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APHC010393222012

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3520]**
(Special Original Jurisdiction)

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

PRESENT

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1077/2012

Between:

1. THE CHOLAMANDALAM, REP BY ITS AUTHORIZED OFFICER, 1ST FLOOR, VENKATA PLAZA-II, D.NO. 6-3-698/3, PANJAGUTTA, HYDERABAD.

...APPELLANT

AND

1. SHAIK JAINABEE ANO, W/O. LATE JOHNY, D.NO. 4-515-B-2, EKALAVYA NAGAR, OPP : TO RAVINDRANADH SCHOOL, INDUSTRIAL ESTATE, MARKAPUR, PRAKASAM DISTRICT.
2. A NAGA RAJU, S/O. VENKATESWARLU, AUTO AP 27 Y 1857, KONETI VEEDHI, MARKAPUR POST & TOWN, PRAKASAM DISTRICT.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court

IA NO: 1 OF 2012(MACMAMP 2347 OF 2012

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 Judgement passed in MVOPNo. 190 of 2011, dated 17-1-2012 on the file of the Chairman Motor Accidents Claims Tribunal-cum-I Addl. District Judge, Ongole, pending the final disposal of the main appeal and pass

IA NO: 2 OF 2012(MACMAMP 2882 OF 2012

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 vacate the order passed in MACMAMP NO. 2347 of 2012 in MACMA No. 1077/2012 dt. 26-4-2012 and to pass

IA NO: 1 OF 2013(MACMAMP 2485 OF 2013

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 permit the petitioner to withdraw the amount deposited by the first respondent in MVOP.No. 190 of 2011 on the file of the MACT-cum-First Additional District Judge, Ongole. Prakasam District

Counsel for the Appellant:

1. KOTA SUBBA RAO

Counsel for the Respondent(S):

1. NUTHALAPATI KRISHNA MURTHY

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1531/2012

Between:

1. SHAIK JAINABEE, W/O.LATE JOHNY, D.NO. 4-515-B-2, EKALAVYANAGAR,OPPOSITE TO RAVINDRANAGH SCHOOL, INDUSTRIAL ESTATE, MARKAPUR, PRAKASHAM DISTRICT, A.P.

...APPELLANT

AND

1. A NAGARAJU ANO, S/O. VENKATESHWARLU, OWNER OF THE AUTO AP 27 Y 1857, KONETIVEEDHI, MARKAPUR POST & TOWN,

PRAKASHAM DISTRICT,A.P.

2. CHOLAMANDALM MS GENERAL INSURANCE CO LTD, REP BY ITS AUTHORISED OFFICER, 1ST FLOOR, VENKATA PLAZA-11, D.NO. 698/3, PANJAGUNTTA, HYDERABAD - 500 082, A.P.,

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court

Counsel for the Appellant:

1. RAVI KUMAR PONAKAMPALLI

Counsel for the Respondent(S):

1. .

2. KOTA SUBBA RAO

The Court made the following:

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A. Nos. 1077 And 1531 of 2012

COMMON JUDGMENT:

Introductory:

1. One Shaik Jainabee made a claim before the Motor Accidents Claims Tribunal–cum-I Additional District Judge, Ongole *[for short 'the learned MACT']*, vide M.V.O.P.No.190 of 2011, seeking compensation of Rs.5,50,000/- for the death of her son Shaik Baji *[hereinafter referred as 'the deceased'].* The claim was partly allowed, awarding a compensation of Rs.3,30,000/- vide order and decree dated 17.01.2012 along with interest at the rate of 6% p.a.. and other incidental directions.

2. Dissatisfied with the quantum of compensation, the claimant filed MACMA No.1531 of 2012. Questioning the liability and quantum of compensation, the Insurance Company filed the appeal in MACMA No.1077 of 2012 and both the appeals are heard together.

3. For the sake of convenience, the parties will be hereinafter referred to as the claimant/petitioner and the respondents, with reference to their status before the learned MACT.

Case of the claimants:

4. [i] The deceased is the son of the claimant, aged 18 years, working as a Carpenter and Plaster of Paris worker earning Rs.250/- to 300/- per day.

