THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL No.146 OF 2016

JUDGMENT:

Assailing the order and decree dated 06.03.2015 in M.V.O.P.No.365 of 2011 passed by the Principal District Judge-cum-Chairman, Accident Claims Tribunal, Visakhapatnam, respondent No.2/Insurance Company has preferred the instant appeal for awarding compensation of Rs.7,25,000/- for the untimely death of Kanumuri Raju.

2. The parties are being referred to as 'petitioners' and 'respondents' as arrayed in the petition before the tribunal, for the sake of convenience and clarity.

3. Case of the petitioners is thus:

On 16.09.2008 at about 10.20 pm, while the deceased-Kanumuri Raju was standing by the side of his motor cycle bearing No.AP-33-B-5485 at Chinagantayada Bus stop junction and was chit-chatting with one D.Raju and Lalam Appala Naidu and at that time, one Scorpio bearing No.AP-31-AW-3763 which was driven by the driver of the 1st respondent came in a rash and negligent manner and dashed against the above said three persons and as a result, Kanumuri Raju and other two persons died on the spot. The deceased aged about 30 years, working as Crane and Tractor mechanic and was earning Rs.10,000/- P.M. The petitioners are the legal representatives and dependents of the deceased. Due to the sudden demise of the husband of petitioner No.1, all the petitioners lost financial support and love and affection. Respondent No.1 is owner and Respondent No.2 is insurer of Scorpio bearing No.AP-31-AW-3763.

4. Having received notice, Respondent No.1 remained *ex parte*.

5. Respondent No.2 filed counter refuting the averments made in the petition, wherein, inter alia contended that the driver of the offending vehicle had no valid and effective driving licence as on the date of the accident, the accident occurred due to the negligence of the deceased, who suddenly tried to cross the road, the driver was under the influence of alcohol at the time of the accident, the respondent No.1 violated the terms and conditions of the policy and as such, this respondent is not liable to pay compensation, petitioners claiming excessive compensation, and with other formal denials, prayed to dismiss the petition.

6. Taking into consideration of the aforementioned pleadings, the learned Tribunal settled the following issues:

1) Whether the accident resulted in the death of Kanumuri Raju who was the husband of the 1st petitioner, father of Petitioner Nos.2 and 3 due to the motor accident occurred on 16.09.2008 on NH-5 Road, Chinagantyada Junction, Gajuwaka due to rash and negligent driving of the driver of the motor vehicle ie., Scorpio vehicle bearing No.AP-31-AW-3763?

2) Whether the petitioners are entitled to compensation as prayed for' if so, to what amount and from whom?

3) To what relief?

7. During trial, petitioner No.1 herself examined as PW.1 and the petitioners have got examined eye witnesses as P.Ws.2 and 3, and filed Exs.A1 to A6 documents. As against the said evidence, respondent No.1 has not adduced either oral as well as documentary evidence. Respondent No.2 has got examined its administrative officer and the then Inspector of Police, Gajuwaka Traffic Police Station as RWs.1 and 2, and filed Ex.B1 document. At the culmination of trial, the learned tribunal awarded compensation of Rs.7,25,000/- fixing liability jointly and severally on respondent Nos.1 and 2.

Feeling aggrieved by the said order and decree, respondent No.2 preferred the instant appeal urging the following grounds:

i. The Judgment and decree passed by of Motor Accident Claims Tribunal -cum- Principal District Judge - Visakhapatnam is contrary to law, weight of evidence and probabilities of the case.

ii. The Learned Tribunal failed to see that there was no negligence on the part of driver of the offending vehicle and that the accident occurred due to the negligence of the deceased.

iii. The Learned Tribunal failed to see that the driver of the insured vehicle was under the influence of alcohol at the time of accident and failed to consider the evidence of RW2/ inspector of Gajuwaka Traffic Police Station.

iv. The Learned Tribunal without any basis considered the monthly income of the deceased at Rs 5000/-.

v. The Learned Tribunal applied wrong multiplier of 17, awarded excessive rate of interest, did not follow the established principle, granted excessive compensation, and with other formal grounds, prayed to allow the appeal.

8. Admittedly, the petitioners have not filed any appeal or cross objections against the findings in respect of quantum of compensation, however, being the first appellate court and final fact finding court, this court has to re-examine and re-appreciate the entire oral as well as documentary evidence on record.

