

***HON'BLE SRI JUSTICE RAVI NATH TILHARI**

AND

***HON'BLE SRI JUSTICE CHALLA GUNARANJAN**

+M.A.C.M.A. No.487 OF 2024

% 14.02.2025

#1. The Oriental Insurance Company

.....Appellant

And:

\$1. Zakeeya Begum and others

....Respondents

!Counsel for the appellant : Sri M.Solomon Raju

^Counsel for the respondents : Sri Srinivas Ambati

<Gist:

>Head Note:

? Cases referred:

1. (2009) 14 SCC 71
2. (2021) 1 SCC 171
3. (2013) 10 SCC 646
4. 2024 SCC OnLine AP 4408
5. (2017)16 SCC 680
6. (2009) 6 SCC 121
7. (2017) 16 SCC 680
8. (2018) 18 SCC 130
9. (2022) SCC OnLine SC 1683
10. (2021) 11 SCC 780
11. 2024 SCC OnLine SC 1901
12. 2012 ACJ 702
13. (2003) 7 SCC 484
14. (2015) 1 SCC 539
15. (2021) 6 SCC 188
16. (2021) 2 SCC 166

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M.A.C.M.A. No.487 of 2024

1. The Oriental Insurance Company

.....Appellant

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DATE OF JUDGMENT PRONOUNCED : 14.02.2025.

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND**

THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN

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|---|--------|
| 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 Your Lordships wish to see the fair Copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

AND

THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 487/2024

Between:

The Oriental Insurance Company Ltd., **...APPELLANT**

AND

Zakeeya Begum and Others **...RESPONDENT(S)**

Counsel for the Appellant:

1.M SOLOMON RAJU

Counsel for the Respondent(S):

1.SRINIVAS AMBATI

The Court made the following:

JUDGMENT:- *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri M.Solomon Raju, learned Standing counsel appearing for the appellant-Insurance Company, and Sri G.Divya Theja, learned counsel representing Sri Srinivas Ambati, learned counsel appearing for the claimants/respondents 1 to 6.

2. This appeal under Section 173 of the Motor Vehicles Act 1988, (in short 'M.V.Act'), has been filed by the appellant-Oriental Insurance Company Limited (in short 'Insurance Company'), challenging the Award, dated 08.11.2023, passed in M.V.O.P.276 of 2019 by the

Motor Accidents Claims Tribunal-cum-Principal District Judge, Kadapa (in short 'the Tribunal).

3. The claimants/respondents 1 to 6 filed M.V.O.P.276 of 2019 under Section 166 of the M.V.Act (in short 'MVOP') seeking compensation of Rs.30,00,000/- for the death of one Shaik Haneef (hereinafter referred as 'deceased') in the motor accident, which occurred on 13.06.2019 at about 10.40 pm., near Railway Gate, S.Kothapalli village, Kodur Mandal, *inter alia* submitting that while the deceased was proceeding on his Yamaha Scooty, the accident occurred due to the negligence of the driver of the lorry bearing No.AP 03 T 2529 (offending vehicle) (respondent No.3. in MVOP), that was parked on the road without any warning signals, in which the deceased sustained grievous injuries, and succumbed on the spot. The deceased was aged about 28 years. He was Carpenter and Sculpture worker, and was getting not less than Rs.20,000/- per month.

4. The 7th respondent herein (respondent No.1 in MVOP) is the owner and the appellant (respondent No.2 in MVOP) is the insurer of the offending vehicle.

5. The appellant-Insurance Company (2nd respondent in the MVOP) filed a written statement denying the material averments of the claim petition and submitting that the claimants should be put to strict proof of their assertions. It was contended that the accident occurred

due to the contributory negligence of the deceased, as he collided with the stationed lorry, and that was not liable to pay compensation. The deceased's age, income, and the dependency of his family members were denied. It was also asserted that the deceased did not possess a valid and effective driving license at the time of the accident. The claim was said to be highly excessive and out of proportions.

6. The respondents 1 & 3 in M.V.O.P.276 of 2019 on the file of the Principal District Judge, Kadapa, remained *ex parte*.

7. The Tribunal framed the following issues for consideration :

“1. Whether the deceased Shaik Haneef died due to the injuries sustained in a motor vehicle accident occurred on 13.06.2019 near Railway Gate, S.Kothapalli Village, Rly.Kodur Mandal, due to rash and negligent driving of the driver of lorry bearing No.AP 03 T 2529 ?

