THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 170 OF 2017

JUDGMENT:

Assailing the Order and decree dated 26.10.2016 passed in M.V.O.P.No.2 of 2015 by the Chairman, Motor Accidents Claims Tribunal-Cum-VI Additional District & Sessions Judge, Markapur, the respondent/appellant has preferred the instant appeal for granting compensation of Rs.5,00,000/- for the untimely death of Jaldi Sai Nikhil in a motor vehicle accident dated 21.07.2014.

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

3. Case of the petitioners is thus:

On 21.07.2014, while the deceased going to his village on his motorcycle and when he reached near Madireddypalem Village at about 1.00 P.M, one APSRTC bus bearing No.AP 28 Z 5546 came in wrong route in a rash and negligent manner and dashed against the motorcycle of the deceased and as a result of which, deceased fell down on the road, and sustained severe multiple injuries on his head and died on the way to hospital. As on the date of the accident, deceased aged about 18 years, hale and healthy, working as mason, was earning Rs.6000/- per month and contributing the same for maintenance of his family. Due to his sudden death, petitioners who completely depended upon the earnings of the deceased, lost financial support and love and affection. Since the accident occurred due to the rash and negligent driving of the driver of the APSRTC bus bearing No.AP 28 Z 5546, a case in crime No.169 of 2014 is registered of the offence under Section 304-A of the Indian Penal Code (hereinafter referred to as 'the Code')

against the driver of the offending vehicle. Respondent/APSRTC is liable to pay compensation.

4. Respondent filed written statement refuting the averments made in the petition and contended that the accident occurred due to inexperience and rash and negligent riding of the deceased, deceased had no valid driving license, as on the date of the accident, petition is bad for non-joinder of necessary parties, petitioners claimed excessive compensation and interest, 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 death of deceased Jaldi Sai Nikhil is the resultant of the accident due to rash and negligent driving of the driver of crime vehicle APSRTC Bus bearing No.AP-28-Z-5546?
2) Whether the petitioners are entitled for any compensation. If so to what amount?
3) To what relief?

6. During trial, petitioner No.1 examined himself as P.W.1, and filed EXs.A1 to A4 documents. As against the said evidence, respondent has not adduced either oral or documentary evidence. At the culmination of trial, learned Tribunal awarded compensation of Rs.5,00,000/- with interest at 9% per annum. Feeling aggrieved by the said Order and decree, respondent/APSRTC preferred the instant appeal urging the following grounds:

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

(ii) The learned Tribunal failed to see that there was no negligence on the part of the driver of the bus bearing No.AP 28Z 5546 and that the accident occurred due to the rash and negligent riding of the deceased.

(iii) The learned Tribunal ought to have seen that the deceased had no valid driving license, as on the date of the accident, and not appreciated the evidence in proper perspective.

(iv) The learned Tribunal ought to have held that there was contributory negligence on the part of the deceased.

(v) The learned Tribunal ought to have dismissed the petition on the ground of non-joinder of necessary parties.

(vi) The learned Tribunal ought to have seen that the salary of the deceased has not been properly assessed before awarding compensation, and with other formal grounds, prayed to allow the appeal.

7. Heard both sides.

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

(i) Whether the deceased Jaldi Sai Nikhil died in the accident dated 21.07.2014 occurred due to the rash and negligent driving of the respondent?

(ii) Whether the petitioners are entitled for compensation? If so, to what amount and from which of the respondents?

(iii) Whether the Order and decree dated 26.10.2016 passed by the learned Tribunal are sustainable in law and facts?

(iv) To what relief?

9. 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.

10. Point No.1:

(a) As seen from the record, there is absolutely no dispute with regard to the factum of accident and involvement of the offending vehicle i.e. bus bearing No.AP 28Z 5546 in the accident. In order to prove the manner and method of accident, petitioners relied upon the evidence of P.W.1 coupled with EXs.A1 to A4 documents. P.W.1 testified that on 21.07.2014, while the deceased going to his village, on his motorcycle and when he reached near Madireddypalem Village at about 1.00 P.M, driver of the APSRTC bus bearing No.AP 28 Z 5546 drove the same in a rash and negligent manner and dashed against the motorcycle and as a result of which, deceased fell down on the road and sustained severe multiple injuries to his head and he died on the way to hospital and in the cross-examination, nothing useful material is elicited. According to him, the accident occurred only due to the rash and negligent driving of the driver of the bus. Having filed written statement, respondent did not adduce any evidence. Except self-serving statement of respondent that the accident took place due to the rash and negligent riding of the deceased, respondent has not produced any supportive material. Driver of the bus, who is the best person to speak about the accident is not examined and his non examination is fatal to the case of respondent.

(b) Further, a case in crime No.169 of 2014 under Section 304-A of the Code is registered *vide* EX.A1/First information report against the driver of the APSRTC bus and after completion of investigation, police laid EX.A4/Charge sheet alleging that the accident occurred due to the rash and negligent driving of driver of the bus. So, the evidence of P.W.1 coupled with EXs.A1 and A4 clinchingly proves that the accident occurred due to the rash and negligent driving of driver of the bus. It is evident from EX.A3/Postmortem report that the deceased succumbed to the injuries sustained in the accident. Hence, this point is answered holding that the accident occurred only due to the rash and negligent driving of driver of the APSRTC bus bearing No.AP 28 Z 5546, Jaldi

Sai Nikhil sustained injuries in the said accident and succumbed to the said injuries.

