



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

[3365]

TUESDAY ,THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO:
3158/2014**

Between:

The United India Insurance Co Ltd

...APPELLANT

AND

Karu Nukalamma 3 Others and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.NAGUMANTRI NAGESWARA RAO

Counsel for the Respondent(S):

1.SRIDHAR TUMMALAPUDI

2.G V S MEHAR KUMAR

**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL
NO: 205/2025**

Between:

Tupakula Siva Ganga Bhavani

...APPELLANT

AND

Karu Nukalamma And 3 Others and

...RESPONDENT(S)

Others

Counsel for the Appellant:

1.G V S MEHAR KUMAR

Counsel for the Respondent(S):

1.NAGUMANTRI NAGESWARA RAO

2.

The Court made the following:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

M.A.C.M.A.No.3158 of 2014

and

M.A.C.M.A.No.205 of 2025

COMMON JUDGMENT:

M.A.C.M.A.No.3158 of 2014, under Section 173 of the Motor Vehicles Act, 1988, is filed by the insurance company assailing the award dated 18.04.2013 of the learned Chairman, Motor Vehicles Accidents Claims Tribunal-cum-VI Additional District Judge (F.T.C.), Guntur (hereinafter referred to as 'the Claims Tribunal') in M.V.O.P.No.97 of 2010.

2. M.A.C.M.A.No.205 of 2025, under Section 173 of the Motor Vehicles Act, 1988, is filed by the second wife of the deceased assailing the award dated 18.04.2013 of the learned Chairman, Motor Vehicles Accidents Claims Tribunal-cum-VI Additional District Judge (F.T.C.), Guntur (hereinafter referred to as 'the Claims Tribunal') in M.V.O.P.No.97 of 2010.

3. Heard arguments of Sri N.Nageswara Rao, the learned counsel for appellant-Insurance Company and Sri G.V.S.Mehar

Kumar, the learned counsel for respondent No.4 in M.A.C.M.A.No.3158 of 2014.

4. Heard arguments of Sri G.V.S.Mehar Kumar, the learned counsel for appellant and Sri N.Nageswara Rao, the learned counsel for respondent No.4-Insurance Company in M.A.C.M.A.No.205 of 2025.

5. The following facts are required to be noticed:

An unsuspecting Tupakula Raju @ Stalin aged 45 years was sleeping in front of his own house in Winchipet, Vijayawada at 4:30 A.M. on 17.10.2009. The driver of milk van bearing registration No.AP-16-T-9663, while driving the vehicle was supposed to have the requisite focus on the road in manoeuvring his vehicle safely. However, his negligence allowed the vehicle to run over the chest of the sleeping man and caused serious injury and the injured was shifted to Government General Hospital, Vijayawada and thereafter to Government General Hospital, Guntur where he succumbed to injuries on 22.10.2009. Vijayawada II Town Police Station registered Crime No.354 of

2009 against the driver of the offending van. During his lifetime Sri Tupakula Raju @ Stalin was a public health worker in Vijayawada Municipal Corporation earning a monthly salary of Rs.6,728/-. His married daughter and his mother showing the second wife of the deceased as respondent No.3 filed M.V.O.P.No.97 of 2010 under Section 166 of the Motor Vehicles Act praying for compensation of Rs.4,00,000/- alleging that the owner of the offending vehicle/respondent No.1 and the insurer of it/respondent No.2 have to pay compensation. Respondent Nos.1 and 3 did not choose to appear and contest. Respondent No.2-insurance company denied the liability and questioned that the compensation claimed was excessive and that there was no driving licence for the driver of the offending vehicle and that amounted to breach of insurance policy and prayed for dismissal of the claim.

6. The learned Claims Tribunal settled the following issues for trial:

1. Whether the accident took place due to rash and negligent driving of the driver of the 1st respondent?

2. Whether the petitioner is entitled for compensation, if so, what amount and from which of the respondents?

3. To what relief?

7. The evidence of PWs.1 to 4 and Exs.A.1 to A.7 and Exs.X.1 and X.2 and the evidence of RWs.1 to 3 and Exs.B.1 to B.6 were available for consideration before the Claims Tribunal.

8. After a detailed analysis of the evidence, the learned Claims Tribunal found that the driver of the offending vehicle was responsible for the death of Sri Tupakula Raju @ Stalin. From the evidence of RW.2, a Junior Assistant working in Vijayawada Municipal Corporation and Ex.A.3-salary certificate it concluded that the monthly income of the deceased was Rs.6,728/-. 1/3rd of it was deducted towards his possible personal and living expenses. Considering his age and the ruling in **Sarla Verma v. Delhi Transport Corporation**¹ multiplier '14' was applied. In its calculation the Claims Tribunal found that Rs.7,53,536/- could be granted towards loss of dependency. Under the conventional

