THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 2007 OF 2016

JUDGMENT:

This appeal is filed by the petitioners against the Order and decree dated 11.02.2016 in M.V.O.P.No.140 of 2013 passed by the Chairman, Motor Accident Claims Tribunal-cum-XVI Additional District & Sessions Judge, Nandigama, seeking enhancement of compensation.

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. **The case of the petitioners is thus**:

On 11.06.2011, while the deceased along with other passengers travelling in an auto bearing No.AP 16 TY 164 and when the auto reached near Magallu Village, the driver of the said auto drove the same in a rash and negligent manner, lost control over the auto and dashed against the tractor and as a result of which, deceased sustained injuries. Immediately after the accident, he was shifted to the Government Hospital, Nandigama and from there, shifted to the Government Hospital, Vijayawada and on the next day, he succumbed to the said injuries. As on the date of the accident, deceased hale and healthy, was aged about 40 years, working as coolie and was earning Rs.6000/- per month and contributing the same for maintenance of his family. Due to his sudden demise, the petitioners, who are dependants and legal representatives of deceased lost their financial support as well as love and affection. Since the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 16 TY 164, a case in Crime No.234 of 2011 is registered of the offence under Section 338 of the Indian Penal Code (hereinafter referred to as 'the Code') against the driver of the offending vehicle. Respondent Nos.1 and 2 are owners, respondent No.3 is insurer and

respondent No.4 is driver of auto bearing No. AP 16 TY 164 and as such, the respondents are jointly and severally liable to pay the compensation.

4. Having received notice, respondent Nos.1, 2 and 4 remained *ex parte.* Respondent No.3/Insurance company filed written statement refuting the averments made in the petition, wherein, *inter alia* contended that petitioners claimed excessive compensation, no documentary evidence is adduced with regard to the age and income of the deceased, driver of the auto had no valid driving license, offending vehicle had no permit and fitness, as on the date of accident, petition is bad for non-joinder of necessary parties, and with other formal denials, prayed to dismiss the petition.

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

> 1) Whether the deceased Orsu Venkateswara Rao died in a Motor Accident that occurred on 11.06.2011 at 8.00 P.M., near Magallu Village, Nandigama Mandal, Krishna District due to rash and negligent driving of the driver of the Auto bearing No.AP 16 TY 164?
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> 2) What is the correct age and income of the deceased by the date of accident?
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> 3) Whether the petitioners are entitled to the compensation as prayed for? If so, for what amount and from whom?
>
> 4) To what relief?

6. During trial, petitioner No.1 examined herself as PW.1 and the petitioners have got examined independent witness as P.W.2, and filed Exs.A1 to A6 documents. As against the said evidence, respondent No.3 has got examined its legal officer and authorized person of RTA office as RWs.1 and 2, and filed Ex.B1/House hold card of family of P.W.1 and EX.X1/Search report. At the culmination of trial, learned Tribunal exonerated the liability of the respondent No.3 and awarded compensation of Rs.3,50,000/- for the untimely death of O. Venkateswara Rao, fixing liability on respondent Nos.1 and 2.

7. Being aggrieved by the said Order and decree, the petitioners/claimants preferred the instant appeal, urging the principal grounds that:

(i) The Order and decree of the learned Tribunal is contrary to law, weight of evidence and probabilities of the case.

(ii) The learned Tribunal erroneously dismissed the petition against respondent No.3 and that ought to have granted compensation against the respondent No.3 also.

(iii) The learned Tribunal ought to have seen that the special damages and general damages ought to have passed, and with other formal grounds, prayed to allow the appeal.

8. Heard both sides.

9. Perused petition and other material available on record including the impugned order dated 11.02.2016.

10. On hearing both sides and upon perusing the material placed on record, the points that would arise for consideration are as follows:

(1) Whether O. Venkateswara Rao died in the accident dated 11.06.2011 occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 16 TY 164?

(2) Whether the petitioners are entitled for compensation? If so, to what amount?

(3) Whether the Order and decree dated 11.02.2016 passed in M.V.O.P.No.140 of 2013 by the Chairman, Motor Accident Claims Tribunal-cum-XVI Additional District & Sessions Judge, Nandigama, are sustainable in facts and law?

(4) To what relief?

11. Admittedly, respondent Nos.1, 2 and 4 have not filed any appeal or cross objection challenging the findings of the learned Tribunal, 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.

12. **Point No.1:**

(a) Now, it is necessary to analyze the evidence on record to answer the points. As seen from the record, during trial, petitioner No.1 filed examination-in-chief in lieu of chief examination by reiterating the averments mentioned in the petition. In order to prove the manner and method of accident, petitioners relied upon the evidence of P.Ws.1 and 2 coupled with Exs.A1 to A4 documents. It is evident from the record that PW.1 who is wife of the deceased is not an eye witness to the accident and the only available evidence to prove the manner and method of accident is that of P.W.2 who travelled in the same auto, along with the deceased had categorically stated that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 16 TY 164.