11. Point No.2:

(a) According to the petitioners, the deceased hale and healthy, aged about 18 years, unmarried, working as mason, was earning Rs.6000/- per month, the petitioners are parents of the deceased and due to the sudden demise of their son, petitioners lost financial support, love and affection. In all the crime records i.e. EXs.A3 and A4/Postmartem report and charge sheet, age of the deceased is mentioned as '19' years. There is no contra evidence to that effect. Therefore, it can safely be concluded that the deceased aged about 19 years, as on the date of accident and the relevant multiplier is '18'. The petitioners who are mother and father of the deceased are entitled to compensation.

(b) As regards the income of the deceased, petitioners have not adduced any documentary evidence. Since the petitioners have not adduced any evidence, the learned Tribunal has fixed notional income of the deceased at Rs.2,000/- per month. In the given facts and circumstances coupled with the fact that the accident occurred in the year 2014 and on a reasonable hypothesis, this court is of the considered view that monthly earnings of the deceased have to be fixed at Rs.200/- per day i.e. Rs.6,000/- per month.

(c) The petitioners have not filed any appeal seeking 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 2014 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".

(d) 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 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***[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

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[1] 2013 (11) SCC 517
[2] 2023 SCC Online AP 1725
[3] (2021) 16 SCC 467

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.

(f) While determining compensation, the principles laid down by the Hon'ble Supreme 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] must be considered. The accident occurred on 21.07.2014. Respondent filed the appeal with a delay, and the appeal was registered in 2017. As regards the applicability of subsequent decisions to the present case, in ***Government of India and another v. Sri Devaraj Medical College***[7], it was held that, unless a decision of the Hon'ble Supreme Court expressly provides for prospective application, the law declared therein applies retrospectively.

(g) As seen from the impugned Order dated 26.10.2016, the learned Tribunal erroneously deducted 1/3rd of the income towards personal expenses and considered the multiplier of '16' instead of '18' while assessing the loss of dependency.

(h) Applying the aforementioned principles, this Court assesses the compensation as follows:

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

Sl. No.	Heads		Calculation
1.	Annual income (Rs.6000 × 12)	Rs.	72,000.00
2.	Deduction towards personal expenses (72000 × 1/2)	Rs.	36,000.00
3.	Total income (72000 − 36,000)	Rs.	36,000.00
4.	Future prospects (40% of 36,000)	Rs.	14,400.00
5.	Total loss of dependency (36,000 + 14,400) =50,400 × 18	Rs.	9,07,200.00
6.	Loss of consortium (40,000 × 2) (Filial)	Rs.	80,000.00
7.	Funeral expenses	Rs.	15,000.00
8.	Loss of estate	Rs.	15,000.00
	Total	Rs.	**10,17,200.00**

(i) In the court's well considered view that in accordance with the propositions of law laid down by the Hon'ble Apex Court, the compensation of **Rs.10,17,200/- (Rupees Ten Lakhs Seventeen Thousand Two Hundred Only)** is just and reasonable, having regard to the loss suffered by the dependents of the deceased.

(j) So far as liability of the respondent is considered, a finding is already given in point No.1 holding that the accident occurred only due to the rash and negligent driving of the driver of the bus bearing No.AP 28 Z 5546 and as such, respondent is vicariously liable for the acts committed by its driver. Hence, this point is answered holding that respondent is liable to pay compensation.

12**. Point No.3:**

Upon reappraisal of the evidence on record and for the reasons stated above, this Court concludes that the learned Tribunal erred in determining just and fair compensation. The award is therefore liable to be modified. Point No.3 is answered accordingly.

13. **Point No.4:**

(i) ***In the result***, and in view of the findings in points Nos.1 to 3, the appeal is dismissed, while modifying the order of the learned Tribunal by enhancing the compensation **from Rs.5,00,000/- (Rupees Five Lakhs Only) to Rs.10,17,200/- (Rupees Ten Lakhs Seventeen Thousand Two Hundred Only)**, together with simple interest at 7.5% per annum from the date of the petition until realization, subject to payment of additional court fee on **Rs.5,17,200/- (Rupees Five Lakhs Seventeen Thousand Two Hundred Only)** by the petitioners before the Registry within thirty (30) days from today. The compensation amount shall be recoverable by the petitioners from respondent.

(ii) Out of the total compensation, **Rs.5,08,600/- (Rupees Five Lakhs Eight Thousand Six Hundred only) each** is awarded to petitioner Nos.1 and 2. The compensation shall be apportioned accordingly.

(iii) The compensation amount, together with interest, after deducting any amount already deposited, shall be deposited within one (1) month from the date of receipt of this judgment by the learned Tribunal.

(iv) Upon such deposit, petitioners are permitted to withdraw the compensation awarded to them, together with the accrued interest, after deducting any amount already paid.

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

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

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SUNITHA GANDHAM, J

Dt: 02.11.2026

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