

APHC010601872017



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3470]

**FRIDAY ,THE NINTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR
PRESENT**

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO:
2121/2017**

Between:

...APPELLANT(S)

Eerla Ramadevi, Prakasam Dist And Two Others
and Others

AND

...RESPONDENT(S)

V V Ravi Kumar Prakasam Dist Another and
Others

Counsel for the Appellant(S):

1. SIVAPRASAD REDDY VENATI

Counsel for the Respondent(S):

1. P BHASKAR

2. GUDI SRINIVASU

3..

The Court made the following:

**HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
HON'BLE SRI JUSTICE NYAPATHY VIJAY**

M.A.C.M.A.No.2121 of 2017

JUDGMENT: *(Per Hon'ble Sri Justice Nyapathy Vijay)*

This Appeal is filed under section 173 of the Motor Vehicles Act,1988 by the claimants seeking enhancement of the compensation awarded in the Order and Decree dated 15.09.2016 passed in M.V.O.P.No.765 of 2008 by the Principal, Motor Accident Claims Tribunal, Nellore.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal.

3. The brief facts of the case are as under:

The claimants are the wife and children of one Eerla Hari Babu (hereinafter called as '**deceased**'). They had filed MVOP claiming compensation on account of the death of the deceased for a sum of Rs.1,00,00,000/-. It is their case that on 14.09.2007, while the deceased was proceeding in a car bearing No.AP-10AV-T/R-2223 along with his friend V.V.Ravi Kumar from Cheemakurthi to Chennai.

When they reached near Swarna Toll Plaza near Sullurupet, the driver of the car in a rash and negligent manner dashed the toll way stop rod and dashed an ongoing lorry from its behind. As a result, the car turned turtle and both the deceased as well as his friend died on the spot. The dead bodies were shifted to Government Hospital, Sullurpet. A case in Crime No.64 of 2007 was registered by the D.V.Satram Police Station. The deceased was aged 42 years at the time of accident and was earning Rs.86,000/- per month by transporting granite in his lorries.

4. The Respondent No.1 owner of the offending vehicle remained *ex parte*. The Respondent No.2-insurance company filed their formatted counter denying every aspect of the claim.

5. In the course of trial, on behalf of claimants, P.Ws.1 to 5 were examined on behalf of claimants and Exs.A.1 to A.15 were marked. The Exs.X.1 to X.3 were marked through PW.3. On behalf of respondents, Ex.B.1 insurance policy was marked.

6. The Tribunal framed the following issues:

1. Whether the accident, resulting in death of the deceased, had occurred due to negligent driving of car bearing No.AP-10-AV-T/R-2223, by its driver?

2. Whether the petitioners are entitled for any compensation? If so, how much amount and from which of the respondents?

3. To what relief?

7. After considering the oral and documentary evidence, the Tribunal had adopted a multiplier of 14 and assessed Rs.40,000/- as the income of the deceased and granted compensation of Rs.43,51,800/- with interest @ 9 % per annum. Hence, the present Appeal is filed seeking enhancement.

8. Heard Sri V.Siva Prasad Reddy, learned counsel for the appellant and Sri Gudi Srinivasu, learned counsel for respondent No.2-Insurance company.

9. As the scope of the appeal is only *vis-a-vis* correctness of compensation, the evidence on record are the Income tax returns for the Financial Years 2004-05, 2005-06 and 2006-07 which are marked as Ex. A.5, A.6 ,A.7, A.14 and A.15 on behalf of the

claimants and as Ex.X1, X2 and X.3 through PW.3 for very same financial years.

10. (A). As per Ex.A.7 and Ex.X.1, the income of the deceased as per for **Financial Year 2004-05** after deduction of tax is as under;

Total Income	Rs.133631/-
Income Tax	Rs.15,726/-
Income after deduction of Tax	Rs. 1,17,905/-.

(B). As per Ex.A.6,A.14 and Ex.X.2, the income of the deceased as per for **Financial Year 2005-06** after deduction of tax is as under;

Total Income	Rs.6,45,656/-
Income Tax	Rs.1,43,698/-
Income after deduction of Tax	Rs. 5,01,958/-.

