

HIGH COURT FOR THE STATE OF TELANGANA

M.A.C.M.A. No.1199 OF 2008

Between:

Maruti, S/o. G. Shyam Rao, aged 48 years, Occ: Labour,
R/o. Kukatpally, Ranga Reddy District, and 6 others.

.. Appellants

Vs.

N. Padma Rao, S/o. Narayana Rao,
Aged Major, Occ: Owner of Lorry bearing No.AHT 5427,
R/o. H.No.4-26/1, Kukatpally, Hyderabad District, and another

.. Respondents

DATE OF THE JUDGMENT PRONOUNCED: **19.02.2024**

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| 1. Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes |
| 3. Whether his Lordship wishes to see the fair copy of the judgment? | Yes |

K. SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ M.A.C.M.A. No.1199 OF 2008

% DATED 24TH November, 2023

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R/o. Kukatpally, Ranga Reddy District, and 6 others.

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>Head Note:

! Counsel for the Appellants : Sri Dhulipalla V.A.S. Ravi Prasad

^Counsel for Respondent No.2 : Sri R. Sridhar

? CASES REFERRED : 1. (2019) 2 SCC 192
2. MANU/SC/1104/2023
3. (2005) 6 SCC 172
4. (2001) 8 SCC 197
5. (2017) 16 SCC 680
6. (2009) 6 SCC 121
7. (2018) 18 SCC 130
8. (2011) 10 SCC 756
9. 2003 ACJ 12 (SC)

THE HONOURABLE SRI JUSTICE K. SURENDER

M.A.C.M.A. No.1199 of 2008

JUDGMENT:

This appeal is filed aggrieved by the Order and Decree dated 03.10.2007 in O.P.No.478 of 2005 passed by the III Additional Chief Judge, City Civil Court, Hyderabad, (for short, 'the Tribunal').

2. The appellants herein are the petitioners/claimants in the aforesaid O.P., which was filed by them seeking compensation of Rs.3,00,000/- on account of death of one Mr. Lakhan, (hereinafter referred to as 'the deceased').

3. The brief facts of the case are that on 18.06.2003, while the deceased was travelling in a Lorry bearing No.AHT 5427, at Madannaguda, a Gas Tanker bearing No.KA 21 B 1296, which was coming from Chandanagar side, being driven in a rash and negligent manner at high speed, hit the Lorry in which the deceased was travelling. Due to the head-on collision, the deceased and the drivers of both the vehicles along with other labourers who were travelling in the vehicle died on the spot.

4. On perusal of entire material on record, both oral and documentary, the Tribunal vide impugned order dated 03.10.2007, awarded an amount of Rs.86,000/- with interest @ 7.5% per annum

from the date of petition till the date of realisation. Challenging the said order, the appellants/claimants filed the present appeal.

5. Heard Sri Dhulipalla V.A.S. Ravi Prasad, learned counsel appearing for the appellants/claimants, and Sri R. Sridhar, learned counsel appearing for respondent No.2-Insurance Company. Perused the record.

6. Learned counsel appearing for the appellants would submit that the deceased was working as a labourer and the said fact was supported by the Inquest Report. However, the Tribunal failed to consider the same and concluded that the deceased was not an earning member of the family. Further, without considering the age and future earning capacity of the deceased, the Tribunal has erroneously computed the compensation as Rs.86,000/-. He would further submit that the Tribunal dismissed the petition against respondent No.2-Insurance Company. According to him, the policy issued by respondent No.2-Insurance Company covers the risk of (6) persons under Section 147 of the Motor Vehicles Act. As such, respondent No.2-Insurance Company is also liable to pay the compensation to the claimants. In support of his contentions, learned counsel appearing for the appellants relied on the decisions of the Hon'ble Apex Court in **Ramla and others v. National Insurance Company Limited and others**¹, **Saroj Devi and**

¹ (2019) 2 SCC 192

others v. Narendra Singh and others² and National Insurance Co. Ltd. v. Prembai Patel and others³.

7. Learned counsel appearing for respondent No.2-Insurance Company would submit that the insurance policy does not cover the 'labourer' travelling in the lorry as it covers only the two 'workers' in the lorry and the compensation was already paid to those two workers. As such, respondent No.2-Insurance Company is not liable to pay the compensation. Therefore, according to him, the Tribunal has rightly dismissed the petition against respondent No.2.

8. The learned Judge of the Tribunal, having examined P.Ws.1 and 2 on behalf of the claimants and on consideration of Exs.A.1 to A.3, found that there was contributory negligence on the part of the driver of lorry bearing No.AHT 5427, in which the deceased was travelling. Further, the insurance company had filed a counter affidavit stating that since two persons namely, Saheb and Anil, who died in the accident, have already claimed the compensation under the Workmen Compensation Act, 1923, in Case No.75 of 2003, the claimants are not entitled for compensation from respondent No.2. Though the claimants herein have filed W.C.No.115 of 2003 for compensation, the same was dismissed as not-pressed and subsequently, the present O.P. was filed.

9. The learned Judge of the Tribunal found that since the premium was paid only on behalf of two labourers and that they were already

² MANU/SC/1104/2023

³ (2005) 6 SCC 172

compensated by the Insurance Company, the liability would only be fastened on the driver of the vehicle and not the Insurance Company.

10. Except filing a counter affidavit, the Insurance Company had not taken steps to examine any witness on its behalf nor mark any documents pertaining to the compensation paid to two labourers. Admittedly, there was a driver in the vehicle. The driver of the vehicle cannot be considered as a labourer.

