APHC010800942017

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3604]**
(Special Original Jurisdiction)

MONDAY, THE 12th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 2984/2017

Between:

1. THE ORIENTAL INSURANCE COMPANY LIMITED, REPTD BY ITS DIVISIONAL MANAGER, RAJAHMUNDRY.

...APPELLANT

AND

1. KAMISETTI SESHA RAO, S/O LATE SATYANARAYANA, HINDU, AGED 26 YEARS, R/O SREERAMPURAM, RAJANAGARAM MANDAL.
2. KAMISETTI LOVA RAJU, S/O LATE SATYANARAYANA, HINDU, AGED 25 YEARS, R/O SREERAMPURAM, RAJANAGARAM MANDAL
3. KAMISETTI VEERA VENKATA LAKSHMI, D/O. LATE SATYANARAYANA HINDU, AGED 24 YEARS, R/O SREERAMPURAM, RAJANAGARAM MANDAL.
4. KAMISETTI RAGHAVA, W/O LATE SESHA-RAO, HINDU, AGED 65 YEARS, WIDOW, R/O SREERAMPURAM, RAJANAGARAM MANDAL.
5. J POSIYYA, S/O PEDDA SUBBA RAO, HINDU, AGED 50 YEARS, DRIVER OF LORRY BEARING NO. AP 31 TT 4086, R/O BANDAMAMIDI, RAMPACHODAVARAM MANDAL
6. VICECHAIRMAN AND MANAGING DIRECTOR OF GIRIJAN COOPERAT, OWNER OF THE LORRY BEARING NO. AP 31 TT 4086, R/O EAST POINT COLONY, OPPOSITE UDA COLONY, VISAKHAPATNAM. (R- 5 AND 6 ARE NOT NECESSARY)

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High CourtAppeal against the judgment and decree of the Motor Accidents Claims Tribunal cum VIII Additional District Sessions Judge (FTC), East Godavari at Rajamahendravaram in O.P. No. 491/2012 dt. 24-04-2017 for the following among other grounds

IA NO: 1 OF 2017(MACMAMP 5268 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased condone the delay of 87 days in representation of the appeal.

IA NO: 2 OF 2017(MACMAMP 5269 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further pros including the execution of the decree and order passed in OP.491/2012 dt. 24-04-04-2017 on the file of the Motor Accident Claims Tribunal-Cum-IV Additional District & Sessions Judge(FTC) East Godavari at Rajamahendravaram, pending disposal of the above M.A.C.M.A

Counsel for the Appellant:

1. GUDI SRINIVASU

Counsel for the Respondent(S):

1. N SIVA REDDY

The Court made the following:

THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 2984 OF 2017

JUDGMENT:

Assailing the order and decree dated 24.04.2017 in M.V.O.P.No.491 of 2017 passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-VIII Additional District & Sessions Judge (FTC), East Godavari, Rajamahendravaram, for awarding compensation of Rs.4,88,000/- for the untimely death of Kamisetti Satynarayana, in a road traffic accident.

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**:

(a) On 29.04.2017 at about 5.00 p.m., while the deceased proceeding on his motorcycle slowly and by observing the traffic and when he reached near G.I.E.T Engineering College, one lorry bearing No. AP 31 TT 4086 which was coming from Rajanagaram, came in a rash and negligent manner, suddenly turned towards Umar Alisha Cold Storage in a rash and negligent manner, lost control and dashed against the motor cycle of the deceased and as a result, Kamisetti Satyanarayana fell down sustained injuries and died on the spot.

(b) A case in Cr.No.85 of 2012 was registered of the offence under Sections 304-A of Indian Penal Code, against the driver of lorry. The deceased aged about 40 years, was doing seasonal fruits business, was earning Rs.500/- per day, as on the date of accident. The petitioner No.1 and 2 are the sons, petitioner No.3 is the daughter and petitioner No.4 is the mother of the deceased. Due to the sudden death, petitioners lost their financial support as well as love and affection. Respondent No.1 is the driver, Respondent No.2 is owner and Respondent No.3 is insurer of the lorry bearing No. AP 31 TT 4086

and as such, all the respondents are jointly and severally responsible to pay compensation.

4. Having received summons, respondent No.1remained *ex parte*.

5. Respondent No.2 filed counter denying the averments made in the petition and by contending that the lorry is insured with the respondent No.3, respondent No.1 had driving license, accident occurred due to the rash and negligent riding of deceased, there was no negligence on the part of respondent No.1, owner and insurance company of motor cycle are not arrayed as parties, and with other formal denials, prayed to dismiss the petition.

6. Respondent No.3 filed written statement by denying the material averments mentioned in the petition, wherein, inter alia contended that the accident occurred due to the rash and negligent riding of the deceased, petitioners claimed excessive compensation, respondent No.1 had no driving license, and with other formal denials prayed to dismiss the petition.