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

3. To what relief?”

8. On behalf of the claimants, 1st claimant was examined as P.W.1. They also examined witnesses as P.Ws.2 to 4. The evidence of P.W.2 was eschewed. In documentary evidence, Exs.A1 to A6 were got marked.

9. The Insurance Company examined one N.Vinod Krishna, Branch Manager of the company as R.W.1. No documents were marked on its behalf.

10. The Tribunal recorded a finding that the accident occurred due to the negligent act of the driver of the offending vehicle in parking the lorry on the road without focusing signal lights or any caution for parking the lorry on the road loaded with bananas. Had the driver taken minimum care and caution, the deceased would not have dashed the lorry from behind. It also determined that there was no contributory negligence on the part of the deceased. The Tribunal assessed the deceased's monthly income as Rs.20,000/- noting that he was working as a carpenter and sculpture worker. The deceased's age was considered in the age group of 26-30 years. After deducting 1/3rd of the income towards personal expenses of the deceased and applying a multiplier of 17, and adding Rs.30,000/- for loss of estate and love and affection, Rs.40,000/- for loss of consortium, and Rs.15,000/- for funeral expenses, a total compensation of Rs.28,39,000/- was awarded with interest @ 7.5% p.a., from the date of the petition till the date of deposit. The respondents 1 & 2 in MVOP (owner and insurance company) were jointly and severally held liable to pay the compensation amount.

11. Learned counsel for the appellant submits that the deceased hit the stationed lorry from behind. There was contributory negligence on the part of the deceased.

12. Learned counsel for the appellant next submits that the finding on the point of income suffers from illegality. He submits that Ex.A6-income certificate issued by G.Venkata Ramana, was not admissible in evidence and so income was not proved, and the compensation awarded is excessive.

13. Learned counsel for the claimants/respondents submits that there was no contributory negligence of the deceased. The lorry was stationed on the road without any precautionary signals.

14. Learned counsel for the respondents/claimants next submits that the finding on the point of income is based on evidence. The person who issued the income certificate was examined as P.W.3. In his deposition, he mentioned that the deceased earned Rs.800/- per day. The deceased was working as a carpenter under P.W.3, along with other workers. He further submits that the Tribunal did not award any amount towards future prospects and that the compensation under different heads is not in accordance with the settled law. The rate of interest 7.5 % awarded is on the lower side. The compensation deserves to be awarded as per law.

15. We have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

16. The following points arise for our consideration and determination are :-

- 1. *Whether the finding of no contributory negligence of the deceased, suffers from illegality?***
- 2. *Whether the compensation awarded by the Tribunal is just and fair compensation? In other words, is it excessive or inadequate, in the light of the submissions advanced by the learned counsels, and to what amount of interest the claimants are entitled ?***

ANALYSIS :-

(I) Point No.1 :-

Contributory Negligence :-

17. The Tribunal held that there was no contributory negligence on the part of the deceased. The accident occurred solely due to the negligence of the lorry driver, who parked the vehicle on the road without activating signal lights or providing any warning of its presence. The learned counsel for the appellant argues that since the deceased collided with the lorry from behind, contributory negligence should be attributed to him. However, we find no merit in this submission. Had the lorry been properly parked with its parking lights on, or with appropriate precautions

taken to signal its presence, a driver or rider approaching from behind would have been alerted. In the present case, the Tribunal has clearly found that the lorry driver was negligent in parking the vehicle without any warning signals. The Tribunal's findings are well-reasoned and free from any perversity. Therefore, the appellant's submission on this point stands rejected.

18. In ***Usha Rajkhowa and others vs. Paramount Industries and others***¹, the Hon'ble Apex Court observed and held that the question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence'. Negligence ordinarily means breach of a legal duty to care, but when used in the expression 'contributory negligence' it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an 'author of his own wrong'.

19. We find that there is absolutely no evidence to suggest that there was any failure on the part of the deceased riding Yamaha Scooty to take any particular care or that he had breached his duty in any manner. In this respect, the appellant Insurance Company has failed to discharge its burden to prove the contributory negligence on the part of the deceased.

¹ (2009) 14 SCC 71

20. We are satisfied that on the preponderance of evidence, including the evidence of P.W.3, the eyewitness, and in the absence of any evidence of the Insurance Company on the contributory negligence, even of the driver of the offending lorry, no fault can be found in the finding of the Tribunal that the accident was caused due to the negligent act of the driver of the lorry and that there was no contributory negligence on the part of the deceased.

