

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

M.A.C.M.A. No.2717 OF 2018

Between:

Reliance General Insurance Co. Ltd.,
Represented by its Manager,
4-1-327 to 377, 4th Floor,
Sagar Plaza, Abids,
Hyderabad.

... Appellant/Respondent No.2

versus

1. Bhupathi Sujatha, W/o. late Sivaiah,
35 years, Housewife.
2. Bhupathi Akshaya, D/o late Sivaiah,
10 years, Student (Minor).
3. Bhupathi Sri Akshitha, S/o. late Sivaiah,
6 years, Student (Minor).
4. Bhupathi Rajeswari, W/o.Ramaiah,
66 years, Housewife.
[Respondent Nos.2 & 3 being minors are
represented by their Mother and Natural Guardian,
the respondent No.1 herein]
All residing at D.No.328, 3rd Cross Road,
Ramannapet, Guntur City,
Guntur JCJC. ... Respondents/Petitioners
5. Mahaboob Pasha, S/o. Yakub Ali, Major,
Owner of Lorry No.AP 15U 9567,
House No.1-414/4, Indira Nagar,
Narasampet, Warangal, JCJC Warrangal.
6. Jannu Anand, S/o.Sammaiah, 35 years,
Driver of Lorry No.AP 15U 9567,
Pocharam village, Parakal Mandal,
Warangal District,
Telangana State. ... Respondents/
Respondents No.1 & 3

CROSS OBJECTION No.17 OF 2022

1. Bhupathi Sujatha, W/o.Late Sivaiah,
Aged 39 years, Occ:House Wife,
R/o.D.No.328, 3rd Cross Road,
Ramannapet, Guntur Town.
2. Bhupathi Akshaya, D/o.Late Sivaiah,
Aged 20 years, Occ:Student, R/o.D.No.328,
3rd Cross Road, Ramannapet,
Guntur Town.
3. Bhupathi Sri Akshitha,
S/o.Late Sivaiah, Aged 10 years,
Occ:Student, R/o.D.No.328,

- 3rd Cross Road, Ramannapet,
Guntur Town, Being minor,
Rep. by his Mother and Natural Guardian
i.e., petitioner no.1 hereinabove.
4. Bhupathi Rajeswari, W/o.Ramaiah,
Aged 70 years, House Wife,
R/o.D.No.328, 3rd Cross Road,
Ramannapet, Guntur Town. ... Cross Objectors/
Respondents Nos.1 to 4

Versus

1. Reliance General Insurance Co. Ltd.,
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3. Jannu Anand, S/o Sammaiah, 39 years,
Driver of Lorry bearing No.AP 15U 9567,
Pocharam village, Parakal Mandal,
Warangal District, Telangana. ... Respondents/
Respondents No.5 & 6

DATE OF JUDGMENT PRONOUNCED : 16.06.2022

SUBMITTED FOR APPROVAL:

HON'BLE Mr. JUSTICE AHSANUDDIN AMANULLAH

AND

HON'BLE Mr. JUSTICE TARLADA RAJASEKHAR RAO

- | | |
|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Lordships wish to
see the fair copy of the Judgment? | Yes/No |

AHSANUDDIN AMANULLAH, J

TARLADA RAJASEKHAR RAO, J

*** HON'BLE Mr. JUSTICE AHSANUDDIN AMANULLAH
AND
* HON'BLE Mr. JUSTICE TARLADA RAJASEKHAR RAO**

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Driver of Lorry bearing No.AP 15U 9567,
Pocharam village, Parakal Mandal,
Warangal District, Telangana. ... Respondents/
Respondents No.5 & 6

