



**HIGH COURT OF ANDHRA PRADESH**  
FRIDAY ,THE TWENTY EIGHTH DAY OF OCTOBER  
TWO THOUSAND AND TWENTY TWO

**PRSENT**

**THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI**

**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 174 OF 2016**

**Between:**

1. K. AMRUTHA & 2 OTHERS W/o. late K.Babu @ Ravindra Babu  
Occ:Housewife
2. Minor P.Gopi S/o. Late K. Babu @ Ravindra Babu,  
Occ;Student  
Rep.by her mother and natural guardian K.Amrutha.
3. Smt. P. Govindamma W/o. Late P. Krishnaiah  
(All are R/o at D.No. 4-1486/1, Masque Street, Greampet, Chittoor Town  
and District.

**...PETITIONER(S)**

**AND:**

1. THE KS RTC, Rep. by its Managing Director,  
Cental Office, Shantinagar, Doubul Road, Bangalore,  
Karnataka State.

**...RESPONDENTS**

**Counsel for the Petitioner(s): B S REDDY**

**Counsel for the Respondents: P VINAYAKA SWAMY**

**The Court made the following: ORDER**



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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**M.A.C.M.A.No.174 OF 2016**

**Between:**

1. K.Amrutha, W/o.Late K.Babu @ Ravindra Babu,  
Hindu, Aged 34 years, House wife.
2. Minor P.Gopi, S/o.Late K.Babu @ Ravindra Babu,  
Hindu, Aged 16 years, Student,  
Rep. By his mother and natural guardian  
K.Amrutha.
3. Smt.P.Govindamma, W/o.Late P.Krishnaiah,  
Hindu, Aged 68 years.

All are residing at D.No.4-1486/1, Masque Street,  
Greampet, Chittoor Town and District).

....Appellants/Petitioners

*Versus*

The KSRTC, Rep.by its Managing Director,  
Central Office, Shantinagar,  
Doubul Road, Bangalore,  
Karnataka State.

....Respondent

DATE OF JUDGMENT PRONOUNCED : 28.10.2022



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

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**B.V.L.N.CHAKRAVARTHI, J**



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

**+ M.A.C.M.A.No.174 OF 2016**

**% 28.10.2022**

**# Between:**

1. K.Amrutha, W/o.Late K.Babu @ Ravindra Babu,  
Hindu, Aged 34 years, House wife.
2. Minor P.Gopi, S/o.Late K.Babu @ Ravindra Babu,  
Hindu, Aged 16 years, Student,  
Rep. By his mother and natural guardian  
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The KSRTC, Rep.by its Managing Director,  
Central Office, Shantinagar,  
Doubul Road, Bangalore,  
Karnataka State.

....Respondent

**! Counsel for the Appellant** : M/s.B.S.Reddy

**^ Counsel for the Respondent** : Sri P.Vinayaka Swamy.



**< Gist:**

**> Head Note:**

**? Cases referred:**

- 1. 2009 ACJ 1298**
- 2. (2017) 16 SCC 680**
- 3. 2018 ACJ 2782**
- 4. 2022 Livelaw (SC) 734**

This Court made the following:



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

**M.A.C.M.A.No.174 OF 2016**

**JUDGMENT:**

This appeal is preferred by the Appellants/claimants, challenging the award dated 21.10.2015 passed in M.V.O.P.No.190/2012 on the file of Motor Accidents Claims Tribunal-cum-I Addl.District Judge, Chittoor, wherein the Tribunal while partly allowing the petition, awarded compensation of Rs.4,71,800/- with interest @ 7.5% p.a. from the date of petition, till the date of realisation to the petitioners/claimants for the death of K.Babu @ Ravindra Babu.

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 (1) © of Motor Vehicles Act, 1988 (for brevity "the Act") claiming compensation of Rs.10,00,000/- on account of the death of K.Babu @ Ravindra Babu, who is the father of the 2<sup>nd</sup> petitioner, husband of the 1<sup>st</sup> petitioner and son of the 3<sup>rd</sup> petitioner, in a motor vehicle accident that occurred on 07.02.2012.



