APHC010043622026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3311]**
(Special Original Jurisdiction)

Thursday the Thirtieth day of April Two Thousand and Twenty Six

Present

The Honourable Ms. Justice B.S.Bhanumathi

M.A.C.M.A. No: 737 of 2011

&

Cross Objections (SR) No.1166 of 2010

Between:

Bajaj Allianz General Insurance Company Ltd.,

Rep. by its Manager. **...Appellant**

and

Devisetti Sri Lakshmi and others

...Respondents

Counsel for the appellant:

Sri P.Rajasekhar

Counsel for the respondents:

Sri T.Rama Koteswara Rao

The Court made the following:

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (in short, 'the Act') against the decree and the award dated 20.05.2009 in M.V.O.P. No. 514 of 2008 on the file of the Motor Vehicles Accidents Claims Tribunal-cum- District Judge, Guntur.

2. Though cross objections were filed, they were not pressed.

3. The respondents Nos.1 to 5 / the claimants, filed the petition M.V.O.P. No. 514 of 2008 seeking compensation of Rs.10,00,000/-. The respondent No.6 is the respondent No.1 and the appellant is the respondent No.2 before the Tribunal.

4. The claimants filed the claim petition under Section 163-A of the Act due to the death of Murali Krishna resulting from the injuries sustained by him on 15.03.2008 at about 5.30 A.M. while he, along with others, was taking a morning walk on the national high way No.5 and hit by a lorry bearing No. AP 04V 9279 driven by its driver in a rash and negligent manner. The respondent No.1 is the owner and the respondent No.2 is the insurer of the lorry. The police registered a case against the driver of the lorry and filed a charge sheet against him for offence punishable under Section 304-A I.P.C. The claimant No.1 is the wife, the claimants Nos. 2 and 3 are the children, and the claimants Nos. 4 and 5 are the parents of the deceased.

5. The respondent No.1 remained *ex parte.*

6. The respondent No.2 resisted the claim by filing a written statement, while denying the case pleaded by the claimant, further stating that the lorry was transferred to Varikuri Srinivas Reddy who was not made a party to the petition.

7. On behalf of the claimants, P.Ws.1 to 3 were examined and marked Exs. A1 to A5 and Exs. X1 to X3.

P.W.1: Devisetti Sri Lakshmi
P.W.2: Atchukola Brahma Swamy @ Brahmaswamulu
P.W.3: B. Babu Rao

Ex. A1 : Certified copy of F.I.R.
Ex. A2 : Certified copy of inquest report.
Ex. A3 : Certified copy of charge sheet.
Ex. A4 : Certified copy of P.M. report
Ex. A5 : Certified copy of M.V.I. Report.
Ex. X1 : Appointment letter.
Ex. X2 : Salary certificate.
Ex. X3 : Copy of service record.

8. On behalf of the respondents, R.W.1 G. Chandra Sekhar was examined and Ex.B.1 was marked.

Ex. B1 : Policy.

9. The Tribunal held that the accident in question was caused due to the rash and negligent driving of the driver of the lorry. The deceased was aged about 36 years. The claimants stated that the deceased was earning Rs.5,000/- per month. To prove the same, they examined P.W.3, Personnel Officer in Maddi Lakshmaiah and Group of Companies, Chilakaluripet and got marked Exs. X1 to X3 through him. After examining the evidence, the Tribunal has taken monthly salary of the deceased as Rs. 4,965/-, after deducting amount of professional tax of Rs. 60/- and calculated annual salary of Rs. 59,580/-, out of which

further deducted 1/3rd towards the personal expenses of the deceased. Thus, Rs. 39,720/- was taken as his annual contribution to the family and multiplied the same by the multiplier '13' applicable to the person of age group of '36' years. That apart, the Tribunal awarded the claimant No.1 Rs. 15,000/- towards loss of consortium and to all the claimants together Rs.15,000/- towards loss of estate and an additional sum of Rs. 10,000/- towards medical expenses, transportation charges of the dead body to the house and funeral expenses. Thus, in total, an amount of Rs. 5,56,000/- was awarded as compensation, with interest @ 7% p.a. payable from the date of the petition till the date of realisation. The Tribunal awarded costs of the petition proportionate to the amount of compensation granted.

