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APHC010750322014



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

[3520]

FRIDAY, THE THIRTEENTH DAY OF MARCH
 TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 751/2014

Between:

1. THE APSRTC., MUSHEERABAD, HYD.,, REP. BY ITS MANAGING
 DIRECTOR CUM VICE CHAIRMAN, MUSHEERABAD, HYDERABAD

...APPELLANT

AND

1. SMT P JYOTHI CHITTOOR DT AND 4 OTHERS, W/O. LATE
 P.LINGAKARA, R/O. EGUVA KANCHALACHERUVU VILLAGE,
 RAGIMANIPENTA POST, BANGARUPALYAM MANDAL, CHITTOOR
 DISTRICT)

2. CHANDRAKALA, D/O. LATE P.LINGAKARA, (R2 TO R4 ARE MINORS,
 REPT. BY THEIR NATURAL MOTHER R1) R/O. EGUVA
 KANCHALACHERUVU VILLAGE, RAGIMANIPENTA POST,
 BANGARUPALYAM MANDAL, CHITTOOR DISTRICT)

3. P NEELAVENI, D/O. LATE P.LINGAKARA, (R2 TO R4 ARE MINORS,
 REPT. BY THEIR NATURAL MOTHER R1) R/O. EGUVA
 KANCHALACHERUVU VILLAGE, RAGIMANIPENTA POST,
 BANGARUPALYAM MANDAL, CHITTOOR DISTRICT)

4. P NAVEEN KUMAR, S/O. LATE P.LINGAKARA, (R2 TO R4 ARE
 MINORS, REPT. BY THEIR NATURAL MOTHER R1) R/O. EGUVA

KANCHALACHERUVU VILLAGE, RAGIMANIPENTA POST,
BANGARUPALYAM MANDAL, CHITTOOR DISTRICT)

5.SMT P LAKSHMAMMA, W/O. LATE MOGILAPPA, R/O. NAKKALA
COLONY, DAMINEEDU TIRUCHANURU TIRUPATI RURAL MANDAL,
CHITTOOR DISTRICT R3 TO 5 ARE MINORS REP. BY THEIR MOTHER
D.LAXMI

...RESPONDENT(S):

Appeal filed under Order 41 of CPC praying that the Highcourt may be pleased to allow the decree by setting aside the decree and judgment dated 3-7-2012 made in M.V.O.P.No. 142 of 2008 on the file of the District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Chittoor.

IA NO: 1 OF 2012(MACMAMP 8082 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 condone the delay of 30 days in filing the MACMA., against the M.V.O.P.No. 142 of 2008 on the file of the District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Chittoor.

IA NO: 2 OF 2012(MACMAMP 8466 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 of all further proceedings including execution of the decree and judgment dated 03.07.2012 made in MVOP No. 142 of 2008 on the file of the District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Chittoor, and pass

Counsel for the Appellant:

1.ARAVALA RAMA RAO(SC FOR APSRTC KKAC)

Counsel for the Respondent(S):

1.SURESH KUMAR REDDY KALAVA

The Court made the following:

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA**M.A.C.M.A.No.751 of 2014****JUDGMENT:**

1. Respondent/A.P.S.R.T.C. in M.V.O.P.No.142 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Chittoor (for short “the learned MACT”), filed the present appeal, feeling aggrieved by the award and decree dated 03.07.2012, questioning the liability and quantum of compensation of Rs.4,79,194/- awarded as against the claim made for Rs.4,00,000/-.
2. When the matter is taken up for hearing, learned counsel for the appellant submitted that the appellant intends to withdraw the appeal.
3. Learned counsel for the respondents / claimants submitted that the legal position is that, the appellate Court can examine the just and adequate nature of the compensation even in the absence of an appeal by the claimants in an appeal filed under Section 173 of the Motor Vehicles Act, 1988. The appellant cannot withdraw the appeal and even if the appellant withdraws the appeal, the appellate Court shall consider the just and adequate nature of the compensation awarded by the learned MACT.
4. Extensive arguments were submitted by both sides on the point whether the appeal can be withdrawn by the appellant and whether the appellate Court is

bound to consider the appeal on merits even in the event that the appellant intends to withdraw the appeal though there is no appeal or cross-objections filed by the claimants.

5. Learned counsel for the claimants submitted that the legislation being social welfare in nature and the just and adequate nature of the compensation can be tested by the Court when the matter is before this Court the withdrawal of the appeal by the appellant is not permissible.

6. Per contra, learned counsel for the appellant submitted that the appellant appeal can withdraw the appeal, particularly when the withdrawal is unconditional. The objections of the respondents for withdrawal of the appeal are not tenable and there are no merits in the contention of the respondents.

7. The points that arise for determination in the context of this appeal are:

- 1) Whether the appellant cannot be permitted to withdraw the appeal and whether the respondents can insist that the appeal be disposed of on merits despite the appellant intending to withdraw the appeal?
- 2) What is the result of the appeal?

