

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

M.A.C.M.A. No. 423 of 2014

Between:

1. Kolluri Rajeswari and another

.....Appellants

AND

1. K. Anjaneyulu and 2 others

.....Respondents

Date of Judgment pronounced on : 29.01.2018

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM 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 The Lordship wishes to see the fair copy
Of the Judgment? : Yes / No

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 423 of 2014

% 29.01.2018

1. Kolluri Rajeswari and another

.....Appellants

Versus

\$ 1. K. Anjaneyulu and 2 others

..... Respondents.

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> HEAD NOTE:

! Counsel for the Appellants : A. Veera Swamy

^ Counsel for the Respondents : B. Devanand

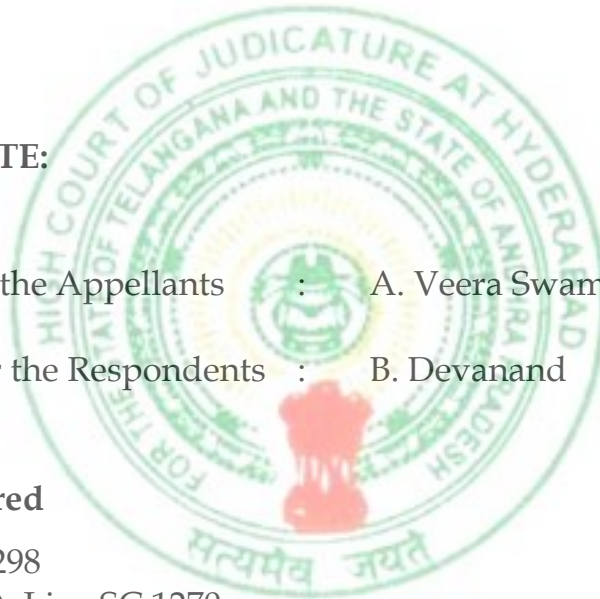
? Cases referred

¹ 2009 ACJ 1298

² 2017 SCC OnLine SC 1270

³ (2013) 9 SCC 65

⁴ 2003 (2) SCC 274



THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 423 of 2014

JUDGMENT:

This appeal is arising out of the Award and Decree dated 12.09.2011, in M.V.O.P.No.212 of 2010 on the file of the Chairman, Motor Accidents Claims Tribunal cum IV Additional District Court, East Godavari, Kakinada. The appellants are the claimants and the respondents are the driver, owner and insurer of the offending vehicle in the above original petition.

2. Brief facts of the case are that on 06.04.2009 at 8:30 a.m., Kolluri Bhramaramba (hereinafter referred to as 'the deceased') was proceeding to Jaggampeta, along with her mother, in an auto bearing No.AP-5TU-4035. When the auto reached near Katravulapalle, a lorry bearing No.AGP-0189 driven by its driver in a rash and negligent manner dashed the auto. As a result, the deceased sustained grievous injuries and died while undergoing treatment in the hospital. Alleging that the accident occurred due to the rash and negligent driving by the driver of the crime lorry, the claimants have filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.10,00,000/-, against respondents 1, 2 and 3. The Tribunal, on consideration of the evidence PW.1, PW.2 and RW.1; and documents Exs.A1 to A7, Ex.B1, and Exs.X1 and X2, awarded compensation of Rs.4,44,400/- with proportionate costs and interest at 7.5% per annum, against respondents 1 to 3 holding them jointly and severally liable to pay compensation, and they were directed to deposit the compensation within one month. Aggrieved by the quantum of compensation awarded by the

Tribunal, the claimants preferred this appeal seeking enhancement of compensation.

3. Heard learned counsel Sri A. Veera Swamy for the appellants-claimants; and learned counsel Sri B. Devanand for respondents.

4. The short point that arises for consideration in this appeal is whether the appellants are entitled for enhancement of compensation.

5. Learned counsel for the appellants contended that the Tribunal has not taken the monthly income of the deceased basing on the evidence. According to the appellants, the deceased was working as Record Assistant in Eastern Power Distribution Company, Jaggampeta, and was earning Rs.17,228/- per month as evidenced by the pay slip Ex.A4, but the Tribunal has taken the pay of the deceased as Rs.14,313/- in spite of filing of pay slip Ex.A4. In fact, the Tribunal, in paragraph 7 of its order, observed that there was no evidence to show that the deceased was a permanent employee. It is further observed that though PW2 was examined, his testimony is as per the recitals in office records as PW2 joined the office after the date of accident. Sri M. Syamala Rao, AAO, has issued Ex.A4 pay slip of the deceased showing the pay for the month of March 2009. The date of accident is 06.04.2009. As per the testimony of PW2, the salary of the deceased, (PW2 filed Exs.X1 and X2, copy of acquittance register), was Rs.14,313/-. The Tribunal has considered the evidence of PW2, and documents Exs.X1 and X2, and has rightly taken salary of the deceased as Rs.14,313/- for the purpose of calculation of compensation. The Tribunal has not granted any amount towards future prospects stating that there was no record to show that the

