

**THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**

**M.A.C.M.A. No. 2468 of 2015**

**JUDGMENT:**

This appeal is preferred by the ICICI Lombard General Insurance Company Limited, questioning the award and decree, dated 24.01.2015 passed in M.V.O.P.No.2530 of 2010 on the file of the Motor Accidents Claims Tribunal-cum-X Additional Chief judge, City Civil Court, Hyderabad (for short, the Tribunal).

2. For the sake of convenience, hereinafter, the parties are referred to as per their array before the tribunal.

3. The claimants filed a petition under Section 163-A of the Motor Vehicles Act claiming compensation of Rs.8,00,000/- for the death of the deceased, Alimela Ravi @ Ravi, who died in a motor vehicle accident that occurred on 06.09.2010. According to the claimants, on the fateful day, while the deceased was attending to his work in the godown of Ragi and Ragi Enterprises for shifting the huge drums of cable with the help of crane vehicle i.e., Crane bearing No.AP 28 AT 1978, in the process of lifting a cable drum, the drum slipped from its hook and fell on the deceased, who was on the floor of the godown. As a result, the deceased crushed under the cable drum and

died on the spot. Since the accident occurred due to negligence of the Operator of the Crane, owned by respondent No.1 and insured with respondent No. 2, the claimants filed the claim-petition seeking compensation of Rs.8.00 lakhs towards compensation under various heads.

4. Before the Tribunal, while the respondent No. 1, owner of the offending vehicle, stood ex parte, the respondent No. 2 contested the claim denying the averments of the claim petition, including the age, avocation and income of the deceased and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the claim, counter and the evidence, both oral and documentary brought on record, the tribunal has allowed the O.P. awarding a sum of Rs.9,16,200/- towards compensation with interest at 7.5% thereon to be paid by the respondent Nos.1 and 2 jointly and severally. Hence, the insurance company filed the present appeal challenging the quantum of compensation as well as its liability to pay the compensation.

6. Heard both sides and perused the record.

7. The contentions of the learned Standing Counsel for the appellant, insurance company are in three fold.

Firstly, inasmuch as the claim-petition was filed under Section 163-A of the Motor Vehicles Act, the Tribunal ought to have awarded the compensation basing on the structural formula as enunciated in the II Schedule of the Act.

Secondly, the accident was occurred not in the public place and the policy coverage to use the crime vehicle as tool ie., Crane is not covered under the provisions of the Act, and therefore, the claim-petition itself is not maintainable as the owner of the premises i.e., M/s. Ragi and Ragi Enterprises was not made as party respondent to the O.P.

Lastly, though there are four dependents, the Tribunal has wrongly deducted personal expenses of the deceased at 1/5<sup>th</sup> instead it ought to have deducted 1/4<sup>th</sup>. Even the Tribunal, under the head of conventional heads has awarded excessive amount of Rs.1,00,000/- to the wife and Rs.1,00,000/- to claimant Nos.2 and 3 and Rs.25,000/- towards funeral expenses.

8. On the other hand, the learned counsel appearing on behalf of respondents, claimants, has contended that since the accident occurred while using the offending vehicle and due to the negligence on the part of the Operator of the offending vehicle, the Tribunal has rightly answered the issue No.1 holding that the accident occurred was only due to the negligent operating of the offending vehicle and basing on the said findings, proceeded to award compensation treating the O.P. as has been filed under Section 166 of the M.V.Act.

9. It is to be noted that although the O.P. was filed under Section 163-A of the M.V. Act, in view of its findings arrived on issue No. 1 to the effect that the accident had occurred while using the offending vehicle and on account of rash and negligent driving of the crime vehicle by its driver, the Tribunal has rightly proceeded with the O.P. as has been filed under Section 166 of the M.V. Act.

10. As regards the second contention of the learned Standing Counsel for the appellant, although the accident occurred within the premises of M/s. Ragi and Ragi Enterprises, under whom the deceased was working as Labour, the insurance

company cannot escape its liability on the premise that the accident occurred in the private place but not in the public place when the policy covered by Ex.B1 was very much in force. Therefore, the said contention is rejected.

11. As regards the quantum of compensation, as rightly pointed out by the learned Standing Counsel, as there are four dependents, the Tribunal ought to have deducted  $1/4^{\text{th}}$  towards personal deducting but not  $1/5^{\text{th}}$ . Even under the conventional heads, the Tribunal has adequately granted the compensation. Even though the claimants have asserted that the deceased was earning Rs.5,000/- per month, the Tribunal has restricted to Rs.4,500/- per month. However, considering the prevailing rate of minimum wages at the relevant point of time, this Court is inclined to fix the income of the deceased at Rs.5,000/- per month. Duly deducting  $1/4^{\text{th}}$  therefrom towards personal expenses of the deceased, the net monthly contribution of the deceased to the family comes to Rs.3,750/-. Since the deceased was 32 years, the appropriate multiplier is '16'. Therefore, duly applying the multiplier '16', the loss of dependency comes to Rs.3,750/- x 12 x 16 = Rs.7,20,000/-. That apart, the claimants are entitled to Rs.77,000/- under the conventional

heads as per the decision of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***<sup>1</sup>.

Further, considering the fact that the claimant Nos. 2 and 3, who are minor children of the deceased, this Court is inclined to award a sum of Rs.40,000/- each to them under the head of parental consortium as per the decision of the Apex Court in ***Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others***<sup>2</sup>. Thus, in all, the claimants are entitled to only Rs.8,77,000/-. Therefore, the compensation awarded by the Tribunal is reduced from Rs.9,16,200/- to Rs.8,77,000/-.

12. Accordingly, the M.A.C.M.A. is allowed in part as indicated above. The rate of interest awarded by the Tribunal is not interfered with. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

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**JUSTICE M.G.PRIYADARSINI**

27.12.2022  
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<sup>1</sup> 2017 ACJ 2700

<sup>2</sup> (2018) 18 SCC 130

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**DATE: -12-2022**