



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

[3548]

FRIDAY, THE EIGHTH DAY OF MAY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1831/2017

Between:

1. THE NEW INDIA ASSURANCE CO.LTD.,, REP.BY ITS REGIONAL
MANAGER, REGIONAL OFFICE, PAVAN
PARADISE,DWARKANAGAR,VISAKHAPATNAM.

...APPELLANT

AND

1. SARIKA SYAMASUNDARA RAO, S/O.LATE SANYASI, AGED 55 YRS,
R/O.D.NO.1-47-52, THEGARAPUVALASA, BHEEMUNIPATNAM
MANDAL, VISAKHAPATNAM.
2. SARIKA SWARNALATHA, W/O.SYAMASUNDARA RAO, AGED 49
YRS, R/O.D.NO.1-47-52, THEGARAPUVALASA, BHEEMUNIPATNAM
MANDAL, VISAKHAPATNAM.
3. SARIKA SHAMILI RANI, D/O.SYAMASUNDARA RAO, AGED 25 YRS,
R/O.D.NO.1-47-52, THEGARAPUVALASA, BHEEMUNIPATNAM
MANDAL, VISAKHAPATNAM.
4. SARIKA KISHORE KUMAR, S/O.SYAMASUNDARA RAO, AGED 24
YRS, R/O.D.NO.1-47-52, THEGARAPUVALASA, BHEEMUNIPATNAM
MANDAL, VISAKHAPATNAM.
5. SARIKA CHATGAN KUMAR, S/O.SYAMASUNDARA RAO, AGED 23
YRS, R/O.D.NO.1-47-52, THEGARAPUVALASA, BHEEMUNIPATNAM
MANDAL, VISAKHAPATNAM.
6. P V CHIRANJEEVI RAO, S/O.SATYANARAYANA, R/O.D.NO. 8-57-1-
1, SANTHA PETA, BHIMILI ROAD, THAGARPUVALASA,
VISAKHAPATNAM. OWNER OF LORRY NO.AP-31-TT-7757.
7. K KRISHNA RAO, S/O.BANGARAYYA, AGED 59 YRS, R/O.RAILWAY
NEW COLONY, VISAKHAPATNAM DISTRICT. DRIVER OF LORRY

NO.AP-31-TT-7757, RESP.NO.3 ADDED AS PER ORDERS IN I.A.NO.511/2015 R 6 AND 7 ARE NOT NECESSARY

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court, aggrieved by the orders passed by way of judgment and decree in MVOP.No.934 of 2012, dated 16.08.2016 on the file of the VI Addl. District Judge-Cum-Chairman, MACT, Visakhapatnam

IA NO: 1 OF 2017(MACMAMP 3343 OF 2017)

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 219 days in filing the appeal in decree and judgment passed in MVOP.No.934 of 2012 dated 16.08.2016 on the file of the VI Addl. District Judge-cum-Chairman, MACT, Visakhapatnam and pass

IA NO: 2 OF 2017(MACMAMP 3344 OF 2017)

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 execution of decree and judgment passed in MVOP.No.934 of 2012 dated 16.08.2016 on the file of the VI Addl. District Judge-cum-Chairman, MACT, Visakhapatnam and pass

IA NO: 3 OF 2017(MACMAMP 24291 OF 2017)

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 219 days in filing the appeal in decree and judgment passed in MVOP.No.934 of 2012 dated 16.08.2016 on the file of the VI Addl. District Judge-cum-Chairman, MACT, Visakhapatnam and pass

Counsel for the Appellant:

1.G HARAGOPAL

Counsel for the Respondent(S):

1.S.N.K.MAHANTHI

The Court made the following:

JUDGMENT:

The appeal is preferred by The New India Assurance Company Limited, represented by its Regional Manager, against the Judgment and Decree, dated 16.08.2016, in M.V.O.P.No.934 of 2012, passed by the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge, Visakhapatnam (hereinafter referred to as “the Tribunal”), allowing the petition by awarding a sum of Rs.11,22,000/- with interest @ 7.5% per annum and the same to be realized from the respondents 1 to 3.

