

*** THE HON'BLE SRI JUSTICE SUJOY PAUL**

AND

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

+M.A.C.M.A.No.2875 OF 2019

% 28-06-2024

Royal Sundaram General Insurance Co. Ltd.,

....Appellant

Vs.

Chinthala Rama and others.

.... Respondents

!Counsel for the appellant : Sri A.Ramakrishna Reddy

Counsel for the Respondents : Sri Y.Swaroop Sai representing
Sri C.M.R.Velu

<Gist :

>Head Note:

? Cases referred:

1. 2003 (5) ALD 162 (AP)
2. 2017 (16) SCC 680
3. 2009 ACJ 1298 (SC)

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

* * * *

M.A.C.M.A.No.2875 OF 2019

Between:

Royal Sundaram General Insurance Co. Ltd.,

....Appellant

Vs.

Chinthala Rama and others.

.... Respondents

ORDER PRONOUNCED ON: 28.06.2024

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : 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

NAMAVARAPU RAJESHWAR RAO, J

THE HON'BLE SRI JUSTICE SUJOY PAUL
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO
M.A.C.M.A.No.2875 of 2019

JUDGMENT: *(per Hon'ble Sri Justice Namavarapu Rajeshwar Rao)*

This Motor Accident Civil Miscellaneous Appeal is filed by the appellant-Insurance Company, aggrieved by the order and decree dated 18.02.2019 passed in M.V.O.P.No.1042 of 2017 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge-II-FTC, Warangal at Jangaon (for short 'the Tribunal').

2. For convenience, the parties will be referred to as arrayed before the Tribunal.

3. The brief facts of the case are as follows:

On 27.08.2017, at about 06:00 hours, the deceased-Chinthala Gattaiah, left from his house at Jangaon on a Taxi bearing No.TS-08-UA-9952 to Phanigiri, Nagaram Mandal, Thirumalagiri District, to attend a function along with his son, Chinthala Ashok and son-in-law Shakapuram Samaiah and one Chintala Srihari. After attending the function, they returned to Jangaon, where they reached C.S.I. Hostel at the outskirts of Phanigiri village, the driver of the said Car, Shakapuram Ganesh, drove it in a rash and negligent manner

and dashed a tree, resultantly, they fell down on the road. The deceased sustained grievous injuries, and the other inmates also received simple and grievous injuries. After administering first aid at Thirumalagiri, on the doctor's advice, the deceased was shifted from Thirumalagiri Government Hospital to Government Area Hospital at Jangaon for better treatment. The deceased succumbed to his injuries on 27.08.2017 at about 8:30 P.M. at the Government Area Hospital at Jangaon.

4. Based on the complaint given by one Gandamalla Shoban Babu, VRA of Phanigir, the police Nagaram registered a case in Cr.No.36 of 2017 for the offence punishable under Section 337 of IPC against the driver of the offending vehicle. Later, on coming to know about the death of the deceased, the police altered the section of law from Section 337 IPC to Section 304-A IPC. Therefore, the petitioners filed the claim petition seeking compensation of Rs.25,00,000/- for the deceased's death.

5. Before the Tribunal, the first respondent failed to file counter, as such, forfeited the right to file counter. Respondent No.2 remained ex-parte.

6. Respondent No.3 filed a counter affidavit denying the allegations in the claim petition.

7. PWs.1 and 2 were examined to prove the petitioners' case, and Exs.A1 to A12 were marked. No oral evidence was adduced on behalf of the respondents, but Ex.B1-Copy of the Insurance Policy was marked.

8. After considering the oral and documentary evidence available on record, the Tribunal allowed the claim petition by granting a sum of Rs.59,30,000/- (Rupees Fifty Nine Lakh Thirty Thousand Only) with costs and interest @ 9% per annum from date of the petition till the date of realization. Respondent Nos.1 to 3 were jointly and severally liable to pay the awarded amount. Though the claim petition was filed only for Rs.25,00,000/-, the Tribunal granted an amount of Rs.59,30,000/-. Challenging the same, respondent No.3/Insurance Company has filed the present appeal.

9. Heard Sri A. Ramakrishna Reddy, learned counsel for the appellant-Insurance Company and Sri Y.Swaroop Sai, learned counsel representing Sri C.M.R.Velu, learned counsel for the respondent Nos.1 to 4 and perused the record.

10. Learned counsel for the appellant-Insurance Company contended that the Tribunal ought to have seen that except filing Ex.A-7-original license of Fast Food Tiffin Centre, and Ex.A-8-Partnership Deed pertaining to Shakapuram Sambaiah and the deceased, no other oral or documentary evidence was produced to show that the deceased was earning Rs.40,000/- per month,

including salary and 50% of the profits. There is no whisper, either in the pleadings or in the evidence of the petitioners, that the deceased and Shakapuram Sambaiah have started the business and are running the business as on the date of the accident.

