



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 49 OF 2017

Between:

1. G.SAROJINI & 4 ORS W/o.late Krishna, Occ: Housewife
R/o.DIET Colony, Nellimarla (V) & (M),
Viziangaram District.
2. G.Aswini D/o.late Krishna, Occ: Student
R/o.DIET Colony, Nellimarla (V) & (M),
Viziangaram District.
3. G.Bhavani D/o.late Krishna, Occ: Student
R/o.DIET Colony, Nellimarla (V) & (M),
Viziangaram District.
(Petitioners 2 and 3 bring minors rep by their natural guardian and Mother
1st petitioner)
4. G.Thoudu S/o.Thatayya, Hindu
R/o.DIET Colony, Nellimarla (V) & (M),
Viziangaram District.
5. G.Pentamma W/o.G.Thoudu, Hindu, Occ: Housewife
R/o.DIET Colony, Nellimarla (V) & (M),
Viziangaram District.

...PETITIONER(S)

AND:

1. GUMMIDI APPANNA & 2 ORS S/o.Appala Swamy, Hindu
Occ: Driver of Tractor & Traller No.AP35 W 4877 & 9894
R/o.Penubarthi (V), Gurla (M),
Vizianagaram District.
6. K.Srinivasa Rao S/o.Appala Naidu, Hindu
Owner of Tractor & Traller No.AP35 W 4877 & 9894
R/o.D.No.436, BC Colony,
Gurla (V) & (M), Viziangaram District.
7. Reliance General Insurance Company Ltd rep by its Manager
O/o.Visakhapaynam.

...RESPONDENTS

Counsel for the Petitioner(s): V HEMANTH KUMAR

Counsel for the Respondents: N MOHAN KRISHNA

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

M.A.C.M.A.No.49 OF 2017

Between:

1. G.Sarojini, W/o.Late Krishna,
Hindu, Aged 28 years, House wife,
R/o.DIET Colony, Nellimerla Village & Mandal,
Vizianagaram District.
2. G.Aswini, D/o.Late Krishna,
Hindu, Aged 11 years, Student,
R/o.DIET Colony, Nellimerla Village & Mandal,
Vizianagaram District.
3. G.Bhavani, D/o.Late Krishna,
Hindu, Aged 9 years, Student,
R/o.DIET Colony, Nellimerla Village & Mandal,
Vizianagaram District.

(Appellants 2 and 3 are being minors,
Rep. by their mother and natural guardian
1st Appellant G.Sarojini).

4. G.Thoudu, S/o.Thatayya,
Hindu, Aged 55 years,
R/o.DIET Colony, Nellimerla Village & Mandal,
Vizianagaram District.
5. G.Pentamma, W/o.G.Thoudu,
Hindu, Aged 53 years, House wife,
R/o.DIET Colony, Nellimerla Village & Mandal,
Vizianagaram District.

....Appellants/ Claim Petitioners

Versus



1. Gummidi Appanna, S/o.Appala Swamy,
Hindu, Aged 31 years,
Driver of Tractor & Trailer AP 35 W 4877 & 9894,
R/o.Penubarthi Village, Gurla Mandal,
Vizianagaram District.
2. K.Srinivasa Rao, S/o.Appala Naidu,
Hindu, Aged 47 years,
Onwer of Tractor & Trailer AP 35 W 4877 & 9894,
R/o.D.No.4-36, B.C.Colony, Gurla Village & Mandal,
Vizianagaram District.
3. Reliance General Insurance Company Limited,
Rep. by its Manager, Visakhapatnam.

....Respondents/Respondents

DATE OF JUDGMENT PRONOUNCED : 04.11.2022

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

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

B.V.L.N.CHAKRAVARTHI, J



HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

+ M.A.C.M.A.No.49 OF 2017

% 04.11.2022

Between:

1. G.Sarojini, W/o.Late Krishna,
Hindu, Aged 28 years, House wife,
R/o.DIET Colony, Nellimerla Village & Mandal,
Vizianagaram District.
2. G.Aswini, D/o.Late Krishna,
Hindu, Aged 11 years, Student,
R/o.DIET Colony, Nellimerla Village & Mandal,
Vizianagaram District.
3. G.Bhavani, D/o.Late Krishna,
Hindu, Aged 9 years, Student,
R/o.DIET Colony, Nellimerla Village & Mandal,
Vizianagaram District.