2. The parties are arrayed as arrayed before the Tribunal.

The facts stemmed from the petition are as follows:

3. The petition was filed under Section 166 of the Motor Vehicles Act, 1988 (in short called as ‘the Act’) r/w Rule 455 of A.P. Motor Vehicle Rules, 1989, claiming compensation of Rs.4,00,000/-.

4. The deceased, S.Vijay Kumar, who was working as cleaner for lorry bearing No.AP31TT7757, was unloading metal at 10:00 p.m. at Gandhavaram and the lorry driver in a rash and negligent manner, without observing the electrical wires, touched them, and as a result, S.Vijay Kumar died of electrical shock on the spot. Crime No.76 of 2008 under Section 304-A of IPC was registered against the 3rd respondent.

5. At the time of death, the deceased was 22 years and he was the sole breadwinner of the family and due to the sudden demise of S.Vijay Kumar, the claimants have become destitutes. The petitioner further contends that the deceased used to draw Rs.4,500/- per month as salary and Rs.50/- per day as batta and was hale and healthy prior to the accident.

6. Before the Tribunal, the 1st claimant is the father of the deceased, the 2nd claimant is the mother of the deceased, the 3rd claimant is the sister of the deceased, the 4th and 5th claimants are the brothers of the deceased. The 1st respondent is the owner of the lorry bearing No.AP31TT7757, the 2nd

respondent is The New India Assurance Company Limited/appellant before this Court in the present appeal, and the 3rd respondent is the driver of the lorry bearing No.AP31TT7757. The 1st respondent was set *ex parte* on 20.12.2012.

7. The 2nd respondent, refuting the said petition, filed counter denying the age, employment, income and the manner in which the accident occurred and all the allegations are put to strict proof. The counter further rebuts that the 3rd respondent was not holding a valid and effective driving license at the time of accident, and so the 2nd respondent is not liable to pay the compensation. But the 2nd respondent admitted that the lorry bearing No.AP31TT7757 was insured with it and sought permission under Section 170 of the Act to contest the case on all other grounds than specified under Section 149 of the Act. The said petition filed by the 2nd respondent in I.A.No.556 of 2014 was allowed, and as per order in I.A.No.511 of 2015, dated 24.06.2015, the driver of the lorry was impleaded as the 3rd respondent. However, the 3rd respondent remained *ex parte*.

8. Basing on the adversaries of the parties, the Tribunal framed the following issues:

- i. Whether the pleaded Motor Vehicle accident has occurred on 26-10-2008 at about 22-00 hours at Gandhavaram village, Visakhapatnam, resulting the death of Sarika Vijay Kumar?
- ii. Whether the accident occurred due to the fault of by driver of AP 31 TT 7757, 2007 Model?
- iii. Whether the claimants are entitled for compensation and if so, to what amount and what is the liability of respondents?
- iv. To what relief?

9. The claimants got examined PWs.1 to 3 and marked Exs.A1 to A4. Ex.A1 is the attested copy of FIR, Ex.A2 is the attested copy of postmortem report, Ex.A3 is the copy of inquest report, Ex.A4 is the salary

certificate of the deceased. Ex.B1 is the insurance policy copy. On behalf of respondents, no oral or documentary evidence was adduced.

10. While answering the issues, the Tribunal has taken up issue Nos.1 and 2 together, and the evidence adduced on behalf of the claimants and the documents in their support were duly considered and answered the issues in favour of the petitioners. The opinion of the Medical Officer, which is Ex.A2, clearly depicts that the deceased died of cardiac arrest due to electrocution, and the Ex.A3, which is the inquest report also fortifies that the death was due to electrocution.

11. As stated *supra*, since there are lacunas in the evidence adduced by the respondents, the Tribunal relied upon the judgment of the Hon'ble Supreme Court in ***Vidhyadhar vs. Manikrao and another***¹, wherein it was observed that *"Where a party to the suit does not appear into the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct"*. Taking the said observation, which is no more a legal conundrum, the Tribunal has answered in favour of the petitioners and against the respondents.