[ii] On 28.01.2011 at about 01.30 a.m. while the deceased was travelling in an Auto bearing No.AP 27 Y 1857 *[herein after referred to as the offending vehicle]*, reached near petrol bunk on Markapur to Pothily road, the respondent No.1, being driver of the auto hit the lorry which was going ahead, whereby the auto turned turtle and the deceased sustained multiple injuries. He was shifted to Government Hospital, Markapur and was referred to Government General Hospital, Guntur for better treatment. While undergoing treatment at Government General Hospital, Guntur the deceased succumbed to injuries on 01.02.2011.

[iii] Accident occurred due to rash and negligent driving of the driver of the auto.

[iv] 1st respondent is the owner and 2nd respondent is the insurer of the offending vehicle. Hence both are liable to pay compensation.

[v] The deceased was having one minor brother and sister. Since the claimant herein being mother of the deceased, laid a claim and entitled for just and reasonable compensation.

5. The 1st respondent, owner of the offending vehicle remained *ex-parte*.

Case of the 2nd respondent- Insurance Company:-

6. (i) The claimant shall prove the pleaded accident, age, occupation, and income of the deceased, death of the deceased due to accident, dependency of the claimant.

(ii) The accident occurred due to negligence to the driver of the lorry. There was no negligence on the part of the driver of the auto. The petition is bad for non-joinder of the owner and the Insurance Company of the lorry.

(iii) The driver of the auto is not having an effective driving licence. There is no valid permit for the auto to ply on the road.

(iv) In any event, the quantum of compensation claimed is excessive and the Insurance Company is not liable to pay any compensation.

Issues:

7. Learned MACT framed issues touching the accident and negligence of the driver of the auto and the entitlement of the claimant for compensation and its quantification, vide issues No.1 and 2.

Evidence before the Learned MACT:-

On behalf of the petitioner/claimant:

8. (i) Claimant was examined as PW1, she has stated about the accident, death of the deceased due to accident, age, occupation and income of the

deceased and dependency of the claimant and her other children on the income of the deceased.

(ii) One Jidugu Rangaiah- PW2, eyewitness to the accident, examined as PW2. He has stated about the accident, negligence of the driver of the auto and that the charge sheet was laid against the driver of the auto, and denied the negligence of the driver of the lorry.

(iii) Ex.A1 is the FIR, Ex.A2 is the inquest report, Ex.A3 is the Post Mortem Examination report, Ex.A4 is the MVI report, Ex.A5 is the charge sheet laid against the 1st respondent.

On behalf of the 2nd respondent-Insurance Company:-

9. [i] On behalf of the 2nd respondent, Senior Manager (Claims) was examined as RW1 and has relied on Ex.-B1 -copy of Insurance Policy; Ex.B2- attested copy of the proceedings of the driving licence extract; Ex.B3 - attested copy of registration certificate of crime vehicle.

[ii] RW 1 evidence is that the crime vehicle is a passenger auto, Ex.B1 covering the risk of (3 +1) persons only; in case of violation of the conditions they are entitled to recover on payment; he do not know that respondent No.1 is whether owner-cum- driver. As per Ex.B2- respondent No.1 is having driving licence to drive the auto rickshaw, non-transport and as per Motor Vehicles Rules, transport endorsement can be granted after one year. He stated that he do not know whether there is any disqualification to the 1st respondent to drive

the auto. It is relevant to note that charge sheet has been laid under Section 187 of the Motor Vehicles Act, but not under the provisions relating to violation of driving licence.

Findings of the learned MACT:-

10. (i) With the evidence of PW.2, the accident and negligence of the driver of the auto stands acceptable. Further, the crime record Ex.A1 - certified copy of FIR, A2-Inquest report, Ex.A3- postmortem report and Ex.A4-MVI report, Ex.A5-Charge sheet corroborates the evidence of PW.2. Therefore, the negligence of the driver of the auto is accepted.

(ii) Accident occurred due to negligence of the driver of the auto. Therefore, 1st respondent is liable and the 2nd respondent is liable in view of the Insurance Policy. The 2nd respondent may recover on payment.

