

APHC010294032022



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

[3333]

TUESDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 218/2022

Between:

1. ROYAL SUNDARAM GENERAL INSURANCE COMPANY LTD, REP.
BY ITS BRANCH MANAGER, D.NO. 48-14-116/7, UPSTAIRS OF
BATA SHOWROOM, 302, LAKSHMI ROYAL PLAZA, BESIDE
SPENCER'S SUPER MARKET, VISAKHAPATNAM-13.

...APPELLANT

AND

1. VYDA ARJUNA RAO, S/O. LATE APPA RAO, AGED 31 YEARS,
D.NO. 2-65, KOTTURUSAIRIGAM@ RAGHAVAPURAM VILLAGE,
GARA POST AND MANDAL, SRIKAKULAM DISTRICT.
2. VYDA RAJESHU, S/O. V. ARJUNA RAO, AGED 7 YEARS,
3. VYDA HARIKA, D/O. V. ARJUNA RAO, AGED 3 YEARS, (2ND AND
3RD PETITIONERS ARE MINORS, REP, BY THEIR NATURAL
FATHER AND NEXT FRIEND 1ST PETITIONER)
4. KANUGULA THULASI RAO, S/O. LATE THATIVAIAH, AGED 43
YEARS, BELAMAM VILLAGE, AMUDALAVALASA MANDAL,
SRIKAKULAM DISTRICT.
5. RAMANAMMA KANUGULA, W/O. APPALANARASIMHUDU, 1-
47, BELAMAM VILLAGE, AMUDALAVALASA MANDAL, SRIKAKULAM

DISTRICT.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC praying that the Highcourt may be pleased toMemorandum of Grounds of CivT Miscellaneous Appeal to this Hon'ble High Court being aggrieved by the decree and judgment dated 28-12-2021 passed in Mvop no. 393 / 2018 on the file of Motor Accident claims Tribunal cum II Additional District Judge, Srikakulam

IA NO: 1 OF 2022

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 25 days in preferring the appeal against the decree and judgment dated 28.12.2021 passed in Mvop no. 393/2018 on the file of Motor Accident claims Tribunal cum II Additional District Judge, Srikakulam, in the interest of justice

IA NO: 2 OF 2022

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 dated 28-12-2021 passed in Mvop no. 393 / 2018 on the file of Motor Accident claims Tribunal cum II Additional District Judge, Srikakulam pending disposal of Appeal and pass

IA NO: 1 OF 2024

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 may be pleased to vacate the interim order dated 04.07.2022 passed by this Hon'ble court in IA. No. 2 of 2022 in MAGMA No. 218/2022 and pass.

Counsel for the Appellant:

1.D RAVI KIRAN

Counsel for the Respondent(S):

1.V SUDHAKAR REDDY

The Court made the following:

JUDGMENT:-

This appeal is filed by the appellant – Insurance company challenging the award dated 28.12.2021 passed by the Motor Accidents Claims Tribunal, Srikakulam in M.V.O.P.No.393 of 2018 filed by the respondent Nos.1 to 3/claimants seeking compensation of Rs.24,36,000/- for the death of one Vida Haimavathi (hereinafter referred to as 'deceased') due to the accident that occurred on 31.01.2018 at Loddalapeta, Srikakulam, whereby the Tribunal granted a compensation of Rs.17,71,500/-.

2. For the sake of convenience, the parties are referred to as they are arrayed before the Tribunal.

3. The claimants are the husband and children of the deceased. Respondent No.1 is the driver, respondent No.2 is the owner and respondent No.3 is the insurer of the tractor bearing No.AP30TA2750. On 31.01.2018, the deceased along with her sister by name Rajeswari went to their relatives' house at Loddalapeta. At 04.30 p.m., while crossing the bus stop junction at Loddalapeta to board an auto, the 1st respondent, drove the tractor bearing No.AP30TA2750 with thrashing machine in a rash and negligent manner and hit the deceased, because of which, the deceased fell under the wheels of the thrashing machine and died on the spot. The incident was reported to the Police and accordingly, a case was registered in Crime No.2 of 2018. It is the case of the claimants that the deceased was aged about 26 years and used to earn Rs.9,000/- per month by attending NREGS works, agricultural labour and household duties.

4. Respondent Nos.1 and 2 filed a common counter affidavit contending that though the 1st respondent honked at the deceased,

without considering the same, she came across the vehicle and was hit by the thrashing machine. They further contended that the 1st respondent was holding a valid driving license and had never driven the subject vehicle in a rash and negligent manner.

5. The 3rd respondent filed its counter affidavit by stating that as on the date of the accident, the 1st respondent was not holding a valid driving license and denied the contention of the claimants that the deceased had an income of Rs.9,000/- per month.

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

- 1) *Whether the deceased Vambarilli Vyda Hymavathi, wife of Arjunarao died on account of injuries sustained in the Motor Vehicle accident that took place on 31.01.2018 at about 5.30 p.m., near Loddalapeta village, Amadalavalasa Mandal, Srikakulam District, if so, whether the accident took place due to rash and negligent driving of tractor bearing No. AP 30 TA 2750 by its driver?*
- 2) *What is the correct age and income of the deceased by the date of accident?*
- 3) *Whether the petitioners are entitled to compensation for the death of deceased Vyda Hymavathi w/o Vida Arjuna Rao? If so, to what amount and from whom?*
- 4) *To what relief?*

7. During the course of trial, the 1st claimant was examined as P.W.1 and the sister of the deceased got examined as P.W.2. On behalf of the claimants, Exs.A1 to A6 were marked. R.W.1 was examined on behalf of the respondents and Exs.B1 and B2 were marked on their behalf.

