

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

CIVIL REVISION PETITION Nos. 445, 461 and 488 of 2023

1. CRP No.445 of 2023

Between:

Pasanaboina Nagaraju and another

...Petitioners

AND

1. Smt.Nannepangu Krishnamma @ Kistamma and four others

...Respondents

2. CRP No.461 OF 2023

Between:

Pasanaboina Nagaraju and another

...Petitioners

AND

1. Manda Yakobu and others

...Respondents

3. CRP No.488 OF 2023

Between:

Pasanaboina Nagaraju and another

...Petitioners

AND

1. Nannepangu Papa Rao and others

...Respondents

COMMON JUDGMENT PRONOUNCED ON: 19.08.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment : Yes/No
may be marked to Law
Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of
judgment

JUSTICE K.SARATH

THE HON'BLE SRI JUSTICE K.SARATH**+CRP NO.445 OF 2023**

%Dated 19.08.2023

Pasanaboina Nagaraju and another

...Petitioners**and**

1. \$ Nannepangu Krishnamam and others

...Respondents**+CRP NO.461 OF 2023**

Pasanaboina Nagaraju and another

...Petitioners**and**

1 \$ Manda Yakobu and others

...Respondents**+CRP No.488 of 2023**

Pasanaboina Nagaraju and another

Petitioners**and**

1. \$ Nannepangu Papa Rao and others

...Respondents! Counsel for Petitioners in all the : Sri P.Nagendra Reddy
Civil Revision Petitions

^ Counsel for Respondents/claimants: Ms.Annapurna Sreeram

< GIST :**> HEAD NOTE :***? Cases referred :*

1. (2011) 6 SCC 425
2. (2019) 12 SCC 395
3. 2017 SCC Online 1504
4. (2015) 9 SCC 273

THE HON'BLE SRI JUSTICE K.SARATH**CIVIL REVISION PETITION Nos.445, 461 & 488 of 2023****COMMON ORDER:**

Heard the Learned Counsel appearing for the petitioners and the Learned Counsel for the respondents/claimants.

2. In all the Civil Revision Petitions, the petitioners are one and the same and since all the MVOPs filed by the respective claimants in the same Court arose out of one and the same accident, all the petitions were heard together and are being disposed of by way of this common Order.

3. These Civil Revision Petitions are filed against the Orders dated 12.12.2022 passed in I.A.No.54 of 2019 in MVOP No.143 of 2017, I.A.No.56 of 2019 in MVOP No.170 of 2017 and I.A.No.58 of 2019 in MVOP No.172 of 2017 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nalgonda.

4. The learned Counsel for the petitioners submits that the respondents/claimants herein filed claim petitions claiming compensation of Rs.5,00,000/- each on account of death of their respective sons in a motor vehicle accident against drivers and owners of the offending vehicles i.e. Tipper bearing No.AP-26-TU-0123 and Tanker Lorry bearing No.AP-16-TE-4189 in MVOP Nos.143 of 2017, 170 of 2017 and 172 of 2017 on the file of Chairman, MACT-cum-II Additonal District Judge, Nalgonda.

5. The learned Counsel for the petitioners further submits that the revision petitioners, who are the driver and owner of the Tipper bearing No.AP-16-TU-0123 respectively filed I.A.No.54 in MVOP No. 143 of 2017, I.A.No.56 of 2019 in MVOP No.170 of 2017 and I.A.No.58 of 2019 in MVOP No.172 of 2017 on the file of Chairman, MACT-cum-II Additonal District Judge, Nalgonda, for impleadment of the owner of the Motor

Cycle bearing No.AP-24-M-1306 i.e. Respondent No.5 herein, on which the deceased-sons of the claimants, who were minors, travelled on the said bike and the rider of the motor cycle was not having driving license and therefore the owner of the bike is also liable to pay the compensation. The Court below dismissed the said petitions and therefore, the petitioners filed the present revision petitions.

6. The learned Counsel for the petitioners further submits that the material on record clearly discloses that the deceased were minors and they all travelled on a bike and such minors were not having driving license and therefore owner of the bike is also liable to pay compensation. Since the claim petitions are filed for grant of compensation against the petitioners and the bike owner is also liable to pay compensation, but he was not made as one of the respondents in the

said MVOPs. The Court below without taking into the contention raised by the petitioners dismissed the petitions filed for impleadment of the proposed respondent as respondent No.6 in the MVOPs.

7. The learned Counsel for the petitioners further submits that the impugned Orders are contrary to the principles laid down by the Hon'ble Supreme Court that, if the driver did not have driving license at all, the liability to make payment of compensation fell on the owner, since it was his obligation to take adequate care to see that the driver had an appropriate licence to drive the vehicle and in view of the same the impugned order is liable to be set aside and the proposed respondent has to be impleaded as respondent No.6 in the MVOPs and requested to allow the Civil Revision Petitions.

