

APHC010345102019 IN THE HIGH COURT OF ANDHRA



PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3505]

THURSDAY, THE TWENTY THIRD DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO:
1077/2019

Between:

1. SHAIK KARIMUN, W/O.MASTAN VALI, AGED ABOUT 44 YEARS, OCC. HOUSEWIFE, R/O, EDAGAMITTA, SINGARAYAKONDA MANDAL, PRAKASAM DISTRICT,
2. PATHAN SHABNA,, W/O.IBRAHLM, AGED ABOUT 29 YEARS, OCC HOUSEWIFE, R/O, EDAGAMITTA, SINGARAYAKONDA MANDAL, PRAKASAM DISTRICT,
3. SHALK RASHMA,, W/O, MAHABOOB BASHA, AGED ABOUT 27 YEARS, OCC. HOUSEWIFE, R/O, EDAGAMITTA, SINGARAYAKONDA MANDAL, PRAKASAM DISTRICT,

...APPELLANT(S)

AND

1. BRIJESTH KHERO, S/O. RAJENDRA SINGH, R/O, BHERHOPUR, KURGALI BERPO, BOKARO DISTRICT, JHARKAND STATE, (DRIVER OF LORRY BEARING NO. NL 01 K 1369)
2. DHARMADEO MAHATO, NH33 BALIGJMA MANGO

JAMSHEDPUR, JHARKHAND STATE, (OWNER OF THE LORRY BEARING NO.NL 01 K 1369)

3.IFFCO TOKIO GENERAL INSURANCE COMPANY, REP,
BY ITS AUTHORIZED SIGNATORY, RAMA MURTHY,
R/O,D.NO,16-3-519, NELLORE CITY, NELLORE
DISTRICT,

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court to call for entire records connected to award and decree dated 31.01.2019 passed in MN,O.P.No,184 of 2017 from the file of the court of Before the Chairman, Motor Accidents. Claims Tribunal-cum-Principal District Judge, Ongole, Prakasam District, examine the same and set it aside in so far as dismissal portion/disallowed portion of compensation claim is concerned and allow the claim as prayed for in the interests of justice and pass

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 158 days in perfering the present appeal against the award and decree dated 31.01.2019 passed in M.V.O.P. No. 184/2017 on the file of the Before Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Ongole, Prakasam Dist.

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 dispense with the filing of certified copy of decree dated 31.01.2019 passed in M.V.O.P. No. 184/2017 on the file of the Before Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Ongole, Prakasam Dist.

Counsel for the Appellant(S):

1.NAGA PRAVEEN VANKAYALAPATI

Counsel for the Respondent(S):

1.GUDI SRINIVASU

2.

The Court made the following:

JUDGMENT:-

1. Aggrieved by order dated 31.01.2019 in MVOP No.184 of 2017, the present appeal is preferred by the claimants. For the sake of convenience, the parties are referred to, as they were referred before the Tribunal.

2. The petitioners (wife and the children of the deceased) filed claim petition under Section 166(1)(c) & 168 of Motor Vehicles Act, claiming compensation of Rs.15,00,000/- on account of the death of Shaik Mastanvali. It is the case of the petitioners that on 19.01.2017, while he was returning from Tanguturu on his motor vehicle bearing Registration No.AP27BB 4625, when it reached Mulaguntapadu Cross Road, the offending lorry bearing Registration No.NL01K 1369 came in rash and negligence manner at high speed and suddenly applied brake without giving signals. In view of the same, the deceased dashed the lorry from behind and as a result of which, he sustained head injury and died on the spot. It was the further case of the petitioners that the deceased was aged 49 years and was working as driver in Transport Company and was earning Rs.14,000/- per month. In view of the sudden demise of the

deceased, the petitioners lost their source of income and support and in those circumstances, they approached the Tribunal by the present petition. The respondent Nos.1 & 2 i.e., the driver and the owner of the lorry remained ex-parte.

3. The respondent No.3-Insurance Company resisted the claim by filing the counter affidavit. It was contended that there was no negligence on the part of the 1st respondent driver. It disputed the age, occupation and the income of the deceased. It was further contended that the offending lorry had no fitness certificate and permit as on the date of the accident. It was further case of the 3rd respondent that, the accident was occurred due to the negligence of the deceased, inasmuch as he came on wrong side without following the traffic rules. It was further stated that the deceased has no valid driving license.

4. In order to prove the case of the petitioners, the wife of the petitioner was examined as PW-1 and examined eye-witness Syed Moulali as PW-2. The documents filed by the petitioners were marked as Exs.A1 to A7. On the other hand, the respondent-Insurance company examined one Mr. Chandra

Sekhar, Legal Officer of the Insurance Company as RW-1 and marked copy of the insurance policy in Ex.B1.

