

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

MACMA NO.2871 OF 2009

Between:

A. Shoba, W/o Late A. Srinivas Goud,
Aged 26 years and others ... Petitioners

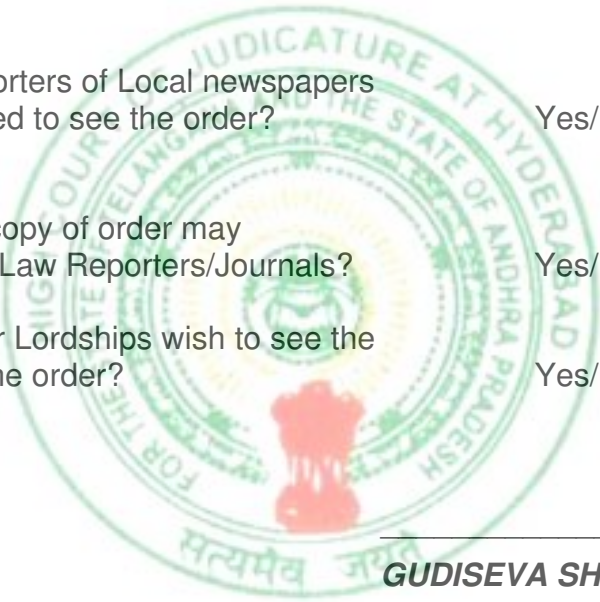
AND

Sidda Reddy and Company and another ... Respondents

Date of Order Pronounced : 31-07-2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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1. Whether Reporters of Local newspapers
May be allowed to see the order? Yes/No
 2. Whether the copy of order may
be marked to Law Reporters/Journals? Yes/No
 3. Whether Their Lordships wish to see the
Fair copy of the order? Yes/No

GUDISEVA SHYAM PRASAD, J.

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD*+WRIT PETITION No. 2871 OF 2009****%Dated: 31-07-2018**

A. Shoba, W/o Late A. Srinivas Goud,
Aged 26 years and others ... Petitioners

VERSUS

\$ Sidda Reddy and Company and another Respondents

!Counsel for the petitioners : Smt N. Sameena.**^Counsel for respondents : -----****<GIST :****>HEAD NOTE :****?Cases referred :**

1. (2008)12 SCC 165
2. (2009) 6 SCC 121
3. (2017) ACJ 2700
4. (2003) 2 SCC 274



THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**M. A. C. M. A. No. 2871 of 2009****JUDGMENT :**

This appeal is arising out of the Decree and Award in O.P.No.127 of 2005 on the file of the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge (FTC), Mahabubnagar.

2. Brief facts of the case are that the appellants are the legal heirs of the deceased-A. Srinivas Goud. The deceased and his friend Srisailam, who is the petitioner in O.P.No.126 of 2005, were returning to Nandigam by LML Vespa bearing No.AP-9A-5132, at about 6:30 PM, met with an accident at Kothur Bus Stand due to rash and negligent driving of the driver of a lorry bearing No.AP-26U-6624 coming from Hyderabad side. At the time of accident, the deceased was driving the LML Vespa, and his friend Srisailam was pillion rider. The deceased died on the spot, and his friend Srisailam received multiple injuries. The legal heirs of the deceased filed claim petition O.P.No.127 of 2005 for compensation of Rs.4,00,000/-, on account of the death of the deceased, against respondents 1 and 2, the owner of offending Lorry bearing No.AP-26U-6624, and the insurer of the said Lorry. The Tribunal, on consideration of the evidence of witnesses PWs.1 and 2, and the documents Exs.A1 to A10, Ex.B1, held that the accident occurred due to the rash and negligent driving by the driver of the lorry and, therefore, awarded compensation of Rs.2,33,000/- to the petitioners, holding the respondents 1 and 2 jointly and severally liable for payment of compensation.

Aggrieved by the impugned Award, the appellants preferred this appeal for enhancement of compensation.

3. Heard the arguments of the learned counsel for the appellants. None appeared on behalf of the respondents.

4. Learned counsel for the appellants submits that the Tribunal has not taken into consideration the correct income of the deceased, though the deceased was doing Toddy business and earning Rs.5,000/- per month and contributing the same to his family. The Tribunal has taken the notional income of Rs.15,000/- per annum which is inadequate even if the notional income of deceased is taken at Rs.3,000/- per month. It is argued even the notional income of a labourer is Rs.3,000/- per month, the annual income would be Rs.36,000/- but the Tribunal has taken only Rs.15,000/- per annum which is inadequate.

