

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE THIRTY FIRST DAY OF OCTOBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT JUSTICE K. SUJANA

**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 814 AND 1514 OF
2015**

Appeal filed Under Section 173 of Motor Vehicles Act against the Order and decree in O.P.No. 299 of 2011 dated 13.01.2015 on the file of the Court of the VIII Additional District and Sessions Judge, Ranga Reddy.

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 814 OF 2015

Between:

Reliance General Insurance Company Ltd., rep. by its Regional Manager, Regional office at #4-1-327 to 337, IV Floor, Sagar Plaza, Abid road, Hyderabad.

...Appellant/Respondent No.2

AND

1. Marri Ganapathi Reddy, S/o. M. Bal Reddy, Occ Business. R/o.H.No.1-8-732, Nallakunta, Hyderabad.
2. Marri Sunitha Reddy, W/o. M. Ganapathi Reddy, R/o.H.No.1-8-732, Nallakunta, Hyderabad.

...Respondents/Petitioners

3. Mohd. Nusrath, S/o. Shaik Chand, aged Major, Occ Owner of the vehicle, R/o. H.No. 18-8-684/17, Aulla Bagh, Edi Bazar, Santosh Nagar, Hyderabad.

...Respondent/Respondent No.1

I.A. NO: 1 OF 2015(MACMAMP. NO: 2200 OF 2015)

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 grant stay of all further proceedings in pursuance of the order and the decree dated 13-01-2015 passed in OP No.299 of 2011 by the VIII Additional District & Sessions Judge, Ranga Reddy District at L.B. Nagar, pending disposal of the above appeal.

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1514 OF 2015

Between:

1. Marri Ganapathi Reddy, S/o. M. Bal Reddy, Occ Business. R/o.H.No.1-8-732, Nallakunta, Hyderabad.
2. Marri Sunitha Reddy, W/o. M. Ganapathi Reddy, R/o.H.No.1-8-732, Nallakunta, Hyderabad.

...Appellants/Petitioner

AND

1. Mohd. Nusrath, S/o. Shaik Chand, Occ Owner of the vehicle, R/o. H.No. 18-8-684/17, Aulla Bagh, Edi Bazar, Santosh Nagar, Hyderabad.
2. Reliance General Insurance Company Ltd., rep. by its Regional Manager, Regional office at #4-1-327 to 337, IV Floor, Sagar Plaza, Abid road, Hyderabad.

...Respondents/Respondents

Counsel for the Appellant in

MACMA No.814 of 2015 and

Respondent No.2 in MACMA

No.1514 of 2015

: Sri T MAHENDER RAO

Counsel for the Respondents

in MACMA No.814 of 2015 and

Appellant in MACMA

No.1514 of 2015

: Sri KRISHNA REDDY PUTTA

The Court delivered the following

: COMMON JUDGMENT

THE HON'BLE SRI JUSTICE K.LAKSHMAN
AND
THE HON'BLE SMT JUSTICE K. SUJANA

M.A.C.M.A.Nos.814 AND 1514 OF 2015

COMMON JUDGMENT : *(per Hon'ble Smt Justice K.Sujana)*

Feeling aggrieved by the order and decree dated 13.01.2015 in O.P.No.299 of 2011 passed by the VIII Additional District & Sessions Judge, Ranga Reddy District at L.B.Nagar, the Reliance General Insurance Company Ltd., filed M.A.C.M.A.No.814 of 2015, challenging the liability and also the quantum of compensation. The appellants/petitioners/claimants in the said O.P., filed M.A.C.M.A.No.1514 of 2015 seeking enhancement of the compensation.

2. For the sake of convenience, the appellant in M.A.C.M.A.No.814 of 2015 is referred to as 'Insurance Company' and the appellants in M.A.C.M.A.No.1514 of 2015 are referred to as 'Claimants'.