(iii) The age of the deceased is ‘18’ years. Income can be notionally acceptable at Rs.40,000/- per annum, particularly in the context of the claim being under Section 163-A of M.V. Act. As the deceased is unmarried 50% of the income to be deducted. Hence, the entitlement of the claimant for compensation under loss of dependency comes Rs.3,20,000/-. Apart from that, the claimant is entitled for funeral expenditure at Rs.5,000/- and loss of estate at Rs.5,000/-. In total, the petitioner/claimant is entitled for Rs.3,30,000/-.

Arguments in the appeal:-

For the petitioner/claimant/appellant:-

11. The multiplier adopted is not proper, deduction of 50% is excessive, interest granted is very low.

For the 2nd respondent-Insurance Company:-

12. (i) There is violation of conditions of Insurance Policy by the owner of the offending vehicle.

(ii) Pay and recovery is not automatic.

(iii) Quantum of compensation granted is excessive.

13. Perused the material on record.

14. Thoughtful consideration is given to the arguments advanced by both sides.

15. The points that arise for determination in these appeals are:

1. Whether the impugned order and decree dated 17.01.2012 passed by the learned MACT in M.V.O.P.No.190 of 2011 on the aspects relating to entitlement of claimant for compensation, liability of the 2nd respondent - Insurance Company and the quantification of compensation are proper? Or require any interference? If so, on what grounds and to which extent?

2. What is the result of MACMA No.1077 of 2012?

3. What is the result of MACMA No.1531 of 2012?

Point No.1:

Accident and Negligence:-

16. The findings on this point involve discussion on the negligence on the part of the driver of the offending vehicle and the compliance with conditions of Insurance Policy etc.

Statutory Guidance:

17 (i). As per Section 176 of the Motor Vehicles Act, the State Governments are entitled to make rules for the purpose of carrying effect to the provisions of the Motor Vehicles Act.

(ii). In relation to claims before the learned MACT, Rule 455 to Rule 476 of the A.P. Motor Vehicles Rules, 1989, vide Chapter No.11 provides comprehensive guidance. As per Rule 476 of the A.P. Motor Vehicles Rules, 1989, the claims Tribunal shall proceed to award the claim basing on the registration certificate of the vehicle, Insurance Policy, copy of FIR and Post-mortem certificate etc.

Precedential Guidance:

18. The Hon'ble Apex Court in ***Bimla Devi and others Vs. Himachal Road Transport Corporation***[1]***,*** in para 15 observed as follows:

> **"***15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be*

[1] *2009 (13) SCC 530*

possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties..”

Reasoning and Findings:

19. In the light of the statutory and precedential guidance and as the claim is laid in terms of Section 163-A of M.V. Act, proof of accident is enough and there is no need to prove the negligence. Here, the accident and involvement of offending vehicle are shown. Therefore, on the point relating to accident and negligence, the findings of the Learned MACT require no interference.

Entitlement and Liability:-

20. (i) Claimant is mother of the deceased. Therefore, she is entitled.

(ii) Crime vehicle was insured with the 2nd respondent. The only violation alleged against the driver is that there is no transport category license for driving the auto.

(iii) It is relevant to note that in respect of Light Motor Vehicles, the objection of driving licence as to transport and non-transport category is no longer *res integra,* and does not merit any consideration in the context of judgments of the Hon’ble Supreme Court. The legal position as to a person holding of non-transport category driving licence of ‘Light Motor Vehicle’ driving transport vehicle has been addressed by the Hon’ble Apex Court in ***Mukund***

Dewangan vs. Oriental Insurance Company Limited[2] [Mukund Dewangan(2016)] and ***Mukund Dewangan vs. Oriental Insurance Company Limited***[3] [Mukund Dewangan(2017)].

