

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
&**

THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL No.2276 of 2017

JUDGMENT (per CHALLA GUNARANJAN, J):

Appellant - Insurance Company filed the present appeal under Section 173 of the Motor Vehicles Act aggrieved by the order dated 04.05.2017 in M.V.O.P. No.203 of 2013 passed by the Motor Accident Claims Tribunal – cum – Principal District Judge, Kadapa, under Section 166 of Motor Vehicles Act awarding compensation of Rs.25,50,000/- with subsequent interest at the rate of 6% per annum from the date of petition till realization.

2. For the sake of convenience, the parties herein will be referred to as they were arrayed before the Tribunal.

3. Brief facts of the case are as follows:

(a) The deceased driver while attending to Election duties was proceeding to Ongole headquarters along with the commandant and other police staff, on the way on 13.06.2015 at about 04.15 a.m., near Nellore Palem on Nellore - Mumbai Highway, met with an accident as Tata Magic Auto bearing No. AP 26TV 0809 came in the opposite direction and dashed the police jeep. The deceased along with inmates of Jeep sustained injuries and

were shifted to the Government Hospital, Atmakuru. Later, the deceased was being taken to Chennai for better treatment, but he succumbed on the way. At the instance of Assistant Commandant and inmates of Jeep, a complaint was lodged and the same was registered as Cr.No.73 of 2012 under Sections 337, 338 and 304(A) of IPC against the driver of the Auto. As deceased aged 25 years and was working as driver with police department stated to be drawing salary of Rs.14,000/- per month, considering his future promotions in the department and better salary prospects, wife of the deceased laid claim for compensation of Rs.30,50,000/- against the 1st respondent - owner of auto and 2nd respondent – Insurance Company. The 3rd respondent, mother of the deceased, as was not cooperating with the claimant, she got impleaded as such.

(b) The 1st respondent filed a written statement contending that the deceased was at fault in causing the accident but not the driver of auto by denying that the auto was driven in a rash and negligent manner without dim and dip of lights on wrong side. It was also contended that the negligence was solely attributable to the deceased as the inquest report and final report of police investigating the accident found that the same occurred due to fault of deceased, therefore, the claim was prayed to be dismissed.

(c) Insurance company also filed written statement denying all the averments of petition and firstly stated that auto never involved in the alleged accident and further by referring to the inquest report and final report, it was stated that the deceased was at fault in causing the accident and as driver of auto was in compliance with all traffic rules at the time of accident, he could not be found to be in fault. Further it was also pleaded that the driver of auto was not having valid and effective driving license to drive the auto, which was transport vehicle, thereby violated the conditions of policy, eventually insurance company also filed petition under Section 170 of the Act, which was permitted. The compensation claimed based on age, income, future prospects and interest were all contested to be highly excessive and unjust and thereby sought for dismissal of the petition.

(d) The 3rd respondent - the mother of the deceased, while denying the averments in the petition to the extent that she was not cooperating in instituting the claim, supported the other aspects of claim and prayed to award legitimate share in her favour.

4. On behalf of the petitioner, PWs.1 to 4 were examined and marked Exs.A1, A2 and Exs.X1 to X5, whereas on behalf of 2nd respondent, R.Ws.1 to 3 were examined and marked Ex.B1, in support of their case.

5. The Tribunal considering the pleadings and documentary and oral evidence framed the following issues:

- “1. Whether the accident took place on 13.06.2012 at 4.50 a.m. near Nellore Palem on Nellore to Mumbai High way due to rash and negligent driving of the driver of TATA Magic Auto bearing No.AP 26TV 0809, resulting death of the deceased by name Allapuraju Kiran Kumar?
2. Whether the claimant is entitled to claim compensation, if so, to what extent, and from which of the respondents?
3. To what relief?”