21. In ***Anitha Sharma vs. New India Assurance Company Limited***², the Hon'ble Apex Court held that the strict principles of evidence and standards of proof like in a criminal trial are inapplicable in Motor Accident Claim Cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. In ***Anitha Sharma (supra)***, the Hon'ble Apex Court referred to its previous judgment in ***Dulcina Fernandes v. Joaquim Xavier Cruz***³, in which it was held that the plea of negligence on the part of the first respondent who was driving the pick-up van as setup by the claimants was required to be decided by the learned Tribunal on the

² (2021) 1 SCC 171

³ (2013) 10 SCC 646

touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt.

22. In ***Erramreddy Mamatha, SPSR Nellore Dist V. G.Sreeramulu Naidu and Others***⁴, this Court held, at Paragraphs 51 & 52, which read as under :

“51. In the exercise of the first appellate jurisdiction, this court is not inclined to interfere with the above finding, as it is well settled in law that if the Tribunal/court has taken a possible view based on material on record, the appellate court would be loath to interfere. In *Sharanamma v. Managing Director Divisional Contr.,- North-East Karnataka Road Transport Corporation*⁹, the Hon'ble Apex Court has held as under:

“12. Generally, a finding of fact recorded by the Tribunal should not be interfered with in an appeal until and unless it is proved that glaring discrepancy or mistake had taken place. If the assessment of compensation by the Tribunal was fair and reasonable and the award of the Tribunal was neither contrary nor inconsistent with the relevant facts as per the evidence available record then as mentioned hereinabove, the High Court would not interfere in the appeal”

52. In *Divl. Controller, KSRTC (NWKRTC) v. A.T. Mane*⁽⁴⁾¹⁰ the Hon'ble Apex Court observed that once a domestic Tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and Courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal.”

⁴ 2024 SCC OnLine AP 4408

23. It is a settled principle of law that, in exercising appellate jurisdiction, this Court would not be inclined to interfere with the findings of the Tribunal or the first Court, if the view taken by the Tribunal or such Court is a possible one based on the material on record. If any other view is also possible on appreciation of evidence of record, the appellate Court would ordinarily decline to substitute such other view.

(I) Point No.2 :-

(I) Income :-

24. With regard to the income of the deceased, P.W.3 was examined. His deposition, as has been referred to in the Tribunal's judgment, which is not disputed by the learned counsel for the appellant indicates that the P.W.3 had been working as a carpenter for the past 26 years. P.W.3 employed the deceased along with six workers and paid them Rs. 800/- per day, except on Sundays. The Tribunal concluded that the deceased being skilled worker and considering the prevailing daily wages for laborers, the income of the deceased could be fixed at Rs.20,000/- per month. If we go by the evidence of P.W.3, the income of the deceased would come to more than Rs.20,000/- per month. However, on this aspect, the claimants/respondents have not disputed Rs.20,000/- per month nor argued against this finding. The appellant-Insurance Company did not produce any evidence on the point of

income of the deceased. The income certificate referred in the evidence of P.W.3, was issued by P.W.3. However, the Tribunal though mentioned about the certificate, but its finding is primarily based on the evidence of P.W.3. In the absence of any contrary evidence, we have no reason to interfere with the finding recorded by the Tribunal on the point of the income of the deceased, who was skilled person, a Carpenter. We do not find any illegality in the determination of the deceased's income as Rs.20,000/- per month.

(II) Future Prospects :-

25. The Tribunal has not awarded any amount towards future prospects. The claimants are entitled for grant of future prospects. In ***National Insurance Company Limited V. Pranay Sethi and Others***⁵, on the point of future prospects, the Hon'ble Apex Court has held as under :

“59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

⁵ (2017)16 SCC 680

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

26. In view of the **Pranay Sethi** (*supra*), the claimants/respondents are entitled for addition of the future prospects @ 40%, on income, i.e., Rs.96,000/- (Rs. 20,000/- x 12 = Rs. 2,40,000/- its 40%) as the deceased was working as Carpenter and was aged about 28 years. We grant the same.

(III) Deduction towards personal expenses :-

27. As per the ratio laid down in **Sarla Varma and others V. Delhi Transport Corporation and another**⁶, the deduction towards personal expenses of the deceased would be 1/4th where the number of dependents is 4 to 6. The Tribunal erred in making the deduction towards personal expenses of the deceased as 1/3rd. Paragraph 30 of **Sarla Varma** (*supra*), reads as under:-

⁶ (2009) 6 SCC 121

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra*, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.”