12. Now, coming to issue No.3, the Tribunal has explicitly considered the contention of the 2nd respondent, who admitted that Ex.B1, the insurance policy is subsisting as on the date of the accident i.e., 26.10.2008 and regarding the other contention that the 3rd respondent is not holding a valid and effective driving license on the date of accident could not stipulated or elicited by the 2nd respondent through the documentary evidence or the cross-examination. On the other hand, all the evidence adduced by the claimants emphatically corroborated that the accident has taken place and the driver was having a valid and effective driving license on the date of accident. The 2nd respondent i.e., the New India Assurance Company Limited, has also not

¹ (1999) 3 SCC 573

taken any care to prove that the vehicle suffers from any technical violations relating to registration, fitness or permit and in the absence of these legal aberrations, the Tribunal concluded against the respondents and in favour of the petitioners.

13. Before the Tribunal, the claimants relied upon the judgment of this Court in **N.Surender Rao and others vs. B.Swamy and another**², wherein it was held as follows:

“18. When we advert to the Table in Sarla Verma, 2009 ACJ 1298 (SC), the appropriate multiplier to be applied to the present case, taking into consideration the age of the deceased Abinav, shall be 18. In the facts of Reshma Kumari, 2013 ACJ 1253 (SC), the deceased was only 15-year-old boy and where the age of the victim happened to be 15 years the Apex Court is of the opinion that irrespective of section 166 or section 163-A of the Act under which claim for compensation has been made, multiplier of 15 and assessment as indicated in the Second Schedule subject to correction as pointed out in column (6) of the Table in Sarla Verma (supra) should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under section 166 of the Act. In all other cases of death where the application has been made under section 166, the multiplier as indicated in column (4) of the Table in Sarla Verma (supra) should be followed.

34. Thus, finding that the age of the dependants or the deceased whichever is higher is to be taken into consideration is though a ratio which forms part of a precedent but in view of the later judgment where certain directions were made by the three Judges is a precedent which laid down law. Therefore, the judgment of the Apex Court in Amrit Bhanu Shali, 2012 ACJ 2002 (SC), is the law declared by the Apex Court and a binding precedent and if that is applied to the present facts of the case, multiplier applicable to the age group of the deceased alone shall be taken for adopting

² 2013 SCC OnLine AP 778

appropriate multiplier for arriving at compensation to be paid to the dependants of the deceased bachelor. Hence, we hold that the age of the deceased alone shall be taken for adopting multiplier in view of the law as on today, since earlier judgments are not binding precedents but they only consist of a ratio decidendi.”

14. The age of the deceased was taken as 22, and the principles laid down in the celebrated judgment in **Sarla Verma and others vs. Delhi Transport Corporation and another**³, the multiplier was considered as 18, and the salary was taken *in toto* as Rs.4,500/- per month and Rs.50/- per day as batta, since there is no rebuttal or even a slight attempt by the 2nd respondent to controvert the said salary certificate of the deceased. Further, the Tribunal, in paragraphs 22 and 23 of its judgment, observed as follows:

“22. In Sarala Verma.. Case by Hon’ble Mr. Justice R.V.Raveendran and Hon’ble Mr. Justice Lokeshwar Singh Panta was also pleased to hold:

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and

³ (2009) 6 SCC 121

dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

36. Hence, in view of the principles laid down by the Apex Court in **Fakeerappa and another vs. Karnataka Cement Pipe Factory and others** and Sarala Verma's case, the Tribunal rightly deducted 50% of the income of deceased Abhinav towards his personal expenses. ..."