8. The learned Counsel for the petitioners in support of his contention placed reliance on the following Judgment:

1. Jawahar Singh Vs., Bala Jain and others¹

9. On the other hand the learned Counsel for the respondents/claimants submits that the Court below rightly dismissed the Interlocutory Applications filed by the petitioners as the accident occurred due to rash and negligence on the part of the drivers of the Tipper and Tanker Bearing No.AP-16-TU-0123 and AP-16-TE-4189 respectively and it is settled law that when more than one vehicles were involved in the accident, the claimants have got an option to proceed against all of them or any one of them and it is not necessary to file claim petition against all the tortfeasors and there are no merits in the petition and requested to dismiss the Civil Revision Petitions.

¹ (2011) 6 SCC 425

10. The learned Counsel appearing for the respondent/claimants in support of her contention relied on the following Judgments:

- 1. Shivaji and another Vs., Divisional Manager, United India Insurance Company Ltd., ²**
- 2. United India Insurance Company ltd., Vs., Sunil Kumar and another ³**
- 3. Khenyei Vs., New India Assurance Co., Ltd., and others⁴**

11. After hearing both sides this Court is of the considered view that the petitioners herein are the driver and owner of the Tipper bearing No.AP-16-TU-0123 and the respondents/claimants herein filed separate claim petitions on the file of Chairman, MACT-cum-II Additional District Judge, Nalgonda and the petitioners herein filed Interlocutory Applications in said claim petitions for impleading the proposed respondent as respondent No.6, who is the owner of

² (2019) 12 SCC 395

³ 2017 SCC Online 1504

⁴ (2015) 9 SCC 273

the motor cycle bearing No.AP-24-M-1306 on the ground that he is also liable to pay compensation to the families of the deceased.

12. The Court below after hearing both sides and relying on the Judgments of the Hon'ble Supreme Court dismissed the said Interlocutory Applications filed by the petitioners herein and held that since the claim petitions are filed under Section 163-A of the Motor Vehicles Act and the claimants need not prove the negligence on the part of the drivers/owners of the vehicles involved in the accident, as such merely because the proposed respondent No.6, who is the owner of the motor cycle, is not made as one of the respondents, it cannot be said that the proposed respondent No.6 is also necessary party for better adjudication of the claim petitions.

13. The respondent/claimants herein filed claim petitions before the Court below under Section 163-A of the Motor Vehicles Act. Section 163-A of the said Act reads as follows:

163-A. Special provisions as to payment of compensation on structured formula basis.—

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

14. The Judgment relied on by the learned Counsel for the petitioners in **Jawahar Singh Vs. Balajain and others (supra 1)** do not apply to the instant case, as the said decision is with regard to the liability of the

owner of the vehicle on which the rider of the motor cycle at the time of accident was minor. The facts in the present case are different and the point for consideration in the instant case is whether all the owners of the vehicles involved in the accident are to be impleaded in MVOP.

15. The Judgments relied on by the learned Counsel for the respondents/claimants squarely apply to the facts of the instant case.

i) In ***Shivaji and another Vs. The Divisional Manager, United India Insurance Company Ltd.,(supra 2)***, the Hon'ble Supreme Court of India held as follows:

5. The issue which arises before us is no longer res integra and is covered by a recent judgment of three judges of this Court in United India Insurance Co. Ltd. v. Sunil Kumar & Anr.,¹ wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision,

which is “final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time”. The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163A of the Act, it would “bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self- contradictory but also defeat the very legislative intention”. Consequently, it was held that in a proceeding under Section 163A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation.

ii) The Hon’ble Supreme Court of India in ***United India Insurance Company Ltd., Vs., Sunil Kumar and another (supra 3)***, the Hon’ble Supreme Court of India, held as follows:

“8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to

be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention”.

iii) In ***Khenyei Vs New India Assurance Company Ltd., (supra 4)*** the Hon’ble Supreme Court framed guidelines in similar cases and the same is as follows:

“18. xxx xxx

What emerges from the aforesaid discussion is as follows :

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation as liability of joint tort feasons is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feasons vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

iii) In case all the joint tort feasons have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasons is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feason can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasons. In such a case, impleaded joint tort feason should be left, in case he so desires, to sue the other joint tort feason in independent proceedings after passing of the decree or award”

16. In the light of the principles laid down by the Hon’ble Supreme Court in the above Judgments, the petitioners can sue in independent proceedings after passing of Decree or Award in MVOP and the impugned Orders dated 12.12.2022 passed by the

Court below in I.A.No.54 of 2019 in MVOP No.143 of 2017, I.A.No.56 of 2019 in MVOP No.170 of 2017 and I.A.No.58 of 2019 in MVOP No.172 of 2017 needs no interference by this Court and accordingly the Civil Revision Petitions are liable to be dismissed.

17. In view of the above findings, all the three Civil Revision Petitions are dismissed.

18. Miscellaneous petitions, pending if any, in all the Civil Revision Petitions shall stand closed. There shall be no order as to costs.

JUSTICE K.SARATH

Date:19.08.2023

Note:

LR copy to be marked

trr