APHC010405472016

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

MONDAY, THE 2ND DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 3379/2016

Between:

1. THE DIVISIONAL MANAGER, DIVISIONAL OFFICE,, THE ORIENTAL INSURANCE COMPANY LIMITED, LABBIPETA, VIJAYAWADA, KRISHNA DISTRICT, A.P.

...APPELLANT

AND

1. EEDA KRUPAVARAM, S/O.YESU RATNAM, HINDU, MALE, AGED 37 YEARS, COOLIE, RFO.TUMMAGUPPA VILLAGE, H/O.ANAKODERU VILLAGE, BHIMAVARAM MANDAL, WEST GODAVARI DISTRICT, A.P.
2. EEDA SUSILA, W/O.KRUPAVARAM, HINDU, FEMALE, AGED 32 YEARS, COOLIE, R/O.TUMMAGUPPA VILLAGE, H/O.ANAKODERU VILLAGE, BHIMAVARAM MANDAL, WEST GODAVARI DISTRICT. A.P.
3. JANGAM SUBHASH, S/O.VENKATESWARA RAO, HINDU, MALE, AGED 27 YEARS, DRIVER OF AUTO BEARING NO.AP-37TA-3280, DO.SRUNGAVRUKSHAM VILLAGE, PALAKODERU MANDAL, WEST GODAVARI DISTRICT, A.P.
4. JANGAM CHINA VENKATESWARLU, S/O.RATHNAM RAJU, HINDU, MALE, AGED NOT KNOWN, OWNER OF AUTO BEARING NO.AP-37TA-3280, R!O.DOCR NO.3-71, PALAKODERU VILLAGE AND MANDAL, WEST GODAVARI DISTRICT, A.R

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Courtpleased to set aside the order passed in M.V O.P.No.131 of 2014 on the file of the Court of the Motor Vehicle Accidents Claims Tribunal-cum-Ill Additional District Judge, at Bhimavaram, dated 9th December, 2016 and pass

IA NO: 1 OF 2016(MACMAMP 6060 OF 2016

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 the delay of 126 days i resubmittig the above MACMA [SR] No.27425 of 2016 in the interest of justice ad pass

IA NO: 2 OF 2016(MACMAMP 6119 OF 2016

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 grant stay of operation of the decree and judgement in MVOP No.131/2014 on the file of the court of the Motor Vehicle Accident Claims Tribunal cum III Additional District Judge at Bhimavaram dated 9th day of December, 2015 pending disposal of the main MACMA

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 vacate the interim orders passed in MACMA.MP.NO.6119/2016 in MACMA.NO.3379/2014 dated.13-12-2016 by permitting the petitioners to withdraw the amount deposited by the appellant and pass

Counsel for the Appellant:

1. GUDI SRINIVASU

Counsel for the Respondent(S):

1. B SRIRAM KARTIK

The Court made the following:

THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 3379 OF 2016

JUDGMENT:

Assailing the order and decree dated 09.12.2015 in M.V.O.P.No.131 of 2014 passed by the Chairman, Motor Accident Claims Tribunal-Cum-III Additional District Judge, Bhimavaram, respondent No.3/Insurance company has preferred the instant appeal for awarding compensation at Rs.2,45,000/- for the untimely death of Eeda Uday Kumar.

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:

(a) On 16.01.2012 at about 02.00 P.M, while the deceased and his father proceeding towards Bhimavaram in an auto bearing No.AP 37 TA 3280 so as to go to his school i.e. Z.P.High School, Anakoderu Village, respondent No.1 drove the auto in a rash and negligent manner, and as such, auto turned turtle, fell on the boy Eeda Uday Kumar, he sustained multiple injuries and died on the spot. Father of the deceased also sustained fracture injuries. The accident occurred due to rash and negligent driving of respondent No.1 and as such, a case in Crime No.05 of 2012 is registered of the offences under Sections 304-A and 337 of the Indian Penal Code (hereinafter referred to as 'the Code'), against him. Respondent No.1 is driver, respondent No.2 is owner and respondent No.3 is insurer of the auto bearing No.AP 37 TA 3280. Respondents are jointly and severally liable to pay compensation.