! Counsel for the Appellant : Mr. G. Ramachandra Reddy,
Advocate

**^ Counsel for the Respondents
No.1 to 4** : Mr. M. Chalapathi Rao,
Advocate

**^ Counsel for the Respondents
No.5 & 6** : [None/Appearance Not
Provided]

< **Gist:**

< **Gist:**

> **Head Note:**

? **Cases referred:**

1. (1999) 73 ALJR 403

2. (2002) 6 SCC 455

- 3. (2014) 2 SCC 735**
- 4. 2009 ACJ 1298 (SC).**
- 5. (2021) 2 SCC 166**
- 6. *National Insurance Company Limited v Birender and Ors.*,
(Civil Appeal Nos.242-243 of 2020, Dt.13.01.2020)**
- 7. 2022 LawSuit (SC) 161**
- 8. AIR 2020 SC 4424**
- 9. 2006 LawSuit (Guj) 911**
- 10. AIR 2007 Ker 103**
- 11. 2000 LawSuit (Kar) 199**
- 12. 2022 LawSuit (SC) 230**
- 13. 2019 LawSuit (Gau) 689**
- 14. (2013) 9 SCC 65**
- 15. (2017) 16 SCC 680**

This Court made the following:

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**THE HON'BLE Mr. JUSTICE AHSANUDDIN AMANULLAH****AND****THE HON'BLE Mr. JUSTICE TARLADA RAJASEKHAR RAO****MACMA No.2717 OF 2018**

Reliance General Insurance Co. Ltd.,
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... Appellant/Respondent No.2

versus

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6. Junnu Anand, S/o Sammaiah, 35 years,
Driver of Lorry No.AP 15U 9567,
Pochamram village, Parakal Mandal,
Warangal District, Telangana State

...Respondents/
Respondents No.1 & 3

Counsel for the Appellant : Mr. D. Ravi Kiran, Advocate

For the Respondents No.1 to 4: Mr. Venkata Rama Rao Kota,
Advocate

For the Respondents No.5 & 6 : [None/Appearance Not Provided]

Along with**CROSS OBJECTION No. 17 OF 2022**

1. Bhupathi Sujatha, W/o.Late Sivaiah,
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Driver of Lorry bearing No.AP 15U 9567,
Pocharam village, Parakal Mandal,
Warangal District, Telangana. ... Respondents/
Respondents No.5 & 6

Counsel for the Cross Objectors : Mr. Venkata Rama Rao
Kota, Advocate

Counsel for the Respondent No.1 : Mr. D. Ravi Kiran,
Advocate

For the Respondents No.2 & 3 : [None/Appearance Not
Provided]

CAV JUDGEMENT**Date: 16.06.2022****JUDGEMENT OF THE COURT*****(Per Hon'ble Mr. Justice Ahsanuddin Amanullah)***

The instant judgement governs both MACMA No.2717 of 2018 and Cross Objection No.17 of 2022. For ease of reference, the parties are hereinafter referred to as arrayed in MACMA No.2717 of 2018, filed by the insurance company. Heard Mr. D. Ravi Kiran, learned counsel for the appellant and Mr. Venkata Rama Rao Kota, learned counsel on behalf of the respondents no.1 to 4 in MACMA No.2717 of 2018.

2. MACMA No.2717 of 2018 is preferred against the order dated 30.05.2018 passed by the learned Motor Vehicle Accident Claims Tribunal-*cum*-II Additional District Court, Guntur, Andhra Pradesh (hereinafter referred to as the 'Tribunal') in M.V.O.P.No.1455 of 2012. *Vide* the said order, an award has been passed under the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') and the Andhra Pradesh Motor Vehicle Rules, 1989, awarding INR 49,30,000/- in favour of the respondents no.1 to 4, the family members of one of the deceased in the accident, who was a passenger in the car, against the appellant company.

3. Learned counsel for the appellant submitted that without sufficient evidence to indicate that the incident in question was an accident, the Tribunal awarded the amount, which is unjustified. In support of his contention, it was pointed out that the lorry, which was parked and which was dashed into by the

Toyota *Qualis* vehicle (hereinafter referred to as '*Qualis*') on which the deceased was travelling, was on the margin of the road and thus, it was the negligence of the driver of the *Qualis*, which resulted in the accident and thus, there being contributory negligence on the part of the driver of the vehicle, in which the deceased was travelling, the quantum of compensation awarded should have been less. It was submitted that only on the basis of the deposition of the driver of the vehicle in which the deceased was travelling, the impugned award has been passed without definite evidence to show that the lorry was parked in the middle of the road.