(b) As seen from EX.A1/First information report, accident occurred due to the rash and negligent driving of the said auto. Further, it is evident from EX.A4/Motor Vehicle Inspector report, the accident not occurred due to any mechanical defect. No rebuttal evidence is adduced by the respondents. Having filed written statement, respondent No.3 has not examined the driver of the auto who is the best person to speak about the accident and his non-examination is fatal to the case of respondents. It is already stated above that the respondent Nos.1, 2 & 4 have not preferred any appeal or cross objection, challenging the finding of the learned Tribunal in respect of the rash and negligent driving of the driver of the auto/respondent No.4. So, the evidence of P.Ws.1 and 2 coupled with EXs.A1 to A4 clinchingly proves that the accident occurred due to the rash and negligent driving of the driver of the auto. As

seen from EX.A2/Inquest report and EX.A3/Postmartem report, O. Venkateswarlu sustained injuries and succumbed to the said injuries. Hence, this point is answered in the affirmative and in favour of the petitioners, holding that the accident occurred only due to the rash and negligent driving of the driver of the auto bearing No.AP 16 TY 164.

13. **Point No.2:**

(a) As per the version of petitioners, petitioner No.1 is wife, petitioner No.2 is married daughter and petitioner No.3 is major daughter of the deceased, the deceased hale and healthy, aged about 40 years, working as coolie and was earning Rs.6,000/- per month, as on the date of the accident and due to his sudden demise, the petitioners lost their financial support as well as love and affection. As seen from EX.A2/Inquest report and EX.A3/Post-mortem report, age of the deceased is mentioned as 40 years. There is no contra evidence to that effect. So, it can safely be concluded that the age of the deceased was 40 years as on the date of accident. The relevant multiplier is '15'. The petitioners who are none other than the legal representatives and dependants of the deceased are entitled for compensation.

(b) So far as earnings of the deceased is concerned, petitioners have not adduced any evidence. Having considered EX.B1/Household card of the deceased, learned Tribunal assessed the notional annual income of the deceased at Rs.36,000/-. In the given facts and circumstances and on a reasonable hypothesis, monthly income of the deceased can be assessed as Rs.6,000/-.

(c) Admittedly, petitioners filed the claim application seeking compensation of Rs.3,50,000/- and the learned Tribunal awarded compensation of Rs.3,50,000/-. Learned counsel for the petitioners submitted that just and fair compensation may be awarded. Applying the principles in ***Sarala Varma and***

Others Vs. Delhi Transport Corporation and another[1] and ***National Insurance Company Ltd Vs. Pranay Sethi and others***[2] and ***Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram and others***[3], this court has assessed the compensation as follows:

Sl. No.	Heads		Calculation
1.	Annual Income (Rs.6000 X 12)	Rs.	72,000.00
2.	Deduction towards personal expenses (72000x1/3)	Rs.	24,000.00
3.	Total income (72,000-24000)	Rs.	48,000.00
4.	Future prospects (25% of 48000)	Rs.	12,000.00
5.	Total loss of dependency (48,000+12,000) = 60,000x15	Rs.	9,00,000.00
6.	Loss of consortium (40,000x3) (spousal+parental)	Rs.	1,20,000.00
7.	Funeral expenses	Rs.	15,000.00
8.	Loss of estate	Rs.	15,000.00
	Total	Rs.	**10,50,000.00**

(d) In the given facts and circumstances of the case, petitioners are entitled for **Rs.10,50,000/- (Rupees Ten Lakhs Fifty Thousand Only)** and in this courts well considered view, the compensation awarded is just, adequate and reasonable, as the deceased left his dependents.

(e) Insofar as liability of the respondent No.3 is concerned, a finding is already given in point No.1 that the accident occurred due to the rash and negligent driving of respondent No.4. Learned counsel for the respondent No.3 contended that driver of the auto had no driving license, as on the date of accident. To prove the said contention, respondent No.3 has got examined its legal officer as RW.1 and Junior Assistant in RTA Office, Nandigama as

[1] (2009) 6 SCC 121
[2] (2017) 16 SCC 680
[3] (2018) 18 SCC 130

RW.2 and filed EX.X1/Search report. As per the evidence of RW.1/Legal officer of respondent No.3, the driver of the auto/respondent No.4 had no driving license. Though petitioners contended that respondent No.4 has valid driving license, they have not adduced any documentary evidence. As per the evidence of RW.2/Junior Assistant in RTA Office, Nandigama, no driving license particulars in the name of respondent No.4 were found in their office and they have not issued any driving license in the name of respondent No.4.