9. Point No.1:

a). As seen from the record, there is absolutely no dispute in respect of the accident and to prove the manner and method of accident, petitioners relied upon the evidence of PWs.1 to 3. PW.1 is none other than the wife of the deceased and is not an eye witness to the accident and the only available evidence to prove the manner and method of accident is that of PW.2 who testified that on 16.09.2008 at 10.20 P.M, while deceased and two other persons were standing at China Gantyada Old Bus Stop, the driver of Scorpio

bearing No.AP-31-AW-3763 drove the same in a rash and negligent manner and dashed against the said three persons and as a result of which, the deceased Kamunuri Raju and two others died on the spot and basing on the report of the defacto complainant, a case in Crime No.257 of 2008 is registered for the offences under Section 304-A of Indian Penal Code and Section 185 of Motor Vehicles Act, 1988 and the accident occurred due to rash and negligent driving of driver of offending vehicle bearing No.AP 31 AW 3763. Nothing useful material is elicited in the cross examination of PWs.2 and 3. Respondent No.2 has not examined its driver and his non-examination is fatal to the case of respondent No.2.

(b) Further, as seen from Ex.A1/Attested copy of First Information Report, crime is registered of the offence under Section 304-A of I.P.C & Section 185 of M.V.Act and after completion of investigation, the investigating officer laid charge sheet alleging that the accident occurred only due to rash and negligent driving of driver of Scorpio bearing No.AP-31-AW-3763. Having argued that the accident occurred due to the negligence of the deceased, respondent No.2 failed to adduce any supportive oral as well as documentary evidence. RW.1 who is employee of respondent No.2 is not an eye witness to the accident and she has stated as per the record and RW.2/ the then investigating officer also stated that the accident occurred due to the rash and negligent driving of driver of offending vehicle, and his evidence in respect of the allegation of consumption of alcohol would be discussed at a little later while appreciating the evidence with regard to the liability of the respondents. Further, having received notice, respondent No.1/ owner of the offending vehicle remained exparte. The driver of the offending vehicle, who is the best person to speak about the accident is not examined and his non-examination is fatal to the case of respondent. So, the evidence of PWs.1, 2 and RW.2 coupled with Ex.A1/First Information Report and Ex.B1/charge sheet clinchingly proves that the accident occurred due to the rash and negligent driving of driver of Scorpio. As seen from Ex.A2/Post-mortem report,

deceased Kanumuri Raju sustained injuries in the accident and succumbed to the said injuries. Therefore, this Court is of the considered view that the accident occurred only due to the rash and negligent driving of driver of Scorpio bearing No.AP-31-AW-3763, Kanumuri Raju sustained injuries in the accident and succumbed to the said injuries. Hence, this point is answered in the affirmative and against the respondent No.2.

10. Point No.2:

(a) As per the version of petitioners, deceased hale and healthy, aged about 30 years, working as Crane and Tractor Mechanic in M/s.Visakha Constructions, was earning Rs.10,000/- per month, as on the date of accident and due to the sudden demise of the deceased, petitioners lost financial support, love and affection. As seen from Ex.A2/ Postmortem report, age of the deceased is mentioned as 30 years. There is no contra evidence to that effect. So, it can safely be concluded that the deceased aged about 30 years, as on the date of his death. Petitioners who are none other than wife, children and mother of the deceased are entitled for compensation.

(b) To prove income of the deceased, having filed Ex.A6/certificate issued by M/s.Visakha constructions, they have got examined Supervisor of M/s Visakha Constructions as PW.3 and it came in his evidence that the deceased working as Mechanic Maintenance in-charge in their office and was drawing salary of Rs.10,000/- per month *vide* Ex.A6 and in his cross examination, he has admitted that it is not a registered firm and they are not maintaining any register to show that they were paying Rs.10,000/- per month. In the given facts and circumstances, the learned Tribunal has considered the monthly income of the deceased at Rs.5,000/- and the same can be taken into consideration.

(c) This petition is filed by the wife, two children and mother of the deceased. So there are four petitioners. But, the learned tribunal had deducted half of the amount towards the personal expenses of the deceased,

which is against to the principles of law and since the petitioners are four in number, 1/3rd amount is to be deducted towards personal expenses of the deceased.

