APHC010680842018

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3548]**
(Special Original Jurisdiction)

SATURDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL Nos: 2510/2018 and 1532/2018

M.A.C.M.A.No.2510 of 2018:

Between:

1. S SARASWATHI, W/O LATE S.SUDHAKAR REDDY, AGE ABOUT 47 YEARS, OCC- HOUSE WIFE, DEPENDANT VISUALLY HANDICAPPED.
2. S.RANJITH KUMAR, S/O. LATE S.SUDHAKAR REDDY, AGE ABOUT 22 YEARS.
3. NEETU, D/O LATE S.SUDHAKAR REDDY, AGE ABOUT 17 YEARS. ALL ARE RESIDING AT GOLLAMADUGU VILLAGE, GUDIPALA MANDAL, CHITTOOR DISTRICT.

...APPELLANT(S)

AND

1. GANESH ASHOK PEWER, S/O ASHO GANGARAM PAWAR, AGE ABOUT 29 YEARS, R/O OUTPOST, SIVAMNAGAR, CHAIPHATE, NAMPUR VILLAGE, SATANA TALUK, NASHIK, MAHARASHTRA.
2. CHOLAMANDALAM MS GENERAL INSURANCE CO LTD, AT POST, SHEVAN NAGAR, CHAR PHATA, NAMPUT, TAL-SATANA DISTRICT, NASHIK, MAHARASHTRA, OEN OF THE BRANCH, REP. BY ITS BRANCH MANAGER, M/S CHOLAMANDALAM MS GENERAL INSURANCE CO.LTD., NO.302, III FLOOR, SR ARCHED, PARK LANE, SECUNDERABAD.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC praying thet the Highcourt may be pleased tomay be pleased to allow the appeal by modifying the order and decree dated 11-10-2017 passed in MV.OP.No.5 of 2015, on the file of Motor Accident Claims Tribunal -cum- Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Chittoor consequently enhance the compensation amount from Rs.7,33,400/- to Rs.21,00,000/-, with interest and costs as prayed for in the Tribunal below, in the interest of justice and to pass

IA NO: 1 OF 2018

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 condone delay of 447 days in filing the appeal against the order and decree dated.11/10/2017 passed in MVOP.NO.5/2015 On the file of the Motor Accident Claims Tribunal- cum- Principal District Judge, Chittoor in the interest of the Justice and to pass

Counsel for the Appellant(S):

1. K V L NARASIMHA RAO

Counsel for the Respondent(S):

1.

The Court made the following:

COMMON JUDGMENT:

Heard,

Sri K.V.L.Narasimha Rao, learned counsel appearing for the claimants, and Sri Srinivasa Rao, learned counsel representing Sri Kota Subbarao, learned counsel appearing for Cholamandalam MS General Insurance Company Limited.

1. M.A.C.M.A.No.2510 of 2018 is filed by the claimants and M.A.C.M.A.No.1532 of 2018 is filed by the Insurance Company. As both the appeals have been filed against M.V.O.P.No.5 of 2015, they are heard together and a common order is being passed.

2. Dissatisfied with the order passed by the Motor Accidents Claims Tribunal-cum-Principal District Judge, Chittoor, in M.V.O.P.No.5 of 2015, dated 11.10.2017, the claimants preferred the appeal seeking enhancement of compensation.

3. The parties are arrayed as they were before the Tribunal

4. The contour of facts is that on 04.11.2014 at about 08.15 A.M., the deceased Salla Sudhakar Reddy was riding his TVS-50 motor cycle bearing No.TN09W1339 on Chittoor-Vellore road, and when he was near Gudipala Cross Road, Gudipala Mandal, the driver of Tavera car bearing No.MH15BX9940 belonging to the 1st respondent, drove the same in a rash and negligent manner and, while proceeding towards the Vellore Road, lost control and dashed against the deceased's vehicle, resulting in a fatal accident, who succumbed to the injuries at about 09.15 A.M., on the same day. A crime was registered against the driver of the 1st respondent in Crime No.138 of 2017 registered by Gudipala Police, and later a charge sheet is filed in C.C.No.512 of 2014 on the file of IV Additional Judicial Magistrate of First Class, Chittoor.

