

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

**THURSDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI



MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1751 OF 2012

Between:

The National Insurance Company Limited, Represented by Divisional Manager Divisional Office, Gatlapati Complex, Governorpet, Vijayawada. O/o. National Insurance Company Limited, Divisional Office

...Appellant/Respondent No.2

AND

1. Mandava Sujatha, W/o. Late Anjaiah, Hindu, aged about 48 years, Housewife R/o. Basavannapalem Village, Maddipadu Mandal, Prakasam District.
2. Mandava Venu, S/o. Late Anjaiah, Hindu, aged about 28 years, R/o. Basavannapalem Village, Maddipadu Mandal, Prakasam District.

...Claimants/Respondents

3. N. Venkata Raajani, W/o. Venkata Prasad, Owner of the Lorry No. AP 16/TV-0944 R/o. C/o. South India Freight Carrier, Alladivari Street, Kothapet, Vijayawada, Krishna District.
4. Gummadi Kavitha, W/o. Venkata Krishna Rao, Hindu, aged about 31 years, Housewife R/o. Neelayapalem Village, N.G.Padu Mandal, Prakasam District.

...Respondents/Respondents

Appeal under Section 173 of M.V.Act against the Judgment and decree dated 25/01/2011 in M.V.O.P No. 393 of 2008 on the file of the Court of the Chairperson, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Ongole.

ORDER: This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material papers in the Suit and upon hearing the arguments of Sri V.Veerabhadra Chary for the Appellant and of Sri Rama Chandra Rao Gurram for the Respondents.

The Court doth Order and Decree as follows:

1. That the MACMA be and hereby is dismissed.
2. That the award and decree passed by the Tribunal in M.V.O.PNo.393/2008 on 25/01/2011 is confirmed.
3. That there be no order as to costs.

Sd/- S SRINIVASA PRASAD
ASSISTANT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The Chairman, Motor Accidents claims Tribunal-cum-VII Additional District Judge, Ongole, Prakasam District.
2. Three CD Copies

vna



HIGH COURT

DATED: 30/11/2023

DECRETAL ORDER

MACMA.No.1751 of 2012

4 Copies

2/3/24

DSL



DISMISSING THE MACMA WITHOUT COSTS

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

THURSDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI



MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1751 OF 2012

Appeal under Section 173 of M.V.Act against the Judgment and decree dated 25/01/2011 in M.V.O.P No. 393 of 2008 on the file of the Court of the Chairperson, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Ongole.

Between:

The National Insurance Company Limited, Represented by Divisional Manager Divisional Office, Gatlapati Complex, Governorpet, Vijayawada. O/o. National Insurance Company Limited, Divisional Office

...Appellant/Respondent No.2

AND

1. Mandava Sujatha, W/o. Late Anjaiah, Hindu, aged about 48 years, Housewife R/o. Basavannapalem Village, Maddipadu Mandal, Prakasam District.
2. Mandava Venu, S/o. Late Anjaiah, Hindu, aged about 28 years, R/o. Basavannapalem Village, Maddipadu Mandal, Prakasam District.

...Claimants/Respondents

3. N. Venkata Raajani, W/o. Venkata Prasad, Owner of the Lorry No. AP 16/TV-0944 R/o. C/o. South India Freight Carrier, Alladivari Street, Kothapet, Vijayawada, Krishna District.
4. Gummadi Kavitha, W/o. Venkata Krishna Rao, Hindu, aged about 31 years, Housewife R/o. Neelayapalem Village, N.G.Padu Mandal, Prakasam District.

...Respondents/Respondents

Counsel for the Appellant: SRI. V VEERABHADRA CHARY

Counsel for the Respondents: SRI RAMA CHANDRA RAO GURRAM

The Court made the following: Judgment

HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

M.A.C.M.A.No.1751 OF 2012

J U D G M E N T:

Challenging the order dated 25.01.2011 passed in M.V.O.P.No.393/2008 on the file of Motor Accidents Claims Tribunal-VII Addl.District Judge, Ongole, the appellant/National Insurance Company Limited, Ongole, filed the appeal.

