR**MACMA No.860 OF 2019****JUDGMENT:-**

1. The present appeal is filed by Appellant-Insurance Company aggrieved by order dt.22.02.2019 in M.O.P.No.943 of 2016, on the file of Chairman, Motor Vehicle Accidents Claims Tribunal-cum-IX Additional District & Sessions Judge, Chodavaram, Visakhapatnam.

2. The claimants approached the Tribunal by filing petition under Section 166 of Motor Vehicles Act, 1988 claiming compensation of Rs.12,00,000/- on account of death of one Sunkara Modayya in the accident that was occurred on 24.05.2016 in which the offending Tractor bearing Registration No.AP37AR 3096 was involved.

3. The 1st claimant is the wife and claimant Nos.2 & 3 are the children of the deceased. It is the case of the claimant that on 23.05.2016 the deceased approached the 2nd respondent, owner of the offending tractor and requested him to send the tractor so as to plough the agricultural land belonged to him. Subsequently, on 24.05.2016 the deceased boarded the tractor

and sat on the mudguard of the tractor. When it reached near the agriculture land belonged to the deceased, the driver of the tractor drove the vehicle in rash and negligent manner and hit a big stone. As a result of which, the tractor turned turtle and thereby the deceased fell down under the tractor and died on the spot.

4. The claim petitioners stated that the deceased used to earn Rs.5,000/- per month and the same was being contributed to the family. In view of the sudden the death, they approached the Tribunal seeking compensation of Rs.12,00,000/-.

5. The driver & owner of the offending vehicle remained ex-parte. The 3rd respondent/appellant filed counter affidavit contending that the owner of the tractor violated the provisions of Motor Vehicles Act and allowed the deceased to sit on the mudguard and therefore the deceased was an unauthorized passenger and contended that the owner and driver are liable to pay compensation.

6. Considering the oral and documentary evidence, the Tribunal by impugned order awarded compensation of Rs.10,80,000/- to the claim petitioners on various conventional

heads. Aggrieved by the same, the Insurance Company preferred the present appeal.

7. Heard counsel for the appellant and learned counsel for respondents.

8. Perused the record.

9. The only ground urged before this Court is that the appellant-insurance company is not liable to pay compensation inasmuch as the owner of the offending vehicle violated the terms of the policy and allowed the deceased to sit on the mudguard. The counsel for the appellant would further submit that the Insurance Company is not liable to pay compensation inasmuch as the deceased was an unauthorized passenger, as such the Tribunal erred in fastening liability on it.

10. On the other hand, the learned counsel appearing for the respondents/claimants would submit that the Tribunal after considering the plea of the appellant, had rightly awarded compensation by rejecting the contention of the appellant. He would further submit that the Tribunal failed to award compensation loss of consortium for all the three dependents, instead, it had granted only Rs.40,000/- towards one dependent.

11. The contention of the appellant that the Insurance Company is not liable to pay compensation as the deceased was unauthorized passenger. In this regard, it is pertinent to note that the offending tractor was admittedly insured with the Appellant-Insurance Company. In such circumstances, it would have to be held that the Appellant-Insurance Company has to pay compensation together with interest to the claimants as determined by the Tribunal and later the same can be recovered from the owner of the offending vehicle. The Hon'ble Apex Court in the case of "**V. Renganathan and another Vs. The Branch Manager, United India Insurance Company Limited and another¹**" held that that even if the insurance company is not liable to pay compensation, it has to pay the same to the claimants and later the compensation can be recovered from the owner of the offending vehicle.

12. Following the judgment rendered by the Apex Court, in the above referred judgment, the contention of the appellant is liable to be rejected.

¹ 2022 Supreme (SC) 1873

13. Coming to the quantum of compensation awarded by the Tribunal is concerned, as can be seen from the order impugned, it is clear that awarding the compensation under various conventional heads, the Tribunal had awarded Rs.40,000/- towards loss of consortium. In the case on hand, there are three (03) dependents and each dependent is entitled to Rs.40,000/- as per the Judgment by the Hon'ble Apex Court in the case of ***“National Insurance Company Limited Vs. Pranay Sethi and others²”***. In that view of the matter the loss of consortium has to be enhanced to Rs.40,000/- to Rs.1,20,000/-. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.10,80,000/- to Rs.11,60,000/- together with interest @ 7.5% per annum from the date of petition till the date of realization.

14. Further, the order under challenge is modified and the Appellant Insurance Company is directed to pay compensation of Rs.11,60,000/- together with interest @ 7.5% per annum from the date of petition till the date of realization. It is needless to mention that the Appellant- Insurance Company is at

² (2017) 16 SC 680

liberty to recover the above compensation from owner of offending tractor.

15. For the reasons recorded above, there are no merits in the instant appeal, however as directed above, the compensation paid by the Appellant-Insurance Company can be recovered from the owner of the offending vehicle. Accordingly the appeal is disposed of with the above directions.

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

JUSTICE T.C.D. SEKHAR

20.02.2026
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THE HONOURABLE SRI JUSTICE T.C.D. SEKHAR

MACMA No.860 of 2019
Date 20.02.2026

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