6. The first issue was answered in affirmative upon considering the evidence of P.Ws.3 and 4, who were inmates of the police jeep when the accident occurred. The inquest report and final report on which much reliance was placed by 1st and 2nd respondents were discarded as P.Ws.3 and 4 were direct witnesses to the incident. In so far as the 2nd issue relating to quantum of compensation was concerned, age of the deceased came to be treated as 24 years as appearing in the inquest report (Ex.A2), the income as Rs.15,027/- per month as appearing in the salary certificate (Ex.X3) and by applying multiplier of 18 in terms of **Sarla Verma and others v. Delhi Transport Corporation and another**¹, the loss of income came to be assessed as Rs.21,63,888/- after 1/3rd deduction towards personal expenses of the deceased. The

¹ (2009) 6 SCC 121

Tribunal awarded rupees one lakh towards consortium, Rs.25,000/- towards funeral expenses, one lakh each to petitioner and 3rd respondent towards loss of love and affection, Rs.61,112/- towards loss of amenities, however, declined to grant future prospects by holding that due to young age of petitioner there was every chance of remarriage to her, in all compensation of Rs.25,50,000/- was awarded to be payable by respondents 1 and 2 jointly and severally with interest at the rate of 6%. Aggrieved by the aforesaid order of Tribunal, Insurance company preferred the present appeal.

7. Heard Sri D.Ravi Kiran, learned counsel for appellant, Sri D.Kodandarami Reddy, learned counsel appearing for 1st respondent and Sri G.Ramachandra Reddy, learned counsel appearing for the 3rd respondent. None appeared for the 2nd respondent.

8. Learned counsel for the appellant contends that the Tribunal erred in considering evidence of P.Ws.3 and 4 in coming to conclusion that the accident occurred because of rash and negligent driving of driver of the auto by ignoring the crucial evidence i.e., the inquest report (Ex.A2) and final report (Ex.X5). These crucial exhibits categorically mention that the accident occurred because of the negligence of the deceased who was driving police jeep but not the driver of auto,

therefore, the findings rendered by the Tribunal in this regard suffer from perversity. He further contended that the finding of the Tribunal that respondents have not produced single piece of document or evidence with respect to proving negligence on the part of the driver of auto, on the face of Exs.A2 and X5, is equally perverse. He would place reliance on the judgment of the Hon'ble Apex Court in **National Insurance Company Limited v. Ashalata Bhowmika and others**² in support of the submission that when the deceased driver is at fault claim for compensation is not maintainable under Section 166 of the Act.

9. Opposing the above submissions, learned counsel for 1st respondent/claimant, while supporting the order passed by the Tribunal to the extent of finding that the accident occurred because of rash and negligent driving of the driver of the auto, contended that the reasoning and findings rendered by the Tribunal are based on proper appreciation of the evidence both documentary and oral. In particular considering the evidence of eyewitnesses P.Ws.3 and 4, Tribunal has rightly held that the accident occurred because of rash and negligent driving of the driver of the auto, which does not suffer from any infirmity. The inquest report and final report on which much reliance has been placed on cannot by itself be conclusive evidence in deciding that the

² (2018) 9 SCC 801

accident occurred because of rash and negligent driving of the deceased. Rather it constitutes one of the evidences and when there are direct eyewitnesses to the incident, such evidence of eyewitnesses should be given more credence and weightage than going by the inquest report and final reports. At any rate, he contended that when occurrence of accident has been established these documents which are part of criminal proceedings cannot be looked into while considering the claim under Section 166 of the Act as it is well settled that the degree of proof required to be considered in adjudicating the claims being on the touchstone of preponderance of probabilities but not by beyond reasonable doubt. He also contended that though claimant has not filed any appeal for enhancement of compensation, claimant is entitled for just and fair compensation. This Court even in exercise of appellate powers can enhance the compensation, in support of the same, he placed reliance on the judgment of the Division Bench of this Court in **National Insurance Company Ltd. V. E.Suseelamma and others**³. The Tribunal has not awarded future prospects and that the interest awarded at the rate of 6% is unjust and it ought to have granted interest at the rate of 9%, in support of the same reliance has been placed on **National Insurance Company Limited v. Pranay Sethi and others**⁴.

³ 2023 SCC OnLine AP 1725

10. Perused the record and considered the rival submissions made by both parties.

11. Now, the points that arise for consideration are:

I. Whether the order passed by the Tribunal needs interference as claimed by the Appellant – Insurance Company?

II. Whether the claimants are entitled for just and fair compensation even in the absence of any appeal or cross-appeal by them?