3. M.A.C.M.A.No.814 of 2015 is filed by the Reliance General Insurance Company, contending that the court below grossly erred in taking the notional income of the deceased-Rithesh Reddy as Rs.30,000/- p.a., and failed to see that in case of death of a boy aged 13 years the Hon'ble Supreme Court in



Manju Devi & another Vs Musafir Paswan and another¹

assessed the notional income for non earning person at Rs.15,000/-, The court below grossly erred in awarding Rs.25,000/- towards funeral expenses, is excessive. Further awarding an amount of Rs.25,000/- towards loss of estate is also excessive and interest @ 7.5% p.a., is also excessive. As such prayed the Court to set aside the order of the court below.

4. The appellants/claimants filed M.A.C.M.A.No.1514 of 2015 contending that the court below awarded only Rs.2,60,000/- against the claim of Rs.5,00,000/- which is erroneous. The court below deducted 50% of the amount towards personal expenses of the deceased, though he is aged about 13years and grossly erred in arriving the net income @ Rs.30,000/- and awarding an amount of Rs.2,10,000/- towards loss of love and affection. Therefore, prayed the Court to enhance the compensation.

5. Heard Sri T. Mahender Rao, learned counsel appearing for the Reliance General Insurance Co., Ltd., and Sri Putta Krishna Reddy, learned counsel appearing for the claimants.

¹ 2005 ACJ 99

6. The facts of the case in the petition are that on 07.11.2010 at about 1100 hours, while the deceased-Rithesh Reddy was proceeding from Penimella Village to Hyderabad along with his family members in Innova car bearing No.AP 09 BX 324, when they reached Debaguda gate, Kandukur near a culvert, one Mini Bus bearing No.AP 9V 9670 while proceeding towards Srisailam came in opposite direction at high speed in a rash and negligent manner and dashed the Innova Car. Consequently, the deceased died on the spot and immediately, the dead body was shifted to Osmania General Hospital, Hyderabad and the duty doctor conducted postmortem examination. It is further contended that the deceased was aged about 13 years at the time of accident; he was a student, hale and healthy at the time of accident. Due to the death of the deceased, the appellants became destitute and suffered mental agony

7. The petitioner No.1 is father and petitioner No. 2 is mother of the deceased.

8. The respondent No.1 in the O.P., remained ex parte. The respondent No.2 filed counter denying the manner in which the accident occurred and involvement of the Mini bus and that the alleged accident occurred due to the contributory negligence of

the driver of Innova car, as such, the claim is not maintainable and the petition is bad for non-joinder of necessary parties i.e., owner and insurer of the Innova car. It was further contended that the Mini bus was not insured with it and the policy was not in existence on the date of alleged accident. The driver of the Mini bus was not having valid driving licence, though the owner of the Mini bus had full knowledge about the said fact, he handed over his bus to such a person in violation of the provisions of the Motor Vehicles Act. As such, the Insurance Company is not liable to pay the compensation. Therefore, prayed the Court to dismiss the petition against the Insurance Company.

9. With regard to the accident, a case in Cr.No.184 of 2010 was registered under Section 304-A of the IPC in Kandukur Police Station against the driver of the Mini bus.

10. To prove the claim, petitioner No.2, therein got examined herself as Pw.1 and Exs.A.1 to A.6 are marked. On behalf of the Insurance Company, one Syed Rehmullah, Senior Executive of the Insurance Company was examined as Rw.1 and Ex.B.1- Policy was marked.

11. Basing on the evidence on record, the court below opined that the accident occurred due to the negligent driving of the

driver of the Mini bus. Against the said decision, the Insurance Company filed M.A.C.M.A.No.814 of 2015 contending that there is contributory negligence on the part of the driver of Innova Car but no witness was examined on their behalf to prove the same except examining the employee of Insurance Company.

12. Now, the points for consideration are :

1. Whether the accident occurred on 07.11.2010 due to the contributory negligence of the driver of the Mini bus and driver of the Innova car ?
2. Whether, the claimants are entitled for enhancement of compensation as prayed for ?