¹(2009) 6 SCC 121

heads, towards loss of consortium Rs.5,000/- and towards funeral expenses Rs.2,000/- were granted. However, the learned Claims Tribunal took the view that the claimants in their claim petition prayed for Rs.3,70,000/- only towards loss of dependency and therefore it restricted the compensation amount under this head to the extent it was claimed by the claimants. Thus, it awarded compensation of Rs.3,77,000/-. While the claim petition was pending the mother of the deceased/2nd petitioner therein died. Second wife of the deceased who was shown as respondent No.3 though did not file a counter deposed as RW.3 and from her evidence it was recorded that she was living away from her husband before his death and on the death of her husband death benefits were granted to her and she has been drawing pension on his death. The Claims Tribunal granted compensation to the surviving first petitioner and the second wife/respondent No.3. With reference to the contention of the insurance company that the driver of the offending vehicle did not have valid and effective driving licence, after referring to the evidence and precedent, the

Claims Tribunal held that such allegation of insurance company was not proved. It passed the award in the following terms:

“In the result, the petition is allowed, in part, with proportionate costs by granting the following reliefs:

1. The Petitioners 1 and R-3 are entitled for the total compensation of Rs.3,77,000/- equally, as the second petitioner died during the pendency of this petition.

2. The Petitioner No.1 and R-3 are entitled for the interest at the rate of 7.5% per annum on the amount awarded from the date of the petition till the date of deposit;

3. The Respondents 1 and 2 are directed to deposit the said amount within 30 days from the date of this order;

4. On making such deposit the 1st petitioner and R-3 are entitled to withdraw an amount of Rs. 75,000/- at first instance from out of the respective share allotted to them and the rest of the amount shall be deposited in any Nationalized bank for a period of three years or until further orders;

5. The rest of the claim is dismissed without costs;

6. Advocate fee is fixed at Rs.2,000/-;

7. The award is subjected to any compensation already awarded under Section 140 of M.VAct and subjected to payment of deficit court fee if any payable;

8. The Petitioners are not entitled for any interest for the period where the petition was dismissed for default and till it was restored, if any.”

9. Aggrieved of the above award, the insurance company preferred M.A.C.M.A.No.3158 of 2014.

10. Learned counsel appearing on behalf of the insurance company contended that excess compensation was granted and the driver had no effective and valid driving licence and the first claimant of the deceased was a married daughter and therefore she was not a dependent on him and respondent No.3 before the Claims Tribunal was second wife who was also not entitled for compensation, but the Claims Tribunal committed grave errors in awarding compensation and therefore the impugned award shall be set aside.

11. The second wife of the deceased was aggrieved of the award and she preferred M.A.C.M.A.No.205 of 2025.

12. Learned counsel appearing on her behalf contended that the Claims Tribunal committed an error in not granting what it found to be the just compensation and it failed to grant any amount towards funeral expenses and loss of consortium and seeks enhancement of compensation.

13. The points that fall for consideration in these appeals are:

1. **Whether a married daughter is not entitled for compensation?**
2. **Whether a second wife, in the light of the evidence on record, is a dependent on the deceased?**
3. **Whether there was fundamental breach of insurance policy since the driver of the alleged offending vehicle did not have valid and effective driving licence?**
4. **Whether the impugned award requires interference?**

14. The claim before the Claims Tribunal was under Section 166 of the Motor Vehicles Act. It is undisputed that Sri Tupakula

Raju @ Stalin died, and the death arose out of accident caused by the driver of offending milk van bearing registration No.AP-16-T-9663. Section 166(1)(c) of the Motor Vehicles Act, 1988 provides that where death has resulted from the accident, all or any of the legal representatives of the deceased are entitled to make a claim for compensation. Since the word 'legal representative' is not defined in the Motor Vehicles Act, the definition as given in Section 2(11) of the Code of Civil Procedure, 1908 has always been applied. The said provision reads as below:

"2(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued."

15. It is an inclusive definition. The definition shows that heirs of the deceased are also legal representatives. Compensation that could be granted on death of an individual in a motor accident becomes the estate of the deceased. A daughter

married or unmarried is a legal heir. Therefore, a married daughter is entitled to stake a claim for compensation on the death of her father. However, eligibility to claim is one thing and as to how much is to be granted towards loss of dependency is another aspect. Every heir may not be dependent. Non-heirs may also be dependent. Simply because a daughter is married does not completely cease to be dependent. To what extent she is dependent on her father is a matter of fact and it is that fact which is required to be pleaded and proved and considered in such claims. Valuable reference in this regard could be seen in the enunciation of law by their Lordships of the Hon'ble Supreme Court of India in ***National Insurance Company Limited v. Birender***². Referring to the precedent, their Lordships stated that a legal representative is one who suffers on account of death of a person due to a motor vehicle accident. Then their Lordships stated that it is the bounden duty of the Claims Tribunal to consider the evidence and state the extent of dependency. The effect of the ruling of their Lordships is that if the claimant was not

² (2020) 11 SCC 356

at all dependent, it was usual to grant only compensation under the conventional heads. Therefore, the extent of dependency has to be measured by the Claims Tribunal.

16. A similar question when it fell for consideration before a learned Judge of this Court in ***Shaik Kalesha v. B.Sreenivasa Rao***³, this Court had to consider the eligibility of married sons and married daughters to claim compensation. The learned Judge of this Court followed the ruling of the Hon'ble Supreme Court of India referred earlier and granted compensation.