(b) Respondent No.2 filed written statement contending that there was no negligence on the part of respondent No.1, he had valid driving licence and the vehicle is insured with respondent No.3 and as such, respondent No.3 alone is liable to pay compensation and further, as per the agreement,

respondent No.1 paid an amount of Rs.60,000/- to the petitioners, in the presence of elders and with other formal denials, prayed to dismiss the petition.

4. Respondent No.3 filed written statement refuting the averments made in the petition, wherein, *inter alia* contended that the respondent No.1 had no driving licence to drive the auto bearing No.AP 37 TA 3280 and as such, after completion of investigation, police laid charge sheet of the offences under Sections 304-A and 337 of the IPC along with Section 181 r/w Section 177 of the Motor Vehicles Act, respondent No.1 who is none other than driver-cum-owner of the auto, wilfully breached the terms and conditions of policy and as such, they are not liable to pay compensation, 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 viz., Eeda Uday Kumar (Aged 9 years) died in a motor accident on 16-01-2012 at about 02-00 PM near Z.P.High School, Anakoderu Village, Bhimavaram Mandal, West Godavari District due to rash and negligent driving of the Auto bearing No.AP 37 TA3280 driven by its driver-cum-owner/1st respondent and insured with 3rd respondent?
2) Whether the petitioners are entitled to claim compensation? and if so, how much quantum of compensation that petitioners are entitled?
3) To what relief?

6. During trial, petitioner No.1 examined himself as PW.1 and filed EXs.A1 to A7documents. As against the said evidence, respondent No.3 has got examined RW.1/Driver and RW.2/Assistant Administrative Officer, and filed EXs.B1 to B5 documents. At the culmination of trial, the learned Tribunal awarded compensation of Rs.2,45,000/-, directing the respondent No.3 to pay the said amount and recover the same from respondent No.1. Feeling 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, weight of evidence and probabilities of the case.

(ii) The learned Tribunal grossly erred in making the respondent No.3 liable to pay compensation and recover it from respondent No.1.

(iii) The learned Tribunal failed to consider oral as well as documentary evidence adduced by the respondent No.3.

(iv) The learned Tribunal failed to consider the established principles in awarding compensation and fixing liability on respondent No.3 as the respondent No.1 has no driving license, and with other formal grounds, prayed to allow the appeal.

7. Heard Sri Gudi Srinivasu, learned counsel for the appellant and Sri B. Sriram Kartik, learned counsel for the respondent Nos.1 & 2/claimants.

8. Perused petition and the material available on record including the impugned order dated 09.12.2015.

9. On hearing both sides and upon perusing the material available on record, that points that would arise for consideration are:

(1) Whether the Eeda Uday Kumar died in the accident dated 16.01.2012 occurred due to the rash and negligent driving of the respondent No.1?

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

(3) Whether the order and decree dated 09.12.2015 passed in M.V.O.P.No.131 of 2014 by the Chairman, Motor Accident Claims Tribunal-Cum-III Additional District Judge, Bhimavaram, are sustainable in facts and law?

(4) To what relief?

10. 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.

11. Point No.1:

(a) As seen from the record, absolutely there is no dispute with regard to the factum of accident and to prove the manner and method of accident, petitioner No.1 filed examination-in-chief affidavit in lieu of his chief examination by reiterating the averments mentioned in the petition and filed EXs.A1 to A7 documents. In his direct evidence, PW.1 stated that on 16.01.2012 at about 02.00 P.M, while himself and his deceased son going in an auto bearing No.AP 37 TA 3280 so as to drop his son at Z.P.High School, Anakoderu Village, respondent No.1/driver of the auto drove the same in a rash and negligent manner, and as such, auto turned turtle, and as a result auto fell on his son the auto and died on the spot. Nothing useful material is elicited in the cross examination of PW.1. Further, respondent No.3 having examined the driver of the auto i.e. respondent No.1 as RW.1, failed to show single probability in respect of accident, except eliciting the fact that he had no driving licence.