(Appellants 2 and 3 are being minors,
Rep. by their mother and natural guardian
1st Appellant G.Sarojini).

4. G.Thoudu, S/o.Thatayya,
Hindu, Aged 55 years,
R/o.DIET Colony, Nellimerla Village & Mandal,
Vizianagaram District.
5. G.Pentamma, W/o.G.Thoudu,
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2. K.Srinivasa Rao, S/o.Appala Naidu,
Hindu, Aged 47 years,
Onwer of Tractor & Trailer AP 35 W 4877 & 9894,
R/o.D.No.4-36, B.C.Colony, Gurla Village & Mandal,
Vizianagaram District.
3. Reliance General Insurance Company Limited,
Rep. by its Manager, Visakhapatnam.
.....Respondents/Respondents.

! Counsel for the Appellants : Sri V.Hemanth Kumar

**^ Counsel for the
3rd Respondent** : Sri V.Sreemannarayana

< Gist:

> Head Note:

? Cases referred:

- 1. 2013 ACJ 1403**
- 2. 2009 ACJ 1298**
- 3. (2017) 16 SCC 680**
- 4. 2018 ACJ 2782**
- 5. 2022 Livelaw (SC) 734**
- 6. (2015) 7 SCC 2154**
- 7. (2011) 14 SC 481**

This Court made the following:



HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

M.A.C.M.A.No.49 OF 2017

JUDGMENT:

This appeal is preferred by the Appellants/claimants, challenging the award dated 30.09.2016 passed in M.V.O.P.No.553/2014 on the file of Motor Accidents Claims Tribunal-cum-Spl.Judge for Trial of Cases under SCs & STs (P.O.A.) Act-cum-Additional District Judge, Vizianagaram, wherein the Tribunal while allowing the petition, awarded compensation of Rs.9,70,000/- with interest @ 9% p.a. from the date of petition, till the date of realisation to the petitioners/claimants, for the death of G.Krishna in a motor vehicle accident.

2. For the sake of convenience, the parties are arrayed as parties in the lower Court.

3. As seen from the record, originally the petitioners filed an application U/s.166 of Motor Vehicles Act, 1988 (for brevity "the Act") claiming compensation of Rs.6,70,000/- on account of the death of G.Krishna, who is the husband of the 1st petitioner, father of petitioners No.2 and 3 and son of petitioners No.4 and 5, in a motor



vehicle accident that occurred on 08.08.2013. The petitioners subsequently enhanced the compensation to Rs.9,70,000/-.

4. The facts show that on 08.08.2013 at about 06.30 p.m., the deceased G.Krishna left his house on a moped to purchase medicines for his daughter, who was suffering from fever, and while he was returning to his house, and reached near railway fly over of Nellimerla village, the 1st respondent, who is the driver of tractor bearing No.P 35W 4877 and trailer bearing No.P35U 9894, drove his tractor and trailer in a rash and negligent manner, at a high speed, while going from Vizianagarm to Nellimerla, dashed against the deceased, as a result, he fell down and sustained grievous injuries and died on the spot. Police of Nellimerla registered a case in Cr.No.107/2013 for the offence punishable U/s.304-A of Indian Penal Code against the 1st respondent. The deceased was working as a mason, earning Rs.200/- per day. The petitioners depended on the earnings of the deceased. Due to death of the deceased, the petitioners lost their bread winner.

5. Before the Tribunal, the 1st respondent/driver of tractor filed a counter denying the material averments of the petition, contending that when his tractor and trailer reached near Nellimerla fly over on the date of accident, he noticed one person coming on a moped from the opposite direction, in the middle of the road, and he blew the horn,



and then the deceased unable to control the speed, dashed against the tractor and trailer, and that there was no negligence on part of the 1st respondent. The 1st respondent was having a valid driving license and the said vehicle was duly insured with the 3rd respondent under a valid policy and if any compensation is payable, it is payable by the 3rd respondent, but not by the respondents No.1 and 2. The 2nd respondent adopted the counter filed by the 1st respondent.