5. Learned counsel appearing for the claimants proceeded with his arguments stating that the Tribunal has grossly erred in not taking the income of the deceased in a proper and perspective manner and the same is contrary to the very ratio laid down by the Hon'ble Supreme Court time and again. He draws the attention of the Court that the deceased was a painter, besides participating in agricultural operations, and was earning more than Rs.1,000/- per day and doing building painting contract works and was getting Rs.15,000/- per month and Rs.25,000/- per month towards agricultural operations and with the sudden death of the deceased, who is the husband of the 1st claimant and father of claimants 2 and 3, the claimants were put to heavy financial loss and also family maintenance.

6. The accident vehicle, Tavera car bearing No.MH15BX9940 was insured with the 2nd respondent-Insurance Company. The 1st respondent, who is the driver, remained *ex parte*, and the 2nd respondent-Insurance Company filed counter denying the contentions in the petition. In the counter, it is refuted that there is no rash and negligent driving on the part of the 1st respondent and further that the 1st respondent is not having a valid driving license, thereby violating the terms and conditions of the policy and hence not liable to pay any compensation.

7. The Tribunal framed the following issues:

i. Whether the accident in question occurred due to the rash and negligent driving of the driver of car bearing No.MH-15-BX-9940 resulting in the death of the deceased S.Sudhakar Reddy?

ii. Whether the petition is bad for non-joinder of necessary parties?

iii. Whether the petitioners are entitled for any compensation, if so, to what amount and from whom?

iv. To what relief?

8. The Tribunal, while answering the issues framed regarding the rash and negligent driving and the compensation and entitlement to the claimants, answered in favour of the claimants. There is no dispute regarding

the accident and the 1st claimant examined as PW1, a third-party eye witness was examined as PW2, and a third-party co-worker of the deceased was examined as PW3, who deposed regarding the nature of the accident. The 2nd respondent, who marked his appearance, has not made any efforts to mark any evidence nor cross-examined the witnesses. The documents marked on behalf of the claimants are as follows:

Ex.A1: Certified copy of FIR dated 04.11.2014

Ex.A2: Certified copy of Charge sheet

Ex.A3: Certified copy of Accident Information Report

Ex.A4: Certified copy of Postmortem Certificate

Ex.A5: Certified copy of Inquest report

Ex.A6: Certified copy of Motor Vehicle Inspector's Report

Ex.A7: Aadhar card of PW1

Ex.A8: Household card of deceased S.Sudhakar Reddy

Ex.A9: Disability certificate of S.Saraswathi issued by the Medical Board, Government Hospital, Chittoor.

The 2nd respondent has got marked the copy of the Insurance Policy issued by it.

9. There is no factual dispute regarding the accident as well as the evidence marked by both the parties before this Court. The arguments advanced on behalf of the claimants is that the evidence adduced on behalf of the claimants/appellants was taken into proper perspective by the Tribunal and held that the accident occurred only due to the rash and negligent driving of the 1st respondent and fastened on the owner and the insurance company as jointly and severally liable to pay compensation and has answered accordingly.

10. While coming to the compensation aspect, learned counsel for the claimants pointed out that the age of the deceased is 45 years as per the exhibits marked and the Tribunal wrongly taken note of the age mentioned in

the Aadhaar card as 48 years. It is an established principle of law that the age mentioned in the Aadhaar card is not conclusive proof and the Tribunal failed to appreciate that the said documents which are marked. The age derived from the Postmortem certificate and other relevant reports is 45 years, and the Tribunal ought to have taken 45 as correct age and should have applied '14' as multiplier in computing compensation.

11. On the other hand, learned counsel appearing for the insurance company vehemently contended that, in the absence of the claimants filing any other proof, the Tribunal has rightly considered the age mentioned in the Aadhaar card as conclusive. This Court finds it difficult to accept the said contention since it is settled law that the date of birth in the Aadhaar card is not conclusive and cannot be taken into consideration. This Court is of the opinion that the age of the deceased should be taken as 45 years and not 48 years.

