IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

****

C.M.A.No. 1583 of 2004

Between:

The United India Insurance Company Limited,
Represented by its Divisional Manager,
Brindavanam, Nellore. ... Appellant/Respondent No.2

And

1. Gandavarapu Rathnamma (died)
.... Respondent/Petitioner
2. G.Muneendra, S/o.Venkataramaiah, Hindu,
Residing at 26-1-1397, Chandramouli Nagar,
Vedaypalem, Nellore.
... Respondent/Respondent No.1
3. Gandavarapu Kamalamma,
W/o.Late Ramana Reddy, Hindu, Aged about 66 years,
R/o.Inanadugu Village, Kovur Mandal,
Nellore District.
4. Gandavarapu Durga Prasad,
S/o.Late Ramana Reddy, Hindu, Aged about 36 years,
R/o.Inanadugu Village, Kovur Mandal,
Nellore District.
5. Gandavarapu Aruna,
W/o.Maneedra, D/o.Late Ramana Reddy,
Hindu, Aged about 43 years,
R/o.Inanadugu Village, Kovur Mandal,
Nellore District.
6. Kangala Vijaya Lakshmi,
W/o.Venkatesh, D/o.Late Ramana Reddy,
Hindu, Aged about 39 years,
R/o.Inanadugu Village, Kovur Mandal,
Nellore District.
7. Gandavarapu Siva Krishna,
S/o.Late Ramana Reddy, Hindu, aged about 33 years,
R/o.Inanadugu Village, Kovur Mandal,
Nellore District.

.... Respondents/L.Rs of Respondent No.1

(Respondents 3 to 7 are brought on record as Legal Representatives of deceased 1st respondent as per the order dated 23.11.2021 in I.A.No.3 of 2021)

DATE OF JUDGMENT PRONOUNCED**: 15.06.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes/No

3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

DUPPALA VENKATA RAMANA, J

*** THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

+ M.A.C.M.A.No.1583 of 2004

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(Respondents 3 to 7 are brought on record as Legal Representatives of deceased 1st respondent as per the order dated 23.11.2021 in I.A.No.3 of 2021)

! Counsel for Appellant **:** Smt.S.A.V.Ratnam

^ Counsel for Respondents 3 to 7 **:** Smt. M.Suguna

< Gist:

> Head Note:

? Cases referred:

1. 2010 ACJ 1687
2. 2012 SCC Online Del 2442 = 2014 ACJ 1540

This Court made the following:

HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

C.M.A.No.1583 of 2004

JUDGMENT:

This appeal under Section 173 of the Motor Vehicles Act (for short "the Act") has been preferred by the appellant-United India Insurance Company Limited, challenging the Award dated 16.03.2004, in O.P.No.14 of 2001 delivered by the Motor Accidents Claims Tribunal-cum-District Judge, Nellore (for short "the Tribunal"), granting compensation of Rs.30,000/- along with interest @ 9% per annum, from the date of the petition till the date of realization, to the petitioner-injured against the 1st & 2nd respondents jointly and severally, on account of the injuries sustained by the injured in a road traffic accident that occurred at P.S.R. bus stand, Nellore Town.

2. For the sake of convenience, the parties are referred to as they are arrayed before the Tribunal.

3. Following note-worthy facts emerge from the record of appeal:

a) On 21.06.2000 at about 11.00 a.m., while the petitioner was proceeding to a flower stall after getting down the bus at P.S.R. bus stand, Nellore, a Car bearing No.AP 03 V 404 owned by the 1st respondent and insured with the 2nd respondent, being

driven by its driver in a rash and negligent manner, dashed her behind as a result, she fell on the ground and the wheels of the Car ran over her right foot causing crush injury. The petitioner was shifted to Government Head Quarters Hospital, Nellore and from there to a private hospital for treatment. Due to the said crush injury, she became partially disabled. A complaint was lodged by the injured with the jurisdictional Police Station, Nellore, alleging that the accident took place as a result of rash and negligent driving of the driver of the offending vehicle bearing No.AP 03 V 404 and the same was registered as a case in Crime No.34 of 2000 for the offence under Section 338 IPC and issued FIR. After completion of the investigation of the case, a charge sheet was submitted by the Police against the accused-driver for having committed an offence punishable under Section 338 IPC before the learned II Additional Judicial Magistrate of First Class, Nellore. The claimant-Gandavarapu Rathnamma filed an application claiming compensation of a sum of Rs.50,000/-, on account of the injuries sustained by her in the said road traffic accident, against the respondents 1 and 2.