10. Aggrieved by the award, this appeal was preferred mainly contending that the Tribunal erred in awarding the compensation under Section 163-A of the M.V. Act, though the Tribunal decided that the annual income of the deceased was more than Rs. 40,000/- and that the Tribunal erred in believing the documentary evidence under Exs. X.1 and X.3 and the oral evidence of P.W.3, despite the admission of P.W.1 / wife of the deceased that the deceased was a coolie in M.L.G. Group of Companies but not a sampler, as is also evident from the contents of the F.I.R. and the charge sheet. It is further contended that the ration card of the deceased shows that he was working as a coolie and earning Rs. 12,000/- p.a. (it is not in evidence) and further that the claimants Nos. 4 and 5 are not dependants on the deceased as the claimant No. 4 i.e., the father of the deceased, was a dealer of a ration shop. It is also mainly contended that the insurance company is not liable to pay any amount of compensation since the owner of the lorry,

on its transfer from the respondent No. 1, was not made a party to the claim petition.

11. The learned counsel for the appellant, assisted by Sri K.D.S.D. Ravi Teja, reiterated the grounds of appeal and placed reliance on the decision of the Supreme Court in **Deepal Girishbhai Soni & others Vs. United India Insurance Company**[1] to buttress the arguments that the amount of compensation cannot be granted by applying Schedule-II of the Act, if the amount of annual income is more than Rs.40,000/- and that once the claim was made under Section 163-A, benefit cannot be claimed under Section 166 at the end. Therefore, it is also contended that the Tribunal awarded more amount under the heads funeral expenses, consortium and loss of estate above what is mentioned in Schedule-II @ Rs.2000, Rs.5,000/- and Rs.2,500/- respectively.

12. The learned counsel for the respondents Nos. 1 to 5 / claimants assisted by Sri B.K. Chakravarthy submitted that irrespective of the provision of law cited, the Tribunal has to award just amount of compensation and that the Tribunal had granted compensation by applying the principles to award compensation under Section 166 of the award. With regard to the income and occupation, he submitted that the Tribunal rightly evaluated the evidence of the person from the company, who gave evidence as P.W.3, on being summoned, and also produced not only the salary slip but also the service register of the deceased and therefore, no interference is required in the findings of the Tribunal. He further submitted that the Tribunal erred in applying multiplier ‘13’ instead of ‘16’ to a person aged between 31 to 35 (as per the post-mortem examination report, the deceased was aged 35 years, but the

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[1] (2004) 5 SCC 385

claimants stated that the deceased was aged 36 years and the Tribunal has taken the age of the deceased as ‘36’ years). He further submitted that the Tribunal erred in deducting 1/3rd of the income towards personal expenses as it ought to have deducted 1/4th in view of the number of dependants on him is ‘5’. It is also submitted by him that the amount of compensation towards loss of consortium and the other heads is also less. It is also his submission that irrespective of the cross appeal or cross objections filed by the claimants, it is free to increase the amount of compensation in appeal filed by the insurance company and placed reliance on the decision of the Division Bench of this Court in **Oriental Insurance Company Limited Vs. Chinta Annapurna and others**[2]. Since cross objections have been not pressed, all these arguments have no merit.

13. The main grievance of the insurance company is because of filing of the claim petition under Section 163-A of the Act. Though the petition is filed under Section 163-A of the Act, if the claimant is able to establish negligence, compensation can be granted on fault liability by treating the application as under Section 166 of the Act. The Tribunal found that the accident was caused due to the rash and negligent driving of the driver of the lorry. Therefore, there is no error in the award impugned in the appeal.

14. Insofar as earning of the deceased is concerned, it is only basing on the trustworthy evidence under Exs. X1 to X3 coupled with oral evidence of the employee concerned, the Tribunal evaluated the evidence. The nature of the job of the deceased may be similar to a labourer’s work. The claimant No.1 must have stated in her evidence

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[2] M.A.C.M.A. No. 2776 of 2014, dated 02.01.2025

about the occupation of her husband in the ordinary sense. An uneducated, rustic witness cannot be expected to use technical terms. Therefore, the evidence under Exs. X1 to X3 and the oral evidence of P.W.3 cannot be brushed aside, in the light of a stray statement, which appears to be an admission adverse to the case of the claimant regarding the nature of the job of the deceased and the contention of the appellant cannot be accepted. As such, the income calculated by the Tribunal is just and reasonable and based on proved evidence and does not require any interference in the appeal.

15. The further contention that the claim petition is not maintainable in view of the absence of the owner of the lorry on transfer is concerned, unless it is established with cogent evidence that the owner who is respondent in the claim petition was not actually the owner of the vehicle as on the date of the accident, the contention is not sustainable. It is settled law that even on transfer of a vehicle, the policy continues to be valid insofar as its liability is concerned.

16. In the result, the appeal is dismissed and the cross objections (SR) No.1166 of 2010 are dismissed as not pressed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

B. S. BHANUMATHI, J

Dt.30.04.2026

PNV / RAR