

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

M.A.C.M.A. No. 606 of 2009

Between:

The New India Assurance Co. Ltd.
Secunderabad Branch, Secunderabad
Rep. by its Branch Manager.

.....Appellant

AND

1. Smt. Jayalakshmi w/o late Mallesh,
and 4 others

.....Respondents

Date of Judgment pronounced on : 14.06.2018

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers : Yes / No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes / No
Of the Judgment?

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**M.A.C.M.A. No. 606 of 2009**

% 14.06.2018

1. The New India Assurance Co. Ltd.
Secunderabad Branch, Secunderabad
Rep. by its Branch Manager.

.....Appellant

Versus

\$ 1. Smt. Jayalakshmi w/o late Mallesh,
and 4 others

..... Respondents.

< **GIST:**

> **HEAD NOTE:**

! Counsel for the Appellant : Ms. J.K. Anitha

^ Counsel for the Respondents : Mr. Madhava Rao

? **Cases referred**

¹ 2017 SCC OnLine SC 1270

² (2009) 6 SCC 121



THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**M.A.C.M.A No. 606 of 2009****JUDGMENT:**

This appeal is arising out of the order dated 15.09.2003 in O.P. No.148 of 1999 on the file of Motor Vehicle Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Courts, Secunderabad. The appellant is the New India Assurance Company Limited, respondent No.2 in the O.P. The O.P. was filed by the petitioners/respondents 1 to 3 herein, under Section 166 of the Motor Vehicles Act, against the owner and insurer of the lorry bearing No.AHT 2264, claiming compensation of Rs.5,00,000/- on account of the death of K. Mallaiah in a motor vehicle accident that occurred on 25.06.1998 at 2:30 PM, while the deceased was going on his scooter bearing No.AP 10H 9654 from Nacharam towards Kushaiguda, and the offending lorry driven by its driver in a rash and negligent manner, dashed his scooter.

2. The Tribunal, on consideration of evidence of witnesses PWs.1 and 2, and the documents Ex.A1 to A8, and Ex.B1-copy of insurance policy; allowed the petition and awarded compensation of Rs.5,00,000/- with interest at 9% per annum holding the owner and insurer of the offending lorry jointly and severally liable to pay the compensation. Aggrieved by the Judgment passed by the Tribunal, the New India Assurance Company Limited preferred this appeal.

3. Heard Ms. J.K. Anitha, learned counsel appearing for the appellant-insurance company. Though one Mr. Madhava Rao is shown as counsel for the respondents-claimants, none appeared on their behalf though notices have been served on them.

4. The point for consideration is whether the compensation awarded by the Tribunal is excessive.

5. Learned counsel for the appellant-insurance company is not disputing the findings of the Tribunal with regard to the rash and negligence on the part of the driver of the offending lorry. The dispute is only with regard to the age, income and the rate of interest considered by the Tribunal. It is argued that the correct income of the deceased is not taken into consideration by the Tribunal. Placing reliance on the document Ex.A7-Salary Slip, it is submitted that the deceased was working as a Fitter in South Central Railway and drawing a salary of Rs.4,263/- per month, whereas the Tribunal has taken the income of the deceased as Rs.5,000/- for the purpose of calculating the compensation. Therefore, it is argued that the Tribunal has taken excessive income for awarding compensation.

6. It is pertinent to note that the Tribunal has not awarded any compensation for future prospects of the deceased. Admittedly, the deceased was working as Fitter in South Central Railway and though his job is permanent in nature, the Tribunal has not taken into consideration future prospects like promotion and increments. The

Hon'ble Supreme Court in **National Insurance Company Limited v.**

Pranay Sethi¹, held in paragraph 64(iv), as under:

"In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

7. Therefore, if the ratio laid down in **Pranay Sethi** is applied, the income of the deceased, for the purpose of calculation of compensation, would exceed Rs.5,000/-. Insofar as the rate of interest is concerned, the rate of interest awarded is 9% per annum while the claim was for 12% per annum. The rate of interest awarded does not require any interference as 9% per annum is just and reasonable. There is no hard and fast rule and no fixed norm under the Motor Vehicles Act with regard to rate of interest.

8. The last submission of the learned counsel for the appellant-insurance company is that the correct age of the deceased was not taken into consideration by the Tribunal. It is argued that the age of the deceased was 54 years by the date of accident, whereas the Tribunal has taken 43 years basing on the post mortem examination (PME) report. Therefore, there is some force in the argument of the learned counsel for the appellant. If the Salary Slip of the deceased is taken into consideration, it shows the date of birth as 16.04.1944, and

¹ 2017 SCC OnLine SC 1270

on calculation, the age comes to 54 years by the date of accident. The multiplier applicable to the age of 54 years as per **Sarla Verma v. Delhi Transport Corporation**², would be 11. Taking the salary of the deceased as Rs.5,000/- per month, the annual income comes to Rs.60,000/-. Now, deducting 1/3rd towards personal expenses, and applying multiplier '11', the loss of dependency on account of death of the deceased would come to Rs.40,000 x 11, which is Rs.4,40,000/-. Further, in view of the judgment in **Pranay Sethi**, the claimants would be entitled for an amount of Rs.70,000/- under the conventional Heads of loss of estate, loss of consortium and funeral expenses.

9. It is pertinent to note that the Tribunal has arrived at a compensation of Rs.6,80,000/-, but granted Rs.5,00,000/- in view of the total claim for Rs.5,00,000/-. It is obvious that the Tribunal has not granted any compensation towards loss of love and affection, funeral expenses, loss of estate and other conventional Heads. On calculation as per the ratio laid down by the Hon' ble Supreme Court in **Pranay Sethi**, the petitioners/claimants would be entitled to more amount than that was awarded by the Tribunal. Therefore, I do not see any merits in this appeal and the appeal is liable to be dismissed.

10. **In the result**, the appeal is dismissed, confirming the award passed by the Tribunal in O.P.No.148 of 1999. The appellant-insurance company is directed to deposit the compensation amount within one

² (2009) 6 SCC 121

month from the date of receipt of this order and on such deposit the respondents 1 to 3/claimants are permitted to withdraw the amount.

Miscellaneous petitions, if any pending, shall stand closed.

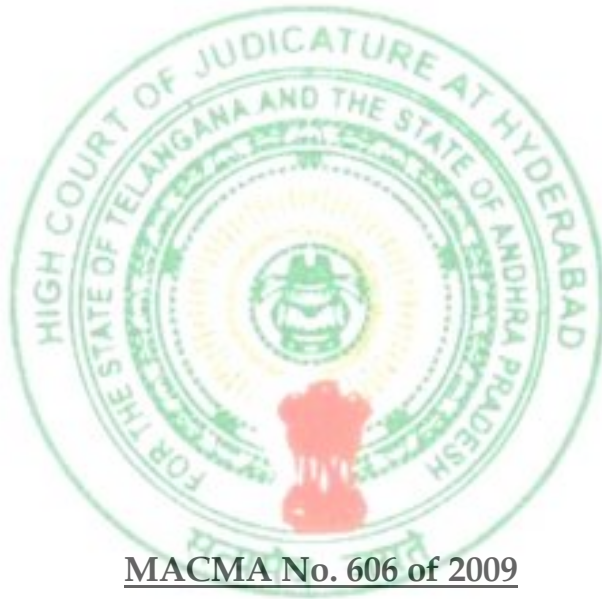
GUDISEVA SHYAM PRASAD, J

14th June, 2018

KSM



THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



MACMA No. 606 of 2009

14th June, 2018

KSM