11. Learned counsel for the appellant further contended that the Tribunal ought not to have taken Rs.40,000/- per month as the deceased's income, without any valid and cogent evidence. The Tribunal failed to appreciate the fact that Ex.A-8 Partnership Deed was executed on 19.05.2017 and that the alleged accident and death of the deceased took place on 27.08.2017, i.e., within three months from the execution of the deed. Further, no accounts were produced by the petitioners with regard to the fast food centre's sales, purchases, remuneration received by the deceased, and profit and loss accounts. In the absence of proof, relying on the self-serving statement of the petitioners, and taking the income of the deceased at Rs.40,000/- per month and calculating the compensation thereon, is highly excessive and contrary to the settled law, and as such, the order of the Tribunal is liable to be set aside.

12. Learned counsel for the appellant further contended that the Tribunal failed to appreciate that Ex.A-8 is brought into existence for the purpose of this case. No person connected to the said partnership deed, namely, the other partner who executed the deed and the witnesses who were present at the time of execution of the said deed,

were not examined. Therefore, it is clear that the same was brought into existence for the purpose of this case, in contravention to the law laid down by this Court in **UNITED INDIA INSURANCE COMPANY LIMITED Vs. MOHD.KHAJA RASOOL SAYYE**¹, wherein it was held as follows:

“...Therefore, any document produced by any of the parties to the lis necessarily requires to be proved in the manner as provided under the Evidence Act. In most of these cases, the claimants are producing certificates and discharge cards etc., issued by the doctors and hospitals and also the bills in regard to the expenses incurred by them which require to be proved in the manner as provided under the Evidence Act. Mere marking of documents through the claimants does not amount to proof of the said documents as held in the decision reported in 1971 S.C. 1856. In most of these cases, no serious attempt is made to produce the necessary competent witnesses. It is urged on behalf of the claimants that once such certificates and the bills etc., issued by the doctors, it is not necessary to examine them. Such contention

¹ 2003 (5) ALD 162 (AP)

cannot be accepted as there is no distinction between medical evidence or other evidence in a Court of law as per the provisions of the Evidence Act. The said contention on behalf of the claimants is to be rejected on the face of it. Therefore, necessarily it has to be held that in the absence of any evidence in proof of the documents through proper witnesses, the documents produced cannot be accepted nor can be relied on by the Court...”

13. Learned counsel for the appellant further contended that the Tribunal, for the reasons best known to it, erroneously took the income of the deceased at Rs.40,000/- per month, which is highly excessive and without any basis.

14. Learned counsel for the appellant further contended that the Tribunal ought to have seen that petitioner Nos.2 and 4 are married daughters of the deceased. Further, PW.2, the son of the deceased admitted in his cross-examination that both his sisters are married and are living separately. Therefore, the Tribunal ought not to have treated petitioner Nos.2 and 4 as dependants on the deceased's income, and ought not to have deducted 1/3rd towards the personal expenditure of the deceased instead of 1/4th.

15. Learned counsel for the appellant also contended that the Tribunal awarded interest at 9% per annum, which is excessive, and

it ought to have awarded interest at 6% per annum, in consonance with the interest granted at nationalized banks on fixed deposits.

16. On the other hand, learned Counsel for respondents/petitioners submitted that the Tribunal, after considering the evidence and material placed before it, rightly granted compensation to the respondents/petitioners. As such, no interference is required by this Court in the same. Accordingly, prayed to dismiss the appeal.

17. A perusal of the impugned order discloses that the Tribunal, having framed issue No.1 as to whether the accident had occurred due to rash and negligent driving of the offending vehicle by its driver, and having considered the evidence of PW.2 coupled with the documentary evidence i.e., Ex.A-1-FIR and Ex.A-10-charge-sheet, held that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle and has answered in favour of the petitioners and against the respondents. Therefore, there are no reasons to interfere with the said finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle.

18. Now, coming to the quantum of compensation, the Tribunal observed, based on the testimony of PWs.1 and 2, that the deceased was skilled in cooking and also that the deceased was self employed, earning Rs.15,000/- per month as a Head Cook in Supritha Fast Food and Tiffin Centre, apart from the business income of