6. The 3rd respondent/Insurance Company filed a written statement, resisting while traversing the material averments with regard to proof of age, avocation, monthly earnings of the deceased, manner of accident, rash and negligence on the part of the driver of the offending vehicle, and liability to pay compensation, and contended that the 1st respondent was not holding a valid and effective driving license and was not qualified to drive the vehicle, which amounts to a breach of terms and conditions of the policy. The 3rd respondent was not supplied with the required documents and particulars of the accident either by the owner or by the police, which amounts to a breach of terms and conditions of the policy and statutory violations. The claim of the petitioners is high, exorbitant, including interest.

7. On the strength of the pleadings of both parties, the Tribunal framed the following issues:



1. Whether the driver of the moped or the 1st respondent drove the offending vehicle i.e., tractor and trailer No.AP 35W 4877 & AP35U 9894 in a rash and negligent manner or whether both of them contributed for the accident?

2. Whether the petitioners are entitled to compensation? If so, which respondents are liable to pay the compensation amount?

3. To what relief?

8. To substantiate their claim, the petitioners examined P.Ws-1 and 2 and got marked Exs.A-1 to A-4. On behalf of the respondents, no oral evidence is adduced, but Ex.B-1 copy of insurance policy was marked by consent.

9. The Tribunal, taking into consideration the evidence of P.Ws-1 and 2, coupled with Exs.A-1 to A-4, held that the accident took place due to the rash and negligent driving of the driver of the tractor and trailer, and further, taking into consideration the evidence of P.Ws-1 and 2 corroborated by Exs.A-1 to A-4, awarded a compensation of Rs.9,70,000/- with interest @ 9% p.a. from the date of petition, till the date of realisation.

10. The plea of the 3rd respondent/Insurance Company is that the 1st respondent was not holding a valid and effective driving license and



not qualified to drive the vehicle, which amounts to a breach of the terms and conditions of the policy.

11. The Tribunal considered the evidence on record, and based on the contentions of both parties, held that the accident occurred due to the rash and negligent driving of the 1st respondent/driver.

12. The Tribunal after considering the evidence of P.Ws-1 and 2 coupled with Exs.A-1 to A-4, awarded an amount of Rs.9,18,000/- towards compensation; Rs.25,000/- towards funeral expenses; Rs.1,00,000/- towards loss of consortium; Rs.1,00,000/- towards loss of estate; and Rs.1,00,000/- towards loss of love and affection; total comes to Rs.12,43,000/-, but as the petitioners restricted their claim to Rs.9,70,000/-, the same was granted as compensation.

13. The contention of the appellants/claimants is that, the Tribunal did not consider the judgments of the Hon'ble Apex Court in the case of **Nagappa Vs. Gurudayal reported in AIR 2003 SC 674** and **Ningamma Vs. United India Insurance Company, reported in 2019 (13) SCC 710**, and restricted the claim to the extent claimed by the appellants, though found that they are entitled to more than the amount claimed by them, and therefore, the appellants/claimants are



entitled to just compensation, and their claim shall not be limited to the amount claimed by them before the Tribunal.

14. The appellants/claimants filed the claim petition U/s.166 of M.V.Act1988, claiming a compensation of Rs.9,70,000/- for the death of G.Krishna, who is the husband of the 1st claimant, father of claimants No.2 and 3 and son of claimants No.4 and 5 in the case.

15. The Tribunal after considering the case of the claimants, as well as the Insurance Company, which was permitted to plead U/s.170 of M.V.Act, held that the accident occurred due to the rash and negligent driving of the 1st respondent, who is the driver of the tractor and trailer, and as a result, the deceased died on the spot, and therefore, the owner (2nd respondent) is vicariously liable for the acts of the driver and the Insurance Company (3rd respondent) shall indemnify the same, as Ex.B-1 insurance policy was in force, on the date of accident.

16. The contention of the appellants is that, the deceased was working as a mason and earning Rs.200/- per day, and he was aged 29 years as on the date of accident, as seen from the post mortem certificate, and the Tribunal has applied multiplier 17 as per judgment of Hon'ble Apex Court in the case of **Sarla Verma and another Vs. Delhi Road Transport Corporation and others**. The Tribunal, in its



order held that the claim of the petitioners is that the deceased was earning Rs.200/- per day as mason is not supported by any credible evidence, but the deceased may be earning Rs.4,000/- per month, equivalent to Rs.48,000/- per annum. The Tribunal has applied the principles laid down by the Hon'ble Apex Court in **Rajesh Vs. Rajbhar Singh** and held that as the deceased is below 40 years, 50% is to be added towards future prospectus to arrive at the earnings of the deceased as contributions to his family.

