APHC010585492022

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3333]
(Special Original Jurisdiction)

MONDAY,THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 480 OF 2022

Between:

1. AVULA VENKATA NARASAMMA, W/O CHANDRAIAH, AGED ABOUT 43 YEARS,
2. AVULA ADINARAYANA, SIO CHANDRAIAH, AGED ABOUT 24 YEARS,
3. BODA ADILAKSHMI, W/O CHINNA, AGED ABOUT 22 YEARS, ALL ARE RESIDENTS OF RACHAMALLAPADU VILLAGE, VELDURTHY MANDAL, GUNTUR DISTRICT.
4. SHRIRAM GENERAL INSURANCE COMPANY LTD.,, REP BY ITS DIVISIONAL MANAGER, E-8, EPIP, RTTCO INDUSTRIAL AREA, SITAPURA, JAIPUR, RAJASTHAN STATE

...APPELLANT(S)

AND

1. NAGA MANI TUMULA, W/O SRINIVASA RAO, R/O D.NO. 13-2-87, MACHERLA, GUNTUR DISTRICT (OWNER OF THE DMC LORRY BEARING NO AP 11 U 0306)
2. OSMAN MD, S/O MD. DASTAGIRI, INA, KONDAPAKA GUDEM, NARAKETPALLY, NALGONDA, (DRIVER OF THE DMC LORRY BEARING NO AP 11 U 0306) (1ST AND 3RD RESPONDENT IS NOT NECESSARY TO THIS APPEAL, AS HE WAS SET EXPARTE IN THE LOWER COURT)

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court aggrieved by the order and decreetal order to the extent appealed in M.V.O.P No. 1328 of 2017 Dt 26.07.2022 on the file of the Court of Motor Accidents Claims Tribunal Cum Principal District court, Guntur, Guntur District the Appellant prefers Memorandum of Motor Accident Civil Miscellaneous Appeal

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 permit me to amend the claim application in regard to the enhancement of compensation amount from Rs. 5,00,000/- to Rs.10,00,000/- in the interests of justice and pass

Counsel for the Appellant(S):

1. SIVAPRASAD REDDY VENATI

Counsel for the Respondent(S):

1.

The Court made the following Judgment:

THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 480 OF 2022

JUDGMENT :-

The Claimants filed the present Appeal aggrieved by the order and decree, dated 26.07.2022 in M.V.O.P.No.1328 of 2017 on the file of the Court of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Guntur, whereby and whereunder the Tribunal granted compensation of Rs.5,05,600/- to the Claimantsherein, as against the claim of Rs. 5,00,000/-, on account of death of Avula Chandraiah (hereinafter referred to as 'the deceased') in a motor accident that occurred on 29.06.2017.

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

3. The case of the petitioners, in brief, is as follows:

On 29.06.2017 at about 7.00 a.m, when the Claimants were proceeding in a DMC lorry bearing No. AP 11 U 0306 from Yarragundapalem towards Macherla at forest area; on the way when the said lorry reached near Sirigiripadu Village, Veldurthy Mandal in a rash and negligent driving of the driver i.e Respondent No.3, the said lorry turned turtle due to lost control over it and in that accident the deceased sustained head injury and died on the spot. The Veldhurthy Police registered a case in Crime No.41 of 2017 against the driving of the said lorry. Therefore, the Claimants being the wife and children of the deceased filed a claim petition seeking compensation.

4. Before the Tribunal, the Respondents No. 1 and 3 i.e Owner and Driver the offending lorry were remained *ex parte.*

5. The Respondent No.2/ Insurance Company filed counter-affidavit denying the material averments made in the claim petition and *inter alia* contended that the deceased and others travelled in a lorry of Respondent No.1 as an unauthorized passenger, therefore, he is not liable to pay compensation to the Claimants and even if any compensation is entitled by the Claimants, the Respondents No.1 and 3 are liable to pay. At the time of accident, the Respondent No.3 was not having valid and effective driving license and therefore, the Insurance Company is not liable to indemnify the Respondent No.1. It was further contended that the compensation claimed by the Claimants is highly excessive and exorbitant and hence, it was prayed to dismiss the claim petition.