12. Now coming to the aspect of compensation, there is a specific averment by the claimants that the deceased was earning Rs.15,000/- towards painting work and Rs.25,000/- towards agricultural operations and together he was getting Rs.40,000/- per month and the same was corroborated by the evidence of PW3. However, the Tribunal ultimately held that claimants have not placed any reliable documentary proof to establish that the deceased was earning Rs.15,000/- and Rs.25,000/- towards painting work and agricultural operations respectively and finally concluded by holding that he was earning Rs.4,500/- per month. The Tribunal, further basing on the judgment in the case of ***Rajesh and Others vs. Rajbir Singh and others***[1], held that "*even in cases of self-employed and persons on fixed wages, there would be increase in the income and therefore while computing income, future prospects must be taken into consideration"*.

[1] 2013 ACJ 1403

13. The Tribunal, after deducting personal and living expenses as per the ratio enunciated in the case of ***Sarla Verma and Others vs. Delhi Transport Corporation and Another*** [2] , granted Rs.1,00,000/- towards consortium to the 1st petitioner. This was vehemently objected to by the learned counsel appearing for the Insurance company and stated that fixation of Rs.1,00,000/- towards consortium is directly contrary to the ratio observed in the case of ***National Insurance Company Limited vs. Pranay Sethi***[3]. So this Court has to reduce the amount to what is mentioned in ***Pranay Sethi***'s judgment, which is Rs.40,000/- towards consortium. He also asserts that as on today the rulings of ***Pranay Sethi***'s judgment is being followed and is operating. Learned counsel for the claimants has also not seriously objected for the said arguments, since it is the law which is to be applied in principle all through.

14. The next question to be considered is whether Rs.4,500/- as fixed by the Tribunal is correct or not?

15. Learned counsel for the claimants relied upon the judgment of the Hon'ble Supreme Court in the case of ***Syed Sadiq and Others vs. Divisional Manager, United India Insurance Company Limited***[4], wherein the Hon'ble Supreme Court, at paragraph No.8, while discussing the quantum of compensation to be fixed, observed as follows:

> *"8. The appellant/claimant in his appeal further claimed that he had been earning Rs.10,000 p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs.3500 p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in* ***Ramachandrappa vs. Royal Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236]*** *has held as under:*

[2] 2009 (3) ACC 708 (SC)
[3] (2017) 16 SCC 680
[4] (2014) 2 SCC 735

> *"13. In the instant case, it is not in dispute that the Appellant was aged about 35 years and was working as a Coolie and was earning Rs.4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3000/- p.m. Secondly, the Appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.*
>
> *14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time.*
>
> *15. In the present case, Appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to Rs.150/- per day or Rs.4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the Appellant from Rs.4500/- to Rs.3000/- per month. We, therefore, accept his statement that his monthly earning was Rs.4500/-.""*

16. At paragraph No.9, the Hon'ble Supreme Court has further observed that "*there is no reason in the instant case for the Tribunal and the High Court to ask for evidence for evidence of monthly income of the appellant/claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6500/- per month*".

17. At paragraph No.10, the Hon'ble Supreme Court has observed that "*we can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter*

category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc".

18. In view of the above observations of the Hon'ble Supreme Court, this Court finds it reasonable and desirable to fix the monthly income as Rs.6,500/- per month instead of Rs.4,500/- per month. It is to reiterate again, this Court is unable to obliterate as to how the Tribunal has come to the conclusion in fixing the income at Rs.4,500/- per month.