5. In **Laxmi Devi & Others vs Mohammad Tabbar & Another**¹, the Hon' ble Supreme Court held as under:

"The High Court confirmed the earlier findings regarding the negligence of death. However, the High Court came to the conclusion that though the claim of the income of Rs.4200/- per month was not reliable, the notional income should have been held to be Rs.36,000/- per annum, i.e., Rs.3,000/- per month. For this proposition the High Court held that the notional income of Rs.15,000/- in the Second Schedule was prescribed in the year 1994 while the accident had taken place in the year 2004. The second reason given by the High Court was that even an unskilled labourer, these days, can easily earn Rs.100/- per day and Rs.3,000/- per month and, therefore, the High Court held the income to be Rs.36,000/- per annum and by deducting 1/3rd of the income of the deceased for his personal expenses, the claimants dependency was assessed at Rs.24,000/- per annum."

6. In the instant case also, the accident occurred in 2004. The unskilled labourer earns Rs.100/- per day during the year 2004. Therefore, the notional income of the deceased can be taken into consideration as Rs.3,000/- per month. On that

¹ (2008) 12 SCC 165

basis, the annual income (Rs.3,000 x 12) comes to Rs.36,000/-, and after deducting 1/3rd income towards personal expenses, his contribution to his family would be Rs.24,000/- per annum. As the deceased was 26 years old by the date of accident, the relevant multiplier as per **Sarla Verma v. Delhi Transport Corporation**² for his age would be '17', the compensation towards loss of dependency would come to (Rs.24,000 x 17) i.e., Rs. 4,08,000/-.

7. In respect of other Heads, the Tribunal awarded an amount of Rs.2,000/- towards funeral expenses, Rs.8,000/- towards loss of estate. Keeping in view the ratio laid down in **National Insurance Company Ltd. v. Pranay Sethi**³, in a case of death, an amount of Rs.70,000/- can be awarded under conventional Head. Hence, the ends of justice would be met in this case if an amount of Rs.15,000/- is awarded towards loss of consortium, and Rs.24,000/- towards loss of estate, and Rs.10,000/- towards funeral expenses; all put together, Rs.49,000/- is awarded under these Heads.

8. The ratio laid down by the Hon' ble Supreme Court in **Nagappa v. Gurudayal Singh**⁴, under the Motor Vehicles Act, 1988, is that the compensation should be just and reasonable, and in an appropriate case where from the evidence brought on record, if the Court considers that the claimant is entitled to get more compensation than what he has claimed, the Court may pass such award, by granting just and reasonable compensation. The only embargo is that the compensation should be 'Just' compensation, and it should not be arbitrary, fanciful or unjustifiable. In this case, the claimants have originally

² (2009) 6 SCC 121

³ (2017) ACJ 2700

⁴ (2003) 2 SCC 274

claimed Rs. 5, 20, 000/- in their petition, but restricted their claim to Rs. 4, 00, 000/-. In the circumstances of this case, the claimants are entitled for Rs. 4, 57, 000/- which is more than their claim of Rs. 4, 00, 000/-. In the light of the judgment in **Nagappa** (4 supra), the Courts can grant just and reasonable compensation, which is not arbitrary, fanciful or unjustifiable. The claimants since originally claimed Rs. 5, 20, 000/- but restricted their claim, their demand of enhancement is just and reasonable. Even otherwise, the claimants are entitled to just and reasonable compensation. The compensation awarded is shown in the tabular format as below:

S.No	Head	Compensation awarded by the Tribunal	Compensation enhanced
1	Loss of dependency	Rs.2,16,000/-	Rs.4,08,000/-
2	Funeral expenses	Rs.2,000/-	Rs.10,000/-
3	Loss of estate	Rs.7,000/-	Rs.24,000/-
4	Loss of consortium	Rs.8,000/-	Rs.15,000/-
	TOTAL	Rs.2,33,000/-	Rs.4,57,000

9. In the result, the appeal is allowed, awarding the compensation of Rs. 4, 57, 000/- with proportionate costs and interest at 7.5% per annum in view of the ratio laid down by the Hon’ ble Supreme Court in **Dharampal v. U.P. State Road Transport Corporation**⁵, from the date of petition till realisation. The respondents are directed to deposit the compensation amount within one month from the date of receipt of a copy of this order. On such deposit, the appellants-claimants are permitted to withdraw the amount as per the apportionment made by the Tribunal. The appellants are

⁵ (2008) 12 SCC 208

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

31st July, 2018
EHA / Ksm



THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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