POINT NO.1 :

13. On going through the documents filed by the claimants, Ex.A.1 FIR is issued immediately after the accident and Ex.A.2 charge sheet, which was filed after due investigation, it is evident that the driver of the Mini bus is responsible for the accident. Ex.A.3 scene of offence panchanama also shows that accident occurred due to the negligence of the driver of the Mini bus. Ex.A.4 is the certified copy of inquest, Ex.A.5 is the post mortem examination report and Ex.A.6 is the certified copy of the MVI report. Though summons were served on the driver of the Mini bus, he has not contested the claim and not denied the manner in which the accident occurred. There is no dispute

with regard to occurrence of accident and the death of the deceased, whereas, the Insurance Company disputed the liability and claim contending that there is contributory negligence, whereas, the evidence on record clearly shows that the accident occurred due to the negligence of the driver of the Mini bus. The Insurance Company relied on the judgment in **Agnuru Jaya Ramulu Vs Mohammed Afzal Miyan and another²**, wherein the date of accident itself is in dispute though the accident occurred on the intervening night of 12/13.7.1997, the medical officer evidence would show that the accident occurred on the intervening night of 11/12.7.1997. Therefore, the Court came to the conclusion that the documents filed by the claimants are not reliable. As such, the appeal was decided stating that there is contributory negligence on the part of claimant also. Whereas, in the present case, the documents filed by the claimants clearly proves that the accident occurred due to the negligent driving of the driver of the Mini bus, as such, the observations made in the above judgment are not applicable to this case. Apart from that the Insurance Company failed to examine any eye witness on its behalf to prove the negligence of driver of Innova Car whereas, Pw.1 is the mother

of the deceased and one of the injured eye witness deposed the manner in which the accident occurred. Therefore, there is no force in the contention of the Insurance Company that accident occurred due to the contributory negligence on the part of both the drivers. As such, this issue is decided in favour of the claimants and against the Insurance Company. Accordingly, this point is answered.

POINT NO.2 :

14. According to the claimants, the age of the deceased is 13 years as on the date of accident. The court below relied on the judgment of the Hon'ble Supreme Court in **Kishan Gopal and another Vs Lala and others**³ and took the notional income at Rs.30,000/- p.a., and awarded an amount of Rs.2,10,000/- towards compensation for loss of love and affection of the deceased, which is a meagre amount. Per contra, learned counsel for the Insurance Company relied on the judgment of the Hon'ble Supreme Court in **Manju Devi's** case. According to the said judgment, notional income for non-earning person is Rs.15,000/- only and compensation awarded is excessive. Whereas learned counsel for the claimants relied on the

³ 2014 (1) Supreme Court Cases 244

judgment of the Hon'ble Supreme Court in **Meena Devi Vs Munu Chand Mahto alias Nemchan Mahto and others**⁴, which is latest judgment, wherein the claimants therein have claimed Rs.5,00,000/- for the death of the minor. In paragraph No.16, the Hon'ble Supreme Court held as under :

“16. Thus applying the ratio of the said judgments, looking to the age of the child in the present case i.e. 12 years, the principles laid down in *Kishan Gopal* [*Kishan Gopal v. Lala*, (2014) 1 SCC 244 : (2014) 1 SCC (Civ) 184 : (2014) 1 SCC (Cri) 241] are aptly applicable to the facts of the present case. As per the ocular statement of the mother of the deceased, it is clear that the deceased was a brilliant student and studying in a private school. Therefore, accepting the notional earning Rs 30,000 including future prospect and applying the multiplier of 15 in view of the decision of this Court in *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002], the loss of dependency comes to Rs 4,50,000 and if we add Rs 50,000 in conventional heads, then the total sum of compensation comes to Rs 5,00,000. As per the judgment of MACT, lump sum compensation of Rs 1,50,000 has been awarded, while the High Court enhanced it to Rs 2,00,000 up to the value of the claim petition. In our view, the said amount of compensation is not just and reasonable looking to the computation made hereinabove. Hence, we determine the total compensation as Rs 5,00,000 and on reducing the amount as awarded by the High Court i.e. Rs 2,00,000, the enhanced amount comes to Rs 3,00,000.”