23. Since the deceased was unmarried, 50% has to be deducted towards his personal expenses. Hence the monthly income of the deceased for computation of loss of earnings and support due to sudden demise of deceased to the petitioners can be taken at Rs.4,500-00 per month and annual income is Rs.54,000-00. Net income of deceased per annum is Rs.54,000-00 x 18 (multiplier) = Rs.9,72,000-00. The petitioners towards loss of estate are entitled to Rs.1,00,000-00 and also Rs.50,000-00 towards funeral expenses. In all the petitioners are entitled to Rs.9,72,000-00 + 1,00,000-00 + 50,000-00 = Rs.11,22,000-00. Under all the heads petitioners are entitled to total compensation amount of Rs.11,22,000-00. Petitioners 1 and 2 are parents of deceased. 2nd petitioner being Class-I heir alone is entitled for large amount of share out of the compensation amount. Petitioners 3 to 5 are sister and brothers of deceased and hence they are not entitled for share in compensation on part with petitioners 1 and 2. Hence the petitioners 1, 3, 4 and 5 are entitled to Rs.50,000-00 (Rupees fifty thousand only) each and 2nd petitioner is entitled to Rs.9,22,000-00. This point is answered accordingly in favour of petitioners."

15. In the result, the Tribunal held that the claimants/respondents 1 to 5 herein are entitled to Rs.9,72,000/- towards compensation and Rs.1,50,000/- towards loss of estate and funeral expenses, and put together, a total sum of Rs.11,22,000/- was awarded with interest @ 7.5% per annum, holding respondents 1 to 3 jointly and severally liable.

16. Heard Sri G.Haragopal, learned counsel for the appellant, the New India Assurance Company Limited and Smt.S.N.K.Mahanthi, learned counsel for the respondent Nos.1 to 5/claimants, who argued at length.

17. Learned counsel for the appellant tried to impress upon the Court that the Tribunal has erroneously considered the facts and circumstances of the case and wrongly awarded the amount which is excess and more than the amount claimed and *inter alia* prays this Court to allow the appeal as the legal aspects were totally misplaced.

18. On the other hand, learned counsel for the claimants confronted the arguments, would argue that the Tribunal is justified in awarding the said compensation and there is no legal conundrum that the Tribunals are vested with the jurisdiction to enhance the amount in the case, if it finds that the compensation would be 'Just' according to the facts and circumstances even though the amount claimed is less. Recently, a learned Single Judge of this Court in M.A.C.M.A.No.3601 of 2012, dated 08.01.2026, while considering the ratio laid down by the Hon'ble Supreme Court as well as this Court, has answered the said issue and allowed the appeal. The learned Single Judge observed as follows:

"26. The legal position with regard to awarding more compensation than what is claimed has been considered and settled by the Hon'ble Supreme Court holding that there is no bar for awarding more compensation than what is claimed. For the said preposition of law, this Court finds it proper to refer the following observations of the Hon'ble Supreme Court made in:

(1) Nagappa Vs. Gurudayal Singh and Others, at para 21 of the judgment, that –

"..there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award "just" compensation, which is reasonable on the basis of evidence produced on record."

(2) Kajal Vs. Jagadish Chand and Ors. at para 33 of the judgment, as follows:-

"33. We are aware that the amount awarded by us is more than the amount claimed. However, it is well settled law that in the motor accident claim petitions, the Court must award the just compensation and, in case, the just compensation is more than the

amount claimed, that must be awarded especially where the claimant is a minor."

(3) *Ramla and Others Vs. National Insurance Company Limited and Others at para 5 of the judgment, as follows:-*

"5. Though the claimants had claimed a total compensation of Rs 25,00,000 in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation". The Motor Vehicles Act is a beneficial and welfare legislation. A "just compensation" is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time-barred. Further, there is no need for a new cause of action to claim an enhanced amount. The courts are duty-bound to award just compensation."

19. In all force, the arguments of the claimants/respondents 1 to 5 need to be accepted and this Court does not find any irregularity or infraction in the Judgment and Decree passed by the Tribunal.

20. Resultantly, the Motor Accident Civil Miscellaneous Appeal filed by the Insurance Company deserves to be dismissed as devoid of merits and hence, dismissed.

21. As a sequel, Interlocutory Applications pending, if any, shall stand closed.

TUHIN KUMAR GEDELA, J