

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

M.A.C.M.A.No.2403 of 2012

Between:

... Appellants

And

... Respondents

DATE OF ORDER PRONOUNCED : 14.09.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE V.GOPALA KRISHNA RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the order? : Yes/No
2. Whether the copy of order may be
marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wish to
see the fair copy of the order? : Yes/No

V.GOPALA KRISHNA RAO, J

*** HONOURABLE SRI JUSTICE V.GOPALA KRISHNA RAO
+ M.A.C.M.A. No.2403 of 2012**

% 14.09.2023

M.A.C.M.A. No.2403 of 2012 :

... Appellants

And

... Respondents

! Counsel for Appellants : Sri Mekala Rama Murthy

^ Counsel for Respondent No.6 : Sri Maheswara Rao Kunchem

< Gist:

> Head Note:

? Cases referred:

AIR 2020 SC 434

This Court made the following:

THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO**M.A.C.M.A.No.2403 of 2012****JUDGMENT:**

Aggrieved by the impugned order dated 19.03.2012 on the file of Motor Accident Claims Tribunal -cum- V Additional District Judge (Fast Track Court), Ongole, passed in M.V.O.P.No.368 of 2010, whereby the Tribunal has partly allowed the claim against the respondents 2 to 6, the instant appeal is preferred by the appellants/claimants for enhancement of claim amount.

2. For the sake of convenience, both the parties in the appeal will be referred to as they are arrayed in the claim application.

3. The claimants filed a Claim Petition under section 166 of Motor Vehicles Act, 1988 against the respondents praying the Tribunal to award an amount of Rs.4,00,000/- towards compensation on account of death of deceased Shaik Khadar Bee in a Motor Vehicle Accident occurred on 12.07.2007.

4. Facts germane to dispose of this appeal may be briefly stated as follows:

Petitioners 1 and 2 are the sons and petitioner No.3 is daughter of Smt Shaik Khadar Bee, hereinafter referred to as 'deceased'. The deceased and her husband went to Hyderabad to their relatives house and when they were at Hyderabad, they heard about the death of their relative by name Masthan Vali. On 12.07.2007 they engaged a car bearing No.AP9 TVA 0606 to go to Gummanampadu village and when the car reached Dayyalagandi in Nalgonda District, the driver of the car drove the same in a rash and negligent manner, at the same time, a lorry bearing No.AP29TA 6317, which was coming in opposite direction, driven by its driver, also came in a rash and negligent manner and dashed against each other, as a result, the accident took place. The deceased and her husband died on the spot itself. The driver of the car, who is shown as respondent No.1 in this case, also died on the spot itself.

5. The respondents 2, 4 and 5 remained exparte. The respondents 3 and 6 filed counters separately denying the claim of the claimants and contended that the claimants are not entitled any compensation and the third and sixth respondents are not liable to pay any compensation to the claimants.

6. Based on the above pleadings, the Tribunal framed the following issues:

- i. Whether the death of the deceased Shaik Khadar Bee, W/o.Khasim Saheb is due to rash and negligent driving of Car bearing No.AP9 TVA 0606 and lorry bearing No.AP29 TA 6317 by their drivers?
- ii. Whether the petitioners are entitled for compensation? If so, to what amount and from whom?
- iii. Whether the age and income of the deceased are correct?
- iv. To what relief?

7. During the course of enquiry in the claim petition, on behalf of the petitioners, PW1 and PW2 were examined and Ex.A1 to Ex.A5 were marked. On behalf of respondents, RW1 was examined and Ex.B1 and Ex.B2 were marked.

8. At the culmination of the enquiry, after considering the evidence on record and on appreciation of the same, the Tribunal has given a finding that the accident was occurred due to rash and negligent driving of drivers of both the offending vehicles and the

Tribunal granted an amount of Rs.50,000/- to the claimants towards compensation from the respondents 2 to 6. Aggrieved by the same, the claimants filed the present appeal claiming the remaining balance of compensation amount.

9. Heard Sri Mekala Rama Murthy, learned counsel for the petitioners and Sri Maheswara Rao Kunchem, learned counsel for respondent No.6.

10. Now, the points for consideration are:

- 1. Whether the Order of Tribunal needs any interference?***
- 2. Whether the claimants/ appellants are entitled for enhancement of compensation as prayed for?***

11. **POINT Nos.1 and 2:-**

In order to prove the rash and negligent driving of the drivers of the offending vehicles, the claimants relied on the evidence of PW1 and PW2 and Ex.A1 to Ex.A5. PW1 is the first petitioner. He is not an eye-witness to the accident. PW2 is an eye-witness to the accident. As per his evidence, he was travelling in the car at the time of accident and due to the rash and negligent driving of the

drivers of both the vehicles, the accident took place and the deceased and her husband died at the spot itself. On appreciation of the entire evidence on record, the Tribunal came to conclusion that the accident in question occurred due to rash and negligent driving of the drivers of the both the vehicles. I do not find any legal flaw or infirmity in the said finding given by the Tribunal.