(iv) Further, the reference made on the point whether "a person holding a licence for a 'Light Motor Vehicle' class non transport can drive a 'Transport Vehicle' without a specific endorsement, provided the 'Gross Vehicle Weight (GVW)' of the vehicle does not exceed 7,500 Kgs?" is answered by the Hon'ble Apex Court in ***Bajaj Alliance General Insurance Company Limited vs. Rambha Devi and Others***[4] at length and the observation are made under the caption of conclusions are as follows:

> *"131. Our conclusions following the above discussion are as under:—*
>
> *(I) A driver holding a license for Light Motor Vehicle (LMV) class, under Section 10(2)(d) for vehicles with a gross vehicle weight under 7,500 kg, is permitted to operate a 'Transport Vehicle' without needing additional authorization under Section 10(2)(e) of the MV Act specifically for the 'Transport Vehicle' class. For licensing purposes, LMVs and Transport Vehicles are not entirely separate classes. An overlap exists between the two. The special eligibility requirements will however continue to apply for, inter alia, e-carts, e-rickshaws, and vehicles carrying hazardous goods.*
>
> *(II) The second part of Section 3(1), which emphasizes the necessity of a specific requirement to drive a 'Transport Vehicle,' does not supersede the definition of LMV provided in Section 2(21) of the MV Act.*
>
> *(III) The additional eligibility criteria specified in the MV Act and MV Rules generally for driving 'transport vehicles' would apply only to those intending to operate vehicles with gross vehicle weight*

[2] (2016) 4 SCC 298
[3] (2019) 12 SCC 816
[4] 2024 SCC Online SC 3183

> *exceeding 7,500 kg i.e. 'medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle' and 'heavy passenger vehicle'.*
>
> *(IV) The decision in Mukund Dewangan (2017) is upheld but for reasons as explained by us in this judgment. In the absence of any obtrusive omission, the decision is not per incuriam, even if certain provisions of the MV Act and MV Rules were not considered in the said judgment."*

(v) For the reasons stated above and in view of the legal position settled by the Hon'ble Apex Court, the liability of the Insurance Company to pay the compensation do not warrant interference. Even the pay and recovery is not necessary in the context of the case in view of the legal position settled by the Hon'ble Apex Court.

Quantum of compensation:

Precedential guidance:

21. (i). For having uniformity of practice and consistency in awarding just compensation, the Hon'ble Apex Court provided guidelines as to adoption of multiplier depending on the age of the deceased in ***Sarla Verma (Smt.) and Ors. vs. Delhi Transport Corporation and Anr.***[5] and also the method of calculation as to ascertaining multiplicand, applying multiplier and calculating the compensation *vide* paragraph Nos.18 and 19 of the Judgment.

(ii). Further, the Hon'ble Apex Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Others***[6] case directed for adding future prospects at 50% in respect of permanent employment where the deceased is below 40

[5] 2009 (6) SCC 121
[6] 2017(16) SCC 680

years, 30% where deceased is between 40-50 years and 15% where the deceased is between 50-60 years. Further, in respect of self-employed etc., recommended addition of income at 40% for the deceased below 40 years, at 25% where the deceased is between 40-50 years and at 10% where the deceased is between 50-60 years. Further, awarding compensation under conventional heads like loss of estate, loss of consortium and funeral expenditure at Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively is also provided in the same Judgment.

(iii). Further in ***Magma General Insurance Company Ltd. vs. Nanu Ram and Others***[7], the Hon'ble Apex Court observed that the compensation under the head of loss of consortium can be awarded not only to the spouse but also to the children and parents of the deceased under the heads of parental consortium and filial consortium.

<u>Just Compensation:</u>

22. In ***Rajesh and others vs. Rajbir Singh and others***[8], the Hon'ble Supreme Court in para Nos.10 and 11 made relevant observations, they are as follows:

> ***10.*** *Whether the Tribunal is competent to award compensation in excess of what is claimed in the application under Section 166 of the Motor Vehicles Act, 1988, is another issue arising for consideration in this case. At para 10 of Nagappa case [Nagappa v. Gurudayal Singh,*

[7] (2018) 18 SCC 130
[8] (2013) 9 SCC 54

(2003) 2 SCC 274 : 2003 SCC (Cri) 523 : AIR 2003 SC 674] , it was held as follows: (SCC p. 280)

"10. Thereafter, Section 168 empowers the Claims Tribunal to 'make an award determining the amount of compensation which appears to it to be just'. Therefore, the only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation."