employment of the deceased was permanent in nature. However, the Tribunal, placing reliance on **Sarla Verma v. Delhi Transport Corporation**¹, observed that future prospects at 30% of the salary can be taken if the deceased had permanent employment. It is held that there is no record to show that the deceased was a permanent employee, so the future prospects of the deceased are not taken into consideration, and that the evidence on record does not show that the deceased was a permanent employee.

6. It is pertinent to note that though there is no evidence on record to show that the deceased was a permanent employee of Eastern Power Distribution Company, even then she is entitled for future prospects in view of recent judgment of the Hon' ble Apex Court in **National Insurance Company Limited v. Pranay Sethi**², wherein it was 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. The deceased was 48 years old by the date of accident. Since there is no evidence on record to come to a conclusion that the deceased was a permanent employee, keeping in view the ratio laid down by the Hon'ble Apex Court in **Pranay Sethi**, it would meet the ends of justice if 25% of her salary is taken towards future prospects for the purpose of calculation of compensation. Therefore, taking the net salary of the deceased as Rs.14,313/- per month, and adding 25%, it would come to Rs.17,892/- per month. Since the deceased was a bachelor, in

¹ 2009 ACJ 1298

² 2017 SCC OnLine SC 1270

view of the judgment in **Reshma Kumari v. Madan Mohan**³, 50% of her salary has to be deducted towards her personal expenses. Therefore, after deducting 50% of salary towards personal expenses, the contribution of the deceased to her family would come to Rs.8,946/- per month.

8. It is further submitted that the Tribunal has erred in taking the age of the mother instead of deceased for the purpose of calculation of loss of dependency. PW1 was the mother of the deceased, and she was 70 years old by the date of accident. In the light of the judgment of the Hon'ble Supreme Court in **Reshma Kumari (3 supra)**, the age of the deceased has to be taken into consideration for calculating the compensation. The deceased was 48 years old by the date of accident and, therefore, as per **Sarla Verma**, the multiplier applicable to her age is '13'. Therefore, the total loss of dependency would come to Rs.8,946 x 12 x 13 = Rs.13,95,576/-. The Tribunal awarded Rs.10,000/- towards loss of estate and love and affection, and the same is enhanced to Rs.15,000/- in view of the judgment in **Pranay Sethi**. The Tribunal awarded Rs.5,000/- towards transportation and funeral expenses, and the same is also enhanced to Rs.15,000/- in view of the judgment in **Pranay Sethi**. In all, the compensation awarded by the Tribunal is enhanced as shown in the following tabular format.

S.No	Head	Compensation awarded by the Tribunal	Compensation enhanced
1.	Loss of dependency	Rs.4,29,400/-	Rs.13,95,576/-
2.	Loss of estate, conventional charges, transportation, funeral charges etc.	Rs.15,000/-	Rs.30,000/-
	Total	Rs.4,44,400	Rs.14,25,576

³ (2013) 9 SCC 65

9. As shown in the above tabular format, the appellants are entitled to the compensation more than claimed by them. By following the principle laid down in **Nagappa Vs. Gurudayal Singh**⁴, wherein the Hon'ble Supreme Court opined that since the provisions of the Motor Vehicles Act have no restriction on the quantum of compensation that can be awarded in appropriate cases where, from the evidence brought on record, the Courts feel that the claimant is entitled to more compensation than claimed, the Courts may award such compensation, and the only embargo is that the compensation so awarded should be 'just', and should neither be arbitrary, fanciful nor unjustifiable from the evidence brought on record. Therefore, keeping in view the ratio laid down in **Nagappa**, the compensation of Rs.14,25,576/- is awarded to the claimants.

10. **IN THE RESULT**, the appeal is allowed by awarding compensation of Rs.14,25,576/- with interest at 7.5% per annum from the date of petition till realisation. The respondents are directed to deposit the compensation within one month from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw the same. The appellants are directed to pay the Court fee for the compensation awarded over and above the compensation claimed in the original petition. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

29th January, 2018

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⁴ 2003 (2) SCC 274

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



M.A.C.M.A. No. 423 of 2014

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