

**\* THE HON'BLE SRI JUSTICE SUJOY PAUL**  
**AND**  
**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**  
+ M.A.C.M.A.No.150 OF 2023

% 0 —08—2024

# Shriram General Insurance Co. Ltd.

...Petitioner

and

\$ Smt. Reema Sulthana and others.

... Respondents

! Counsel for the Petitioner : Kondadi Ajay Kumar

^Counsel for Respondents 1 to 4: Akkam Eshwar

<Gist :

>Head Note :

? Cases referred

1. 2011 (4) SCC 693
2. 2009 (13) SCC 530
3. AIR 2019 SC 994
4. (2008) 2 SCC 763
5. (2010) 12 SCC 378
6. 2017 (16) SCC 680.
7. 2009 ACJ 1298 (SC)

**IN THE HIGH COURT FOR THE STATE OF TELANGANA**  
**HYDERABAD**

\* \* \* \*

**M.A.C.M.A.No.150 OF 2023**

Between:

Shriram General Insurance Co. Ltd.

...Petitioner

and

Smt. Reema Sulthana and others.

... Respondents

**JUDGMENT PRONOUNCED ON: 0 .08.2024**

**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? : yes
2. Whether the copies of judgment may be  
Marked to Law Reporters/Journals? : yes
3. Whether His Lordship wishes to  
see the fair copy of the Judgment? : yes

**SUJOY PAUL, J**

**NAMAVARAPU RAJESHWAR RAO, J**

**THE HON'BLE SRI JUSTICE SUJOY PAUL**  
**AND**  
**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**  
**M.A.C.M.A.No.150 of 2023**

**JUDGMENT:** *(per Hon'ble Sri Justice Namavarapu Rajeshwar Rao)*

This Motor Accident Civil Miscellaneous Appeal is filed by the appellant-Insurance Company, aggrieved by the order and decree dated 15.10.2022 passed in MVOP.No.83 of 2021 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District and Sessions Judge, Kamareddy (for short 'the Tribunal').

2. For convenience, the parties will be referred to as arrayed before the Tribunal.

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

On 10.03.2021, the deceased (Shaik Mansoor) was proceeding on his Motorcycle bearing No.AP-25-K-0521 from Kamareddy towards Guru Raghavendra Colony side, and when he reached the TATA ACE showroom situated on the National Highway, one new TATA ACE came in the opposite direction and dashed against the motorcycle of the deceased, as a result of which, he fell and sustained grievous injuries, fracture injuries to the head and other parts of the body. He was shifted to Osmania General Hospital, Hyderabad, where he succumbed to injuries on 12.03.2021 while undergoing treatment.

The Police Devanpally registered a case in Cr.No.92 of 2021 against the driver of the offending vehicle under Section 304-A IPC. Hence, the petitioners filed a claim petition seeking compensation of Rs.75,00,000/-.

4. Before the Tribunal, the 1<sup>st</sup> respondent remained ex-parte.

5. Respondent No.2/Shriram General Insurance Company Ltd. filed a counter denying the manner in which the accident took place and also denied the deceased's age, avocation and income. It is also contended that the accident did not occur with the alleged TATA ACE Gold vehicle, and the accident took place due to gross negligence of the deceased, who was riding the motorcycle bearing No.AP-25-K-0521 without a valid driving license, and further, the said motorcycle was not in a worthy condition to ply on the roads. Further, the compensation claimed is excessive and prayed to dismiss the claim petition.

6. To prove the petitioners' case, PWs.1 to 3 were examined, and Exs.A1 to A10 and Ex.C1 were marked. RW.1 was examined for the respondent Insurance Company, and Ex.B1-Copy of the Insurance Policy was marked.

7. The Tribunal, after considering the oral and documentary evidence available on record, allowed the claim petition by granting

compensation of Rs.61,91,962/- with interest thereon @ 7.5% per annum from the date of the petition till the date of realization to be paid by Respondent Nos.1 and 2 jointly and severally to the petitioners. Challenging the same, the present M.A.C.M.A. is filed by the respondent Insurance Company.

8. Heard Sri Kondadi Ajay Kumar, learned counsel for the respondent Insurance Company, and Sri Akkam Eshwar, learned counsel for the petitioners/claimants, and perused the record.