The principle was followed in the later decisions in Oriental Insurance Co. Ltd. v. Mohd. Nasir [(2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] and in Ningamma v. United India Insurance Co. Ltd. [(2009) 13 SCC 710 : (2009) 5 SCC (Civ) 241 : (2010) 1 SCC (Cri) 1213]

***11.** Underlying principle discussed in the above decisions is with regard to the duty of the court to fix a just compensation and it has now become settled law that the court should not succumb to niceties or technicalities, in such matters. Attempt of the court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim.*

<u>Analysis, reasoning and Finding:-</u>

23. (i). The deceased was aged about '18' years. He was attending Carpenter works and Plaster of Paris works. No specific income proof is there. Income can be taken notionally. In view of the skilled labour work, in which the deceased was engaged, learned MACT has taken the income at the rate of Rs.40,000/-, and adopted the Multiplier '16' as per 2nd schedule of M.V. Act.

(ii). It is relevant to note that as per Sarla Verma's case, multiplier applicable to the age group of ‘18’ is ‘18’. Since the deceased died unmarried, 50% of the income is fit to be deducted towards personal expenditure where by the annual income can be taken at Rs.20,000/-, which can be considered as multiplicand.

(iii) Upon application of the multiplier the entitlement of the claimant/petitioner for the compensation under the head of loss of dependency, will comes to *[20,0000/- x ‘18’]* Rs.3, 60,000/-.

(iv) Further, the claimant/petitioner is entitled for compensation under the conventional heads i.e. Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- towards filial consortium can be awarded in terms of the observations of the Hon'ble Apex Court in ***Smt*.*Sarla Verma and Ors’**s case**,* ***Pranay Sethi and Ors’**s case* ***and Magma General Insurance Company’**s* case.

24. In view of the reasons and the evidence referred above, the entitlement of the claimants for reasonable compensation in comparison to the compensation awarded by the learned MACT is found as follows:

Head		***Compensation awarded by the learned MACT***	***Fixed by this Court***
(i)	Loss of dependency	Rs.3,20,000/-	Rs.3,60,000/-
(ii)	Loss of estate	Rs.5,000/-	Rs.15,000/-

(iii)	Loss of Consortium	-Nil-	Rs.40,000/-
(iv)	Funeral expenses	Rs.5,000/-	Rs.15,000/-
	Total compensation awarded	**Rs.3,30,00/-**	**Rs.4,30,000/-**
	Interest (per annum)	6%	7.5%

25. For the reasons aforesaid and in view of the discussion made above, the point No.1 is answered concluding that the claimant/petitioner is entitled for compensation of Rs.4,30,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization and the order and decree dated 17.01.2012 passed by the learned MACT in M.V.O.P.No.190 of 2011 require modification accordingly. Point No.1 is answered accordingly.

Point Nos.2 & 3:

26. In the result,

[I]. the **appeal in MACMA No.1531 of 2012 is partly allowed** as follows:-

a. the compensation awarded by the learned MACT in M.V.O.P.No.190 of 2011 at Rs.3,30,000/- with interest at the rate of 6% per annum is modified and enhanced to Rs.4,30,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization.

b. Respondents before the learned MACT are liable to pay the compensation. However, Respondent No.2 is liable in view of the Insurance Policy.

c. Time for payment /deposit of balance amount is two (02) months.

(i) If the claimant/petitioner furnish the bank account number within (15) days from today, the respondents shall deposit the amount directly into the bank account of the claimant/petitioner and file the necessary proof before the learned MACT.

(ii) If the claimant fail to comply with clause (c)(i) above, the 2nd respondent shall deposit the amount before the learned MACT and the claimant is entitled to withdraw the amount at once on deposit.

[**II**]. t**he appeal, in MACMA No.1077 of 2012** is **dismissed**.

[**III**]. There shall be no order as to costs, in the appeals.

[**IV**]. As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

A. HARI HARANADHA SARMA, J

Date:01.05.2026
Pnr

HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

<u>M.A.C.M.A.Nos.1077 and 1531 of 2012</u>

01.05.2026

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