19. As per the observations of the Hon'ble Supreme Court in the above stated judgment and also the subsequent pronouncement in ***Pranay Sethi*** (supra 3), this Court finds it justifiable to fix the income at Rs.6,500/- per month. Applying the multiplier of '14' as observed earlier, the compensation payable is calculated as under:

Description	Calculation	Amount (Rs.)
Income per month		Rs.6,500/-
Income per annum	Rs.6,500/- x 12	Rs.78,000/-
Addition of 30% of future prospects	Rs.78,000/- x 30%	Rs.23,400/-
Total income per annum	Rs.78,000/-+Rs.23,400/-	Rs.1,01,400/-
Personal and living expenses (1/3rd)	Rs.1,01,400/- x 1/3	Rs.33,800/-
Contribution to the family	Rs.1,01,400 - Rs.33,800/-	Rs.67,600/-
Compensation on applying Multiplier	Rs.67,600/- x 14	Rs.9,46,400/-
Consortium to the claimants	Rs.40,000/- x 3	Rs.1,20,000/-
Funeral expenses		Rs.15,000/-
Loss of estate		Rs.15,000/-
Total compensation payable		Rs.10,96,400/-

20. As the funeral expenses and consortium are to be enhanced by 10% every three years, the amount towards consortium amount up to the year 2020 comes to Rs.1,20,000/- x 10% = Rs.1,32,000/-, and with a further 10% enhancement up to the year 2023, the amount comes to Rs.44,000/- x 10% = Rs.1,45,200/-. Funeral expenses and loss of estate are also required to be enhanced for the years 2020 and 2023. Then the amount comes to Rs.36,300/-. Therefore, the total compensation comes to Rs.9,46,400/- + Rs.1,45,200/- + Rs.36,300/- = Rs.11,27,900/-.

21. With the above observations, the Motor Accidents Civil Miscellaneous Appeal No.2510 of 2018 is partly allowed, enhancing the compensation granted to the claimants from Rs.7,33,400/- to Rs.11,27,900/- with interest @ 7.5% per annum. The respondents 1 and 2 are directed to deposit the aforesaid enhanced amount of compensation before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment, after deducting the amount, if any, deposited earlier. On such deposit, the claimants are entitled to withdraw the same as per their apportioned shares before the Tribunal.

22. In view of partly allowing the appeal filed by the claimants, the Motor Accidents Civil Miscellaneous Appeal No.1532 of 2018 filed by the Insurance Company shall stand dismissed. There shall be no order as to costs.

23. As a sequel, Interlocutory Applications pending, if any, shall stand closed.

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TUHIN KUMAR GEDELA, J

Date : 20-12-2025
BMS

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

***THE HON'BLE SRI JUSTICE TUHIN KUMAR GEDELA**

+MOTOR ACCIDENTS CIVIL MISCELLANEOUS APPEAL Nos.2510 and 1532 of 2018

M.A.C.M.A.No.2510 of 2018:

Between:

S.Saraswati and 2 others **...APPELLANTS**

AND

$ Ganesh Ashok Pewer and another **...RESPONDENTS**

M.A.C.M.A.No.1532 of 2018:

Between:

Cholamandalam MS General Insurance Company Limited **...APPELLANT**

AND

$ S.Saraswati and 3 others **...RESPONDENTS**

JUDGMENT PRONOUNCED ON **20.12.2025**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE TUHIN KUMAR GEDELA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

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JUSTICE TUHIN KUMAR GEDELA

*** THE HON'BLE SRI JUSTICE TUHIN KUMAR GEDELA**

+ MOTOR ACCIDENTS CIVIL MISCELLANEOUS APPEAL Nos.2510 and 1532 of 2018

% 20.12.2025

M.A.C.M.A.No.2510 of 2018:

Between:

S.Saraswati and 2 others **...APPELLANTS**

AND

$ Ganesh Ashok Pewer and another **...RESPONDENTS**

M.A.C.M.A.No.1532 of 2018:

Between:

Cholamandalam MS General Insurance Company Limited **...APPELLANT**

AND

$ S.Saraswati and 3 others **...RESPONDENTS**

! Counsel for the Appellants : Mr.K.V.L.Narasimha Rao

! Counsel for the 2nd Respondent : Mr.Srinivasa Rao for Mr.Kota Subbarao

<Gist :

>Head Note:

? Cases referred: 1. 2013 ACJ 1403

2. 2009 (3) ACC 708 (SC)

3. (2017) 16 SCC 680

4. (2014) 2 SCC 735