

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

FRIDAY, THE SECOND DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

M.A.C.M.A. NO: 1264 OF 2012

Appeal under Section 173 of Motor Vehicles Act against the order and decree made in M.V.O.P.No.899 of 2010, dated 25-07-2011 on the file of the Court of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional Metropolitan Sessions Judge, Mahila Court, Hyderabad

Between:

1. Smt. B. Shanta Bai, W/o. Late B. Tulja Ram, Household R/o. H.No.15-6-161/3, Kolsawadi Begum Bazar, Hyderabad.
2. B. Roopesh, S/o.Late B. Tulja Ram, Mechanic R/o. H.No.15-6-161/3, Kolsawadi Begum Bazar, Hyderabad.
3. B. Suresh, S/o. Late B.Tulja Ram, Mechanic R/o. H.No.15-6-161/3, Kolsawadi Begum Bazar, Hyderabad.
4. B.Mahesh, S/o.Late B. Tulja Ram, Pvt. Service R/o. H.No.15-6-161/3, Kolsawadi Begum Bazar, Hyderabad.
5. B Parmesh, S/o. LateB.Tulja Ram, Pvt.Service R/o. H.No.15-6-161/3, Kolsawadi Begum Bazar, Hyderabad.

...PETITIONERS

AND

1. M/s. Andhra Cement Carriers, Rep., by its Prop.M.K.Babazia H.No. 15/1256, 1st Road,Sanjeevnagar, Tadipatri,Ananthapur District.
2. M/s. The Oriental Insurance Company Limited, Rep., by its Dy. Manager Snehalatha, H.No.6-3-871,P.B.No.45, Greenland Road Begumpet,Hyderabad. Policy No.432490/31/2010/1262 Valid from 18-11-2009 to 17-11-2010)

...RESPONDENTS

Counsel for the Appellants: SRI U. P. RAO

Counsel for the Respondent No.2: SRI P. N. A. CHRISTIAN

Counsel for the Respondent No.1: NONE APPEARED

The Court delivered the following: JUDGMENT

HONOURABLE SRI JUSTICE N. TUKARAMJI

MACMA.No.1264 of 2012

JUDGMENT:

Heard Sri U.P. Rao, learned counsel for appellants/
petitioners.

2. This appeal has been preferred by the appellants/petitioners seeking enhancement of compensation granted in the decree and award dated 25.07.2011 in M.V.O.P.No.899 of 2010 passed by the V Additional Metropolitan Sessions Judge-cum-Mahila Court at Hyderabad.

3. The wife and children of Sri B.Tuljaram who died in motor accident filed the claim petition under Section 163-A of Motor Vehicles Act, 1988 (hereinafter the M.V. Act) seeking compensation of Rs.7 lakhs.

4. The petitioners' case in brief is that on 27.02.2010 at about 6 a.m. while the deceased was proceeding on cycle near Khairathabad cross roads, one lorry bearing registration No. AP-2U-9011 driven (for short 'the lorry')

by its driver in rash and negligent manner and dashed the cycle, as a result he slumped and received grievous injuries and while shifting to the hospital for treatment succumbed to his injuries. The Tribunal on considering the material on record held that the accident occurred due to the negligent driving of the lorry and awarded Rs.2,54,000/- with interest at 7.5% per annum against the owner and insurer of the lorry/1st and 2nd respondents.

5. Aggrieved by the quantum of award, the claim petitioners (for short 'the petitioners') in appeal, contended that the tribunal has erred in considering the evidence as to the income of the deceased and instead of applying the multiplier under Second Schedule, erroneously taken the multiplier proposed in the authority between *Bhagwan Das v. Mohd. Arif* – AIR 1988 AP 99. Thus, prayed for reassessment and to award just compensation.

6. In spite of due notice, the respondents chose to remain silent.

7. In this position, the point arises for determination is:

"Whether the compensation granted to the petitioners is just and proper and the petitioners has been able to make out any ground for enhancement?"