12. As per the case of the petitioners, the deceased used to earn Rs.5,000/- per month by doing coolie work and the first petitioner is the son of the deceased, aged about 29 years, second petitioner is another son of the deceased, aged about 28 years, third petitioner is the daughter of the deceased, aged about 27 years. The contention of the claimants is that they are the dependents on the deceased, because of the death of the deceased, they deprived the income of the deceased. The contention of the respondents is that the petitioners 1 and 2 are the married sons, petitioner No.3 is the married daughter and they are not the dependents on the deceased. It is not in dispute that the petitioners are the children of the deceased and they are legal representatives of the deceased. The law is well settled that ***it is undeniable that a person claiming to***

be a legal representative as the locus to maintain an application for compensation under Section 166 of the Act. As per Section 166 (5) (3) of the Motor Vehicles Act, where death as resulted from the accident, by all are any of the L.Rs of the deceased can file a claim application for claiming compensation for the death of the deceased. But the Tribunal by recording reasons held that since the claimants are not the dependents on the deceased, they are entitled for Rs.50,000/- only under Section 140 of the Motor Vehicles Act.

The law is well settled by the Apex Court in National Insurance Company Limited Vs. Birender and others¹ decided on 13.01.2020 that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earnings sons of the deceased being Legal Representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider application irrespective of the fact whether the concerned legal

¹ AIR 2020 SC 434

representative was fully dependent on the deceased and not to limit the claim towards conventional heads only.

This Court also cannot make any discrimination whether they are the married sons or married daughters and hence very contention of the Insurance Company that the married daughters of the deceased are not entitled for compensation cannot be accepted and the Court has to take note of rationale behind in coming to the conclusion of even married sons and major sons are eligible to claim compensation and hence the married daughters also entitled for compensation on all the heads and not to limit only for conventional heads.

13. As per the case of the petitioners, the deceased used to earn Rs.5,000/- per month. In order to prove the monthly income of the deceased, no oral or documentary evidence is produced by the claimants. The accident in question was occurred in the year, 2007. In those days, an ordinary coolie, aged about 51 to 55 years, can easily earn Rs.2,000/- per month, i.e., Rs.24,000/- per annum. The dependents on the deceased are three in number. As per the decision of **Sarla Verma's case**, 1/3rd income has to be deducted

towards personal expenses of the deceased. If 1/3rd income is deducted, the net income available to the dependents on the deceased is Rs.16,000/- (24,000 - 8,000) per annum. Since the deceased was aged in between 51 to 55 years, the relevant multiplier applicable to the age group of the deceased is 11. Accordingly, an amount of Rs.1,76,000/- (16,000 x 11) is awarded to the claimants towards loss of dependency. In addition to that the claimants also entitled an amount of Rs.20,000/- towards loss of estate and an amount of Rs.10,000/- towards funeral expenses of the deceased. In total, the appellants/ claimants are entitled an amount of Rs.2,06,000/- towards compensation. Accordingly, the claimants are entitled an amount of Rs.1,56,000/- towards enhanced compensation. Since the accident was occurred because of rash and negligent driving of drivers of both the vehicles, respondents 2 and 3 has to deposit 50% of enhanced compensation and respondents 5 and 6 shall deposit remaining 50% of enhanced compensation.

14. In the result, this appeal is partly allowed, modifying the order dated 19.03.2012 passed in MVOP No.368/2010 on the file of the

Motor Accident Claims Tribunal-cum- V Additional District Judge (Fast Track Court), Ongole, consequently the claim amount is enhanced from Rs.50,000/- to Rs.2,06,000/-. The appellants/claimants are entitled the enhanced compensation of Rs.1,56,000/- with interest @6% p.a. from the date of petition, till the date of realization. The respondents 2 and 3 has to deposit 50% of enhanced compensation amount and respondents 5 and 6 shall deposit the remaining 50% of enhanced compensation amount with interest as ordered above, before the Tribunal within two months from the date of this judgment. After depositing the enhanced compensation amount, the claimants are entitled to withdraw their share of enhanced compensation amount along with accrued interest thereon equally. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

V.GOPALA KRISHNA RAO, J

Dated: 14.09.2023.

Note: L.R. copy to be marked

b/o.

sj

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HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

M.A.C.M.A.No.2403 of 2012

14.09.2023

sj