b) The 1st respondent, who is the owner of the offending vehicle, did not contest the matter.

c) The 2nd respondent-Insurance Company filed a counter denying the nature of the accident, age, income and avocation of the petitioner, coverage of the insurance policy and also medical expenses incurred and the nature of the injuries sustained by the petitioner and contending *inter alia* that the compensation claimed by the petitioner is too high and excessive. Therefore, it is prayed to dismiss the petition.

d) Based on the above pleadings, the Tribunal framed the following issues:

1) *Whether the alleged accident occurred due to the rash and negligent driving of the vehicle bearing registration No.AP 03 V 404 by its driver?*

2) *Whether the petitioner is entitled to compensation and if so, to what amount and from which of the respondents?*

3) *To what relief?*

e) During the trial, in order to establish her claim, the injured-claimant was examined herself as P.W.1 and got marked Exs.A.1 to A.3 i.e., Attested Xerox copies FIR, charge sheet and Wound Certificate of the petitioner. The owner-insured (1st respondent) of the offending vehicle neither led any evidence nor marked any documents. No evidence was adduced on behalf of the 2nd respondent. Ex.B.1-Insurance Policy was marked by the consent of Respondent No.2 before the Tribunal.

f) The Tribunal, after analyzing the entire evidence of P.W.1 and Exs.A.1 to A.3, and Ex.B1, came to the conclusion that the accident occurred due to the rash and negligent driving of the offending vehicle (Car) bearing No.AP 03 V 404 by its driver and passed the impugned Award granting compensation of Rs.30,000/- with interest at 9% per annum and with proportionate costs against the 1st and 2nd respondents jointly and severally, from the date of petition till the date of realization.

g) On appreciation of evidence, the following compensation was awarded by the Tribunal.

S.No.	**Heads of compensation**	**Amount of compensation awarded in Rs.**
1	Pain and Suffering	20,000/-
2	Medical expenses, Transport expenses, extra nourishment and damage to clothing etc.	5,000/-
3	Loss of past earnings	5,000/-
	Total	**30,000/-**

(h) Aggrieved by the said award, the M/s.United India Insurance Company Limited, preferred the present appeal.

(i) During the pendency of the appeal, claimant/injured/R.1 died and the legal representatives of the injured were brought on record as respondents 3 to 7 in the appeal, as per the orders of this Court dated 23.11.2021.

4. Learned standing counsel for the appellant-Insurance Company would submit that the insurance policy which has been issued in the name of the owner of the offending vehicle (1st respondent-R.C.holder) is started to commence from 5.10 p.m., on 22.06.2000 and being in operation till 21.06.2001. Since the accident occurred at 11.00 a.m., on 21.06.2000, the policy had not come into effect. Therefore, the Insurance Company is not liable to pay compensation under the terms and conditions of the said policy.

5. Learned counsel for the respondents 3 to 7 (L.Rs of claimant/injured) would submit that, none were examined on behalf of the Insurance Company about the existence of the Insurance Policy by the time of the accident. Further, he would submit that the insurance policy of the offending vehicle was in force from 22.06.1999 to 21.06.2000 midnight. Therefore, an inference can be drawn that the insurance coverage is effective from the previous midnight. Like such an accident, which took place on the date of premium paid, the insurer is liable to pay the compensation. Further, argued that the amount of compensation awarded by the learned Tribunal was absolutely not justified which called for interference in appeal.

6. In the light of the above rival arguments, the points for determination in this appeal are:

> *"1. Whether the compensation awarded by the Tribunal is just and reasonable, in the facts and circumstances of the case* ***or*** *requires enhancement?*
> *2. Whether the risk of the insurer will commence from the time of acceptance of premium or whether it commences from the date of issue of the policy/cover note?"*

POINT Nos.1 & 2:

7. A perusal of the impugned award would show that the Tribunal has framed Issue No.1 as to whether the accident had occurred due to the rash and negligent driving of the vehicle by its driver to which the Tribunal, after considering the evidence of P.W.1 coupled with the documentary evidence, has categorically observed that the accident has occurred due to the rash and negligent driving of the offending vehicle (Car) bearing No.AP 03 V 404 and answered in favour of the claimant/injured and against the respondents. Therefore, there is no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle (Car) bearing No.AP 03 V 404.