7. Taking into consideration of the aforementioned pleadings, the learned tribunal framed the following issues:

> 1) Whether the accident occurred due to rash and negligent driving of R1, while R1 driving the lorry bearing No. AP 31 TT 4086?
>
> 2) Whether the petitioners are entitled for compensation, if so, to what amount and against whom?
>
> 3) To what relief?

8. During trial, petitioner No.1 examined himself as PW.1 and petitioners have got examined two independent witnesses as PWs.2 and 3, and filed Exs.A1 to A4 documents. As against the said evidence, respondent No.2 has got examined its driver as RW.1 and its employee as RW.2, and respondent No.3 got examined its employee as RW.3, and filed Exs.X1 and B1

documents. At the culmination of the trial, the learned Tribunal allowed the petition in part awarding compensation of Rs.4,88,000/-.

9. Being aggrieved by the said Order and decree, respondent No.3 preferred the instant appeal, urging the following grounds:

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

(ii) The finding of the learned Tribunal on issue No.1 is not correct and the learned Tribunal failed to appreciate evidence in proper perspective.

(iii) The learned Tribunal without considering the material available on record erroneously awarded compensation.

(iv) The learned Tribunal failed to consider the aspect that the petitioner Nos.1 to 3 are majors and they are not entitled for compensation.

(v) The learned Tribunal failed to consider the aspect that the investigating officer had filed final report abating the case as the accident occurred due to rash and negligent riding of the deceased.

(vi) The learned Tribunal failed to consider the aspect that the petitioners have not filed any document to show income of the deceased, and with other formal grounds prayed to allow the appeal.

10. Heard Sri Gudi Srinivasu, learned counsel for the Appellant and Sri N. Siva Reddy, learned counsel for the Respondents/Claimants.

11. On hearing both sides and upon perusing the material available on record, and including the impugned order dated 24.04.2017, the points that would arise for consideration are as follows:

(1) Whether Kamisetti Satynarayana died in the accident occurred due to the rash and negligent driver of lorry bearing No. AP 31 TT 4086 i.e., by its driver.

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

(3) Whether the Order and decree dated 24.04.2017in M.V.O.P.No.491 of 2017 passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-VIII Additional District & Sessions Judge (FTC), East Godavari, Rajamahendravaram, are sustainable in facts and law?

(4) To what relief?

12. **Point No.1:**

(a) Admittedly, petitioners have not filed any cross appeal or X-Objections challenging the findings of the learned Tribunal, however, being the first Appellate Court and last fact finding court, this court has to re-appreciate and re-examine the evidence available on record.

(b) Now, it is necessary to analyze the evidence on record and to prove their contentions, petitioner No.1 filed his examination-in-chief in lieu of chief examination by reiterating the averments mentioned in the petition and petitioners relied upon the evidence of PWs.2 and 3 coupled with Exs.A1 to A4 documents.

(c) As seen from the record, PW1 who is the son of the deceased is not eye witness to the accident and the available evidence is that of PWs.2 and 3, who testified that on 29.04.2012 at 5.00 PM, while they were proceeding on their motor cycle from Diwancheruvu to Rajanagaram, they found the deceased kamisetti Satyanarayana who was going ahead of their motor cycle and then, a lorry bearing No.AP 31 TT 4086 which was driven by the respondent No.1, came in a rash and negligent manner, dashed against the motor cycle of the deceased and as such, he fell down and died on the spot. Both the witnesses have categorically stated in one voice that the accident occurred due to the rash and negligent driving of respondent No.1.

(d) The learned counsel for the respondent No.3 argued that the accident occurred due to the rash and negligent riding of the deceased only and as such, though the case is registered against respondent No.1, after completion of investigation, RW3 filed final report alleging that the accident occurred due to rash and negligent riding of the deceased and to substantiate the version of respondent No.3, they relied upon the evidence of RW1/Driver and RW3/Investigating Officer. RW1 testified that he is the driver of respondent No.2, on 29.04.2012, at about 4.30 PM after unloading the load, while he was returning to Cold Storage towards G.I.E.T Engineering College, all of a sudden motor cyclist dashed his vehicle from its behind and died on the spot and immediately after the accident, he went to Rajanagaram Police Station and gave report to the Police. In the cross examination, he had categorically admitted that after commission of accident, he had surrendered before the police, he does not the contents of Ex.A1, there is no proof to show that he has given report to police. Having stated that a case in crime No.85 of 2012 is registered vide Ex.A1, RW.3/Investigating Officer had further stated that the accident occurred due to the negligence of the respondent No.1 and as such, after obtaining permission from his officials, he filed Ex.X1/Final report closing the case as abated. In the cross examination, he had categorically admitted that he had registered the crime against the respondent No.1 and in Ex.A1 report, it is mentioned that the accident occurred due to the negligence of respondent No.1 and as per Ex.A2/Inquest report, he had not examined any independent witness. It is his further evidence that on 30.04.2012, he has examined two persons and the said two persons are not cited as witnesses in the inquest report, they belong to different places, he did not examine any of the students, canteen persons and other independent witnesses who are present near the scene of offence and he has also not examined cleaner of the claim lorry.