(IV) Conventional Heads :-

28. As per the judgments in ***National Insurance Company Limited V. Pranay Sethi and Others***,⁷ ***Magma National Insurance Company Limited vs Nanu Ram @ Chuhru Ram and Ors.***,⁸ ***Smt. Anjali and Others V. Lokendra Rathod and Others***,⁹ ***United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and Ors.***,¹⁰ and ***Rojalini Nayak and Others vs Ajit Sahoo and Others***¹¹ we award the amounts under the Conventional Heads, for loss of

⁷ (2017) 16 SCC 680

⁸ (2018) 18 SCC 130

⁹ (2022) SCC OnLine SC 1683

¹⁰ (2021) 11 SCC 780

¹¹ 2024 SCC OnLine SC 1901.

Consortium, loss of Estate and funeral expenses, as Rs.48,400/- (per claimant), Rs.18,150/- and Rs.18,150/- respectively as was awarded in ***Rojalini (Supra)***, which is with an increase of 10% every three years.

29. The claimants are not entitled for any amount towards loss of love and affection as awarded by the Tribunal. They are entitled under the specified conventional heads only under law.

30. The Claimants are thus entitled for the following amount as just and fair compensation :-

S. No.	Head	Compensation Awarded
1.	Net Annual Income	Rs. 20,000/- x 12 = Rs. 2,40,000/-
2.	Future Prospects (at the age of 28 years)	Rs. 96,000/- (i.e., 40% of the income) Total (i.e., 1+2) = Rs. 3,36,000/-
3.	Deduction towards personal expenditure (i.e.1/4 th) The claimants being 6 in number	Rs. 84,000/-
4.	Total Annual loss	Rs. 2,52,000/-
5.	Multiplier of 17 for the age of 28 years i.e.	17 x 2,52,000/- = Rs. 42,84,000/-
6.	Conventional Heads:	
	i) Loss of Consortium	Rs. 2,90,400/- (Rs. 48,400/- x 6)
	ii) Loss of Estate	Rs. 18,150/-
	iii) Funeral expenses	Rs. 18,150/-
7.	Total Compensation	Rs. 46,10,700/-

31. Consequently, the compensation amount granted by the Tribunal is enhanced from Rs.28,39,000/- to **Rs.46,10,700/-** being just and far compensation as per law.

(V) Just and Fair Compensation :-

32. It is a well settled in law that the claimants are entitled for just and fair compensation, which should neither be a bonanza nor a pittance. Effort must be made to determine the just compensation. In ***New India Assurance Company Ltd., V. Yogesh Devi and Others***¹², the Hon'ble Apex Court held that the claimants are entitled for just and reasonable compensation in a motor vehicles accident claim. It referred to the case of ***State of Haryana and another V. Jasbir Kaur and others***¹³, wherein it was held that *"the compensation must be "just" and it cannot be a bonanza: not a source of profit ; but the same should not be a pittance"*.

(VI) Interest :-

33. The Tribunal granted interest at the rate of @ 7.5% p.a. In ***Kumari Kiran vs. Sajjan Singh and others***,¹⁴ the Hon'ble Apex Court set aside the judgment of the Tribunal therein awarding interest @ 6% as also the judgment of the High Court awarding interest @7.5% and

¹² 2012 ACJ 702

¹³ (2003) 7 SCC 484

¹⁴ (2015) 1 SCC 539

awarded interest @ 9% p.a. from the date of the claim petition. In **Rahul Sharma & Another vs. National Insurance Company Limited and Others**,¹⁵ the Hon'ble Apex Court awarded @ 9% interest p.a. from the date of the claim petition. Also, in **Kirthi and another vs. Oriental Insurance Company Limited**,¹⁶ the Hon'ble Apex Court allowed interest @9% per annum.

34. Accordingly, the claimants are granted interest @ 9 % p.a. from the date of the claim petition till realization.

(VII) Result :-

35. IN THE RESULT,

- i) the appeal of Insurance Company is dismissed;*
- ii) The claimants/respondents are granted enhanced compensation of **Rs.46,10,700/-** as just and fair, with interest @ 9% per annum thereon from the date of claim petition till realization ;*
- iii) The appellant shall deposit the amount as aforesaid, adjusting the amount already deposited/paid if any, before the Tribunal within one month, failing which the amount shall be recovered as per law ;*
- iv) On such deposit being made, the claimants shall be entitled to withdraw the same in the proportion as per the award ;*

¹⁵ (2021) 6 SCC 188

¹⁶ (2021) 2 SCC 166

v) *The costs throughout is made in favour of the claimants/respondents, and as against the appellant.*

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

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

Date : 14.02.2025

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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
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MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 487 of 2024

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