2. The respondents/claimants filed the claim petition before the learned Tribunal U/s.163-A and 166 of Motor Vehicles Act, 1988 claiming compensation of Rs.4,00,000/- for the death of Mandava Anjaiah, alleging that the deceased was aged 52 years, working as a clerk in Teja Wine Shop in Seetharamapuram village of Maddipadu Mandal and was earning Rs.5,000/- per month; On 12.07.2007 at 10.20 p.m. the deceased along with his friend on his motor cycle bearing No.AP 27C 4875 started from Seetharamapuram and was going towards Maddipadu village, at that time lorry bearing No.AP 16 TV 0944 of 1st respondent stationed on the road without parking lights and precautions; The deceased could not see the stationed lorry on the road because of lights of vehicles coming in opposite direction and dashed the stationed lorry on its back and died on the spot; The pillion rider on the motor cycle (P.W-2) sustained grievous injuries. The

deceased and P.W-2 were shifted to Government Hospital, Ongole and post mortem was conducted on the dead body of deceased; The accident occurred only due to negligent parking of crime vehicle by its driver; The respondents 1 and 2 are liable to pay compensation.

3. Before the learned Tribunal, the 2nd respondent/Insurance Company filed written statement, while traversing the material averments with regard to manner of accident, rash and negligence on the part of the driver of the crime vehicle, age and avocation of the deceased, liability to pay compensation, and contended that the deceased drove his motorcycle in rash and negligent manner and dashed against the crime vehicle; The crime vehicle was kept by its driver on left side margin of road with signal lights, the deceased who was in intoxication with triple riding, caused the accident; The claim is excessive.

4. The respondents No.1 and 3 remained exparte.

5. On the strength of the pleadings of both parties, the learned Tribunal framed the following issues;

1. Whether the accident occurred due to rash and negligent driving of the lorry bearing No.AP 16 TV 0944 by its driver?

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

3. To what relief?

6. To substantiate their claim, the claimants examined P.Ws-1 and 2 and got marked Exs.A-1 to A-9. On behalf of the 2nd respondent, R.W-1 was examined and Exs.B-1 and B-2 were marked.

7. The learned Tribunal, taking into consideration the evidence of P.Ws-1 and 2, coupled with Exs.A-1 to A-9 and memo filed by claimants counsel on 18.01.2011 restricting the income of deceased to Rs.40,000/- and requested the learned Tribunal to consider the petition U/s.163-A of M.V.Act, held on issue No.1 that the accident took place not due to negligent parking of lorry, and further held on issue No.2 that the claimants are entitled to claim compensation U/s.163-A of M.V.Act, 1988 even though there is no negligence on the part of driver of crime vehicle, awarded total compensation of Rs.2,77,000/- with interest @ 6% p.a. from the date of petition, till the date of realisation with proportionate costs under section 163-A of M.V.Act, 1988.

8. The contention of the appellant/Insurance Company is that the learned Tribunal ought to have seen that as per Ex.B-2 copy of final

report (charge sheet), the deceased himself was responsible for the accident, and therefore, the claimants are not entitled for any compensation.

9. The contention of the claimants is that the learned Tribunal basing on the facts and circumstances of the case, awarded just compensation under Section 163-A as per law, and it does not warrant any interference by this Court.

10. In the light of above rival contentions, the points that would arise for consideration in this appeal are as under:

1. Whether the award and decree passed by the learned Tribunal warrants interference of this Court?

2. To what relief?

11. **POINT No. 1:**

The claimants in order to establish their case, examined P.W-1 and P.W-2 and filed Ex.A-2 copy of inquest report, Ex.A-3 copy of post-mortem report. The eye witness to the accident was examined as P.W-2. He deposed that on 12.07.2002 at about 10.00 p.m. after completion of business, the deceased closed his wine shop and driving motor cycle, on which he was the pillion rider, and while they were proceeding towards Maddipadu, a lorry bearing No.AP 16 TV 0944 was

stationed on road without any parking signals and unattended. As the said vehicle was negligently stationed on road and due to dazzling of lights of vehicles coming from the opposite direction, the deceased could not identify the stationed lorry, dashed the lorry on its back, sustained injury and fell unconscious and died, whereas he sustained injuries and fell unconscious. No contra evidence was placed by the insurance company. In the light of these facts and circumstances, there are no grounds to interfere with order of the learned Tribunal considering the application under section 163-A instead of section 166 of M.V.Act.