4. At this juncture, when the Court put a categorical query to learned counsel for the appellant as to whether there was any other point which the Court should consider, learned counsel for the appellant submitted that the only objection taken in the appeal [MACMA No.2717 of 2018] is with regard to the contributory negligence of the driver of the *Qualis*, as noted *supra*, as alleged by the appellant company.

5. *Per contra*, learned counsel for the respondents no.1 to 4 submitted that the Tribunal had been very meticulous and careful in arriving at the finding that there was no contributory negligence and that the appellant company, which was the insurer of the lorry, was liable to pay the awarded amount. He further submitted that the First Information Report (hereinafter referred to as the 'FIR') filed by the wife of the deceased *viz.* respondent no.1, alleged that the offending vehicle i.e. the lorry was stationed in the middle of the road without any indicators, parking lights or other precautionary measures and the

negligence was on the part of the lorry driver as also the fact that the lorry was parked in the middle of the road. Learned counsel drew the attention of the Court to the relevant portions of the impugned award, which would indicate that besides the evidence of the *Qualis* driver, who was the sole eye-witness to the unfortunate incident, there was also corroborative material in the Chargesheet (pursuant to the FIR referred to above) to indicate that there was no contributory negligence by the *Qualis* driver, and it was the negligence of the lorry driver alone.

6. Having anxiously considered the facts and circumstances as also the submissions of the learned counsel for the parties, this Court does not find any cogent ground to necessitate or warrant interference in the matter.

7. The sole point canvassed to show that there was contributory negligence on the part of the driver of the *Qualis*, which was the vehicle in which the deceased was travelling, is that the offending lorry was parked on/at the edge of the road. This stand was denied on facts by the testimony of PW 2 (the driver of the *Qualis*) read with Ex.A6, which is the Chargesheet which states that the accident took place due to the negligent act of the driver of the offending lorry, who had stationed the said vehicle in the middle of the road without any indicators, parking lights or any other precautions. Thus, there was evidence on record before the Tribunal, which was not countered, as no other evidence was brought to indicate that the offending vehicle was parked at the margin of the road. The aforesaid, in our considered view, clearly establishes that the offending lorry was parked in the middle of the road without any indicators, parking lights or

any other precautions. Moreover, PW2's evidence reveals that it was also drizzling and the time was about 5.00 AM IST, factors which sufficiently indicate that the accident took place without negligence on the part of the driver of the *Qualis*, wherein the deceased was a passenger. We profitably reproduce the following passage from the judgement of the High Court of Australia in

***Astley v Aus Trust Ltd.*, (1999) 73 ALJR 403:**

'A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many cases, it may be proper for a plaintiff to rely on the defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature of the duty owed may exculpate the plaintiff from a claim of contributory negligence; in other cases, the nature of the duty may reduce the plaintiff's share of responsibility for the damage suffered; and in yet other cases the nature of the duty may not prevent a finding that the plaintiff failed to take reasonable care for the safety of his or her person or property. Contributory negligence focuses on the conduct of the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property.'

(emphasis supplied)

8. The aforementioned extract from ***Astley*** (*supra*) has been quoted approvingly by the Hon'ble Supreme Court in ***Pramodkumar Rasikbhai Javeri v Karmasey Kunvargi Tak*, (2002) 6 SCC 455**. Furthermore, contributory negligence has to be proved, or, to say so, at the very least, shown by adducing evidence, and in the absence thereof, contributory negligence and liability flowing therefrom cannot be fastened onto a party [See ***Syed Sadiq v United India Insurance Co. Ltd.*, (2014) 2 SCC 735**]. The Court

called upon learned counsel for the appellant as to whether there was any contest on the quantum awarded by the Tribunal. The learned counsel for the appellant, in all fairness, submitted that the quantum had been arrived at using the formula laid down in ***Sarla Verma v Delhi Transport Corporation, 2009 ACJ 1298 (SC)***.