4. The facts show that on 07.02.2012 at about 02.20 p.m. while the deceased K.Babu @ Ravindra Babu was proceeding on his bicycle on Chennai-Bangalore bye pass road, Reddigunta, the driver of KSRTC by name K.Manjunath, drove the bus bearing No.KA01F 9229 from Bangalore side, dashed behind the deceased, as a result, he fell down and sustained severe bleeding injuries, and he was shifted to Govt. Head Quarters Hospital, Chittoor, and while undergoing treatment, he succumbed to injuries at 03.05 p.m. On report, SI of Police, Traffic P.S., Chittoor registered case in Cr.No.16/2012 for the offence punishable U/s.304-A of Indian Penal Code. The accident took place due to the rash and negligent driving of the offending bus driver. The deceased was working as a Senior Mason, and used to construct houses on contract basis by deputing five masons and coolies to various places in and around Chittoor, and he used to get Rs.400/- per day as a mason and Rs.200/- per day as commission, and used to contribute the same to the petitioners for their welfare. The petitioners have no other earning member in the family and the petitioners solely depended on the earnings of the deceased. Due to the death of deceased, the petitioners lost their bread winner, and were put to hardship and mental agony.



5. Before the Tribunal, the respondent/KSRTC filed a counter 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 part of the bus driver of the crime bus, nature of injuries, and liability to pay compensation, and contended that the deceased suddenly came across the bus from right side to left side, and came into contact with the left portion of the bus. The accident occurred only due to the negligence of the deceased, and that there is no negligence on the part of driver of KSRTC Bus, and the claim of the petitioners is excessive.

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

1. Whether the accident in question was caused due to the rash and negligent driving of the driver of KSRTC bus bearing No.KA 01F 9229?
2. Whether the petitioners are entitled to any compensation? If so, to what amount and from whom?
3. To what relief?

7. To substantiate their claim, the petitioners examined P.Ws-1 to 3 and got marked Exs.A-1 to A-5. On behalf of the respondent, the





driver of the KSRTC bus was examined as R.W-1 and got marked Ex.B-1.

8. The Tribunal, taking into consideration the evidence of P.Ws-1 to 3, coupled with Exs.A-1 to A-5, held that the accident took place due to rash and negligent driving of the driver of the KSRTC bus, and further, taking into consideration of the evidence of P.Ws-1 to 3 corroborated by Exs.A-1 to A-5, awarded a compensation of Rs.4,71,800/- with interest @ 7.5% p.a. from the date of petition, till the date of realisation.

9. The plea of the respondent/KSRTC is that the deceased suddenly came across the bus from right side to left side and came into contact with the left portion of the bus. The accident occurred only due to the negligence of the deceased.

10. 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 respondent's driver.

11. The Tribunal after considering the evidence of P.Ws-1 to 3 coupled with Exs.A-1 to A-5, awarded an amount of Rs.4,36,800/- towards contribution by deceased to his family; Rs.10,000/- towards loss of estate; Rs.10,000/- towards funeral expenses; Rs.30,000/-



towards loss of consortium to the 1<sup>st</sup> petitioner; total comes to Rs.4,86,800/-, and out of it, the petitioners received Rs.15,000/- under Ex.B-1, which is to be deducted, and thus, the petitioners are entitled for a total compensation of Rs.4,71,800/-.

12. The contention of the appellants/claimants is that, the Tribunal erred in fixing the income of the deceased at Rs.3,000/- per month, without considering the evidence adduced by the appellants, which shows that the deceased was a skilled labour and getting income of Rs.18,000/- per month as per evidence of P.W-1 and P.W-3.

13. The further contention of the appellants is that, the Tribunal erred in granting a sum of Rs.30,000/- only towards loss of consortium, instead of Rs.1,00,000/- as per Hon'ble Apex Court judgment.