⁴ (2023) 1 Supreme Court Cases 204

15. In the said judgment for the age group of 12 years, the notional income of Rs.30,000/- is taken including future prospects and multiplier 15 is taken as per the judgment in **Sarla Verma and Others Vs Delhi Transport Corporation and another⁵** and awarded Rs.50,000/- towards conventional heads.

16. Taking note of the said judgment, it is appropriate to take the notional income of the deceased at Rs.30,000/- including future prospects for the purpose of loss of dependency. As the deceased is a minor, the age of the mother of the deceased i.e., 45 years is taken into consideration. For the age group of 45, the appropriate multiplier applicable is '14' as rightly taken by the court below and if the same is applied, the loss of dependency comes to Rs.4,20,000/- (Rs.30,000/- X 14). Further, Rs.50,000/- is granted under conventional heads. Hence, the total compensation comes to Rs.4,70,000/-.

17. Thus, in all the claimants are entitled to Rs.4,70,000/- as compensation under the following heads :

Loss of dependency	:	Rs.4,20,000/-
Conventional heads	:	Rs. 50,000/-
Total	:	<u>Rs.4,70,000/-</u>

⁵ (2009) 6 SCC 121

18. As far as the issue of rate of interest is concerned, the Insurance Company submitted that 7.5% per annum interest is high, but 6% p.a, is reasonable interest. Whereas, the Apex Court in **Sonal Gupta and another Vs United India Insurance Co., Ltd. and another⁶**, in paragraph No.31 it was observed as under :

“31. As far as issue of rate of interest is concerned, it should be 7.5 per cent in view of the latest decision of the Apex Court in National Insurance Co. Ltd., V Mannat Johal, 2019 ACJ 1849 (SC), wherein the Apex Court has held as under :

“(13) The aforesaid features equally apply to the contentions urged on behalf of the claimants as regards the rate of interest. The Tribunal had awarded interest at the rate of 12 per cent per annum but the same had been too high a rate in comparison to what is ordinarily envisaged in these matters. The High Court, after making a substantial enhancement in the award amount, modified the interest component at a reasonable rate of 7.5 per cent per annum and we find no reason to allow the interest in this matter at any rate higher than that allowed by High Court.”

Accordingly, point No.2 is answered.

19. IN THE RESULT, M.A.C.M.A.No.814 of 2015 filed by the Insurance Company is dismissed and M.A.C.M.A.No.1514 of 2015 filed by the claimants is partly allowed. The order and

⁶ 2023 ACJ 1013

decree dated 13.01.2015 of the VIII Additional District & Sessions Judge, Ranga Reddy District at L.B.Nagar is modified enhancing the compensation from Rs.2,60,000/- to Rs.4,70,000/- with interest @ 7.5% per annum from the date of petition till realization. The owner and Insurance Company of the Mini Bus are jointly and severally liable to pay the said compensation. The owner and Insurance Company of the Mini Bus are directed to deposit the said amount with interest and costs, after deducting the amount which was already deposited, within one month from the date of receipt of certified copy of this judgment. On deposit of the said amount, the claimants are permitted to withdraw the entire amount. No order as to costs.

Miscellaneous applications, if any, pending in these M.A.C.M.As, shall stand closed.

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SD/- T. JAYASREE
ASSISTANT REGISTRAR



To,

SECTION OFFICER

1. The VIII Additional District and Sessions Judge, Ranga Reddy.
2. One CC to SRI. T MAHENDER RAO, Advocate [OPUC]
3. One CC to SRI. KRISHNA REDDY PUTTA, Advocate [OPUC]
4. Two CD Copies

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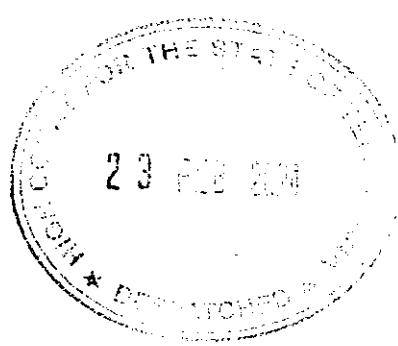
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HIGH COURT

DATED:31/10/2023

JUDGMENT

**MACMA.No.814 of 2015
AND
MACMA.No.1514 of 2015**



**DISMISSING THE MACMA NO.814 OF 2015
AND
PARTLY ALLOWING THE MACMA NO.1514 OF 2015**

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IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE THIRTY FIRST DAY OF OCTOBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT JUSTICE K. SUJANA

**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 814 AND 1514 OF
2015**

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 814 OF 2015

Between:

Reliance General Insurance Company Ltd., rep. by its Regional Manager, Regional office at #4-1-327 to 337, IV Floor, Sagar Plaza, Abid road, Hyderabad.