12. The learned counsel for claimants relied upon a decision of Hon'ble Apex Court in the case of **United India Insurance Company Limited, Appellant Vs. Sunil Kumar and another¹**, wherein it was held that "*in a proceeding U/s.163-A of M.V.Act, it is not open for the insurer to raise any defence of negligence on the part of the victim*".

13. The learned counsel for claimants also relied upon a decision of High Court of Andhra Pradesh in the case of **P.Krishna Vamsi and**

¹ 2019 (12) SCC 398

another Vs. Andhra Pradesh State Road Transport Corporation²,

wherein it was held as follows:

"A situation might arise where the claimants might file petitions both U/secs.163-A and 166, either one after the other or simultaneously. In that eventuality, the proper course to be adopted would be to give an opportunity to the claimants to exercise option as to which of the petitions is to be pursued and in case of option is not exercised, it will be for the Tribunal to decide the question as to which of the applications should be processed."

14. Admittedly, the claimants filed the claim petition U/secs.163-A and 166 of M.V.Act, and the learned Tribunal held that the claimants are entitled to claim compensation U/s.163-A of M.V.Act, as the accident occurred due to use of lorry.

15. The claimants did not file any documentary evidence to show that the deceased was earning Rs.5,000/- per month. But the claimants opted section 163-A of M.V.Act, 1988 by restricting the income of deceased to Rs.40,000/- per annum. In the said circumstances, the learned Tribunal fixed the income of deceased as Rs.40,000/- per annum. The deceased was aged 52 years. The learned Tribunal applied multiplier '10' and thus, the loss of dependency would be Rs.40,000 x 10 = Rs.4,00,000/-. Therefore, the learned

² 2006 LawSuit (AP) 1540

Tribunal deducted $1/3$ by applying Schedule-II of M.V.Act, which would be $\text{Rs.}4,00,000 - 1,33,000 = \text{Rs.}2,67,000/-$. Apart from that, the 1st respondent, who is wife of deceased is entitled to $\text{Rs.}5,000/-$ towards loss of consortium, $\text{Rs.}2,000/-$ towards funeral expenses and $\text{Rs.}2,500/-$ towards loss of estate, and in all the claimants are entitled to $\text{Rs.}2,67,000 + 9,500 = \text{Rs.}2,76,500/-$, which was rounded to $\text{Rs.}2,77,000/-$ with interest thereon at 6% p.a. The learned Tribunal assed the compensation as mentioned above, under Section 163-A of M.V.Act. Hence, there are no grounds to interfere with the quantum of the compensation.

16. The Tribunal awarded interest at 6% p.a. from the date of petition, till the date of deposit. This Court do not find any ground to interfere with the rate of interest awarded by the learned Tribunal at 6% p.a., from the date of petition, till the date of realisation.

17. Considering the facts and circumstances of the case, this Court do not find any grounds to interfere with the award and decree passed by the learned Tribunal. Accordingly, the point is answered.

18. **POINT No.2:** To what relief?

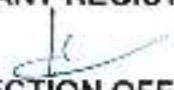
In the light of finding on point No.1, the appeal is liable to be dismissed.

19. In the result, the appeal is dismissed, by confirming the award and decree dated 25.01.2011 passed by the learned Tribunal in M.V.O.P.No.393/2008 on the file of Motor Accidents Claims Tribunal-cum-VII Addl.District Judge, Ongole. There shall be no order as to costs.

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

**Sd/- S SRINIVASA PRASAD
ASSISTANT REGISTRAR**

//TRUE COPY//


SECTION OFFICER

To,

1. The Chairman, Motor Accidents claims Tribunal-cum-VII Additional District Judge, Ongole, Prakasam District. **(with records)**
2. One CC to Sri. V Veerabhadra Chary, Advocate [OPUC]
3. One CC to Sri. Rama Chandra Rao Gurram, Advocate [OPUC]
4. The Section Officer, V.R Section, High Court of Andhra Pradesh at Amaravati.
5. Three CD Copies

vna



HIGH COURT

DATED:30/11/2023

JUDGMENT + DECREE

MACMA.No.1751 of 2012

7 copies
21/3/24
DSL



DISMISSING THE MACMA WITHOUT COSTS