Rs.25,000/- per month and accordingly fixed the deceased's income at Rs.40,000/- per month. In the present case, there was no evidence adduced by the petitioners apart from Ex.A8 to demonstrate the existence of the partnership between the deceased and Shakapuram Sambaiah, and in view of the aforementioned judgment in **UNITED INDIA INSURANCE COMPANY LIMITED Vs. MOHD.KHAJA RASOOL SAYYE** (supra), which held that mere filing of documents is not sufficient and the same has to be proved in the manner provided in the Evidence Act, 1872, this Court is of the considered view that the income earned from the partnership business cannot be presumed at Rs.25,000/- per month. Further, the deceased met with the said accident within a period of three months from the date of execution of the partnership deed. As such, we cannot presume the profits arising out of the partnership business of the deceased. Learned counsel for the appellant-Insurance Company produced a National Income Chart (Draft) prepared by the Telangana State Legal Services Authority, showing the notional monthly income in the year 2023 as Rs.15,000/-. However, there is no clarity in the said chart about the nature of employment, i.e., skilled labour or unskilled labour. There must be a variation in considering the notional income of a skilled labour and an unskilled labour. As such, this Court is of the considered view that the fixing of the monthly income of the deceased at Rs.40,000/- by the Tribunal is on the higher side. This Court feels

it appropriate to fix the total monthly income of the deceased at Rs.30,000/- instead of Rs.40,000/-. Considering the available evidence on record, the Tribunal has fixed the age of the deceased at 47 years. Since the deceased was self-employed, the petitioners are entitled to 25% of the deceased's income towards future prospects, as per the decision of the Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi**². Therefore, the monthly income of the deceased comes to Rs. 37,500/- (Rs.30,000 + 25%). The annual income of the deceased would come to Rs.4,50,000/- (Rs.37,500/- X 12). The deduction towards the personal expenses of the deceased has been clearly laid down in the decision of the Hon'ble Apex Court in **Pranay Sethi** (supra). In the instant case, the Tribunal erred by wrongly deducting 1/4th of the income when it ought to have deducted 1/3rd towards the personal expenditure of the deceased, in terms of **Pranay Sethi** (supra), since petitioner Nos.2 and 4 are the married daughters of the deceased and they are not dependants on the income of the deceased. The dependants are two in number. Hence, the deduction towards the personal expenditure of the deceased is liable to be fixed at 1/3rd of the deceased's income. Accordingly, 1/3rd of the annual income is deducted which comes to Rs. 3,00,000/- (Rs.4,50,000 -Rs.1,50,000/-). As per the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport**

² 2017 (16) SCC 680.

Corporation³, the appropriate multiplier applicable for the deceased's age is '13', as the deceased was aged 47 years at the time of the accident. Adopting a multiplier of 13, the total loss of dependency comes to **Rs.39,00,000/-** (Rs.3,00,000/- X 13).

19. As per **Pranay Sethi** (supra), petitioner No.1 is entitled to a sum of Rs.48,400/- (Rs.40,000/- +10%+10%) towards loss of spousal consortium. The petitioner Nos.1 and 3 are also entitled to a sum of Rs. 36,300/- (Rs.15,000/- + Rs. 15,000/- + 10% + 10%) towards loss of estate and funeral expenses. The Tribunal granted an amount of Rs.15,000/- towards transport expenses, which is on the higher side, and therefore, the same is reduced to Rs.10,000/- instead of Rs.15,000/-.

20. Therefore, the order dated 18.02.2019 passed by the Tribunal in M.V.O.P.No.1042 of 2017 is modified as follows:-

S.No.	Particulars	Amount
1.	Loss of dependency	Rs.39,00,000/-
2.	Loss of Spousal Consortium (Rs.40,000/- +10%+10%)	Rs.48,400/-
3.	Loss of Estate and Funeral Expenses (Rs.15,000/-+Rs.15,000/- +10%+10%)	Rs.36,300/-

³ 2009 ACJ 1298 (SC)

4.	Transport Expenses	Rs.10,000/-
	Total Compensation	Rs.39,94,700/-

20. The Tribunal awarded the rate of interest at 9% per annum, which is excessive and this Court grants interest at the rate of 7.5% per annum.

21. In the result, this M.A.C.M.A. is partly allowed and the compensation amount awarded by the Tribunal is reduced from Rs.59,30,000/- to **Rs.39,94,700/-** (Rupees Thirty Nine Lakh Ninety Four Thousand Seven Hundred only) with interest @ 7.5 % p.a. from the date of petition till the date of realization. The said compensation amount is to be apportioned in the following manner:

1st petitioner: Rs.31,15,866/- (Rupees Thirty One Lakh Fifteen Thousand Eight Hundred Sixty Six only)

3rd petitioner: Rs.8,78,834/- (Rupees Eight Lakh Seventy Eight Thousand Eight Hundred Thirty Four only)

Respondent Nos. 1 to 3 are directed to deposit the said amount with costs and interest, after giving due credit to the amount already deposited, if any, within a period of two months from the date of receipt of a copy of this judgment. On such deposit, Petitioner Nos.1 and 3 are permitted to withdraw the said amount in the manner as indicated above. Insofar as the claim petition in respect of Petitioner

Nos.2 and 4 is concerned, the same is liable to be dismissed, and it is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any are pending, shall stand closed.

SUJOY PAUL, J

NAMAVARAPU RAJESHWAR RAO, J

June 2024

Prv