(d) The petitioners have not filed any appeal or cross objections for enhancement of compensation, however, learned counsel for the petitioners would argue that though they have not filed any appeal or cross objections seeking enhancement of compensation, just and fair compensation may be awarded. Learned counsel for the respondent No.2 argued that the accident occurred in the year 2008 and as such, the present principles of law shall not be applied to the facts of the case at hand. It is settled principle of law that the petitioners are entitled for just and fair compensation and further, in exercise of the appellate powers under Order 41 Rule 33, this court can enhance the amount of compensation even in the absence of appeal or cross objections. In this regard, it is to be noted that in ***Sharanamma & Others v. Divisional Controller, North-East Karnataka Road Transport Corporation***[1]***,*** Hon'ble Apex Court held thus:

> "10. When an appeal is filed under Section 173 of the Motor Vehicles Act, 1988, before the High Court, the normal rules which apply to appeals before the High Court, are applicable to such an appeal also. Even otherwise, it is well settled position of law that when an appeal is provided for, the whole case is open before the appellate court and by necessary implication, it can exercise all powers incidental thereto in order to exercise that power effectively. A bare reading of Section 173 of the Act also reflects that there is no curtailment or limitations on the powers of the appellate court to consider the entire case on facts and law".

(e) Further, in ***National Insurance Company Limited rep. By its Branch Manager v. Susheelamma and Others*** [2] , having considered the aforementioned principle, Division Bench of this Court has held that to the appeal under Section 173 of the M.V. Act to the High Court, in the absence of a different procedure having been provided, either under the M.V. Act or the

[1] 2013 (11) SCC 517
[2] 2023 SCC Online AP 1725

A.P.M.V. Rules, 1989, and the applicability of Order 41 C.P.C also not having been excluded, the normal rules which apply to appeals before the High Court, are applicable and further held that for doing justice and to award just compensation, the provisions of Order 41 Rule 33 are to be invoked.

(f) And, in ***Surekha v. Santhosh***[3], having agreed with the stand of the claimants that just compensation amount ought to be awarded, High Court of Judicature at Bombay declined to grant enhancement merely on the ground that the claimants failed to file cross appeal and in such circumstances, Hon'ble Apex Court held that it is well settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants. So, in the absence of any appeal or cross objections in respect of quantum of compensation, this Court is under obligation to award just and fair compensation.

(g) While awarding compensation, the principles laid down by the Hon'ble Apex Court in ***Sarala Varma and Others Vs. Delhi Transport Corporation and another***[4] , ***National Insurance Company Ltd Vs. Pranay Sethi and others***[5] and ***Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram and others***[6] shall be taken into consideration. Admittedly, accident in this case is occurred in the year 2008. Insofar as applicability of the subsequent settled principles of law to the facts of the case at hand, it is apposite to mention that in ***Government of India and another v. Sri Devaraj Medical College***[7], it is held that if a decision of the Hon'ble Apex Court does not expressly provides its application to be prospective, then it is a settled law that all the decisions are retrospective in application.

[3] (2021) 16 SCC 467
[4] (2009) ACJ 1298
[5] (2017) 6 SCC 680
[6] (2018) 18 SCC 130
[7] 2026 Livelaw SC 766

(h) Applying the aforementioned principles, this court assessed the compensation as follows:

Sl. No.	Heads		Calculation
1.	Annual income(Rs.5000x12)	Rs.	60,000/-
2.	Deduction towards personal expenses (60,000x1/4)	Rs.	15,000/-
3.	Total income (60,000-15,000)	Rs.	45,000/-
4.	Future prospects (40% of 45,000)	Rs.	18,000/-
5.	Total loss of dependency (45,000 +18,000) x 17	Rs.	10,71,000/-
6.	Loss of consortium (40,000 x 4) (spousal+filial+parental)	Rs.	1,60,000/-
7.	Funeral expenses	Rs.	15,000/-
8.	Transportation expenses	Rs.	10,000/-
9.	Loss of estate	Rs.	15,000/-
	Total	Rs.	**12,71,000/-**

(i) In the given facts and circumstances of the case, the petitioners are entitled for Rs.12,71,000/- (Rupees Twelve Lakh Seventy One Thousand only) and in this court's well considered view, the compensation awarded is just, adequate and reasonable, as the deceased had left his dependents.