14. The contention of the appellants is that, the Tribunal erred in granting a sum of Rs.10,000/- only towards loss of estate, and that Rs.10,000/- only towards loss of love and affection against the judgment of the Hon'ble Apex Court.

15. The further contention of the appellants is that, the Tribunal erred in granting a sum of Rs.10,000/- only towards funeral expenses, instead of Rs.50,000/- as per Hon'ble Apex Court Judgment, and the



Tribunal did not grant any amount towards transportation, and that the interest was granted only at 7.5% p.a. instead of 12% p.a., and the Tribunal erred in fixing multiplier 14, instead of 15 for calculating compensation for awarding compensation amount, and therefore, the Tribunal awarded only Rs.4,71,800/-, though the claimants made claim for Rs.10,00,000/-.

16. The learned counsel for appellants submitted that as per evidence of P.W-1 and P.W-3, the deceased was working as a mason and earning Rs.400/- per day, and also earning Rs.200/- per day towards commission, but the Tribunal considered the income of the deceased at Rs.200/- per day only. He further submitted arguments that the deceased was aged 35 years at the time of accident, and even as per post mortem report, he was aged 40 years, but Tribunal considered his age as 41/45 years, and applied multiplier as 14, instead of 15, and deducted 30% towards personal expenses.

17. This is an appeal filed by the claimants, who are the wife, son and mother respectively of the deceased in the case, against K.S.R.T.C.

18. The contention of the claimants is that the deceased was proceeding on his bicycle on Chennai-Bangalore bye pass road, Reddigunta, and the driver of the respondent/KSRTC was driving the



bus bearing No.KA01F 9229, came from Bangalore side, and dashed the vehicle from behind and as a result, the accident occurred and the deceased sustained injuries and died in Govt. Head Quarters Hospital, Chittoor, while undergoing treatment, and police registered a case for the offence punishable U/s.304-A of Indian Penal Code against the driver of the bus, and also laid police report (charge sheet) in C.C.525/2012 on the file of III Addl.Judl.First Class Magistrate, Chittoor, and the accident was occurred due to the rash and negligent act of the driver of respondent/KSRTC, and therefore, the respondent is vicariously liable to pay compensation to the petitioners, who are the dependants of the deceased.

19. The Tribunal upon considering the evidence produced for the petitioners i.e., P.W-2 and Exs.A-1 to A-5, held that the accident occurred due to the rash and negligence act of the driver of the respondent.

20. When coming to the age and income of the deceased, P.W-1, who is wife of the deceased, in her chief-examination affidavit stated that the deceased was working as a senior mason at the time of accident, and he was earning Rs.400/- per day as mason, and also Rs.200/- per day towards commission for deputing five masons and coolies from various places in and around Chittoor.



21. The claimants/appellants also examined another witness as P.W-3. He deposed that the deceased was working as mason under him, and earning Rs.400/- per day, and also was earning Rs.200/- per day for deputing coolies to various places in and around Chittoor.

22. Admittedly, no documentary evidence was produced by the appellants/claimants about the income of the deceased. The only evidence available is the oral testimony of wife of the deceased, and another person. The Tribunal considering the evidence of P.W-1 and P.W-3, found that as per version of P.W-1, her husband worked as senior mason, and he himself constructing houses on contract basis, whereas, P.W-3 version is different, and he deposed that the deceased worked under him as a mason, and therefore, the version of P.W-1 that her husband worked as senior mason independently, and earning commission and wages @ Rs.600/- per day cannot be believed, and held that in the absence of any evidence about the income of the deceased, it has to be estimated notionally and fixed the same at Rs.100/- per day.

