

APHC010419962022



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

[3333]

MONDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 369/2022

Between:

1. ORIENTAL INSURANCE CO.LTD, REP. BY ITS DIVISIONAL MANAGER,
VISAKHAPATNAM
2. ORIENTAL INSURANCE COMPANY LIMITED, REP. BY ITS BRANCH
MANAGER, LTB ROAD, VIZIANAGARAM.

...APPELLANT(S)

AND

1. KANIMERAKA CHINNA RAO, S/O. LATE RAMU, AGED 50 YEARS,
HINDU, RESIDENT OF DUGGUSAGARAM VILLAGE, SALURU MANDAL,
VIZIANAGARAM DISTRICT.
2. DINESHTHIWARI, S/O. RAJENDRA PRASAD THIWARI, AGED 30
YEARS, HINDU, LORRY DRIVER GJ 19 U 2718, R/O. BALAPUR,
BEHARAICH, UTTAR PRADESH
3. BHUDHU YADAV, S/O. RAM CHARITRA YADAV, AGED 50 YEARS,
HINDU, OWNER OF LORRY GJ 19 U 2718 R/O. CHOPRA COLONY NO.
589, BISHRAMPUR DISTRICT, SURAJPUR CG.

...RESPONDENT(S):

Counsel for the Appellant(S):

1. A JAYANTHI

Counsel for the Respondent(S):

1. P GOPALA KRISHNA

The Court made the following:

THE HONOURABLE SMT JUSTICE V.SUJATHA**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 369/2022****J U D G M E N T:**

1. This Motor Accident Civil Miscellaneous Appeal (for short MACMA) has been preferred against an Order and Decree dated 22.02.2017 in M.V.O.P.No.252 of 2017 passed by the Chairman, Motor Accidents Claims Tribunal –cum- IV Additional District Judge, Vizianagaram.

For the sake of convenience the parties are arrayed to as arrayed before the Tribunal i.e., Appellants as Respondents No.3 and 4; Respondent No.1 as Claim Petitioner and Respondents No.2 and 3 as Respondents No.1 and 2.

2. The Petitioner Claimant filed M.V.O.P.No. 252 of 2017 under section 166 of the Motor Vehicles Act read with Section 455 of the A.P Motor Vehicles Rules, claiming Compensation of Rs.15,00,000/- from Respondents No.1 to 4 for the injuries sustained by the Petitioner in a motor vehicle accident that took place on 24.03.2016 at about 15.45 hours at Naidu Street, Salur.

3. Brief averments of the claim petition in MVOP No.252 of 2017 are as follows: On 24.03.2016 the petitioner went to Salur market to bring tomatoes. While he was returning to his village on his bicycle on the left side of the road margin and reached near Chaitanyabharathi School, Naidu Veedhi, Salur Town, at about 15.45 hours, 1st respondent being the driver of the lorry bearing No.GJ 19 U 2718 came in opposite direction in a rash and negligent manner, without blowing horn and dashed against the Petitioner and ran over the lorry tyre on the

petitioner's right thigh. As a result, the Petitioner sustained bleeding injury on right thigh, head and other injuries on the vital parts of the body. Immediately, Petitioner was shifted to CHC, Salur, after first-aid, he was shifted to Government Head Quarters Hospital, Vizianagaram. Later, he was shifted to KGH, Visakhapatnam, for better treatment. The Doctors conducted operation and his right leg was amputated. He spent heavy amount for transport, medicines, extra nourishment etc.,. Two persons attended the petitioner to meet his daily routine.

a. At the time of accident, Petitioner was aged 50 years, quite hale and healthy, he was doing cultivation and labour work, used to earn Rs.350/- per day. Due to the fracture and amputation to the left leg, he is unable to do any work. Doctors advised him to take further treatment, use of medicines, extra nourishment. Petitioner suffered much pain and mental agony, lost his amenities and pleasures of life, due to amputation of right lower limb he cannot walk, stand without support. He underwent treatment as in-patient from 25.03.2016 and discharged on 07.05.2016. His entire life became dependent on others till his death. He lost future income. Hence claiming compensation of Rs.15,00,000/-.

4. 1st Respondent filed counter which was adopted by 2nd respondent. 1st Respondent denied the petition averments and submitted that he is having valid driving license to ply the vehicle by the date of accident, vehicle was also insured with 3rd respondent and the policy was in force by the date of accident,

as such, he is not liable to pay the compensation, if any compensation awarded by the Tribunal to the Petitioner, 3rd respondent has to pay the compensation.

5. 4th Respondent filed counter denying petition averments and submitted that the claim is excessive and denied the contention of 1st respondent that he was having valid driving license.

6. Basing on the above pleadings, the Tribunal settled the following issues for enquiry –

- 1) Whether the 1st respondent drove the offending vehicle Lorry bearing No. GJ19 U 2718 in a rash and negligent manner and caused the accident?
- 2) Whether the petitioner is entitled for compensation? If so, for what amount and which respondents are liable to pay compensation amount?
- 3) To what relief?

7. During enquiry/trial, Petitioner himself examined as P.W.1 and got marked Ex.A.1 – attested copy of F.I.R in Cr.No.54 of 2016 of Salur Police Station, Ex.A.2 – attested copy of wound certificate, Ex.A.3 – attested copy of Charge Sheet, Ex.A.4 – Disability Certificate. He also got examined Dr. B.Uday Kumar as P.W.2 and got marked Ex.X1 – case sheet.