11. Further, as seen from the FIR, the vehicle in which the deceased was travelling, which is the lorry bearing No.AHT 5427, being driven in a rash and negligent manner at high speed, hit the Gas Tanker. Since both the drivers died, the police had not investigated the matter and did not file any charge sheet. In the said circumstances, the FIR which was given at the earliest point of time i.e., on the next day of occurrence of the accident – 18.06.2003, and the statement of P.W.2 – Constable, P. Narasimha, who lodged the complaint, would reveal that it was the lorry bearing No.AHT 5427 which had come in a rash and negligent manner and hit the Gas Tanker.

12. In the said circumstances, the finding of the Tribunal regarding contributory negligence on the part of the driver of the crime vehicle i.e., lorry bearing No.AHT 5427, is hereby set aside.

13. The contention of learned counsel appearing for respondent No.2 that the deceased was not covered under the Insurance Policy since the said policy was only for two persons, cannot be accepted since no

evidence is produced by the Insurance Company before the Tribunal regarding who the two labourers were to whom the workman compensation was paid. Since it is not in dispute that the Insurance Company i.e., respondent No.2 had insured the crime vehicle, the Insurance Company itself is liable to pay compensation to the claimants.

14. Coming to computation of compensation, on consideration of entire material available on record, it appears that the deceased was aged about 16 years at the time of his death. In **Latha Wadhwa v. State of Bihar**⁴ the Apex Court held that even when there is no proof of income and earnings, the income can be reasonably estimated. Since the deceased was aged about 16 years and he was able bodied person and as per the evidence of P.W.1, the deceased was working as a labourer, this Court inclined to take the income of the deceased at Rs.3,000/- per month. As rightly pointed out by the learned counsel appearing for the appellants, the Tribunal erred in not adding future prospects of the deceased as per the judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd., v. Pranay Sethi**⁵. Hence, this Court is inclined to add 40% towards future prospects (40% x Rs.3,000/- = Rs.1,200/-), and by adding so, the monthly income of the deceased comes to Rs.4,200/-. Since the deceased was a bachelor, 50% of the income needs to be deducted towards personal expenses,

⁴ (2001) 8 SCC 197

⁵ (2017) 16 SCC 680

according to the decision in **Smt. Sarla Verma** (Supra). Hence, after deducting 50% towards personal expenses (50% x Rs.4,200/- = Rs.2,100/-), the net annual income of the deceased being contributed to the family comes out to Rs.25,200/- (Rs.2,100/- x 12). As per records, the deceased was aged about 16 years at the time of his death. Therefore, in the light of the judgment of the Hon'ble Apex Court in **Smt.Sarla Varma v. Delhi Transport Corporation**⁶, the multiplier of income is '18'. Thus, the future loss of dependency comes to **Rs.4,53,600/-** (Rs.25,200 x 18). That apart, the claimants are entitled to Rs.33,000/- under conventional heads as per the decision in **Pranay Sethi** (Supra). Similarly, appellant Nos.1 and 2, being the parents of the deceased, are entitled to Rs.40,000/- each, under loss of filial consortium as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram**⁷. Thus, in all, the claimants are entitled to **Rs.5,66,600/-**, which is just and reasonable.

15. In view of the above, the compensation is calculated as under:

S.No.	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Annual Income of the deceased	Rs.15,000/-	Rs.36,000/-
2.	Addition towards future prospects @ 40%	Nil	Rs.14,400/-
3.	Total Annual Income	Rs.15,000/-	Rs.50,400/-
4.	Deduction towards personal expenditure i. Tribunal - $\frac{1}{3}$ rd x Rs.15,000/- ii.This Court - 50% x Rs.42,500/-	Rs.5,000/-	Rs.25,200/-

⁶ (2009) 6 SCC 121

⁷ (2018) 18 SCC 130

5.	Net Annual Income	Rs.10,000/-	Rs.25,200/-
6.	Multiplier	16	18
7.	Compensation	Rs.1,60,000/-	Rs.4,53,600/-
8.	Other Expenses	Rs.12,000/- (Rs.10,000/- + Rs.2,000/-)	Nil
9.	Conventional Heads as per <i>Pranay Sethi</i> (Supra)	Nil	Rs.33,000/-
10.	Filial Consortium as per <i>Nanu Ram</i> (Supra) @ Rs.40,000/- each Rs.40,000/- x 2	Nil	Rs.80,000/-
11.	Deduction towards Contributory Negligence @ 50%	Rs.86,000/- (50% x Rs.1,72,000/-)	Nil
Total Compensation		Rs.86,000/-	Rs.5,66,600/-

16. At this stage, the learned counsel appearing for respondent No.2- Insurance company submits that the claimants claimed only a sum of Rs.3,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made, which is impermissible under law.

17. In **Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited and another**⁸, the Hon'ble Apex Court while referring to **Nagappa v. Gurudayal Singh**⁹ held as under:

“It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in Nagappa vs. Gurudayal Singh (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court

⁸ (2011) 10 SCC 756

⁹ 2003 ACJ 12 (SC)

is entitled to award higher compensation to the victim of an accident.”

18. In view of the judgment of the Hon'ble Apex Court referred to above, the claimants are entitled to get more amount than what has been claimed. Further, the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimants is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

19. Accordingly, M.A.C.M.A is allowed and the compensation amount awarded by the Tribunal is hereby enhanced from Rs.86,000/- to **Rs.5,66,600/-**. The enhanced amount shall carry interest at the rate of 7.5% per annum from the date of petition till the date of realization to be payable by respondent No. 2-Insurance Company. The amount shall be deposited within a period of one (01) month from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective share amounts without furnishing any security. There shall be no order as to costs

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

K. SURENDER, J

Date:19.02.2024
GSP