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

> *"1. Whether the pleaded accident dated 29.06.2017 has occurred due to rash and negligent driving of crime vehicle viz., DMC lorry bearing No.AP 11 U 0306 by its driver/ 3rd respondent, and whether the deceased Avula Chandraiah, died due to the said accident?*
>
> *2. Whether the petitioners are entitled for compensation, if so, to what quantum, and what is the liability of the respondents?*
>
> *3. To what relief?"*

7. On behalf of the petitioners/claimants, P.Ws.1 to 3 were examined. On behalf of Claimants Exs.A1 to A5 were marked. Respondent No.2 examined

as RW-1 and 2 and marked Ex.B1 and Ex.B2 and got marked Exs.X1 to X4 through RW-2.

8. After hearing both parties and after considering the oral and documentary evidence on record, the Tribunal partly allowed the claim petition against Respondent Nos.1 to 3, awarding compensation of Rs.5,05,600/- with interest from the date of filing of the petition till the date of deposit and directed Respondents No.1 to 3 to deposit the said amount of compensation within one (01) month from the date of the award.

9. Aggrieved by the said award, the Claimants preferred this Appeal contending that the Tribunal erred in exonerating the liability of the Respondent No.1 with a finding that he is travelling in a lorry as an unauthorized passenger, the Tribunal failed to appreciate that there is no prudent evidence to prove that the deceased is travelling as an unauthorized passenger, the Respondents failed to examine the Respondent No.3 in the absence of such proof an adverse inference can be drawn in favour of the Claimants as the Motor Vehicles Act is beneficial legislation along with other grounds. The quantum of compensation awarded to the Claimant was also questioned on the ground that the awarded amount was exorbitant and excessive. Therefore, prayed to allow the appeal.

10. On the other hand, learned counsel for the Respondent No.2/ Insurance Company herein has supported the impugned award and prayed to dismiss the Appeal.

12. Now the point for consideration is:

Whether the order of the Tribunal needs any interference?

POINT:

13. Perused the Award passed by the Tribunal. The Claimant No.1 being the wife of the deceased got herself examined as PW-1, who deposed with regard to nature of the accident. To substantiate her case, she got marked Ex.A1 to Ex.A5 and also got examined the witnesses as PWs 2 and 3, who are eye witness to the said accident.

14. It could be observed that the name of PW-2 was shown as a witness in the Charge Sheet i.e Ex.A2, however, his evidence was eschewed. PW-3, though claims to be an eye witness, but was not shown in the said Charge Sheet. However, he witnessed the accident and deposed that due to rash and negligent driving of the driver of the lorry, the accident took place on 29.06.2017, as a consequence, the deceased was sustained head injury and died on the spot. Thereafter, the matter was reported to the Police, who registered a case in Crime No. 41 of 2017 under Section 304-A and 337 of IPC against the driver of the lorry i.e Respondent No.3.

15. Inspite of such evidence of PWs 2 and 3 and the fact that PW-2 was shown as an eye witness in the Charge Sheet i.e Ex.A2, though, the Tribunal has held that the accident occurred due to rash and negligent driving of the driver of the lorry i.e Respondent No.3, because of which the deceased sustained injuries and succumbed to death, the Tribunal fixed the liability on

the Respondent No.3 alone by exonerating the Respondent No.2 i.e Insurance Company with whom, the offending vehicle was duly insured. When the Insurance Policy is in existence as on the date of accident and the liability is fixed on the driver i.e Respondent No.3, this Court is of the opinion that the Tribunal ought to have exonerated the Respondent No.2/ Insurance Company from paying the compensation. In view of the same, this Court feels it appropriate that the Respondents No.1 to 3 shall be jointly and severally liable to pay compensation.

