



HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE ELEVENTH DAY OF JULY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
THE HONOURABLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 665 OF 2018

Between:

1. Reliance General Insurance Company Rep. by its
Branch Manager,4th floor, Surya Towers, MG
Road, Labbipet, Vijayawada, Krishna Dist

...PETITIONER(S)

AND:

1. Smt. Borra Gouri Ratna Kumari W/o late Venkata
Madana Mohana Rao, Hindu, Female, aged 53 years, Housewife, R/o
D.No.5-26, Srinagar Colony, Dondapadu, Chodimella Panchayat,
Pedavegi Mandal, W.G.Dist.
2. Smt.Parasa Vijayalakshmi W/o Satyanarayana,
Hindu, Female, aged 33 years, Housewife, R/o Madhyanapuvarigudem
Village, Borrampalem Panchayat, T.Narasapuram Mandal, W.G.Dist.
3. Borra Venkata Srinivas S/o late Venkata Madan
Mohan Rao, Hindu, Male, aged 31 years,
Dependant, R/o 5-26, Srinagar Colony, Dondapadu, Chodimella
Panchayat, Pedavegi Mandal, W.G.Dist
4. Kumari Borra Usha Rani D/o late Venkata Madan
Mohan Rao, Hindu, female, aged 33 years, Student, R/o 5-26, Srinagar
Colony, Dondapadu,
Chodimella Panchayat, Pedavegi Mandal,
West Godavari district
5. Mohd. Aftab S/o Sathar Muslim, aged 28 years,
Driver of lorry Bearing No. WB 23 C2745, R/o Building No.3, Madana
Mohana Burman Street, Kolkata-700007, West Bengal State.
6. Shaik Rahmatha Ali S/o Md.Kitaa Bul, male owner of lorry bearing No.
17VB 23 C 2745, R/o 8,
Ramlochan Mullick, Kalakar Street, Kolkata,700007, West Bengal State

...RESPONDENTS

Counsel for the Petitioner(s): GUDI SRINIVASU

Counsel for the Respondents: KAMBAMPATI RAMESH BABU

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

M.A.C.M.A.No.665 of 2018

Between:

Reliance General Insurance Company,
Rep. by its Branch Manager, 4th Floor,
Surya Towers, MG Road, Labbipet,
Vijayawada, Krishna District

.. Appellant

And

Smt. Borra Gowri Ratna Kumari,
W/o Late Venkata Madana Mohana Rao,
Hindu, Female, Aged 53 years,
Housewife, R/o D.No.5-26, Srinagar Colony,
Dondapadu, Chodimella Panchayat,
Pedavegi Mandal, West Godavari District and five others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 11.07.2022

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
THE HON'BLE SRI JUSTICE G. RAMAKRISHNA PRASAD**

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

U. DURGA PRASAD RAO, J

G. RAMAKRISHNA PRASAD, J



*HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

AND

HON'BLE SRI JUSTICE G. RAMAKRISHNA PRASAD

+ M.A.C.M.A.No.665 of 2018

% 11.07.2022

Reliance General Insurance Company,
Rep. by its Branch Manager, 4th Floor,
Surya Towers, MG Road, Labbipet,
Vijayawada, Krishna District.

..Appellant

Vs.

\$ Smt. Borra Gowri Ratna Kumari,
W/o Late Venkata Madana Mohana Rao,
Hindu, Female, Aged 53 years,
Housewife, R/o D.No.5-26, Srinagar Colony,
Dondapadu, Chodimella Panchayat,
Pedavegi Mandal, West Godavari District and five others.