(b) Further, as seen from Ex.A1/First Information Report, a case in crime No.5 of 2012 is registered of the offences under Sections 304-A and 337 of the Code against the respondent No.1 and after completion of investigation, the investigating officer laid charge sheet of the offences stated *supra* against respondent No.1. Added to it, as seen from Ex.A2/Postmortem report and Ex.A3/Inquest Report, deceased/Eeda Uday Kumar sustained injuries and succumbed to the said injuries. As seen from EX.A4/Motor Vehicles Inspector report, the accident not occurred due to any mechanical defect of the offending vehicle. The evidence of PW.1 which is buttressed by Exs.A1 and A5 clinchingly proves that the accident occurred due to the rash and negligent

driving of respondent No.1. There is no rebuttal evidence and in the absence of rebuttal evidence, the contention of respondent No.3 that there was no negligence on the part of the respondent No.1 cannot be taken into consideration. Therefore, this point is answered in favour of the petitioners holding that the accident occurred due to the rash and negligent driving of respondent No.1.

12. Point No.2:

(a) As per the version of petitioners, petitioner No.1 is mother and petitioner No.2 is father of deceased and he is pursuing his studies and was aged about nine (9) years, as on the date of accident. As seen from EX.A2/Postmartem report, age of the deceased is mentioned as 9 years. There is no contra evidence to that effect. So, it can safely be concluded that age of the deceased was 9 years, as on the date of accident.

(b) So far as loss of dependency in case of child death is concerned in ***Kishan Gopal v. Lala***[1], when a child aged about 10 years died in a road accident took place on 19-7-1992, Hon'ble Apex Court made departure from the II Schedule of the MV Act and accepted the notional income of Rs.30,000/- and in ***Meena Devi v. Nunu Chand Mahto***[2], Hon'ble Supreme court took notional income of 12 years child at Rs.30,000/- and multiplier 15.

(c) Admittedly, the petitioners have not filed any appeal 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 respondents argued that the accident occurred in the year 2011 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

[1] (2014) 1 SCC 244 11
[2] (2023) 1 SCC 204

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***[3]***,*** 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".

(d) Further, in ***National Insurance Company Limited rep. By its Branch Manager v. Susheelamma and Others*** [4] , 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 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.

(e) And, in ***Surekha v. Santhosh***[5], 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

[3]2013 (11) SCC 517
[4]2023 SCC Online AP 1725
[5](2021) 16 SCC 467

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.

(f) So, in view of the aforementioned decisions, notional income of the deceased boy shall be taken at Rs.30,000/- and the relevant multiplier is '15' as the boy was aged about 9 years and died in a road accident.

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

Sl. No.	**Heads**		**Calculation**
1.	Annual income	Rs.	30,000/-
2.	Total compensation/Loss of dependency (30,000x15)	Rs.	4,50,000/-
3.	Loss of consortium (40,000x2) (Filial)	Rs.	80,000/-
4.	Funeral expenses	Rs.	15,000/-
5.	Loss of estate	Rs.	15,000/-
	Total	Rs.	**5,60,000/-**

(h) In the given facts and circumstances of the case, the petitioners are entitled for **Rs.5,60,000/- (Rupees Five Lakhs Sixty Thousand only)** and in this court's well considered view, the compensation awarded is just, adequate and reasonable.