8. Insofar as the quantum of compensation is concerned, a perusal of the material on record would show that, as per Ex.A.3-Attested copy of the Wound Certificate, the injured had

sustained a crush injury on her right foot and the said injury is grievous in nature. The Doctor, who treated the injured and issued Ex.A.3/Wound Certificate, was not examined and the disability certificate was not filed, it can be safely concluded that as per Ex.A.3/Wound Certificate the injured sustained grievous injury on her right foot.

9. Coming to the aspect of liability of payment of compensation, there was no dispute that the driver of the offending vehicle (Car) bearing No.AP 03 V 404 was not possessing a valid driving licence at the time of the accident. None were examined either from the Insurance Company or from the R.T.O to prove that by the time of the accident, the offending vehicle was not covered by the Insurance Policy. However, the counsel for the 2nd respondent-Insurance Company argued that the accident occurred at 11.00 a.m., on 21.06.2000 and the policy came into force at 5.10 p.m., on 22.06.2000, therefore, the Insurance Company is not liable to pay the compensation as the policy was not existing on the date of the accident. A bare perusal, Ex.B.1-Policy was very much in force at the time of the accident, since the insured paid the premium to the insurer to renew the insurance policy on the date of the accident i.e., on 21.06.2000.

10. In a decision reported in **National Insurance Company Limited & Others Vs. Bhadramma & Others,**[1] High Court of Karnataka at Para 14 it was held as follows:

> *"14. In the instant case the receipt at Ex.R.1 does not mention the time of payment of premium. It. is submitted that the office practice of the insurer is to receive the premium from 10.00 a.m. to 3.00 p.m. which almost corresponds the banking hours. The accident has occurred at 11.15 a.m. The office has commenced at 10.00 a.m. There is no material to show exactly at what point of time the premium was remitted and received. Therefore, it is not established that the premium is paid subsequent to the accident Hence, the ratio laid down in Sunitha Rati' s case would apply to the case and it is to be inferred that the policy is effective from the mid night o 13.7.1994. In view of the reasons and discussions made above, we hold that the finding of the tribunal that the insurer is liable to pay compensation is sound and proper."*

11. In the light of the above said decision, in the present case, it is clear that the insurance premium (by way of cash) was paid by the owner of the offending vehicle (insured) prior to the accident i.e., on 21.06.2000, which is mentioned in the relevant column of Ex.B.1/Policy. It is rather unfortunate that the accident occurred immediately thereafter with an hours difference. But, once the insured paid the premium and availed

[1] 2010 ACJ 1687

insurance policy, the said insured would be under the good impression that the policy came into effect immediately since the payment has been accepted by the Insurance Company. There is no evidence on record to indicate that the person collecting the premium on behalf of the insurance company had informed the person availing of the insurance policy that the policy would not come into operation until a particular date nor was there any request or instructions issued by the insurer collecting the premium that the vehicle should not be plied until the date. In the absence thereof, this Court is of the considered opinion that the Insurance Company cannot evade its liability by contending that, though the premium was received prior to the accident, Ex.B.1/Policy prescribes a different time and date (at 5.10 p.m., on 22.06.2000) from which the coverage comes into operation. This aspect is no longer *res integra*. The Division Bench of the Karnataka High Court, in *Bhadramma's* case (supra) has held that in terms of Section 64-VB of the Insurance Act, the risk of the Insurance Company would commence from the date of receipt of the premium.

12. At this juncture, it is relevant to refer to Section 64-VB of the Insurance Act.

> ***"No risk to be assumed unless premium is received in advance.***
>
> ***64VB.*** *(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.*
>
> *(2) .....*
>
> *(3) .....*
>
> *(4) .....*
>
> *(5) .....*

13. In the light of the principles laid down in the above judgment and the provision of the Insurance Act, there is no material on record to show exactly at what point of time the premium was remitted by the insured and received by the insurer. Therefore, it is not established that the premium is paid subsequent to the accident and it is to be inferred that the policy was in force till the midnight of 21.06.2000. The premium was paid by the insured to renew the policy on 21.06.2000, as per the practice in vogue to receive the premium from 10.00 a.m., to 3.00 p.m. Under such circumstances, the Insurance Company cannot escape from its liability and therefore, the argument advanced by the learned counsel for the Insurer has no force.

14. In so far as the injury sustained by the injured is concerned, the Tribunal has considered the evidence on record and came to a conclusion that the claimant/injured was aged between 50 to 60 years. Admittedly, the claimant sustained a crush injury on her right foot. The Tribunal awarded meager compensation of Rs.30,000/- under the heads of pain & suffering, medical expenses, extra-nourishment and transportation etc. Though the claimant/injured has not enclosed any medical bills with the claim petition, yet, it can be fathomed that the amount awarded by the Tribunal in this regard, cannot be said to be, in any, away excessive or unjust.