(C). As per Ex.A.5, A.15 and Ex.X.3, the income of the deceased as per for **Financial Year 2006-07** after deduction of tax is as under;

Total Income	Rs.9,00,000/-
Income Tax	Rs.2,24,400/-
Income after deduction of Tax	Rs.6,75,600/-

11. The Tribunal did not take into consideration the Income Tax returns for the financial year 2007-2008 as they were filed on 22.01.2008 i.e after the accident and was not supported by any books of account. The PW.3 is the chartered accountant in his deposition though had stated that the deceased owned three lorries, but admitted that Income Tax returns for the financial year 2007-08 are not supported by books of accounts. PW.4 was the Inspector from the Income Tax department, had deposed that Income Tax returns for the financial year 2007-08 were based on estimation under Section 44 AE of the Act.

12. An examination of Ex.A.15 i.e certified copy of the detailed Income Tax return for the Financial Year 2006-2007 would indicate that TDS collected from the deceased was Rs.2,81,992/-. This deduction of TDS is supported by statutory Form 16A and related documents issued in the name of the deceased were enclosed under Ex.A.15. The reasoning of the Tribunal in ignoring Ex.A.5, A.15 and Ex.X.3 merely because the Income Tax returns were filed on 22.1.2008 and not supported by books of accounts cannot be sustained as the deceased did business and had earned income in that year as apparent from the TDS deducted. Further, the Income tax return for Financial Year 2006-07 even though it was based on

estimated income, was supported by TDS amounts deducted and the Income Tax department had accepted the Income Tax return. Therefore, it would not be open to the Insurance company to object to the Income under Ex.A.15 from being taken into consideration.

13. Hence, considering Ex.A.5, A.6, A.7, A.14 and A.15, the average income for the financial years 2004-05, 2005-06 and 2006-07 after deduction of tax is taken into consideration for the purpose of computation of compensation. The average income is calculated as under;

$$Rs. 1,17,905/- + Rs. 5,01,958/- + Rs. 6,75,600/- = Rs 12,95,463/-$$

The average income for 3 years is Rs.35,985/-. For the purpose of computation, Rs.36,000/- is adopted.

14. The revised compensation payable to the claimants, taking into consideration, the Judgment of Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others***¹ as well as individual consortium awarded by Hon'ble Supreme Court

¹ 2017 SCC OnLine 1270

in ***Magma General Insurance Company Limited v. Nanu Ram***² is as under;

S.No	Head	Amount
01	Monthly Income	Rs.36,000/-
02	Addition to income to future prospect (@25% deceased being great than than 40 years and less than 50 years)	Rs.45,000/- (36000+9000)
03	Annual income(Rs.45000x12)	Rs.5,40,000/-
04	Deduction towards personal & Living Expenses(1/3)	Rs.3,60,000/- (540000-180000)
05	Multiplier based on age of 41 years	14
06	Amount of compensation	Rs.50,40,000/- (3,60,000x14)
07	Loss of Estate	Rs.1,5000/-
08	Loss of consortium	Rs.40,000x3
09	Funeral Expenses	Rs.1,5000/-
	Total amount of compensation	Rs. 51,90,000/-

15. The interest @ 9% awarded by the Tribunal is fair and is supported by the Judgments of Hon'ble Supreme Court in ***Rahul Sharma & Another v. National Insurance Company Limited and***

² (2018) 18 SCC 130

*others*³ and *Kirthi and another v. Oriental Insurance Company Limited*⁴ on this aspect.

16. The appeal is partly allowed to the extent indicated above. The Insurance company shall deposit the balance amount within a period of one month from today before the Tribunal and the claimants are entitled to withdraw the amounts in proportionate ratios. No order as to costs. As a sequel, the miscellaneous petitions if any shall stand closed.

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

Date:09.08.2024

KLP

³(2021) 6 SCC 188

⁴(2021) 2 SCC 166