

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

M.A.C.M.A. No. 2026 OF 2005

DATED 9TH December, 2015

BETWEEN

National Insurance Company Limited,
Rep. by its Divisional Manager, Chennai

...Appellant

And

N.Aruna and ors

...Respondents.

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

M.A.C.M.A.No. 2026 OF 2005

JUDGMENT:

This appeal is preferred by the Insurance Company which was the third respondent in O.P.No.734 of 2003 on the file of the Motor Accident Claims Tribunal, Warangal. The first respondent herein filed the aforesaid OP claiming compensation of Rs.5,00,000/- on account of death of her husband in a motor vehicle accident that occurred on 29.05.2003 at the out skirts of Amangal Village, Mahabubabad mandal, Warangal District. It was alleged in the claim petition that on 29.5.2003 at about 6.00 a.m. when the husband of the first respondent, Nayini Raghavender Reddy proceeding from Mahabubabad to

Vaavilaala village on his scooter bearing No. AAO 2107 on the extreme left side of the road, one lorry bearing No. KA 01B 8283 being driven by its driver in rash and negligent manner with high speed came in opposite direction and hit him, as a result of which, he died instantaneously. The deceased was aged about 60 years and was a Contractor and agriculturist earning Rs.1,50,000/- per annum.

The Tribunal framed the following issues for settlement.

1. Whether the accident occurred on 29.5.2003 due to rash and negligent driving of lorry bearing No. KA 01 B 8283 driven by its driver as per S.166 of MV Act ?
2. Whether the petitioner is entitled to compensation ? if so to what amount and from whom ?
3. To what relief.

Before the Tribunal, the claimant/first respondent herein was examined as P.W.1 and another witness was examined as P.W.2 and marked Exs.A.1 to A16 on their behalf. On behalf of the Insurance Company no oral evidence was adduced, however, Ex.B.1 was marked on its behalf.

Based on the oral and documentary evidence, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the crime lorry by its driver. The Tribunal noticed that the deceased was aged about 66 years and in the absence of any evidence with regard to income, it calculated the notional income at Rs.10,000/- per month. By applying the multiplier '5', and after deducting 1/3rd towards his personal expenses, the Tribunal awarded compensation of

Rs.4,00,000/- .

Challenging the said award, the present appeal is filed by the Insurance Company.

The learned Counsel for the appellant submits that even in the absence of any evidence with regard to income of the deceased, the Tribunal erred in taking Rs.10,000/- as his monthly income.

The learned Counsel for the first respondent-Claimant countered the said contention stating that the deceased owned an extent of Ac.16.10 guntas of agricultural land and was also a Contractor and therefore he would have been earning more than Rs.10,000/- per month. He further submits that the Award passed by Tribunal based on the income of the deceased at Rs.10,000/- per month is correct and needs no interference. He however pointed out that though the Tribunal noticed that the first respondent-claimant is entitled to compensation on account of loss of consortium and funeral expenses, nothing was awarded on the said counts on the ground that the same was not claimed.

No doubt the Tribunal took the monthly income of the deceased at Rs.10,000/- in the absence of any acceptable evidence. However, it is not in dispute that the deceased was an agriculturist, but there is no evidence to show that the deceased was a contractor. However that itself is not a sufficient proof in respect of the income of the deceased. In the circumstances, notional income at Rs.10,000/- taken by the Tribunal cannot be sustained. However in view of the obligation

of the Tribunal to award just compensation, it should have awarded reasonable amount towards loss of consortium and funeral expenses as per the latest decisions of the Apex Court. The first respondent-Claimant is thus entitled to be awarded Rs.50,000/- towards loss of consortium and Rs.10,000/- towards funeral expenses. In the circumstances, this Court feels that award of Rs.3,00,000/- would be just compensation in the facts and circumstances of the case.

Accordingly the appeal is allowed partly by reducing the compensation awarded by the Tribunal at Rs.4,00,000/- to Rs.3,00,000/-

Miscellaneous petitions pending consideration if any in the appeal stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 9th December, 2015..

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