(j) So far as liability of the respondents is considered, a finding is already given in point No.1 that the accident occurred only due to the rash and negligent driving of driver of Scorpio and as such, respondent No.1/ owner is vicariously liable for the acts committed by his driver. So far as liability of respondent No.2 is concerned, learned counsel for the respondent No.2 would argue that at the time of accident, the driver was under the influence of alcohol, the same is admitted by the investigating officer/ RW.2, charge sheet also laid under Section 185 of M.V. Act, respondent No.1 violated the terms and conditions of the policy and as such, they are not liable to pay compensation. RW.2 testified that as per the statements of supervisor and owner of Sri Janapriya Bar and Restaurant, driver consumed alcohol, in their

bar, just before the accident, he has got conducted test through a doctor, who certified that the driver was under the influence of alcohol, at the time of accident. Having stated so, he has categorically admitted in his cross examination that the accident occurred due to the rash and negligent driving of driver, he has not filed any document to show that the driver was under the influence of alcohol. So, mere filing charge sheet under Section 185 is not suffice to come to conclusion that the driver consumed liquor prior to commission of accident. Further, no document is appended to substantiate the version of RW.2. Respondent No.2 also not taken any steps to produce the relevant material record. In the absence of any rebuttal evidence, the mere contention of respondent No.2 as well as oral assertion of RW.2 cannot be taken into consideration. In this regard, it is to be noted that it is established principle of law that the material produced before the Tribunal only shall be taken into consideration to award compensation. In ***Bimla Devi & others vs Himachal Road Transport Corporation & others***[8]***,*** it is held that the claimants in a motor accidents claims petition are not required to establish the occurrence of the accident and negligence of the driver beyond reasonable doubt and the standard of proof applicable to such proceedings is preponderance of the probabilities and further, the Tribunal is required to appreciate the entire evidence holistically and determined the issue of negligence on the basis of the probabilities emerging from the facts and circumstances of the case. Having considered the material placed, the learned Tribunal rightly fixed liability on respondent No.2. It is not in dispute that policy of the offending of vehicle was in force as on the date of accident and as such, respondent No.2 is liable to indemnify the owner of the offending vehicle i..e, respondent No.1. Therefore, both the respondents are jointly and severally liable to pay compensation. Hence, this point is answered holding that respondent No.1 is liable to pay compensation.

[8] 2009 (13) SCC 530

11**. Point No.3:**

Upon reappraisal of the evidence on record, and for the foregoing reasons, this Court came to the conclusion that the learned Tribunal erred in assessing just and fair compensation and as such, the same is liable to be modified. Hence, this point is answered accordingly.

12. **Point No.4:**

(i) **In the result**, and in view of the findings in point Nos.1 to 3, this Motor Accident Civil Miscellaneous Appeal is dismissed, however, modifying the Order of the learned Tribunal in respect of the amount of compensation **from Rs.7,25,000/- (Rupees Seven Lakhs Twenty Five Thousand only) to Rs. 12,71,000/- (Rupees Twelve Lakh Seventy One Thousand only)** and awarded the same to the petitioners with interest thereon at 7.5% per annum simple from the date of petition till the date of payment of realization recoverable by the petitioners from respondent Nos.1 and 2, subject to payment of additional Court fee on Rs.4,71,000/- (Rupees Four Lakhs Seventy One Thousand only) before the Registry within thirty (30) days from today.

(ii) Out of the said compensation amount, an amount of Rs.6,71,000/- (Rupees Six Lakhs Seventy One Thousand only) is awarded to the petitioner No.1. Rs.2,00,000/- (Rupees Two Lakhs only) each is awarded to the petitioner Nos.2 & 3 and Rs.2,00,000/- (Rupees Two Lakhs only) is awarded to the petitioners No.4. Apportionment is ordered accordingly.

(iii) Time for deposit of the compensation amount, as aforesaid, with interest, excluding the amount, if any, already deposited, within (02) two months, from the date of receipt of a copy of this judgment by the learned Tribunal.

(iv) On such deposit, petitioners Nos.1 and 4 are permitted to withdraw the compensation as awarded supra along with accrued interest thereon, excluding the amount, if any, already paid.

(v) The award amount of petitioner Nos.2 & 3 shall be kept in two separate fixed deposits, in any nationalized bank, till they attain majority.

(vi) There shall be no order as to costs.

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

_____

SUNITHA GANDHAM, J

Dt:25-11-2026
SSA/knl