9. In view of the discussions made hereinabove, MACMA No.2717 of 2018, is dismissed. Miscellaneous Applications pending, if any, in MACMA No.2717 of 2018 stand closed.

10. From the record, it transpires that while granting stay of operation of the impugned award dated 30.05.2018 in M.V.O.P.No.1455 of 2012 (passed by the Tribunal), on 10.10.2018, this Court had ordered the appellant to deposit 50% of the compensation awarded within six weeks from that date before the Tribunal. It is not in dispute that the same was done. We shall deal with its disbursal while deciding the Cross Objection, which follows below.

11. Cross Objection No.17 of 2022 has been filed on behalf of the respondents no.1 to 4 seeking, *inter alia*, enhancement of the awarded amount from INR 49,30,000/- to INR 52,40,256/- with interest @ 12% per annum from the date of filing of the claim petition till the date of payment, as also costs.

12. It was contended by learned counsel for respondents no.1 to 4 that meagre interest at 7.5% has been awarded which is unreasonable and at least 12% should have been granted in view of the claim petition seeking 18% interest per annum. Learned counsel submitted that even while adopting the formula, an

amount of INR 30,000/- had been deducted from the gross salary towards income tax payable by the deceased taking the same at 10%, which is erroneous in law and incorrect on facts. It was submitted that the total income of the deceased during the relevant period 2010-2011 was assessed at INR 3,00,000/-, and after deduction of GPF and ESI contribution totalling INR 12,360/-, the net income of the deceased would be INR 2,87,640/- for which the applicable income tax rate for the said year exempted INR 1,60,000/-. As such, it was submitted that the taxable income of the deceased would come down to INR 1,27,640/- and 10% of the same would be INR 12,764/-. Learned counsel submitted that the balance annual income should have been taken as (3,00,000 - 12,764 i.e.) INR 2,87,236/- and considering the age of the deceased, 50% is required to be added towards future prospects, which would then take the amount to INR 4,30,854/- and deducting $\frac{1}{4}$ th towards personal expenses, the balance would come to INR 3,23,141/-. Learned counsel submitted that once the same is multiplied by 16, as per the applicable formula, the amount touches Rs.51,70,256/-. He urged that the Tribunal had awarded INR 40,000/- towards loss of consortium, INR 15,000/- towards loss of estate and INR 15,000/- towards funeral expenses. In this scenario, learned counsel pressed that the respondents no.1 to 4 are entitled to INR 52,40,256/-, whereas only a lesser amount of INR 40,30,000/- was awarded by the Tribunal.

13. In support of his contention, learned counsel referred to the decision in ***Kirti v Oriental Insurance Company Limited***, (2021) 2 SCC 166, wherein the compensation of INR 22,00,000/-

awarded by the Delhi High Court was increased to INR 33,20,000/- payable within two months along with interest at 9% per annum from the date of filing of the accident report. Reliance was further placed on ***National Insurance Company Limited v Birender and Ors., Civil Appeal Nos.242-243 of 2020 decided on 13.01.2020***, as also ***R Valli v Tamil Nadu State Transport Corporation Ltd., 2022 LawSuit (SC) 161***. He also cited ***Pappu Deo Yadav v Naresh Kumar, AIR 2020 SC 4424***, wherein, besides increasing the amount *qua* future prospects, interest was also enhanced from 9% per annum to 12% per annum, by the Hon'ble Supreme Court.