9. Learned counsel for the respondent Insurance Company contended that the Tribunal failed to appreciate the fact that the accident took place due to the negligence of the deceased himself. Since he was not wearing protecting head gear while falling down on the road, he sustained a head injury and died subsequently.

10. Learned counsel appearing for the respondent Insurance Company further contended that the Tribunal erred in coming to the conclusion that the vehicle of the 1<sup>st</sup> respondent was involved in the accident. However, the respondent Insurance Company proved that the FIR was lodged with a delay of three days, while planting the said vehicle in collusion with the 1<sup>st</sup> respondent. Further, the non-filing of the medical record of the deceased pertaining to the alleged day of the accident raises several inferences on the narration of the accident.

11. Learned counsel appearing for the respondent Insurance Company further contended that the Tribunal erred by accepting the deceased's salary certificate, thereby granted excessive compensation by considering the deceased's salary as Rs.53,772/-. Further, the Tribunal grossly erred by taking into account the deceased's net salary without deducting any income-tax that was statutorily applicable to him. Accordingly, he prayed to set-aside the order and decree passed by the Tribunal and allow the present appeal.

12. *Per contra*, learned counsel appearing for the petitioners/claimants contended that the Tribunal, after considering the oral and documentary evidence available before it, rightly granted compensation and no interference is required in the same.

13. The Hon'ble Apex Court in its judgment rendered in **Ravi vs. Badrinarayan & Ors**<sup>1</sup>, has dealt with the question of delay in registration of F.I.R., wherein it held as follows:

*"20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. **Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging***

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<sup>1</sup> 2011 (4) SCC 693

***the FIR thus, cannot be the ground to deny justice to the victim.***

*In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.”*

(emphasis supplied)

14. It has thus been clearly held that delay in registration of F.I.R. cannot be the sole ground to disbelieve the version of the claimants or to deprive the claimants of compensation. It is needless to state that the standard of proof in motor vehicle accident cases is that of the preponderance of probability and not a strict standard of proof beyond all reasonable doubts. The Hon’ble Apex Court in its judgment in **Bimla Devi & Ors vs Himachal Road Transport Corpn. & Ors<sup>2</sup>**, observed:

*“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. **It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.**”*

(emphasis supplied)

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<sup>2</sup> 2009 (13) SCC 530

15. This very aspect was dealt with in the judgment of the Hon'ble Apex Court in **Sunita & Ors. Rajasthan State Road Transport Corporation & Anr.**<sup>3</sup>, wherein it was held:

*“23. The Tribunal had justly accepted the appellants’ contention that the respondents did not challenge the propriety of the said FIR No. 247/2011 (Exh. 1) and charge sheet (Exh. 2) before any authority. The only defence raised by the respondents to this plea was that the said FIR No. 247/2011 was based on wrong facts and was filed in connivance between the appellants/complainants and the police, against which the respondents complained to the in charge of the police station and the District Superintendent of Police but to no avail. Apart from this bald assertion, no evidence was produced by the respondents before the Tribunal to prove this point. The filing of the FIR was followed by the filing of the chargesheet against respondent No.2 for offences under u/[Sections 279, 337 and 304A](#) of the IPC and [Sections 134/ 187](#) of the Act, which, again, reinforces the allegations in the said FIR insofar as the occurrence of the accident was concerned and the role of respondent No.2 in causing such accident. Be that as it may, the High Court has not even made a mention, let alone record a finding, of any impropriety against FIR 247/2011 (Exh. 1) or chargesheet (Exh. 2) or the conclusion reached by the Tribunal in that regard. Yet, the FIR and the Charge sheet has been found to be deficient by the High Court.”*

It further held:

*“25. The Tribunal’s reliance upon FIR 247/2011 (Exh. 1) and charge-sheet (Exh. 2) also cannot be faulted as these documents indicate the complicity of respondent No.2. **The FIR and chargesheet, coupled with the other evidence on record, inarguably establishes the occurrence of the fatal accident and also point towards the negligence of the respondent No.2 in causing the said accident. Even if the final outcome of the criminal proceedings against***

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<sup>3</sup> AIR 2019 SC 994



***respondent No.2 is unknown, the same would make no difference atleast for the purposes of deciding the claim petition under the Act.*** This Court in Mangla Ram (supra), noted that the nature of proof required to establish culpability under criminal law is far higher than the standard required under the law of torts to create liability.