5. After enquiry, the Tribunal by order under challenge awarded an amount of Rs.7,46,000/- towards compensation under various conventional heads. Not satisfying with the quantum of compensation awarded by the Tribunal, the claimants preferred the present appeal.

6. Heard Sri Battula Sanjaiah Gandhi, learned counsel, representing on behalf of Sri Naga Praveen Vankayalapati and Sri Gudi Srinivasu appearing for respondent No.3-Insurance company.

7. As the respondent Nos.1 & 2 remained ex-parte before the Tribunal, the matter was taken for hearing.

8. Perused the record.

9. The counsel for the appellant would contend that it was specifically pleaded before the Tribunal that the deceased was working as driver in Transport Company as on the date of accident and was earning Rs.14,000/- per month. To substantiate the said contention, the wife of the deceased was examined as

PW-1, who deposed in similar lines with that of the averments made in the claim petition. Apart from the same, the counsel for the appellant would submit that the driving licence issued in favour of the deceased was also placed on record, which was marked as Ex.A7. He would submit that, in such circumstances, the Tribunal ought to have taken the income of the deceased as Rs.14,000/- per month and ought to have awarded compensation accordingly. He would also further submit that the Tribunal did not award compensation under head of future prospects.

10. On the other hand, the counsel for the respondent would contend that though the petitioners had claimed that the deceased was earning an amount of Rs.14,000/- per month, in order to prove the same nothing is placed on record except filing copy of the driving license. He would further submit that the petitioners failed to examine the employer of the deceased, so as to prove that he was engaged as a driver in Transport Company as claimed by them. He would further submit that in the absence of any evidence, the contention of the counsel for the appellant cannot be believed and the same is liable to be rejected.

11. Having considering the submissions made by the counsel on either side, it is not in dispute that the deceased was driver by avocation. Further as can be seen from the record, the petitioners have filed copy of the driving license of the deceased and the same was marked as Ex.A7. Though, it was denied by the 3rd respondent-Insurance Company that the petitioner was not engaged as driver in Transport Company, taking into consideration of the evidence of PW-1 coupled with Ex.A-7, this Court has no hesitation to come to the conclusion that the deceased was driver by avocation. Further a perusal of the order under challenge, the Tribunal had taken the income of the deceased as Rs.6,500/- per month. In the case on hand, the accident was occurred in the year 2017. Further, it is to be noted that during the said year, the income of driver would not be less than Rs.9,000/- per month. In such circumstances, the income of the deceased has to be taken as such and compensation has to be awarded accordingly.

12. Apart from the same, as rightly pointed out by the counsel for the appellant that, the Tribunal while awarding compensation, did not grant any amount under the head of loss of future prospects. The said contention is not disputed and the

counsel for the respondent fairly conceded that the petitioners are entitled to receive compensation under the said head.

13. Considering the submissions made by the counsel on either side, the income of the deceased is fixed as Rs.9,000/- per month and accordingly the compensation is computed as under:

S.No.	Head	Compensation Awarded
1	Net monthly Income	Rs.9,000 x 12 = Rs.1,08,000/-
2	Future Prospects (age the age of 36 years)	Rs.27,000/- (i.e., 25% of the income)
3	Total Income (Net monthly)	Rs.1,35,000/-
4	Deduction towards personal expenditure (i.e., 1/3 rd)	Rs.45,000/-
5	Total annual loss of dependency	Rs.90,000/-
6	Multiplier of 13 for the age of 49	Rs.11,70,000/- (Rs.90,000 x 13)
7	Conventional Heads	
	(i) Loss of consortium (3 claimants)	Rs.1,20,000/- (Rs.40,000 x 3)
	(ii) Loss of Estate	Rs.15,000/-
	(iii) Funeral expenses	Rs.15,000/-
	Total	Rs.13,20,000/-

14. For the foregoing reasons, the present appeal is allowed and the compensation is enhanced from Rs.7,46,000/- to Rs.13,20,000/- together with interest @ 7.5% per annum from the date of petition till the date of award. Further, the 3rd respondent-Insurance Company is directed to deposit the entire amount together with interest @ 7.5% per annum within two (02) weeks from the date of receipt of copy of the order.

There shall be no order as to costs. As a sequel, all pending miscellaneous petitions, if any, shall stand closed.

JUSTICE T.C.D.SEKHAR

23.04.2026
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THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

M.A.C.M.A.No.1077 of 2019
Date: 23.04.2026

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