3rd respondent got examined its Deputy Manager as R.W.1 and got marked Ex.B.1 – Insurance Policy and Ex.B.2 – extract cum driving license of 1st respondent.

8. Upon hearing both sides, upon considering the oral and documentary evidence placed on record by both the parties, the Tribunal allowed the petition by awarding Rs.15,00,000/- as compensation to the petitioner directing the 3rd respondent to pay the compensation amount within a period of one (01) month from the date of Order with interest at 12% per annum from the date of petition till the date of award and thereafter at 6% p.a till realization on the awarded amount of Rs.15,00,000/-. On such deposit, 3rd respondent is entitled to recover the amount paid by him from Respondents No.1 and 2 in separate proceedings on “pay and recover” basis.

9. Being aggrieved by the said Order and Decree, 3rd and 4th Respondents preferred this appeal on the grounds that the Tribunal awarded excessive compensation under pain and suffering, taken income of the deceased as Rs.350/- per day, considered disability as 25%, granted interest at 12% instead of 6% per cent. The tribunal ought to have exonerated the Insurance Company by considering the evidence of R.W.1 who is R.T.A officer and proved that the 1st respondent was only having driving license to drive Light Motor Vehicle (Non-Transport) but not to drive transport vehicle. Hence, prayed to allow the appeal by setting aside the Order and Decree dated 22.03.2022 passed in M.V.O.P.No.252 of 2017 by the Chairman, MACT –cum- IV Additional District Judge, Vizianagaram and dismiss the M.V.O.P.No.252 of 2017 against the appellants/Respondents No.3 and 4.

10. Heard both sides, perused the material in record.

11. On perusal of the award passed by the Tribunal, it can be observed that the claimant who is injured himself got examined as P.W.1 and stated about the manner of accident in his chief examination. Hence, relying upon the evidence of P.W.1 coupled with Ex.A.1 – attested copy of F.I.R and Ex.A.3 – attested copy of charge sheet, in Crime No.54 of 2016 of Salur police Station, which shows that after due investigation, the police registered case as against Respondent No.1, it was established that the accident had occurred due to the negligence of Respondent No.1, resulting the injuries to the petitioner, the Tribunal safely concluded that the accident had occurred due to the negligence of respondent No.1.

12. With regard to the contention of appellant that the compensation awarded under various heads is excessive – as the accident was occurred in the year 2016, the Tribunal considered the income of the claimant as Rs.350/- per day and treated average work days as 20 days in a month, thus considered the monthly income of the deceased as Rs.7,000/-. Due to amputation of right lower limb, the petitioner sustained disability, took treatment from 25.03.2016 to 07.05.2015 as inpatient and thereafter advised to take rest for 2 months, thus the tribunal assessed the loss of earnings period as 3½ months and awarded Rs.25,000/-. By considering the nature of injury i.e., amputation of right leg Rs.2,50,000/- was awarded towards pain and suffering, Rs.50,000/- was

awarded towards extra nourishment. As the right leg of petitioner was amputated, the functional disability of the petitioner as per Ex.A.4 – disability certificate is assessed at 80%. As the petitioner was aged 50 years as on the date of accident, for the age group 46 – 50 years the appropriate multiplier applicable as per judgment in ***Sarala Verma Vs. Delhi Transport Corporation*** reported in **2018 ACJ 2782** is “13”. If calculated it would come to $(7000 \times 12 \times 13 = 10,92,000/- \times 80\% =) \text{Rs.}8,73,600/-$. As per Judgment of the Hon'ble Apex court in ***“National Insurance Company Vs. Pranay Sethi*** reported in **2009 ACJ 1298** for the age group 41 to 50 years 25% is to be added towards future prospectus. If calculated accordingly, it would come to $[(8,73,600 \times 25\% = 2,18,400) (\text{Rs.}8,73,600 + 2,18,400 =)] \text{Rs.}10,92,000/-$. So, an amount of Rs.10,92,000/- was awarded under the head loss of earnings and future prospectus. Due to the amputation of right leg and permanent disability, the petitioner became handicapped to walk, crippled just not in body but in mind and spirit as well, thus an amount of Rs.83,000/- was awarded under the head loss of amenities of life.

13. Tribunal awarded just compensation under the heads loss of earnings during treatment period, extra nourishment, pain and suffering, loss of earnings and future prospectus and loss of amenities of life, which in total comes to Rs.15,00,000/-. This Court finds no reason to interfere with the amount of compensation awarded by the Tribunal.

14. Coming to the direction given by the Tribunal to the 3rd respondent to deposit the compensation amount with costs and interest and then recover it from respondents No.1 and 2 – the Tribunal rightly directed the 3rd Respondent, as there is violation of terms and conditions of insurance policy by the owner of the vehicle i.e., owner handed over the vehicle to the driver who has no valid driving license to drive the vehicle as he is having only to drive non-transport vehicle. There are catena of judgments of this Court and the Hon'ble Apex Court that when there is any violation of terms and conditions of the insurance policy by the owner of the vehicle, directing the insurance company to pay the compensation and then recover it from the owner. Hence, I find no merits to allow the appeal. Thus, the appeal is liable to be dismissed.

15. Accordingly, Motor Accident Civil Miscellaneous Appeal is dismissed. No costs.

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

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Dated 09.02.2026.

SMT JUSTICE V.SUJATHA

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THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 369/2022

DATED 09.02.2026

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