Point No.1:

8. Order XXIII CPC deals with withdrawal and adjustment of suits. An appeal is a continuation of the suit. Order XLI CPC deals with the procedure as to how the appeals have to be disposed of. The provisions under the Motor Vehicles Act

do not prohibit the application of the provisions of CPC unless there are special and specific provisions provided under the Motor Vehicles Act or the rules framed thereunder as to procedure to be followed.

9. Order XLI Rule 16 provides the right to begin, which speaks that on the day fixed or on any other day to which the hearing is adjourned, the appellant shall be heard in support of the appeal and if the appeal is not dismissed at once, the appellate Court shall hear the respondents against the appeal. Then the appellant is entitled to reply.

10. Order XLI Rule 17 provides that where there is default of the appellant, the Court may make an order dismissing the appeal. The explanation is clear that the said provision does not entitle dismissal on merits. However, it provides that if the respondent is in default, the appeal can be proceeded with *ex parte*.

11. A reading of the provisions under Order XLI Rules 16 to 21 provides that the appeal can be heard if the appellant is present and dismissed if the appellant is absent. *Ex parte* proceedings are also contemplated, if the respondent is absent. However, it is clear that the respondents are entitled to be heard where the appellant is present and the proceedings continue and that the respondents cannot insist for disposal of the appeal on merits in the absence of the appellant or in the absence of cross appeal filed by them.

12. Now, when the appellant is not pressing the appeal and is not insisting upon disposal on merits, the respondents cannot insist for disposal or dismissal of the appeal on merits.

13. What prevented the respondents from filing cross-objections or a cross-appeal is not known. In the absence of cross-objections or cross appeal, the submission that in the event of enhancing the compensation, the respondent(s) will pay Court fee for the enhanced part of the compensation is not sounding fair or logical.

14. There are precedents guiding the enhancement of compensation even in the absence of an appeal by the respondents *vide Surekha and Others vs. Santosh and Others*¹ and the Division Bench of this Court in *National Insurance Company Limited vs. E. Suseelamma and Others*². But to invoke such principles laid down in the above cases, there is no scope, as the appellant institution, in its wisdom, intends to withdraw the appeal. However, the respondents are entitled to costs. Accordingly, this Court finds that costs can be awarded in favour of the respondents while dismissing the appeal. Point No.1 framed is answered accordingly.

15(i). The Motor Vehicles Act is a social welfare legislation. The learned MACT has considered the claim and awarded the compensation considering the

¹ (2021) 16 SCC 467

² 2023 SCC Online AP 1725

evidence and material available before the Tribunal. The appellant / A.P.S.R.T.C. has chosen to file the appeal and made the claimants appear before this Court. For appearing before this Court, the claimants would naturally incur reasonable expenditure. Now, simple withdrawal of the appeal without compensating the claimants for making them appear before this Court in these appeal proceedings cannot be accepted. Therefore, the claimants are entitled for compensation / costs.

(ii). The next question is whether the claimants are entitled to interest on the costs. As per Section 34 CPC, where the decree is for payment of money, the Court may, vide decree, order interest at such rate on the sum adjudged as the Court deems just. The costs component, which the Court feels proper, also becomes a sum adjudged. Therefore, the claimants are entitled for interest on costs even. While considering a case of decree incorporating a term for payment of interest on costs without there being such provision in the judgment, the High Court of Calcutta in a case between ***Janaki Nath Roy, Narendra Nath Roy & Co.Ltd. (in liquidation) vs. Sambhu Nath Mullick and others***³, considered the practice of awarding interest on costs. In that particular case, the objection as to when the judgment is silent and the decree adding interest on costs was considered and while accepting the objection that when judgment is not providing for interest on costs, a decree having such provision is not correct, the Court

³ 1971 SCC OnLine Cal 77: AIR 1971 Cal 504

found that interest can be allowed on costs not exceeding 6% per annum, but it must be provided in the judgment as to the payment of interest on costs with a specific rate, *vide* para '10' of the judgment (3 *supra*).

(iii). Upon examination of the facts and circumstances of the present case, the purpose and intendment of the legislation and also the legal permissibility of awarding interest on costs, I feel it proper to award interest on costs also, however, from the date of appearance of the claimants before this Court.

Point No.2:

16. In the result,

(i). The appeal is dismissed as withdrawn, subject to payment of Rs.5,000/- with interest at the rate of 6% per annum from the date of appearance of claimants in this appeal till the date of deposit towards costs etc.

(ii). The costs imposed and balance amount payable by the appellant shall be deposited within a period of one month from today.

(a) If the claimant No.1/ wife of the deceased furnishes the bank account number within 15 days from today, the appellant / A.P.S.R.T.C. shall deposit the amount directly into the said bank account.

(b) If claimants fail to comply with clause (ii)(a) above, the appellant shall deposit the amount before the learned MACT and claimant No.1 is entitled to withdraw the amount at once on deposit.

17. As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

A. HARI HARANADHA SARMA, J

Date:13.03.2026

Note:L.R. copy to be marked.

(B/o).

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HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.No.751 of 2014

13.03.2026

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