III. To what relief?

12. The undisputed facts are that deceased was driving police jeep bearing No.AP 09PA 145 travelling along with P.Ws.3 and 4 and other police staff proceeding to Ongole headquarters. Even Tata Magic Auto bearing No.AP 26TV 0809 engaged for election duty and the same was returning from Nellore proceeding to Udayagiri after completing the escort of EVMs which was also carrying two police staff. At about 04.15 hours near Nellore Palem on Nellore – Mumbai national highway, the accident occurred. When the incident happened, police jeep was driven by deceased with P.Ws.3 and 4 as inmates, who also sustained injuries. Likewise, auto was driven by R.W.2 with two inmates, who were examined as L.Ws.4 and 5 in Crime No.73/12, who also sustained injuries. The accident is undisputed, however, it is the case of claimant

⁴ (2017) 16 SCC 680

that due to rash and negligent driving of driver of auto, the same has dashed the police jeep. Whereas in defense, both 1st and 2nd respondents before Tribunal contended that it was the police jeep which dashed auto on right side of the road meaning thereby, the deceased driver of the jeep was negligent and responsible but not the driver of auto. In support the claimants examined P.Ws.3 and 4, who are Assistant Commandant and police constable, inmates of jeep who deposed regarding the occurrence of accident and also stated that the driver of auto was responsible for the same.

13. On contra, the respondents 1 and 2 before the Tribunal relied on Ex.A2 and Ex.X5, which are inquest report and final report. Ex.X5, which mentioned that the preliminary enquiry revealed driver of jeep was at fault. The said report was prepared based on investigation and the statements rendered by P.Ws.3 and 4 in the present case who consistently stated that accident occurred because of negligence of driver of the auto and statements of L.Ws.4 and 5, police staff, inmates travelling in auto. Unlike the evidence of P.Ws.3 and 4, L.Ws.4 and 5 were not examined by the respondents in these proceedings. When the occurrence of accident is undisputed and there is direct eyewitness evidence on behalf of the claimants, in order to disprove or rebut the same, the respondents mere reliance on Ex.A2 and Ex.X5 would not suffice rather L.Ws.4 and 5 should have been examined to discharge

the same. The Tribunal rightly came to conclusion based on evidence of eye witnesses who are inmates in holding that accident occurred because of rash and negligent act of driver of auto, particularly when inmates of auto i.e., L.Ws.4 and 5 have not being examined. The Tribunal when has taken possible view, this Court exercising appellate jurisdiction cannot interdict with the said view merely because on re-appreciation of evidence, another view is possible. Ex.A2 and Ex.X5 being documents concerning criminal proceedings, the same cannot be treated as sole evidence for the purpose of deciding claims under Section 166 of the Act. The view taken by Tribunal, in the considered opinion of this Court, is therefore not perverse. It is trite law that in deciding claims under Section 166, one has to look from the perspective of preponderance of probabilities but not beyond reasonable doubt. When accident is admitted and there are direct eyewitnesses to the incident, they particularly being police officers, there is no reason to disbelieve their statements.

14. The Judgment in **Ashalata Bhowmika and others case (supra)** relied on by the counsel for the appellant was a case where the offending vehicle driven by the deceased met with an accident without intervention of any second vehicle due to rash and negligent driving of the deceased, therefore, as the victim died because of his own action of rash and negligent driving, the claim of compensation in that case was

held to be not sustainable. On facts, the said judgment has no application.

Points I & II:

15. We now proceed to determine as to whether the claimant and 3rd respondent are entitled for just and fair compensation under law. It is settled law that the claimants are entitled for just and fair compensation and that endeavor should be made by the Court to award just and fair compensation irrespective of the fact the claimants had not preferred any appeal for enhancement or filed cross objection in the appeal filed by either insurance company or owner. We had summed up the law on this aspect recently in **The Divisional Manager, The New Indian Assurance Company Limited v. Emani Venkata Archana and four others⁵**, by placing reliance on the judgments of the Hon'ble Apex Court in **N.Jayasree v. Cholamandalam Ms.General Insurance Company Limited⁶**, **Surekha v. Santosh⁷**, **Meena Pawala v. Ashraf Ali⁸** and **Smt.Anjali v. Lokendra Rathod (Supra 5)**. As the purport of compensation under Section 166 of the Act is to award just and fair reasonable compensation, this Court is granting the above reliefs to the

⁵ MACMA No.934/2015, dated 09.01.2025

⁶ (2022) 14 SCC 712

⁷ (2021) 16 SCC 467

⁸ (2021) 17 SCC 148

respondents/claimants by enhancing the compensation awarded by the Tribunal.