15. The present appeal is filed by the appellant/Insurance Company challenging its liability to pay the compensation. The injured did not prefer any appeal/cross-objections to enhance the compensation awarded by the Tribunal. However, the provisions of the Motor Vehicles Act are benevolent in nature and even in the absence of filing of any cross-appeal/cross-objections, taking into consideration, the gravity of the injuries sustained by the injured, the appellate Court has the power to enhance the compensation. Now it is relevant to refer to the decision of the High Court of Delhi in **National Insurance**

Company Limited Vs. Komal and others[2] wherein, it is crystal clear that under Order XLI Rule 33 CPC, the Appellate Court has the power to enhance the compensation even in the absence of any Cross Objections. Para No.12 of the decision reads as follows:

> *"12. Section 168 of the Motor Vehicles Act, 1988 empowers the Court to award such compensation as appears to be just which has been interpreted to mean just in accordance with law and it can be more than the amount claimed by the claimants. The provisions of the Motor Vehicles Act, 1988 are clearly a beneficial legislation and hence should be interpreted in a way to enable the Court to assess just compensation. The scope of Order XLI Rule 33 of the Code of Civil Procedure and the power of the High Court to enhance the award amount in accident cases in the absence of cross- objections has been discussed by the Supreme Court in Nagappa v. Gurudayal Singh, AIR 2003 SC 674 where the Apex Court has held that the Court is required to determine just compensation and there is no other limitation or restriction for awarding such compensation and in appropriate cases wherefrom the evidence brought on record if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award and would empower the Court to enhance the compensation at the appellate stage even without the injured filing an appeal or cross-objections."*

16. Under the above provisions of the Motor Vehicles Act, 1988, there is no restriction that the compensation could be

[2] 2012 SCC Online Del 2442 = 2014 ACJ 1540

awarded only upto the amount claimed by the claimants. In an appropriate case, where from the evidence brought on record, if the Tribunal/Court considers, the claimant is entitled to get more compensation than the claimed. Following the guidelines in the decisions supra, this Court is of the view that the claimant/injured is entitled to enhance the compensation at the appellate stage even without the filing an appeal or cross-objections.

17. In the instant case, the claimant/injured, who is a labourer, is not supposed to be that much of meticulous to maintain the bills for future use. Definitely, she might have spent huge amounts to recover from the crush injury. Therefore, this Court opined that the claimant is entitled to enhancement of compensation under the following heads.

S.No.	**Head of Compensation**	**Amount**
1	Pain & Suffering	Rs.30,000/-
2	Medical Expenses & Grievous Injury	Rs.35,000/-
3	Transport Expenses	Rs. 5,000/-
4	Extra-Nourishment	Rs.10,000/-
5	Damage to clothing	Rs. 5,000/-
3	Loss of past earnings	Rs.15,000/-
	Total	**Rs.1,00,000/-**
	(-)Compensation awarded by the Tribunal	Rs.30,000/-
	Enhanced Compensation	Rs.70,000/-

18. Having regard to the facts and circumstances of the case and in view of the law laid down by the Courts, this Court is of the opinion that the award passed by the Tribunal warrants interference and needs to be enhanced and thereby, enhanced the compensation from Rs.30,000/- to Rs.1,00,000/-.

19. Viewed thus, there is no merit in the present appeal, and the same is hereby dismissed, enhancing the compensation awarded by the Tribunal from Rs.30,000/- to Rs.1,00,000/- with costs and interest at 9% per annum from the date of the petition till the date of realization against the Respondents 1 to 2 jointly and severally.

(ii) Respondents are directed to deposit the compensation amount, within a period of two months from the date of this judgment, failing which execution can be taken out against them.

(iii) The Legal Representatives of the claimant/injured are directed to pay the requisite Court-fee in respect of the enhanced amount awarded over and above the compensation claimed.

(iv) The Legal Representatives of the claimant/injured shall be entitled to share the compensation equally and are permitted to withdraw the entire amount with accrued interest.

(v) The impugned award of the learned Tribunal stands modified to the aforesaid extent and in the terms and directions as above.

As a sequel, interlocutory applications pending for consideration, if any, shall stand closed.

JUSTICE DUPPALA VENKATA RAMANA

15.06.2023
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HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

C.M.A.No.1583 OF 2004

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