17. The Tribunal added Rs.24,000/- considering his income as Rs.48,000/- per annum and the Tribunal deducted $\frac{1}{4}$ of his income towards his personal expenses, since dependants are more than 5 members and fixed his annual income at Rs.54,000/- and applied multiplier 17 and arrived the compensation amount towards loss of dependency at Rs.9,18,000/-.

18. The Tribunal also held that the claimants are entitled to Rs.25,000/- towards funeral expenses; Rs.1,00,000/- towards loss of consortium to 1st petitioner; Rs.1,00,000/- towards loss of estate and Rs.1,00,000/- towards loss of love and affection, and accordingly arrived at the total amount of compensation as Rs.12,43,000/-, and further held that the victims are entitled to just compensation, but it should be restricted to their claim of Rs.9,70,000/-, as it is quite



reasonable, and therefore, awarded Rs.9,70,000/- against respondents 1 to 3 as they are jointly and severally liable.

19. The Tribunal fixed the income of the deceased as Rs.4,000/- per month and thereby the annual income was fixed at Rs.48,000/- and the Tribunal considered his age as 29 years and added 50% of earnings towards loss of future earnings as per the judgment of the Hon'ble Apex Court in the case of **Rajesh Vs. Rajbhar Singh**¹ and arrived at Rs.48,000 + Rs.24,000 = Rs.72,000/- and deducted 1/4th of the earnings of the deceased as per the Judgment of the Hon'ble Apex Court in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and another**² and arrived at Rs.72,000 – Rs.18,000 = Rs.54,000/- and applied multiplier 17 as per the judgment of the Hon'ble Apex Court in **Sarla Verma's** case, which comes to Rs.9,18,000/-.

20. The Hon'ble Apex Court in the case of **National Insurance Company Limited and Pranay Sethi and others**³, held that in the case of persons having fixed income, loss of future earnings can be considered @ 40%, if the deceased is below the age of 40 years, and

¹ 2013 ACJ 1403

² 2009 ACJ 1298

³ (2017) 16 SCC 680



therefore, the fixation of loss of future earnings @ 50% by the Tribunal has to be modified accordingly.

21. Further, as per judgment of the Hon'ble Apex Court in **Pranay Sethi's case**, funeral expenses can be granted at Rs.15,000/-, loss of consortium at Rs.40,000/-, loss of estate at Rs.15,000/- and the enhancement should be at the rate of 10% in every three years. Therefore, the earnings of the deceased comes to Rs.48,000 + Rs.19,200 = Rs.67,200/- and after deducting 1/4 towards personal expenses, it comes to Rs.67,200 - 16,800 = Rs.50,400/-, and after applying multiplier 17 as per the Judgment of Hon'ble Apex Court in **Sarla Verma's case**, it comes to Rs.50,400 x 17 = Rs.8,56,800/-. After enhancement of 10%, the claimants are entitled to Rs.16,500/- towards funeral expenses; Rs.44,000/- towards loss of consortium to the 1st petitioner; Rs.16,500/- towards loss of estate.

22. The Hon'ble Apex Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others**⁴ held in para 8.7 as follows:

“A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be

⁴ 2018 ACJ 2782



awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, consortium is a compendious term which encompasses spousal consortium, parental consortium, and filial consortium.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relation with the deceased spouse. 3 Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of company, society, co-operation, affection, and aid of the other in every conjugal relation. 4 Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and 3 Rajesh and Ors. vs. Rajbir Singh and Ors. (2013) 9 SCC 54 4 BLACK'S LAW DICTIONARY (5th ed. 1979) family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.



Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count⁵. However, there was no clarity with 5 Rajasthan High Court in Jagmala Ram @ Jagmal Singh & Ors. v. Sohi Ram & Ors 2017 (4) RLW 3368 (Raj);

Uttarakhand High Court in Smt. Rita Rana & Anr. v. Pradeep Kumar & 6 Ors. respect to the principles on which compensation could be awarded on loss of Filial Consortium.



The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under Loss of Consortium as laid down in Pranay Sethi (supra). In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000 each for loss of Filial Consortium.”