16. On the point of income and age as determined by Tribunal, there is no dispute as the learned counsel for the insurance company did not address any arguments on the same. Though claim petition has been filed by only deceased wife, his mother was also made as a party, thereby the claim has to be considered from the perspective of two claimants and the awarded compensation has to be apportioned among them. The Tribunal has rightly deducted 1/3rd of income towards personal living expenses considering number of claimants as two. The Tribunal awarded Rs.1,00,000/- towards consortium to the claimants, Rs.25,000/- towards funeral expenses, Rs.1,00,000/- each to claimant and 3rd respondent before Tribunal towards loss of love and affection, Rs.61,112/- towards loss of amenities.

17. On the point of the conventional heads, as per the judgments in **Pranay Sethi's case (supra), Magma National Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others⁹, Smt.Anjali and others v. Lokendra Rathod and others¹⁰, United India Insurance Co. Ltd v. Satinder Kaur @ Satwinder Kaur and Ors.¹¹., and Rojalini Nayak and Others v. Ajit Sahoo and Others¹²**, we award the following

⁹ (2018) 11 SCC 780

¹⁰ (2022) SCC OnLine SC 1682

¹¹ (2021) 11 SCC 780

amounts under the conventional heads of Loss of Consortium, Loss of Estate and Funeral Expenses, as ₹48,400/- (per claimant), ₹18,150/- and ₹18,150/- respectively as was awarded in **Rojalini's Case (Supra)**.

Future Prospects:

18. The deceased was employed with police department having permanent job and was aged 24 years i.e., under 40 years of the age. Following the judgment rendered in **National Insurance Company Limited v. Pranay Sethi and others**¹³, as per Para No.59.3, claimants are entitled to future prospects at the rate of 50% on the income as determined above.

Interest:

19. Coming to the contention of the claimants that the Tribunal has granted interest @6% per annum, which is meagre and in view of various recent judgments of Apex Court, the claimants are entitled for interest @9% per annum is concerned, the Apex Court in **Malarvizhi and others vs. United India Insurance Company Limited and others**¹⁴ and **Smt.Anjali and others v. Lokendra Rathod and Others**¹⁵ had granted interest @9% per annum, respectively following

¹² 2024 SCC OnLine SC 1901

¹³ (2017) 16 SCC 680

¹⁴ (2020) 4 SCC 228

¹⁵ (2022) SCC OnLine SC 1682

those judgments, the interest is awarded @9% from the date of the claim petition till realization.

20. Thus, the claimants are entitled for enhanced compensation as mentioned below:

S.No.	Description of the Head	Amount Entitled in rupees
1	Net Annual Income	Rs.15,027/- x 12 = Rs.1,80,324/-
2	Future prospects (at the age of 24 years)	Rs.90,162/- (i.e., 50% of the income)
	Total Income	Rs.2,70,486/-
3	Deduction towards personal expenditure (i.e., 1/3 rd)	Rs.90,162/-
4	Total Annual Loss of Dependency	Rs.1,80,324/-
5	Multiplier of 18 for the age of 24 years	18 x Rs.1,80,324/- = Rs.32,45,832/-
	Conventional Heads:	
6	(i) Loss of consortium (2 claimants)	Rs.96,800/- (Rs.48,400/- x 2)
	(ii) Loss of Estate	Rs.18,150/-
	(iii) Funeral expenses	Rs.18,150/-
7.	Total Compensation	Rs.33,78,932/- (rounded of to Rs.33,78,930/-

21. Accordingly, the M.A.C.M.A. No.2276 of 2017 is dismissed, however, compensation is enhanced over and above granted by the Tribunal to the claimant and 3rd respondent in MVOP. No.203 of 2013

on the file of Motor Accidents Claims Tribunal – cum- Principal District Judge, Kadapa, as just and fair compensation in the following terms:

1. The claimants/respondents are granted enhanced compensation of ₹33,78,930/- as just and fair, with interest @ 9% per annum thereon from the date of claim petition till realization;
2. Out of the total compensation amount of Rs.33,78,930/-, the 3rd respondent – mother of the deceased is entitled for an amount of Rs.8,78,930/- and the claimant – wife of the deceased is entitled for the remaining amount of Rs.25,00,000/-.
3. The appellant Insurance Company shall deposit the compensation amount, as aforesaid, with cost and interest, minus the amount if any already deposited, within a period of one month before the Tribunal.
4. The Tribunal shall proceed to pay the amount, in the aforesaid terms, adjusting the amount, if any, already paid.
5. Entire costs in this case are awarded in favour of the claimant and 3rd respondent before the Tribunal.

As a sequel, miscellaneous pending consideration, if any, in this case shall stand closed.

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

.03.2025
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