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for appellant: Sri Gudi Srinivasu

^ Counsel for respondents: Sri Kambhampati Ramesh Babu for respondents
1 to 4

? CASES REFERRED:

1. MANU/AP/0677/2009 = 2010 (3) ALT 433
2. MANU/SC/0469/1987 = 1987 ACJ 561
3. MANU/SC/0606/2009 = 2009 ACJ 1298



HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

M.A.C.M.A. No.665 of 2018

JUDGMENT: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

The challenge in this appeal at the instance of the Insurance Company is to the order dated 27.11.2017 in M.V.O.P.No.162/2014 passed by the learned Chairman, MACT-Cum-VII Additional District and Sessions Judge, West Godavari, Eluru awarding compensation of Rs.20,92,204/- to the claimants, who are the wife and children of one Borra Venkata Madana Mohana Rao, who died in a motor vehicle accident on 07.10.2013, when he was proceeding from Samisrigudem to Tanuku on his motor cycle bearing No.AP 37VK 7581 along with one Matta Nagendra as pillion rider and when they crossed NH-16 road to enter Tanuku town from Undrajavaram Junction side, the lorry bearing No.WB 23C 2745 dashed the motor cycle causing the death of the said Mohan Rao. Alleging that the lorry driver was responsible for the accident and due to the death of the deceased, his family lost the breadwinner, claimants filed M.V.O.P.No.162/2014 claiming Rs.26.00 lakhs as compensation against respondents 1 to 3 who are driver, owner and insurer respectively of the offending lorry.

2. The respondents 1 and 2 remained *ex parte* and the 3rd respondent/Insurance Company contested the O.P. Its main contention is that the deceased himself was responsible for the accident, as he suddenly tried to cross the NH-16 road and therefore,



the respondents are not answerable to the claim. It is further contended that the claim is highly excessive and exorbitant. The Tribunal having regard to the evidence on record, negated its contention and awarded compensation as stated supra.

Hence, the instant appeal.

3. Heard arguments of Sri Gudi Srinivasu, learned counsel for appellant, and Sri Kambhampati Ramesh Babu, learned counsel for the respondents 1 to 4 / claimants.

4. Severely fulminating the award, learned counsel for the appellant would firstly argue that the Tribunal erred in fastening liability on the lorry driver without having regard to the facts and evidence, as they would clearly depict that the fault in the accident squarely lies with the deceased himself, inasmuch as, he suddenly tried to cross the NH-16 road unmindful of the vehicles passing on either side and hit the lorry. Thus the trial Court ought to have held the deceased was responsible for the accident and dismissed the claim of the claimants.

(a) Nextly, he argued, Tribunal erred in accepting the gross salary of the deceased as Rs.32,285/- basing on Ex.X2-Salary Certificate though Ex.X3-Service Register shows that the pay of deceased was Rs.27,500/- w.e.f. 01.08.2013 and thereby compensation was unduly escalated.



(b) Learned counsel further argued that the Tribunal erred in deducting $1/4^{\text{th}}$ of the income of the deceased towards his personal expenditure on the premise that his dependants were four in number, though, the 2^{nd} respondent-claimant is a married daughter and not a dependant of the deceased. The Tribunal therefore ought to have deducted $1/3^{\text{rd}}$, instead of $1/4^{\text{th}}$, to arrive at his net contribution to the family. He placed reliance on **Oriental Insurance Company Limited v. P.Sathyavathamma**¹. He thus prayed to allow the appeal.

5. Per contra, learned counsel for the respondents 1 to 4 Sri Kambhampati Ramesh Babu would argued that the Tribunal having regard to the evidence on record, particularly that of PW2 – eye witness, has held that the lorry driver was responsible for the accident and therefore, it is preposterous to contend that the deceased himself was at fault. Nextly he would argue that the Tribunal while fixing the monthly income of the deceased, has rightly taken into consideration Ex.X2-Salary Certificate which depicts the gross salary of the deceased for the month of September, 2013 i.e., previous month of his death. He would further submit that on the other hand, Ex.X3-Service Register shows only the enhanced pay of the deceased as Rs.27,500/- w.e.f. 01.08.2013. Since the said amount is only ‘basic pay’ without other allowances, the said amount of Rs.27,500/- was rightly not taken as his gross monthly salary. Since Ex.X2-Salary Certificate shows the basic pay and other allowances, which is naturally higher than the

¹ MANU/AP/0677/2009 = 2010 (3) ALT 433



amount mentioned in Ex.X3, the Tribunal has considered Ex.X2-Salary Certificate and fixed his monthly income as Rs.32,285/-. Thirdly, he argued that merely because the 2nd claimant is a married daughter, she cannot be excluded, because she is one of the legal representatives of the deceased to claim compensation. He thus prayed to dismiss the appeal.