17. Smt. Tupakula Siva Ganga Bhavani is admittedly the second wife of the deceased. The unchallenged evidence placed on record disclosed that she was in receipt of the family pension of her deceased husband. There is no evidence on record showing that the first wife was alive or that Smt. Tupakula Siva Ganga Bhavani was not married to the deceased or that her marriage was void because the earlier marriage was subsisting.

³ (2023):APHC:33004 Judgment dated 14.09.2023 in M.A.C.M.A.No.2403 of 2012

Thus, the only conclusion that could be reached is that she was validly wedded wife though happened to be the second wife of the deceased.

18. Being wife, she was also entitled to claim compensation as she was one of the legal heirs/legal representatives. However, her own evidence disclosed that she fell into dispute with her husband during his lifetime and they were living separately and she has been in receipt of family pension on his death. Thus, she could maintain herself. Her dependency on her husband was very limited. It was only she who appealed to this Court for enhancing the compensation and the married natural daughter of the deceased did not prefer an appeal. It is in such circumstances her prayer for enhancement of compensation has to be considered.

19. Coming to the conventional heads, towards loss of consortium, towards loss of estate, towards funeral expenses, Rs.70,000/- is to be granted in terms of the ruling of the Hon'ble

Supreme Court of India in ***National Insurance Company Limited v. Pranay Sethi***⁴. In the case at hand, nothing was granted towards loss of estate. Towards loss of consortium Rs.5,000/- and towards funeral expenses Rs.2,000/- totalling Rs.7,000/- was granted. In such circumstances an additional amount of Rs.63,000/- under these conventional heads shall be granted and is accordingly granted.

20. The Claims Tribunal made calculations and arrived at multiplicand and applied the multiplier and stated that Rs.7,53,536/- could be considered as amount that could be granted towards loss of dependency. Law permits him to grant the same if in its opinion that was just compensation. However, in the case at hand, the Claims Tribunal took the view that the compensation claimed by the claimants under the head of loss of dependency was only Rs.3,70,000/- and therefore, only that was granted. Smt. Tupakula Siva Ganga Bhavani did not file her pleadings before the Claims Tribunal. However, she assailed the

⁴ (2017) 16 SCC 680

impugned award and filed M.A.C.M.A.No.205 of 2025. Her contention is only revolving around the abstract doctrine that the Claims Tribunal has to grant just compensation. While it is true that irrespective of calculations in the claim petition, it has been the duty of the Claims Tribunal to grant just compensation. The fact always remains that how much amount could be called as just compensation is a matter of evidence and the legal dimension available on such facts. The undeniable finding of the Claims Tribunal indicated that this second wife has not been living with her husband and has been in receipt of pension on the death of her husband. Therefore, the extent of her dependency is limited. Therefore, while disagreeing with the reason recorded by the Claims Tribunal in not granting the amount it found on calculation, this Court for different reasons recorded above holds that what was granted towards loss of dependency by the Claims Tribunal does not require any interference in the given facts and circumstances.

21. It is expected that whoever drives the vehicle will drive it in accordance with law which includes holding a valid and effective

driving licence to drive it. It can be said that one who alleges that a driver drove the vehicle without a driving licence may have to prove the same. Insurance company contended that the offending vehicle was driven by the driver without a valid driving licence. From the evidence on record, it was rightly concluded by the Claims Tribunal that the insurance company which had the onus of proof failed to discharge its burden. Therefore, it is right to think that the driver was holding valid and effective driving licence at the material point of time. In such circumstances, there was no fundamental breach of Ex.B.1-insurance policy.

22. The upshot of the above discussion is that the married daughter of the deceased is entitled to claim compensation. The second wife, in the given facts and circumstances being the only surviving wife is entitled to a share in the compensation. There were no fundamental breaches of insurance policy conditions and therefore the insurance company has to shoulder the liability. The compensation granted by the Claims Tribunal is to be enhanced by granting an additional amount of Rs.63,000/-.

23. In the result, M.A.C.M.A.No.3158 of 2014 is dismissed.

M.A.C.M.A.No.205 of 2025 is allowed enhancing the compensation awarded in the impugned award 18.04.2013 of the learned Chairman, Motor Vehicles Accidents Claims Tribunal-cum-VI Additional District Judge (F.T.C.), Guntur in M.V.O.P.No.97 of 2010 from Rs.3,77,000/- to Rs.4,40,000/- with 7.5% interest per annum from the date of petition till the date of realisation. Respondent Nos.1 and 2 before the Claims Tribunal are jointly and severally liable to pay the compensation. The second respondent-Insurance Company before the Claims Tribunal is directed to deposit the amount after giving due credit to amounts, if any, deposited already within one month before the Claims Tribunal. This enhanced portion is shared by daughter-Karu Nukamma and the wife-Smt. Tupakula Siva Ganga Bhavani in equal measure. Rest of the terms of the award stand intact. There shall be no order as to costs in these appeals.

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

Dr. V.R.K.KRUPA SAGAR, J

Date: 25.03.2025
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THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

M.A.C.M.A.No.3158 of 2014
and
M.A.C.M.A.No.205 of 2025

Date: 25.03.2025

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