16. Coming to the point as to whether the Insurance Company is liable to deposit the compensation at first instance and then recover it from the Respondents No.1 and 3. It could be observed that the Respondent No.2 at the initial stage itself took an objection that the deceased was travelling in the offending lorry as gracious passenger. Therefore, the Insurance Company is not liable to pay compensation. To substantiate the same, the Insurance Company got examined RW-1 and got marked Ex.B1 policy and Ex.B2 – registration certificate of offending vehicle. As per Ex.B2, the offending vehicle was goods carriage/ light motor vehicle. Apart from the same, to prove Ex.B2, RW-2 got examined who is Senior Assistant in RTO, Narasaraopet and got marked Ex.X1 to Ex.X4 through him. As per said documents, the Tribunal has held that the offending vehicle is a goods carriage vehicle and not a passenger vehicle and as such exonerated the Insurance Company from paying the compensation. But, however as held by Hon’ble Apex Court, even in case where it has been held that the deceased was travelling in the

offending vehicle as a gracious passenger, the Insurance Company shall initially deposit the compensation before the Tribunal and then recover the same from the owner and driver of the vehicle. As the Insurance Company is the Respondent No.2 in the present case, the Respondent shall pay the compensation and then recover it from the Respondents No.1 and 3 by filing execution proceedings before appropriate authority.

17. Now coming to the quantum of compensation, it can be observed that as per Ex.A4, the age of the deceased as 52 years as on the date of accident and as per the evidence of PW-1, the deceased used to earn Rs.500/- per day. In the absence of any evidence to that extent, the Tribunal notionally considered the monthly income at Rs.6,000/- per month and holding that the deceased was self employed. Therefore, the Tribunal added 10% towards further prospects as per decision of "***National Insurance Company Vs. Pranay Sethi***[1]" and accordingly notional income of the deceased was taken as Rs. 6,600/-. But however, it can be observed that the deceased was aged 52 years and married, the Tribunal erroneously deducted 50% towards personal expenses instead of 1/3rd. If the same is considered, the notional monthly income of the deceased would come to 4,400/- and loss of earnings of the deceased would come to Rs. 5,80,800/- (Rs. 4,400 x 12 x 11). Apart from the same, the Tribunal also awarded compensation under conventional heads Rs. 15,000/- towards loss of estate; Rs.40,000/- towards consortium

[1] 2018 ACJ 2782

and Rs. 15,000/- towards funeral expenses, in the opinion of this Court is well considered and needs no interference.

18. The compensation awarded by the Tribunal under different heads and the amounts enhanced/modified by this Court, are as follows:

S.No.	Head of the claim	Compensation awarded by the Tribunal	Amounts now awarded by this Court
1.	Loss of income	4,35,600/-	5,80,800/-
2.	Loss of estate	15,000/-	15,000/-
3.	Loss of consortium	40,000/-	40,000/-
4.	Funeral expenses	15,000/-	15,000/-
	Total	**Rs.5,05,600/-**	**Rs.6,50,800/-**

19. However, it is to be noted that in ***National Insurance Co. Ltd. v. Swaran Singh & Ors.,***[2] the Hon'ble Supreme Court has held that if the insurer successfully proves a breach of policy condition, the insurance company may still be directed to pay compensation to the Claimants and then recover the amount from the insured (owner of the vehicle). This ensures that the rights of the third-party victim are protected and it was emphasized that insurance policies are statutorily required to protect third parties, and even in cases of breach by the insured, the insurer's liability towards third-party victims does not vanish immediately.

20. In the case on hand, the evidence adduced by the Claimants before the Tribunal would substantially prove that the accident occurred due to the rash and negligent driving of the offending vehicle, wherein the deceased sustained injuries and died on the spot. In view of the

[2] (2004) 3 SCC 297

same and in the light of the decision of the Hon'ble Supreme Court referred to supra, the contention of the Respondent No.2 that it cannot be directed to pay the compensation cannot be accepted.

21. In view of the above discussion, this Court deems it appropriate to allow the appeal in-part while enhancing the compensation from Rs. 5,05,600/- to **Rs. 6,50,800/-** with interest at 7.5% from the date of claim petition till the date of realization and directing the Respondent No.2/ Insurance Company to deposit the compensation and then recover the amount from the owner and driver of the offending vehicle i.e Respondent Nos.1 and 3 herein. The compensation amount of Rs.6,50,800/- shall be apportioned among the claimants in the same manner and ratio as ordered by the Tribunal. The Appellants/ Claimants are directed to pay deficit Court Fee on the enhanced amount before the Tribunal. On such payment of Court fee, the Appellants/ Claimants are entitled to withdraw the compensation amount.

22. With the above direction, this appeal is partly allowed. No costs. Pending miscellaneous applications, if any, shall stand closed.

JUSTICE V.SUJATHA

Date: 27.04.2026

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