6. The point for consideration is whether the order passed by the lower Tribunal is factually and legally sustainable?

7. **Point:** As stated supra, the appellant/Insurance Company repudiated its responsibility mainly on the argument that the fault in the accident lies with the deceased, but not the lorry driver. In this regard, its contention is that at the time of accident the deceased carelessly tried to cross the NH-16 road at Tanuku, unmindful of the traffic. We have perused the observation of the Tribunal. In para 9 of its order, the Tribunal referred the evidence of PW2, who was the pillion rider of the deceased's motorcycle. In the cross-examination, he stated that the offending lorry was proceeding from Ravulapalem towards Tadepalligudem and he denied the suggestion that the deceased suddenly crossed the road without observing the vehicles and thereby the accident was occurred. On the other hand, he clarified that their motor cycle crossed the National Highway and one tyre of the vehicle was on the Tanuku road and the second tyre was on the National Highway and at that time the lorry dashed on the left side of the second wheel. The Tribunal relied upon his evidence coupled with



Ex.A6-charge sheet which was filed against the lorry driver. We gave our anxious consideration to the above finding of the Tribunal. If PW2's version is true, the motor cycle driven by the deceased had almost crossed the NH- road and one tyre was on the Tanuku road and another tyre was on the highway and at that time, the lorry dashed the left rear side of the motorcycle. To rebut the evidence of PW2, the appellant/Insurance Company did not make any effort to examine the lorry driver. Further, the lorry driver (R1) remained *ex parte*. Admittedly, PW2 is a pillion rider and an eye witness to the accident. Therefore, there is nothing on record to disbelieve his evidence which clearly depicts that the accident was occurred only after the motorcycle of the deceased crossed the NH-16 road. If the accident had occurred while the motorcycle was at the starting point or on the middle of the road while crossing it, negligence may be attributed to the deceased for trying to cross the road without observing the vehicles on either side. However, that is not the case here. It appears, after observing the vehicles on either side, he almost crossed the road and at that time the offending lorry went and dashed the rear side of the motorcycle. Therefore, the evidence of PW2 clearly points out the guilt of 1st respondent/lorry driver. His evidence gets support from Ex.A6-charge sheet also. Hence, we are unable to accept the contention of the appellant in this regard.

8. The next contention of the appellant is concerned, Ex.X2-salary certificate shows the gross salary of the deceased as Rs.32,285/- for



the month of September, 2013 i.e., previous month of his death. Be that it may, Ex.A3-Service Register shows his enhanced pay as Rs.27,500/- w.e.f. 01.08.2013. The said amount only depicts the basic pay of the deceased w.e.f. 01.08.2013. If really the said amount of Rs.27,500/- was the total gross salary of the deceased by 01.08.2013, it would be unlikely for Ex.X2-Salary Certificate to show his gross salary as Rs.32,285/- in the next month i.e., September, 2013. So the amount shown in Ex.A3-Service Register shall be regarded as only 'basic pay' and the amount depicted in Ex.X2 as the gross salary. The Tribunal has rightly considered Ex.X2- Salary Certificate for fixing the income of the deceased and to compute compensation.

