



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

**[3367]**

MONDAY ,THE SEVENTH DAY OF APRIL  
TWO THOUSAND AND TWENTY FIVE

**PRESENT  
THE HONOURABLE SRI JUSTICE V SRINIVAS**

**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL  
NO: 89/2022**

**Between:**

Bontha Koteswaramma and Others

**...APPELLANT(S)**

**AND**

R Naga Raju Naik and Others

**...RESPONDENT(S)**

**Counsel for the Appellant(S):**

A RAJENDRA BABU

**Counsel for the Respondent(S):**

N RAMA KRISHNA

**The Court made the following:**

**JUDGMENT:**

This appeal is directed against the order of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-IX Additional District Judge (FTC) at Guntur (hereinafter called as 'the Tribunal') in M.V.O.P.No.849 of 2008 dated 31.12.2009.

2. The appellants, who are wife and children of one Bontha Ramaiah (hereinafter called as "deceased") are the claimant before the Tribunal. The respondent Nos.1 to 3 are the driver,

insurer and owner of the Auto Rickshaw bearing No.AP 07W 6337 (hereinafter referred to as “crime auto”) respectively.

3. The case of the claimants, in the petition before the Tribunal is that:

i). On 26.04.2008 at about 08.45 a.m., while the deceased was proceeding in the crime auto from Marigapudi to Varagani, when they reached opposite to Venkata Rangam Ginning Mill, Varagani Village, Pedanandipadu Mandal of Guntur District, the 1<sup>st</sup> respondent driven the said auto in a rash and negligent manner at high speed, resulted the auto turned turtle and the deceased received fatal injuries. While undergoing treatment, on the same day, he was succumbed to injuries.

ii). Deceased used to earn Rs.5,000/- per month and contributed the same for the welfare of the family. Being dependents, they claimed compensation of Rs.3,50,000/- against the driver, insurer, and owner of the crime auto.

4. The respondent No.1/driver filed written statement denying the averments in the petition and pleaded that the crime auto was validly insured with the 2<sup>nd</sup> respondent; that this respondent is having valid driving license to drive the crime auto, thereby, this respondent is not liable to pay any compensation to the claimants.

5. The respondent No.2/insurer filed written statement denying the averments in the petition and pleaded that the driver of the crime auto is not having valid driving license to drive the same; that the crime auto is not having valid permit; that the compensation claimed by the claimants is excessive, thereby, prays to dismiss the petition against this respondent.

6. The Tribunal settled the following issues for enquiry basing on the material:

“1. Whether the accident took place due to the rash and negligent driving of the driver of the Auto Rickshaw bearing No.AP 07W 6337?

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

3. To what relief?”

7. During enquiry, on behalf of the claimant, PWs.1 and 2 were examined, Exs.A.1 to A.5 were exhibited. On behalf of the respondent No.2, its official was examined as R.W.1 and Exs.B.1 and B.2 were marked.

8. On the material, the Tribunal, having come to the conclusion that the accident occurred due to the rash and negligent driving of the crime auto by the 1<sup>st</sup> respondent, held that the claimants are entitled for the compensation of Rs.3,13,000/-, with interest at 8% per annum from the date of petition till the date of realization against the respondent Nos.1 and 3 only, for the death of the deceased in the accident. The claim against respondent Nos.2 is dismissed due to violation of terms and conditions of Ex.B.1 policy.

9. It is against the said award; the present appeal was preferred by the appellants/claimants.

10. Heard Sri R.Sanjeev Reddy, learned counsel representing Sri A.Rajendra Babu, learned counsel for the appellants/claimants and Sri N.Ramakrishna, learned counsel for the respondent No.2/insurer.

11. The only contention raised by the learned counsel for the appellants/claimants is that the Tribunal erred in dismissing the claim against the 2<sup>nd</sup> respondent/insurer, when Ex.B.1 policy is in force by the time of incident, since the accident occurred due to the rash and negligent driving of the 1<sup>st</sup> respondent. In support of the above contention, he relied upon the pronouncement of Hon'ble Supreme Court in ***Manuara Khatun v. Rajesh Kumar Singh***<sup>1</sup>.

12. Per contra, learned counsel for the 2<sup>nd</sup> respondent/insurer submits that the Tribunal after elaborate consideration of the matter rightly found that there is violation of terms and conditions of Ex.B.1 policy by allowing twelve passengers in the crime auto, wherein there is only seating capacity of three plus one, thereby, the present appeal has no merits.

13. Now, the short point that arises for determination is "whether the insurer is liable to pay the compensation amount

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<sup>1</sup> (2017) 4 SCC 796

to the claimants/third parties when there is violation of terms and conditions of Ex.B.1 policy?”

14. **POINT:**

The fact of the deceased's death in the incident, the involvement of the crime auto, and the rash and negligent driving by the 1st respondent in causing the incident are not in dispute. The quantum of compensation awarded by the Tribunal is also undisputed. It is further established that the crime vehicle was validly insured with the 2nd respondent/insurer at the time of the accident, as evidenced by Ex.B.1. Additionally, it is an admitted fact that no appeal was preferred by the driver, owner, or insurer of the crime auto against the findings of the Tribunal.

15. It is also categorically proved before the Tribunal from the contents of Ex.A.2 charge sheet that there are twelve passengers including driver travelling in the crime auto by the time of incident. It is also not in dispute that as per Ex.B.1 policy the seating capacity of the crime auto is three plus one only.

Thereby, there is violation of terms and conditions of Ex.B.1 policy.

16. Now, it is relevant to refer the categorical observations made by the Hon'ble Supreme Court in ***Manuara Khatun case*** (referred to supra), by referring and relying on its earlier pronouncement in ***National Insurance Company Limited v. Saju P.Paul***<sup>2</sup>, at paragraph Nos.15 and 21 that:

“15.....This Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of “pay and recover.

21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (Respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. Respondent No.3) to first pay the awarded

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<sup>2</sup> (2013) 2 SCC 41

sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo) Respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of *Saju P. Paul's* case quoted supra.” (emphasis supplied)

17. Having regard to the above categorical precedents, in view of the facts and circumstances of the case, since it is benevolent legislation and Ex.B.1 policy issued in respect of the crime auto is in force by the time of incident, a direction can be issued against the insurer of the crime vehicle to pay the awarded sum to the claimants at first instance and then recover the same from the insured/owner/3<sup>rd</sup> respondent, because as stated supra the accident occurred only due to the rash and negligent driving of the crime auto by the 1<sup>st</sup> respondent/driver, resulted death of the deceased.

18. It is needless to say that the Tribunal by considering the material on record rightly calculated and awarded compensation entitled by the claimants, which is not in dispute.

19. In view of the above discussion, the order passed by the Tribunal warrants interference only regarding liability to pay the compensation by the insurer at first instance and then recover the same from the owner of crime auto. Thus, this point is answered accordingly.

20. In the result, M.A.C.M.A. is allowed in part by modifying the order to the Tribunal to the extent that the respondent No.2/insurer is directed to pay the awarded sum to the claimants/appellants at first instance and then recover the same from the 3<sup>rd</sup> respondent/owner by filing execution petition. The rest of the order passed by the Tribunal shall remain intact. There shall be no order as to costs.

Interim orders granted earlier if any, stand vacated.

Miscellaneous petitions pending if any, stand closed.

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**JUSTICE V.SRINIVAS**

Date: 07.04.2025  
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**THE HON'BLE SRI JUSTICE V.SRINIVAS**

**M.A.C.M.A.No.89 of 2022**

**( JUDGMENT )**

DATE: 07.04.2025

Krs