8. The Tribunal, after considering all the facts and material available before it, came to a conclusion that the accident occurred due to the rash and negligent driving of the 1st respondent and as the insurance policy of the subject vehicle is in force as on the date of accident, it made respondent Nos.2 and 3 severally liable to pay the compensation of Rs.17,71,500/- to the claimants. Contending that the said compensation is excessive, the respondent No.3 filed the present Motor Accidents Civil Miscellaneous Appeal.

9. Heard Sri. D. Ravi Kiran, learned Standing Counsel for the appellant and Sri. V. Sudhakar Reddy, learned counsel for the respondent No.1.

10. During the course of arguments, learned counsel for the appellant/respondent No.3 strenuously contended that the Tribunal has awarded the compensation of Rs.17,71,500/- considering the notional income of the deceased at Rs.7,500/- without any proof. He further contended that the Tribunal, while deducting the annual income towards personal expenses, considered family members as four instead of three and that the Tribunal ought to have deducted 1/3rd of the income of the deceased towards her personal expenses.

11. Perused the entire material available on record. Undisputedly, while the deceased was crossing the road along with her sister (P.W.2) at Loddalapeta village, she was hit by a tractor attached with a thrashing machine being driven by the 1st respondent as a result of which, she died on the spot. A perusal of the evidence adduced by P.W.2, it is clear that due to the rash and negligent driving of the 1st respondent, the deceased got hit by the thrashing machine and the respondents have not put

forward any credible evidence to prove that there was no negligence on the part of the 1st respondent. Hence, the view taken by the Tribunal that the accident occurred due to the rash and negligent driving of the 1st respondent is tenable.

12. Though the claimants contended that the deceased used to earn Rs.9,000/- per month from agricultural coolie work, NREGS works and household works, in the absence of any evidence, the Tribunal relied on the circular bearing Roc.No.08/APSLSA/LSW/2019, dated 05.12.2019, considered the monthly income of the deceased as Rs.7,500/-. The age of the deceased was considered as 26 years by relying on the Exs.A1 to A4. The Tribunal computed the annual income of the deceased as Rs.90,000/- [Rs.7,500/- X 12] and after adding 40% for the future prospects, the annual amount computed was Rs.1,26,000/-. Though the claim petition was filed by three claimants, the Tribunal mistakenly deducted 1/4th of her income towards personal expenses and computed the amount towards personal and living expenses as Rs.31,500/- [Rs.1,26,000/- X 1/4]. Thus, the amount computed towards contribution to the family was Rs.94,500/- [Rs.1,26,000/- - Rs.31,500/-] and after applying the appropriate multiplier as per **Sarla Verma and Ors. Vs. Delhi Transport Corporation and another**¹, the amount computed under the head of loss of dependency was Rs.16,06,500/- [Rs.94,500/- X 17]. In addition, Rs.16,500/- was awarded each towards loss of estate and for funeral charges. Rs.44,000/- was awarded to the husband of the deceased towards loss of consortium and Rs.88,000/- to both the children of the deceased under the same head. In total, Rs.17,71,500/- was awarded as compensation.

¹ AIR 2009 SCC 3104

13. It is the case of the claimants that the deceased used to earn Rs.9,000/- per month by doing agricultural works and household works. The Hon'ble Supreme Court of India, in ***Arun Kumar Agrawal and another Vs. National Insurance Company Limited and Ors.***,² held that it would not be possible to quantify any amount in lieu of the services rendered by the wife/mother to the family and for the purpose of awarding compensation to the dependents, some pecuniary estimate has to be made of her services. In view of the same, the claimants are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. Hence, this Court feels it appropriate to take the notional income of the deceased as Rs.8,000/- instead of Rs.7,500/- as was taken by the Tribunal.

14. Taking the monthly income of the deceased as Rs.8,000/-, her annual income would become Rs.96,000/- [Rs.8,000/- X 12] and adding 40% of the annual income towards future prospects, the annual income would come to Rs.1,34,400/-. In the present case, as rightly pointed out by learned counsel for the appellant, though the claim petition was filed by three claimants, instead of deducting 1/3rd towards personal expenses of the deceased, the Tribunal deducted 1/4th towards personal expenses. Thus, after 1/3rd of the annual income [Rs.1,34,400/- / 3 = Rs.44,800/-] is deducted towards personal expenses, the amount computes to Rs.89,600/- [Rs.1,34,400/- - Rs.44,800/-]. After applying the relevant multiplier i.e. '17', the amount under the head of loss of dependency would become Rs.15,23,200/-. The amount awarded towards funeral charges, loss of estate and loss of consortium is just and reasonable, hence, the same need not be altered.

² AIR 2010 SCC 3426

15. In view of the foregoing discussion, the compensation awarded by the Tribunal under different heads and amounts would now become as under:

S. No	Head of the claim	Compensation awarded by the Tribunal in Rs.	Amounts now altered by this Court
1.	Loss of dependency	Rs.16,06,500/-	Rs.15,23,200/-
2.	Funeral Charges	Rs.16,500/-	Rs.16,500/-
3.	Loss of estate	Rs.16,500/-	Rs.16,500/-
4.	Loss of Consortium for the 1 st claimant	Rs.44,000/-	Rs.44,000/-
5.	Parental consortium to 2 nd and 3 rd claimants	Rs.88,000/-	Rs.88,000/-
	Total	Rs.17,71,500/-	Rs.16,88,200/-

16. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is altered to Rs.16,88,200/-. The respondent Nos.2 and 3 in the claim petition shall deposit the amount within a period of two months from the date of receipt of a copy of this order. The compensation amount now computed shall be apportioned amongst the claimants as was apportioned by the Tribunal. There shall be no order as to costs.

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

JUSTICE V. SUJATHA

Date:17.02.2026.

Gss