(f) In this regard, it is to be noted that in ***National Insurance Co. Ltd., Vs. Swaran Singh and others***[4], in which Hon'ble Apex Court has clearly explained the circumstances about the liability of insurance company and has held that, in case, where driver of vehicle admittedly did not hold license and the same was allowed consciously to be driven by owner of the vehicle, the insurer is entitled to exoneration from its liability and it further held that,

> "the breach of policy conditions, i.e., disqualification of driver or invalid driving licence of the driver, as contained in sub section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer, and mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties, and to avoid its liability towards inured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."

(g) And, in ***United India Insurance Company Ltd., through its Divisional Manager Vs. Sujata Arora and others***[5], Hon'ble Supreme Court while considering the principles laid down in ***National Insurance Company Limited Vs. Laxmi Narain Dhut***[6] and ***Jawahar Singh Vs. Bala Jain and other***[7] has held that, if the offending vehicle is driven by the driver who had no driving license or fake license, it amounts to violation of terms and conditions

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[4] 2004 ACJ 1
[5] 2013 (3) T.A.C. 29 (S.C)
[6] (2007 (4) Scale 36)
[7] (2011 (5) Scale 494)

of policy and in that circumstances, no liability can be fastened on the insurance company. In ***Oriental Insurance Company Limited, Rajahmundry Vs. Bhimala Pavan Kumar and others***[8], Hon'ble High Court of Andhra Pradesh has held that, in the absence of driving license, the insurance company cannot be made liable, to pay compensation.

(h) Respondent No.3 has adduced evidence and proved that respondent No.4/Driver of the auto had no driving license, as on the date of accident. As per EX.A6/Registration certificate of the auto bearing No.AP 16 TY 164, respondent No.1 is registered owner and having received notices, respondent Nos.1 and 4, remained *ex parte.* As per EX.A5, respondent No.2 insured the vehicle with respondent No.3 and respondent No.3 has adduced evidence that respondent No.1 committed willful breach of terms and conditions of EX.A5/Policy. In this regard, it is to be noted that in ***Naveen Kumar v. Vijay Kumar and Others***[9]***,*** Hon'ble Apex Court has held that, under Section 2 (30) of the Motor Vehicles Act, 1988, the person in whose name the vehicle stands registered with the registering authority is treated as its owner for the purposes of the Act and even if the registered owner had sold or transferred the vehicle to another person, he cannot escape liability towards accident victims merely because possession and ownership were transferred, when the registration records continue to reflect his name. In the present case at hand, there is no proof to show that respondent No.1 alienated the offending vehicle to the respondent No.2 and for the reasons best known to the respondent Nos.1, 2 and 4, having received notices, they remained *ex parte*. Mere taking insurance policy in the name of respondent No.2 is not suffice to fasten liability against him, that too, in the present case at hand, respondent No.3 adduced rebuttal evidence to show that respondent Nos.1 and 2 violated the terms and conditions of EX.A5/Policy and as such, respondent Nos.2 and 3 are not liable to pay compensation. Respondent No.4, being the person responsible for the

[8] 2007 (3) ALD 138 16
[9] 2018 (3) SCC 1

accident, is liable to pay compensation and the registered owner/respondent No.1 is also vicariously liable for the acts committed by respondent No.4. Therefore, respondent Nos.1 and 4 are jointly and severally liable to pay compensation. Hence, this point is answered accordingly.

14. Point No.3:

Upon reappraisal of the evidence on record, and for the foregoing reasons, this court came to conclusion that the learned Tribunal erred in assessing the quantum of compensation and fixing liability on respondent Nos.1 and 2 instead of respondent Nos.1 and 4 and as such, the same is liable to be set aside. Hence, this point is answered accordingly.

15. 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 allowed in part, enhancing the compensation awarded by the learned Tribunal **from Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand Only) to Rs.10,50,000/- (Rupees Ten Lakhs Fifty Thousand Only)** together with interest at the same rate as awarded by the Tribunal, from the date of the claim petition till the date of realization, recoverable from the respondent Nos.1 and 4, subject to payment of additional court fee on **Rs.7,00,000/- (Rupees Seven Lakhs Only)** by the petitioners before the Registry within thirty (30) days from today.

(ii) Out of the said compensation amount, **Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand Only)** is awarded to the petitioner No.1. **Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) each** is awarded to the petitioner Nos.2 and 3. Apportionment is ordered accordingly.

(iii) Time for deposit, as aforesaid, with interest, excluding the amount, if any, already deposited, is two (2) months from the date of receipt of a copy of this judgment by learned Tribunal.

(iv) On such deposit, petitioner Nos.1 to 3 are permitted to withdraw the compensation as awarded supra along with accrued interest thereon, excluding the amount, already paid.

(v) Claim against respondent Nos.2 and 3 is dismissed.

(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: 02.11.2026
Vns

Whether the order is :

Speaking Yes/No ✓ / Reasoned Yes/No

Reportable Yes/No ✓ / Non-Reportable Yes/No