(i) So far as the contention of the respondent No.3/insurance company that respondent No.1 had no driving license and the offending vehicle has no valid fitness certificate, as on the date of accident, respondent No.3 also filed EX.B2 to B5/Office copy of notices, postal acknowledgment and returned cover issued to respondent Nos.1 and 2 to show that he has taken steps by issuing notices to the driver-cum-owner of the offending vehicle to produce driving license and has got examined the driver as RW.1 and he categorically

testified that he is driver-cum-owner of the auto bearing No.AP 37 TA 3280, he could not produce his driving license as he had no driving license as on the date of accident and he further categorically stated that his original name is Jangam Chinna Venkateswarlu and he is also called as Subhash. In this regard, it is to be mentioned that the petitioners had shown the driver-cum-owner as respondent Nos.1 and 2 with two different names. As seen from EX.A7, the offending vehicle was registered in the name of RW.1 as J. Chinna Venkateswarlu and EX.B1/Policy is also issued in that name. Other name of respondent No.2 is shown as driver in the petition as well as crime records, whereas, EX.A7/Registration extract of the vehicle and EX.B1/Policy clearly reveal the original name of driver-cum-owner of auto as Jangam Chinna Venkateswarlu. Further, after completion of investigation, police laid EX.A5/charge sheet under Section 181/177 of Motor Vehicle Act stating that driver of auto had no driving license. So, it can safely be held that respondent Nos.1 and 2 are one and the same, his original name is Chinna Venkateswarlu, he had no driving license, as on the date of accident. So, the said name is considered to fix liability.

(j) In this regard, in ***National Insurance Co. Ltd., Vs. Swaran Singh and others***[6], 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

[6] 2004 ACJ 1

> 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."

(k) And, in ***United India Insurance Company Ltd., through its Divisional Manager Vs. Sujata Arora and others***[7], Hon'ble Supreme Court while considering the principles laid down in ***National Insurance Company Limited Vs. Laxmi Narain Dhut***[8] and ***Jawahar Singh Vs. Bala Jain and other***[9] 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 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***[10], 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.

(l) Respondent No.3 has adduced evidence and proved that respondent No.2 who is none other than driver-cum-owner/respondent No.1 had committed willful breach by driving the auto though he had no driving license at all. Added to it, respondent No.2 had not adduced evidence to show that he has not violated the terms and conditions of Ex.B1 policy. Adding circumstances probablising the case of respondent No.3 is that after completion of investigation, police laid charge sheet of the offence under Section 171/181 of Motor Vehicle Act, against respondent No.1 and RW.1 had also categorically admitted that he had no driving license, as on the date of accident. So, respondent No.3 adduced rebuttal evidence to show that respondent No.2 violated the terms and conditions of EX.B1/Policy and as such, respondent No.3 is not liable to indemnify respondent Nos.2. Hence, this point is answered holding that respondent No.2 who is none other than

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[7] 2013 (3) T.A.C. 29 (S.C)
[8] (2007 (4) Scale 36)
[9] (2011 (5) Scale 494)
[10] 2007 (3) ALD 138 16

respondent No.1/driver-cum-owner of the offending vehicle is liable to pay compensation.

13. **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, fixing liability on the respondent No.3 to pay and recover the compensation and as such, the same is liable to be set aside. Hence, this point is answered accordingly.

14. **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, while modifying the order of the learned Tribunal by enhancing the compensation **from Rs.2,45,000/- (Rupees Two Lakhs Forty Five Thousand Only) to Rs. 5,60,000/- (Rupees Five Lakhs Sixty 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 & 2, subject to payment of additional court fee on **Rs.2,60,000/- (Rupees Two Lakhs Sixty Thousand only)** by the petitioners before the Registry within thirty (30) days from today.

(ii) Out of the said compensation amount, an amount of Rs.3,00,000/- (Rupees Three Lakhs only) is awarded to the petitioner No.1. Rs.2,60,000/- (Rupees Two Lakhs Sixty Thousand only) is awarded to the petitioner No.2. Apportionment is ordered accordingly.

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

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

(v) Claim against respondent No.3 is dismissed.

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

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

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SUNITHA GANDHAM, J

Dt: 02 .11.2026

Vns