23. The contention of the appellants/claimants is that the Tribunal erred in fixing the income at Rs.100/- only per day, though the evidence on record shows that he was working as a mason in Chittoor surrounding areas at the time of accident. It is true that the evidence



of P.W-1 and P.W-3 shows that the deceased was working as a mason. Their evidence is not establishing that the deceased was working as a senior mason, and he is also getting commission, apart from his daily wages for deputing workers, for construction of houses. But their evidence is clear on that aspect that the deceased worked as a mason at the time of accident. The learned counsel for appellants relied upon the judgment of High Court of Madras in the case of **Saritha and others Vs. Siva and another** in C.M.A.No.3567 of 2019, contending that the evidence in the case on hand shows that the deceased was working as a mason in Chittoor area at the time of accident in the year 2012, and therefore, fixing his income at Rs.100/- per day by the Tribunal is not proper and correct. The High Court of Madras in its judgment at para 16 held as follows:

*“Therefore, it may not be possible on some occasions to follow the particular judgment delivered by the High Courts or the Supreme Court. Judgments may be outdated or delivered some years back or the facts and circumstances in that particular judgment may not be much applicable <http://www.judis.nic.in> C.M.A.No.3567 of 2019 to the facts and circumstances of the case on hand. Therefore, the Courts are bound to consider the judgments with reference to the facts and circumstances as well as the prevailing situation. Mechanical approach in application of judgments are also not proper. Thus, for grant of compensation under the Motor*



*Vehicles Act, 1988, a particular amount fixed in a particular case need not be passed in a routine manner. Once the facts and circumstances are different, then the yardstick to be adopted also to be different.”*

24. In the case on hand, admittedly, the deceased was working as a mason in Chittoor and surrounding areas. Therefore, he was working as a mason in municipal area at the time of his death. He was aged around 40 years as per post mortem certificate at the time of death. In the said circumstances, fixing of notional income at Rs.100/- per day is undoubtedly less. Therefore, this Court has no hesitation to arrived at a conclusion that Tribunal has committed an error in fixing the notional income of deceased. In that view of the matter, this Court is of the opinion that fixing notional monthly income at Rs.6,000/- will meet the ends of justice, for awarding just compensation by considering his daily wages at Rs.200/- per day. Accordingly, the findings of the Tribunal modified by fixing notional income of the deceased from Rs.36,000/- per annum to Rs.72,000/- per annum.

25. When coming to the fixation of age of the deceased is concerned, admittedly, as pointed out by the Tribunal, the claimants in their claim petition did not mention anything about the age of the deceased. The chief-examination affidavit of P.W-1, who is the wife of deceased was also silent about the age of the deceased. For the first time P.W-1 in



the cross-examination stated that the deceased was aged 35 years, which is against the documents filed by the claimants. Ex.A-3 certified copy of post mortem certificate shows the age of the deceased as 40 years. The Tribunal considered the fact that the marriage of P.W-1 and the deceased was performed about 20 years back, and their son is aged 18 years, and Ex.A-3 post mortem certificate, fixed the age of the deceased between 41 and 45 years, and applied multiplier 14 as per judgment of Hon'ble Apex Court in the case of **Sarla Verma and others Vs. Delhi Road Transport Corporation and another**<sup>1</sup>.

26. Admittedly, there is no documentary evidence to prove the age of the deceased at the time of accident. The only documentary evidence available is Ex.A-3 post mortem certificate, which indicates the age of the deceased as 40 years. If the same is considered to fix the age of the deceased, it shall be fixed at 40 years. Therefore, multiplier to be applied is 15 as per judgment of Hon'ble Apex Court in Sarla Verma's case. Hence, the Tribunal erred in applying multiplier 14.

27. Further, as per the judgment of the Hon'ble Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and**

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<sup>1</sup> 2009 ACJ 1298





**others**<sup>2</sup>, future prospects to be considered for self employed or fixed salaried persons is 40% on actual salary, if the deceased is below 40 years, and if the age of the deceased is 40 to 50 years, it should be 25%. Therefore, considering the age of the deceased as 40 years, he shall be placed in the age group of 40 to 50 years, and hence, future prospects shall be considered at 25% of the actual salary. Deductions would be 1/3 of the income, since there are three dependants, even as per the case of the claimants. Hence, if the annual salary of deceased is fixed at Rs.72,000/-, 1/3 shall be deducted towards personal expenses of deceased. Then it comes to Rs.48,000/- as annual income of deceased, and 25% shall be added and it comes to Rs.48,000 + 12,000 = Rs.60,000/-. The multiplier shall be applied is 15, since the deceased was aged 40 years. Hence, loss of dependency comes to Rs.60,000 x 15 = Rs.9,00,000/-.