(e) As seen from Ex.X1/Final report also, absolutely there are no reasons for coming to conclusion that the accident occurred due to the rash and negligent riding of the deceased and it is simply mentioned that as per the evidence of witnesses, accident occurred due to the rash and negligent riding of the deceased only and that as per the statements of the direct witnesses, he came to conclusion that there was no fault on the part of respondent No.1. Had really R.W.3 examined any of the independent witnesses or direct witnesses, he should have been mentioned the names and details of the said witnesses.

(f) In this regard, it is to be noted that in ***Bimla Devi and Others Vs. Himachal Road Transport Corporation & Ors***[1], it is held that strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be done by the claimants and the claimants were merely to establish their case on the touchstone of preponderance of probability. Further, the standard of proof beyond reasonable doubt could not have been applied. In this case, nothing useful material is elicited in the cross examination of PWs.2 and 3 who are independent witnesses and who have categorically stated in one voice about the rash and negligent driving of respondent No.1. As rightly argued by the learned counsel for the petitioner, the learned Tribunal rightly considered the material placed before it and came to conclusion that the accident occurred due to the rash and negligent driving of respondent No.1. So, the evidence of PWs.1 to 3 coupled with Ex.A1, X1 and also the material elicited by the petitioner in the evidence of R.Ws. 1 and 3, this Court, without any doubt, came to conclusion that the accident occurred due to rash and negligent driving of respondent No.1. As seen from Ex.A2/Inquest report and Ex.A4/Post mortem report, Kamisetti Satyanarayana sustained injuries in the accident and succumbed to the said injuries. Hence, this point is answered in the affirmative and in favour of the petitioners.

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[1] 2009 INSC 740

13. **Point No.2:**

(a) As per the version of the petitioners, deceased hale and healthy, aged about 40 years, doing seasonal fruits business, was earning Rs.500/- per day and due to the sudden demise, petitioners who are sons, daughter and mother of the deceased lost their financial support, love and affection. As seen from Ex.A2/Inquest report and A4/Post mortem report, age of the deceased is mentioned as 45 years. There is no contra evidence to that effect. So, it can safely be concluded that the age of the deceased was aged about 45 years, as on the date of accident and the relevant multiplier is '13'.

(b). Learned counsel for the respondent No.3 argued that petitioner Nos. 1 to 3 are major children of the deceased and as such, they are not entitled for compensation. In ***Manjuri Bera Vs. Oriential Insurance Company Limited***[2], Hon'ble Apex Court held at Para No.14 as follows:

> "14..... In paragraph 16 of the said decision, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, major sonwill be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning."

(c) Further, in ***National Insurance Company Limited Vs. Birender and others***[3], it is held that legal representatives of the deceased have a right to apply for compensation, and in ***Bajaj Allianz General Insurance Co., Limited and another Vs. Bipasa Roy and others***[4] ***and Balvinder Singh Vs.***

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[2] 2007 ACJ 1279 (SC)
[3] AIR 2020 SC 434
[4] 2022 ACJ 1406

Vijaya Kumar and others*[5]*, it was held that major/married daughters and sons are entitled for compensation.

(d) As per the above propositions, married/major sons/daughters who are also earning and not fully dependents on the deceased, would be still covered by the expression "legal representative" of the deceased and entitled for compensation. So, the petitioner Nos.1 to 3, being legal representatives of the deceased are entitled for compensation.

(e) So far as income of the deceased is concerned, as rightly observed by the learned Tribunal, petitioners have not adduced any supportive oral as well as documentary evidence to show that the deceased doing seasonal fruits business and was earning Rs.15,000/- per month and having considered the fact that the accident occurred in the year 2012, the learned Tribunal has rightly assessed the notional income of the deceased at Rs. 4,000/- per month and awarded compensation of Rs.4, 88,00/-.

(f) So far as liability of the respondents is concerned, a finding is already recorded in point No.1 that the accident occurred due to the rash and negligent driving of respondent No.1 and as such, respondent No.2 who is owner of the offending vehicle is vicariously liable for the acts committed by respondent No.1. It is not in dispute that the insurance policy was in force, as on the date of the accident and as such, respondent No.3 is liable to indemnify the liability of Respondent No.2. So, respondent Nos.1 to 3 are jointly and severally liable to pay compensation.

14. 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 rightly awarded just and fair compensation of Rs.4,88,000/-. For the findings in point Nos.1 and 2, this court came to conclusion that absolutely there are no

[5] 2022 ACJ 1140

reasons to interfere with the order and decree of the learned Tribunal. Hence, this point is answered accordingly.

15. Point No.4:

In the result, and in view of the findings in point Nos.1 to 3, this Motor Accident Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

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

SUNITHA GANDHAM, J

Dated 12.10.2026
CJP/ knl/vns