14. Moreover, learned counsel sought to place reliance on ***National Insurance Company Limited v Sureshbhai @ Sureshchandra Maganbhai Parmar, 2006 LawSuit (Guj) 911***, rendered by a Division Bench of the Gujarat High Court; ***Oriental Insurance Co. Ltd. v Nirmala, AIR 2007 Ker 103*** delivered by a Division Bench of the Kerala High Court, and; ***Bhaskar Alias Bhaskar Devaram Bangad v R. K. Srinivasan, 2000 LawSuit (Kar) 199***, by a Division Bench of the Karnataka High Court.

15. Learned counsel for the appellant, opposing the cross-objection, submitted that as per Section 171 of the Act, simple interest is to be awarded in addition to the compensation amount, which ought to have been 5% or 6% per annum, but in the present case, the interest awarded is 7.5% per annum, which itself is high. He placed reliance on the view of the Hon'ble Supreme Court expressed in ***Benson George v Reliance General Insurance Co. Ltd., 2022 LawSuit (SC) 230***, where the rate of interest awarded by the Tribunal, being 9% per annum from the

date of filing of the claim petition till the date of realization was reduced to 6% per annum. It was further contended that the cross-objectors are not entitled to claim interest under the head 'future prospects' as it is probable income to be received in future. In this regard, learned counsel for the appellants cited the decision of a Single Judge of the Gauhati High Court in ***Oriental Insurance Co. Ltd. v Champabati Ray, 2019 LawSuit (Gau) 689.***

16. Having examined the matter from various angles, this Court is of the opinion that the cross objection is fit to be allowed in the interest of justice.

17. Be it noted that the formula applied by the Tribunal for arriving at the quantum of compensation is in conformity with ***Sarla Verma (supra)***, which was affirmed in ***Reshma Kumari v Madan Mohan, (2013) 9 SCC 65.*** Both ***Sarla Verma (supra)*** and ***Reshma Kumari (supra)*** were affirmed by the 5-Judge Bench of the Hon'ble Supreme Court in ***National Insurance Company Ltd. v Pranay Sethi, (2017) 16 SCC 680.***

18. Thus, the limited bone of contention falls down to whether the 10% flat reduction on the head of tax is justified in view of the fact that, the deduction should have been INR 12,764/- and not INR 25,000/-, as computed by the Tribunal. Thus, by the same formula, and by only correcting the figures taken therein, the total amount of compensation payable to the cross-objectors would come to INR 52,40,256/-. This calculation, *per se*, has not been disputed by the appellant. Further, apropos the rate of interest awarded by the Tribunal of 7.5% per annum, upon due

consideration, We find the same to be reasonably sufficient in the attendant facts. Thus, the claim for enhancement of interest by the cross-objectors, and for reduction thereof by the appellant, both are rejected. Further, the contention advanced that future prospects should not carry interest is also noted to be rejected for the reason that the said amount determined by the Tribunal is with reference to the date on which the claim petition was filed. Thus, the interest on the same cannot be denied merely on the assumption that it is accruable in future, as it is quantified with reference to the date of filing of the application for compensation. The Court finds that the decisions relied upon by the learned counsel for the respondents no.1 to 4 are apposite, inasmuch as interest would accrue on the entire amount awarded by the Tribunal, to be payable from the date of filing of the claim petition/application.

19. In view of the foregoing analysis, the award impugned is modified only to the extent that the compensation amount stands enhanced to INR 52,40,256/- from INR 49,30,000/-. Rest of the award shall stand as is. As noted *supra*, 50% of the amount awarded by the Tribunal has already been deposited by the appellant. The remainder, i.e., INR 52,40,256/- minus the amount already deposited, along with interest shall be deposited by the appellant within six weeks from the date of the order before the Tribunal.

20. Thereafter, the respondents no.1 to 4 shall be at liberty to withdraw the amount from the Tribunal. We do not propose any order as to costs. Cross Objection No.17 of 2022 is also disposed of. As a sequel thereto, pending Miscellaneous Applications, if

any, in Cross Objection No.17 of 2022 do not subsist for consideration.

(AHSANUDDIN AMANULLAH, J)

(TARLADA RAJASEKHAR RAO, J)

Note:
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MP/Mjl/*