23. In the case on hand C-1 is the wife of the deceased, and she is entitled to Rs.40,000/- towards consortium as per the above judgment of the Hon'ble Apex Court, C-2 and C-3 are minor daughters of deceased, and C-4 and C-5 are parents of the deceased. In view of the above judgment of the Hon'ble Apex Court, C-2 and C-3 are also entitled to parental consortium at Rs.40,000/- each and the enhancement should be @ 10% in every three years, as the Hon'ble Apex Court delivered the judgment in **Pranay Sethi's case** on 31-10-2017. Therefore, the claimants are entitled enhancement @ 10% under the heads of loss of estate, loss of consortium and funeral expenses. The total compensation that the claimants are entitled to comes to Rs.8,56,800 + 16,500 + 16,500 + 44,000 + 44,000 + 44,000 = Rs.10,21,800/-. The total compensation claimed by the claimants is Rs.9,70,000/-. The Appellants/claimants are in fact entitled to Rs.10,21,800/- as just compensation, but not



Rs.12,43,000/- as held by the Tribunal in its order. But the claim was made only for Rs.9,70,000/-.

24. The Hon'ble Apex Court in the case of **Mona Baghel and others Vs. Sajjan Singh Yadaav and others**⁵, held that in the matter of compensation, the amount actually due and payable is to be awarded despite the claimants having had sought for a lesser amount and the claim petition being valued at a lesser value. The law is well settled that in the matter of compensation, the amount actually due and payable is to be awarded despite the claimants having had sought for a lesser amount and the claim petition being valued at a lesser value. Therefore, though the claimants sought for a lesser amount, and the claim petition being valued at lesser value for Rs.9,70,000/-, the amount actually due and payable is to be awarded is Rs.10,21,800/-. In that view of the matter, the award passed by the Tribunal is liable to be modified.

25. The Tribunal awarded interest at 9% p.a. from the date of presentation of petition, till the date of deposit. The accident occurred in the year 2013 and the Appellant/Insurance Company without admitting for just, fair and reasonable compensation has been

⁵ 2022 LiveLaw (SC) 734



dragging the matter for the last 9 years. In view of the judgment of the Hon'ble Apex Court in the case of **Jakir Hussein Vs. Sabir**⁶ which referred another judgment of the Hon'ble Apex Court in **Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy**⁷ granted interest @ 9% p.a., and therefore, it is not exorbitant and excessive. In that view of the matter, I do not find any ground to interfere with the rate of interest awarded by the Tribunal at 9% p.a. from the date of petition, till the date of deposit of compensation amount.

26. In the result, the appeal is partly allowed, the impugned order is set aside, and it is held that the appellants/claimants are entitled to a total compensation of Rs.10,21,800/-, with interest @ 9% p.a. from the date of filing of claim petition, till the date of actual payment. There shall be no order as to costs.

The 3rd respondent/Insurance Company is directed to deposit the entire compensation amount of Rs.10,21,800/- along with accrued interest thereon, within one month from the date of judgment.

⁶ (2015) 7 SCC 2154

⁷ (2011) 14 SC 481



On such deposit, the 1st Appellant/1st claimant being the wife of deceased, is entitled to an amount of Rs.5,70,000/- and she is permitted to withdraw Rs.5,70,000/- along with the accrued interest thereon. The Appellants No.2 and 3/claimants No.2 and 3, being the minor daughters of the deceased, are entitled to an amount of Rs.1,50,000/- each, and the said amount of Rs.1,50,000/- each, shall be deposited in any nationalised bank, till the Appellants No.2 and 3 attain majority, and after attaining majority, the Appellants No.2 and 3 are permitted to withdraw Rs.1,50,000/- each along with the accrued interest thereon. The Appellants No.4 and 5/claimants No.4 and 5, being father and mother of the deceased are entitled to an amount of Rs.75,900/- each, and they are permitted to withdraw Rs.75,900/- each, along with the accrued interest thereon. The Appellants/claimants are directed to pay the deficit court fee before the Tribunal as per Rule 475 (2) of A.P.M.V.Rules 1989, within one month from the date of receipt of certified copy of the judgment.

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

B.V.L.N.CHAKRAVARTHI, J

04.11.2022
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HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

M.A.C.M.A.No.49 OF 2017

Note: Mark L.R.Copy.

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4th November, 2022

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