9. The next contention of the appellant is that the 2nd claimant / 2nd respondent in the appeal is a married daughter and hence, she cannot be regarded as a dependant of the deceased for applying the rate of deduction of personal expenditure of the deceased. In **P.Sathyavathamma's** case (1 supra) relied upon by the petitioner, a Division Bench of the common High Court of A.P. held that though in terms of the decision of the Apex Court in **Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai**², the legal representative of a deceased can maintain a claim petition for compensation under Section 163 or 166 of the Motor Vehicles Act, 1988, however, such person must, besides showing that he / she is a legal representative of the deceased, must also demonstrate that he /

² MANU/SC/0469/1987 = 1987 ACJ 561



she is a dependant on the deceased or else in view of the decision in **Sarla Verma v. Delhi Transport Corporation**³ he / she cannot be regarded as dependants of the deceased while effecting quantum of deduction towards personal expenses of deceased. Ultimately the Division Bench opined that married sister and her daughters though are legal representatives of the deceased and can file a claim petition for compensation, however, since they are not dependants, they were not entitled to compensation. In that case, the mother alone was held to be entitled to compensation. So far as the rate of deduction towards personal expenditure of the deceased is concerned, since in that case the deceased was a bachelor, applying the dictum in **Sarla Verma** (3 supra) the Division Bench deducted 50% of his income towards living and personal expenses.

10. Coming to the instant case, as already stated, the 2nd claimant / 2nd respondent in the appeal is admittedly a married daughter. The appellant would contend that since she is not a dependant of the deceased, the rest of the three claimants alone can be treated as dependants and thereby 1/3rd instead of 1/4th has to be deducted from the earnings of the deceased towards his personal expenditure.

11. We gave our anxious consideration to the above argument. In **Ramanbhai Prabhatbhai** (2 supra), a fourteen year old boy was run over by the bus belonging to Gujarat State Road Transport Corporation (GSRTC). The two elder brothers of the deceased

³ MANU/SC/0606/2009 = 2009 ACJ 1298



instituted the claim petition under the Motor Vehicles Act. The Tribunal awarded Rs.32,000/- as compensation to the claimants. Aggrieved, the Corporation filed an appeal before the High Court which was dismissed. Hence, the Corporation filed SLP before the Apex Court on the main plank of contention that the brothers of the deceased were not entitled to compensation under the provisions of the Fatal Accidents Act, 1855 since the said Act says that an action can be brought for the benefit of the wife, husband, parent and child of the deceased in a fatal accident but not the siblings. However, the Apex Court while referring to Section 110A of the Motor Vehicles Act, 1939 observed that an application for compensation arising out of a motor vehicle accident can be instituted by all or any of the legal representatives of the deceased and Section 110A, in a way substituted Section 1A of Fatal Accidents Act, 1855. The Apex Court further observed that while the Fatal Accidents Act, 1855 provides that such suit shall be for the benefit of the wife, husband, parent and child of the deceased, Section 110A(1) of the Motor Vehicles Act says that application shall be made on behalf of or for the benefit of the legal representatives of the deceased and a legal representative in a given case need not necessarily be a wife, husband, parent and a child. With such observations, the Apex Court upheld the decision of the Gujarat High Court and dismissed the appeal filed by the GSRTC. The Apex Court incidentally observed that the Parliament did not choose to amend Section 110A of the Act by defining expression “legal representatives” in relation to claims under Chapter VIII of the Act as



“the spouses, parents and children” of the deceased as recommended by the Law Commission and the fact that the Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression “legal representatives” in Section 110A of the Act should be given a wider meaning and it should not be confined to spouses, parent and children of the deceased. It should be noted, Section 166(1)(c) and (d) of the Motor Vehicles Act, 1988 which is in *pari materia* with Section 110A of Motor Vehicles Act, 1939 would say that the legal representatives of the deceased are entitled to institute an application for compensation. Thus, the above jurisprudence would show that irrespective of the dependency factor, the legal representatives of a deceased can as well file the claim petition. Viewing in that angle, the Division Bench judgment in **P.Sathyavathamma** (1 supra) holding that the married sister would not be entitled to compensation cannot be accepted and the Division Bench judgment to that extent is *per incuriam*.