28. As per the judgment of Hon'ble Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others**, wife is entitled to consortium of Rs.40,000/-, and also entitled for loss of estate at Rs.15,000/- and funeral expenses at Rs.15,000/-. The Hon'ble Apex Court in the case of **Magma General Insurance**

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<sup>2</sup> (2017) 16 SCC 680



**Company Limited Vs. Nanu Ram @ Chuhru Ram and others<sup>3</sup>** 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 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. <sup>3</sup> 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. <sup>4</sup> 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 <sup>3</sup> Rajesh and*

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<sup>3</sup> 2018 ACJ 2782



*Ors. vs. Rajbir Singh and Ors. (2013) 9 SCC 54  
4 BLACK'S LAW DICTIONARY (5<sup>th</sup> 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 count<sup>5</sup>.  
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.”*

29. In the case on hand C-1 is the wife of deceased, and she is entitled to Rs.40,000/- towards consortium as per the above judgment of the Hon'ble Apex Court, and C-2 is the minor son of deceased, and C-3 is the mother of deceased. In view of the above judgment of the Hon'ble Apex Court, C-2 also entitled to parental consortium at Rs.40,000/-. Therefore, the total comes to Rs.9,30,000 + 40,000 + 40,000 = Rs.10,10,000/-. The total compensation claimed by the claimants is Rs.10,00,000/-.



30. The Hon'ble Apex Court in the case of **Mona Baghel and others Vs. Sajjan Singh Yadaav and others**<sup>4</sup>, held that in the matter of compensation, the amount actually due and payable is to be awarded despite the claimants having 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 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.10,00,000/-, the amount actually due and payable is to be awarded is Rs.10,10,000/-. In that view of the matter, the award passed by the Tribunal is liable to be modified.

31. The Tribunal awarded interest at 7.5% p.a. from the date of presentation of petition, till the date of realisation with proportionate costs. I do not find any ground to interfere with the rate of interest awarded by the Tribunal at 7.5% p.a. from the date of petition, till the date of realisation.

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<sup>4</sup> 2022 LiveLaw (SC) 734



32. In the result, the appeal is allowed, the impugned order is set aside, and it is held that the appellants are entitled to a total compensation of Rs.10,10,000/-, with interest @ 7.5% 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 respondent/KSRTC is directed to deposit the entire compensation amount of Rs.10,10,000/- along with accrued interest thereon, within one month from the date of judgment.

On such deposit, the 1<sup>st</sup> Appellant/1<sup>st</sup> claimant being the wife of deceased, is entitled to an amount of Rs.4,10,000/- and she is permitted to withdraw Rs.4,10,000/- with accrued interest thereon. The 2<sup>nd</sup> Appellant/2<sup>nd</sup> claimant being the minor son of deceased, is entitled to an amount of Rs.3,50,000/-, and the said amount of Rs.3,50,000/- shall be deposited in any nationalised bank, till the 2<sup>nd</sup> appellant attains majority, and after attaining majority, the 2<sup>nd</sup> appellant is permitted to withdraw Rs.3,50,000/- with accrued interest thereon. The 3<sup>rd</sup> Appellant/3<sup>rd</sup> claimant, being mother of the deceased is entitled to an amount of Rs.2,50,000/- and she is permitted to withdraw Rs.2,50,000/- with 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 judgment.

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

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**B.V.L.N.CHAKRAVARTHI, J**

**28.10.2022**

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

**M.A.C.M.A.No.174 OF 2016**

**Note: Mark L.R.Copy.**

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**28<sup>th</sup> October, 2022**

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