26. Accordingly, we have no hesitation in upholding the finding recorded by the Tribunal that there was an accident on 28102011 at around 7AM between the motorcycle driven by Sitaram bearing registration number RJ 25 SA 6923 and a bus belonging to respondent No.1. (the Rajasthan State Road Transport Corporation) bearing registration number RJ-26/P.A. 0042 coming from the opposite direction and being driven rashly and negligently by respondent No.2, which resulted in the death of Sitaram.”

(emphasis supplied)

16. In the present case, there is a mere delay of three days in filing the F.I.R. In view of the foregoing judgments, it is needless to re-iterate that the near and dear of the deceased would not be in a mindset to rush to the police station to register a complaint, since their priority would obviously be to save the life of the victim. This Court is not inclined to agree with the view taken by the learned counsel for the respondent Insurance Company that the said delay of three days in filing of F.I.R. and the non-filing of the medical reports pertaining to the day of the accident would lead to some other inferences, including that of suggesting that the crime vehicle was planted in collusion with the 1<sup>st</sup> respondent. When it is evident that the accident has occurred and the deceased has lost his life due to such accident, the delay in registration of F.I.R., or the assumption

that some other inference could be drawn, cannot be the basis to reject the claimants' case for compensation.

17. A perusal of the impugned order discloses that the Tribunal, having framed issue No.1 as to whether the accident had occurred due to rash and negligent driving of the offending vehicle by its driver and having considered the evidence of PW.2, an eye witness to the accident, coupled with the documentary evidence i.e., Ex.A-1-FIR and Ex.A-2-CC of final report, came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle and has answered in favour of the petitioners and against the respondents. In view of the judgments mentioned above of the Hon'ble Apex Court with regards to the credibility of F.I.R. even in cases of delay, there are no reasons to interfere with the Tribunal's finding that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle.

18. Insofar as the quantum of compensation is concerned, the deceased was aged 51 years at the time of the accident. PW.3, the drawing officer of the deceased, deposed that the deceased worked as a Record Assistant in the office of the Zilla Parishad High School, Gopalpet and drawing a net salary of Rs.53,772/- as per Ex.A-8-Salary Certificate. Though the 2<sup>nd</sup> respondent cross-examined PW.3, nothing is elicited to disbelieve the salary particulars of the deceased.

Therefore, the Tribunal took the net monthly income of the deceased at Rs.53,772/-, and the annual income as Rs.6,45,264/-.

19. The question involved in the present case is whether the gross income or the net income of the deceased is to be considered for the purpose of the computing the compensation. The said question was answered by the Hon'ble Apex Court in **National Insurance Co. Ltd. v. Indira Srivastava**<sup>4</sup>, wherein it was held as follows:

*“9. The term “income” has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay-packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.”*

20. A similar view was taken by the Hon'ble Apex Court in **Shyamwati Sharma v. Karam Singh**<sup>5</sup>, wherein it held:

*“9. In this case as the annual income has been worked out as Rs. 2,48,292, appropriate deduction has to be made towards income tax. The rate of income tax is a varying figure, with reference to taxable income after permissible deductions and the year of assessment. The High Court has assessed the deduction as 30% and on the facts, we do not propose to disturb it. **We however make it clear that while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans, etc. should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.**”*

(emphasis supplied)

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<sup>4</sup> (2008) 2 SCC 763

<sup>5</sup> (2010) 12 SCC 378

21. The above mentioned judgments of the Hon'ble Apex Court clearly held that the deductions shown in the salary certificate such as deductions towards GPF, life insurance premium, etc., are beneficial to the members of the victim's family, and they are not to be excluded while considering the income of the deceased for the purpose of granting compensation. The Tribunal erroneously considered the net salary of the deceased while computing the income and the same warrants the interference of this Court. Accordingly, the deceased's gross salary is considered for the purpose of awarding the compensation. A perusal of Ex-A.8 Salary Certificate shows the gross monthly income of the deceased as Rs.61,137/-. Hence, the gross annual income of the deceased comes to Rs.7,33,644/-. Further, the Tribunal erred by not deducting the professional tax and the income tax payable by the deceased. Accordingly, the income tax payable on the said amount, i.e., Rs.7,33,644/- is:- upto Rs.2,50,000/-: NIL; From 2,50,001 to Rs.5,00,000/- (5%): 12,500/-; Rs.5,00,001/- to 7,33,644/- (20%): 46,730/-. Hence, the total income tax liability comes to Rs.59,230/- [Rs.12,500/-+Rs.46,730/-]. The professional tax applicable is Rs.2,400/- [Rs.200/- x 12] and accordingly, the annual income comes to Rs.6,72,014/- [Rs.7,33,644/- (minus) Rs.59,230/- (minus) Rs.2,400/-]. The Tribunal rightly considered 15% towards future prospects as per the decision of the Hon'ble Apex