8. The petitioners pleaded that by the date of the accident, Tuljaram/deceased was aged about 52 years and he used to earn Rs.7,000/- as security guard. With regard to age, no specific document is filed. Therefore, considering the entries in the post mortem report/Ex.A-4, the age of the deceased can be accepted at 55 years. To prove the aspect of occupation and income, the petitioners examined Rakesh Kumar/PW-2, Manager in Security Protection Guards Private Limited Company, Khammam who supported the version of petitioner/PW-1 and also filed salary certificate/Ex.A-6. Having regard to the fact that the claim is under no fault liability and the

occupation pleaded, the annual salary could be fixed at Rs.40,000/-. As per Second Schedule, $1/3^{\text{rd}}$ of the income has to be deducted as expenses which the deceased would have incurred towards maintaining himself. Thus the annual contribution of the deceased to the petitioners would be Rs.26,666/-. If this amount is multiplied with the relevant multiplier to the age of the deceased as in the Second Schedule i.e. 11, the total would come to Rs.2,93,326/-, rounded of Rs.2,93,330/-. The petitioners are entitled to this amount towards loss of dependency.

9. In addition, the petitioners are entitled for Rs.2,000/- towards funeral expenses and Rs.2500/- towards loss of estate and Rs.5,000/- for the loss of consortium. Thus, the petitioners are eligible for the compensation as follows:

(i) Loss of dependency	: Rs.2,93,330.00
(ii) Funeral expenses	: Rs. 2,000.00
(iii) Loss of estate	: Rs. 2,500.00

(iv) Loss of Consortium : Rs. 5,000.00

TOTAL: Rs.3,02,830.00

10. Resultantly, the appeal is allowed as under:

(i) the petitioners are awarded compensation of Rs.3,02,830/- (Rupees three lakhs two thousand eight hundred thirty only) with interest at 7.5% per annum with costs from the date of petition till realization;

(ii) the 1st and 2nd respondents are jointly and severally liable to pay the compensation;

(iii) the respondents are directed to deposit the awarded amount with interest within one (1) month from the date of receipt of copy of the order;

(iv) on deposit of the enhanced amount with interest, the petitioners are permitted to withdraw entire amounts as apportioned by the Tribunal;

As a sequel, miscellaneous petitions pending, if any,
shall stand closed.

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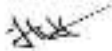
Sd/-N.SRIHARI
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Chairman, Motor Accidents Claims Tribunal-cum-V Additional Metropolitan Sessions Judge, Hyderabad(with records)
2. One CC to Sri U. P. Rao, Advocate [OPUC]
3. One CC to Sri P. N. A. Christian, Advocate [OPUC]
4. Two CD Copies

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HIGH COURT

DATED:02/09/2022

JUDGMENT

MACMA.No.1264 of 2012



ALLOWING THE M.A.C.M.A.
WITHOUT COSTS

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28/1/23
444

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FRIDAY, THE SECOND DAY OF SEPTEMBER
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Policy No.432480/31/2010/1262 Valid from 18-11-2009 to 17-11-2010)

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ORDER: This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material papers in the M.V.O.P. and upon hearing the arguments of Sri U.P.Rao, Advocate for the Appellant and of Sri P.N.A. Christian, Advocate for the Respondent No 2, and of the Respondent No.1 not appeared either in person or by Advocate

This Court while allowing the M.A.C.M.A doth Judgment and decree as follows:

1. That the petitioners be and hereby are awarded compensation of Rs.3,02,830/- with interest at 7.5% per annum without costs from the date of petition till realization;
2. That the 1st and 2nd respondent are jointly and severally liable to pay the compensation;
3. That the respondents be and hereby are directed to deposit the awarded amount with interest within 1 month from the date of receipt of copy of the order;
4. That on deposit the enhanced amount with interest, the petitioners be and hereby are permitted to withdraw entire amounts as apportioned by the tribunal; and
5. That there shall be no order as to costs in this M.A.C.M.A.

**Sd/-N.SRIHARI
ASSISTANT REGISTRAR**

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SECTION OFFICER

To,

1. The Chairman, Motor Accidents Claims Tribunal-cum-V Additional Metropolitan Sessions Judge, Hyderabad
2. Two CD Copies

JNV

HIGH COURT

DATED:02/09/2022

DECREE

MACMA.No.1264 of 2012

ALLOWING THE M.A.C.M.A.
WITHOUT COSTS

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28/1/23
J.V.S.