...Appellant/Respondent No.2

AND

1. Marri Ganapathi Reddy, S/o. M. Bal Reddy, Occ Business. R/o.H.No.1-8-732, Nallakunta, Hyderabad.
2. Marri Sunitha Reddy, W/o. M. Ganapathi Reddy, R/o.H.No.1-8-732, Nallakunta, Hyderabad.

...Respondents/Petitioners

3. Mohd. Nusrath, S/o. Shaik Chand, aged Major, Occ Owner of the vehicle, R/o. H.No. 18-8-684/17, Aulla Bagh, Edi Bazar, Santosh Nagar, Hyderabad.

...Respondent/Respondent No.1

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1514 OF 2015

Between:

1. Marri Ganapathi Reddy, S/o. M. Bal Reddy, Occ Business. R/o.H.No.1-8-732, Nallakunta, Hyderabad.
2. Marri Sunitha Reddy, W/o. M. Ganapathi Reddy, R/o.H.No.1-8-732, Nallakunta, Hyderabad.

...Appellants/Petitioner

AND

1. Mohd. Nusrath, S/o. Shaik Chand, Occ Owner of the vehicle, R/o. H.No. 18-8-684/17, Aulla Bagh, Edi Bazar, Santosh Nagar, Hyderabad.
2. Reliance General Insurance Company Ltd., rep. by its Regional Manager, Regional office at #4-1-327 to 337, IV Floor, Sagar Plaza, Abid road, Hyderabad.

...Respondents/Respondents

Appeal filed Under Section 173 of Motor Vehicles Act against the Order and decree in O.P.No. 299 of 2011 dated 13.01.2015 on the file of the Court of the VIII Additional District and Sessions Judge, Ranga Reddy.

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 Case and upon hearing the arguments of Sri T MAHENDER RAO, Advocate for the Appellant in MACMA No.814 of 2015 and Respondents in MACMA No.1514 of 2015 and of SRI. KRISHNA REDDY PUTTA , Advocate for the Respondent in MACMA No.814 of 2015 and Appellants in MACMA No.1514 of 2015.

This Court while dismissing the MACMA No.814 of 2015 filed by the Insurance company, allowing the MACMA No.1514 of 2015 in part doth Order and Decree as follow:

1. That the order and decree dated 13.01.2015 of the VIII Additional District & Sessions Judge, Rangareddy District at LB Nagar is modified enhancing the compensation from Rs.2,60,000/- to Rs.4,70,000/- with interest @ 7.5% per annum from the date of petition till realization;
2. That the owner and Insurance Company of the Mini Bus are jointly severally liable to pay the said compensation;
3. That the owner and Insurance of the Mini bus are directed to deposit the said amount with interest ad costs, after deducting the amount which was already deposited, within one month from the date of receipt of certified copy of this Judgment;
4. That on deposit of the said amount, the Claimants are permitted to withdraw the entire amount, and
5. That there shall be no order as to costs in this appeal.

SD/- T. JAYASREE
ASSISTANT REGISTRAR

//TRUE COPY//



SECTION OFFICER

To,

1. The VIII Additional District and Sessions Judge, Ranga Reddy.
2. Two CD Copies

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HIGH COURT

DATED:31/10/2023

DECREE

**MACMA.No.814 of 2015
AND
MACMA.No.1514 of 2015**

**DISMISSING THE MACMA NO.814 OF 2015
AND
PARTLY ALLOWING THE MACMA NO.1514 OF 2015**

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1/2/24*