12. Be that it may, in **Sarla Verma** (3 supra) the dependency factor of the claimants of a deceased in a motor vehicle accident was considered in a different context. In order to deduct certain portion of the income of the deceased towards his personal and living expenditure, the Apex Court considered the dependency of the claimants as a relevant factor. Having considered its own decisions, the Apex Court held that if the deceased was married, the deduction



towards his personal and living expenses should be $1/3^{\text{rd}}$ where the number of dependant's family members is 2 to 3; $1/4^{\text{th}}$ where the number of dependant's family members is 4 to 6; $1/5^{\text{th}}$ where the number of dependant's family members exceed 6. It was further observed that if the deceased was a bachelor, 50% is to be deducted towards his personal and living expenses. It must be noted that in **Sarla Verma** (3 supra), the Apex Court did not specifically held that non-dependant legal representatives are not entitled to compensation. Thus, the dependency factor is confined to decide the rate of deduction towards personal and living expenses of the deceased, but nothing more.

13. Therefore, both the above decisions i.e., **Ramanbhai Prabhatbhai** (2 supra) as well as **Sarla Verma** (3 supra) of the Apex Court should be harmoniously applied.

14. When the above decisions are applied to the instant case, the 2nd claimant / 2nd respondent in the appeal though, is a married daughter, still she being the legal representative of the deceased, entitled to compensation and the lower Tribunal rightly awarded compensation to her also along with other dependant claimants of the deceased. So far as the deduction towards personal or living expenses of the deceased is concerned, the Tribunal erroneously included the 2nd claimant and took the total number of dependants as 4 and deducted $1/4^{\text{th}}$ of the income of the deceased towards his personal and living expenditure by following **Sarla Verma** (3 supra). The 2nd claimant / 2nd



respondent being a married daughter, she cannot be regarded as a dependant on her deceased father. Therefore, the total number of dependants is only three in this case. As such following the **Sarla Verma** (3 supra), 1/3rd, instead of 1/4th, has to be deducted towards the personal expenses of the deceased. In such a case, the compensation will be as follows:

(a) The gross monthly salary of the deceased as per Ex.X2-Salary Certificate is Rs.32,285/-. Adding future prospects of 15%, his gross monthly income comes to Rs.37,128/- (32,285 + 4843). The gross annual income of the deceased is Rs.4,45,536/-. Then the lower Tribunal has rightly applied the deduction of income tax as Rs.19,451/- and arrived at the net annual income as Rs.4,26,085/- (4,45,536 – 19,451). To this extent the Tribunal was right. Thereafter, the Tribunal erroneously applied 1/4th deduction, instead of 1/3rd, towards personal and living expenditure of the deceased. If 1/3rd is deducted, the net contribution of the deceased to his family comes to Rs.2,84,057/- (4,26,085 – 1,42,028). Applying the multiplier '11', the loss of dependency comes to Rs.31,24,627/- (2,84,057 x 11). Now, the compensation under other heads have to be added and the Tribunal has rightly fixed them. Therefore, the compensation of Rs.40,000/- towards loss of consortium to 1st petitioner, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses plus 10% enhancement are awarded which comes to Rs.77,000/-. Thus, the total compensation payable to the petitioners is **Rs.32,01,627/-** (31,24,627 + 77,000). The claimants will be entitled to said



compensation with costs and interest @ 7.5% p.a. from the date of O.P. till the date of realization. Out of the said amount, first claimant will be entitled to Rs.24,01,627/- with costs and interest, whereas 2nd claimant is entitled to Rs.1,00,000/- with interest, and claimants 3 & 4 are entitled to Rs.3,50,000/- each with interest to their respective shares. The claimants 1, 3 & 4 are entitled to withdraw Rs.2,00,000/- with interest and their balance amount shall be kept in separate Fixed Deposits in a nationalized bank for a period of three years. The 2nd claimant is entitled to withdraw her compensation amount.

The appeal is allowed to the extent mentioned above. Interlocutory applications, if any pending, also stand closed.

U. DURGA PRASAD RAO, J

G. RAMAKRISHNA PRASAD, J

11.07.2022
MVA



**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD**

M.A.C.M.A. No.665 of 2018

11th July, 2022

mva/krk