Court in **National Insurance Company Limited Vs. Pranay Sethi**<sup>6</sup>, and accordingly, the annual income of the deceased arrives at Rs.7,72,816/- [Rs.6,72,014/-+ Rs.1,00,802/-]. The Tribunal rightly deducted 1/4<sup>rd</sup> towards the personal expenditure of the deceased since the claimants are four in number, in terms of **Pranay Sethi** (supra). After deducting 1/4<sup>th</sup> towards personal expenses of the deceased, the income arrives at Rs.5,79,612/- [Rs.7,72,384/- (minus) Rs.1,93,204/-]. Further, the Tribunal rightly took the multiplier as '11' in terms of the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**<sup>7</sup>, and after applying the said multiplier, the total loss of dependency comes to Rs.63,75,732/-.

22. The Tribunal granted an amount of Rs.40,000/- towards consortium and Rs.15,000/- each towards loss of estate and funeral expenses, which needs to be modified. As per **Pranay Sethi** (supra), petitioner No.1 is entitled to a sum of Rs. 48,400/- (Rs. 40,000/- +10%+10%) towards loss of spousal consortium. The petitioners are also entitled to a sum of Rs. 36,300/- (Rs.15,000/- + Rs. 15,000/- + 10% + 10%) towards loss of estate and funeral expenses.

23. Therefore, the order dated 15.10.2022 passed by the Tribunal in MVOP.No.83 of 2021 is modified as follows:-

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<sup>6</sup> 2017 (16) SCC 680.

<sup>7</sup> 2009 ACJ 1298 (SC)

<b>S.No.</b>	<b>Particulars</b>	<b>Amount</b>
1.	Annual salary of the deceased(Rs.61,137/-X 12)	Rs.7,33,644/-
2.	Less: Professional Tax (Rs.200/- x 12)	(-)Rs.2,400/-
3.	Less: Income Tax	(-)Rs.59,230/-
4.	Net Income [1-(2+3)]	Rs.6,72,014/-
4.	Add: 15% Future Prospects	Rs.1,00,802/-
5.	Sub-Total	Rs.7,72,816/-
6.	Less: 1/4 <sup>th</sup> towards Personal Expenditure	(-)Rs.1,93,204/-
7.	Sub-Total [5-6]	Rs.5,79,612/-
8.	Total Loss of Dependency (Rs.5,81,682/- x 11)	Rs.63,75,732/-
9.	Add : Conventional Heads (Funeral Expenses and Loss of Estate) (Rs.15,000/- + Rs.15,000/- +10%+10%)	Rs.36,300/-
10.	Add: Loss of spousal consortium (Rs.40,000/- +10%+10%)	Rs.48,400/-
<b>11.</b>	<b>Total Compensation</b>	<b>Rs.64,60,432/-</b>

24. The Tribunal has rightly awarded the rate of interest at 7.5% per annum, which requires no interference from this Court.

25. Accordingly, the M.A.C.M.A. is disposed of by modifying the order and decree dated 15.10.2022 passed in MVOP No.83 of 2021. The compensation amount awarded by the Tribunal is enhanced from

Rs.61,91,962/- to **Rs.64,60,432/-** (Rupees Sixty Four Lakh Sixty Thousand Four Hundred Thirty Two Only) with interest @ 7.5 % p.a. from the date of petition till the date of realization. Respondent Nos. 1 and 2 are directed to deposit the said amount with costs and interest, after giving due credit to the amount already deposited, if any, within a period of two months from the date of receipt of a copy of this judgment. On such deposit, the petitioners are permitted to withdraw the said amount in the same manner and ratio as apportioned by the Tribunal. No order as to costs.

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

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**SUJOY PAUL, J**

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**NAMAVARAPU RAJESHWAR RAO, J**

August 2024

Prv

**Note:**

L/R copy is to be marked