

**(2014) 10 AP CK 0065**  
**In the Andhra Pradesh High Court**  
**Case No : M.A.C.M.A. No. 1389 of 2006**

B. Jaisoorya

APPELLANT

Vs

D. Ramakrishna Reddy

RESPONDENT

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**Date of Decision :** 20-10-2014

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 122, 126, 166  
Penal Code, 1860 (IPC) — Section 304A

**Citation :** (2015) 3 ACC 651 : (2015) ACJ 2332 : (2015) 2 ALT 121

**Hon'ble Judges :** B. Chandra Kumar, J

**Bench :** Single Bench

**Advocate :** P. Gangarami Reddy, Advocate for the Appellant; S. Agastya Sarma, Advocate for the Respondent

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## Judgement

B. Chandra Kumar, J.—This appeal is preferred by the claimants, being aggrieved by the award dated 24.03.2006 passed in MVOP No. 1141 of 2002 by the Motor Vehicle Accident Claims Tribunal-cum-XXI Additional Chief Judge-cum-Additional Metropolitan Sessions Judge for the trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge, Red Hills, Nampally, Hyderabad, whereby and whereunder the Tribunal awarded compensation of Rs. 50,000/- under no fault liability out of the total claim of Rs. 10,00,000/-.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal for the sake of convenience.

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

The claimants are the parents and sister of the deceased-B. Bhargava Rama. Their case is that the deceased was aged 21 years and studying final year Engineering in Sri Visveswarayya Institute of Technology and Science, Choudarypally Village, Devarkadra Mandal, Mahabubnagar District. On 25.03.2002 the deceased was proceeding from Hyderabad to Mahabubnagar on his motor cycle bearing No. AP 28 AC 9600. At about 7.45 p.m. when he reached

Rajapur Village, a lorry bearing No. AP 16X 4379 was parked in front of Jeevitha Family Dhaba covering half of the width of the road, without any parking lights or any indicators. In the mean time, another lorry was coming in opposite direction from Zadcherla side, the deceased who was proceeding by the side of the parked lorry moved the vehicle towards further left and in that process hit the rear side portion of the parked lorry, due to which he sustained injuries. Immediately, the deceased was shifted to Government Hospital, Mahabubnagar, for treatment and from there to Osmania General Hospital, Hyderabad. While undergoing treatment, he died on the same day. The police registered a case in Crime No. 58 of 2002 under Section 304-A I.P.C. The claimants' further case is that the deceased was 21 years old and was studying final year Engineering Course in Computer Science and I.T. He was very meritorious student and passed TOEFL examination of Prime University, U.S.A. and also received an appointment order and was intending to go to U.S.A. The claimants' case is that the deceased would have earned Rs. 1,50,000/- per month.

4. The owner of the vehicle remained ex parte. The Insurance Company filed counter and denied the material averments made by the claimants. The insurance company pleaded ignorance about the age and educational qualifications of the deceased. It's main case is that the deceased himself was negligent in driving his motor cycle and there was no negligence on the part of the lorry driver. It pleaded ignorance about the parking of lorry. There is no specific plea with regard to the place, where it was actually parked. The insurance company also pleaded ignorance with regard to offering of job to the deceased.

5. The Tribunal framed the following issues.

"1. Whether the accident took place on 25.03.2002 at about 7.45 p.m. due to sudden stopping of lorry bearing No. AP 16X 4379 on the road without any indicators or parking lights?

2. Whether the petitioners are entitled to claim compensation? If so, from whom and as to what quantum?

3. To what relief?"

6. On behalf of the claimants, the father of the deceased was examined as P.W. 1 and two eye witnesses were examined as P.Ws. 2 and 3 and Exs. A1 to A11 were marked. On behalf of the 2nd respondent, R.W. 1 was examined and Exs. B1 to B4 were marked.

7. On issue No. 1 the Tribunal found that the deceased himself was negligent in driving his motor cycle and therefore the claimants are entitled to only a sum of Rs. 50,000/- under no fault liability.

8. Now the points that arise for consideration are:

"1. Whether the deceased alone was negligent or whether the lorry driver was

also negligent?

2. What is the quantum of compensation to which the claimants are entitled to?"

9. Heard Sri P. Ganga Rami Reddy, learned counsel for the appellants and Sri S. Agastya Sarma, learned Standing counsel for the 2nd respondent.

Point No. 1:

10. P.W. 1 is father of the deceased. He is not an eye witness. However, Exs. A1 to A11 were marked in his evidence. P.W. 2 claims to be an eye witness. On that day he was also proceeding on his motor cycle. According to him, he saw the deceased on another motor cycle and that on seeing the lorry coming in opposite direction, the deceased moved his motor cycle towards left side and in that process his motor cycle dashed the rear portion of the parked lorry. P.W. 2 categorically deposed that the parked lorry was covered half of the road portion without any signals or parking lights. He further deposed that there was darkness at the place of accident and due to which the deceased could not see the parked lorry. He further deposed that he accompanied the deceased to the Government hospital in ambulance. He was cross examined at length. In his cross examination he categorically deposed that he had witnessed the accident. P.W. 2 clarified that the deceased had no other way to cross the stationed lorry and to proceed further in view of another lorry coming in opposite direction. It is elicited in cross examination that he did not give any police complaint.

11. The claimants have also examined another witness, P.W. 3, who was working as Manager in Jeevita Family Restaurant. He has also deposed that the lorry parked in the road covering half of the road portion without parking lights, signals or blinkers. His evidence is almost similar to the evidence of P.W. 2. According to P.W. 3 he lodged complaint to the police. He admitted in his cross examination that motor cyclist himself dashed the lorry from behind.

12. Ex. A1 is copy of the F.I.R. lodged by P.W. 3, wherein it is categorically mentioned that on seeing heavy focus lights of opposite lorry, the deceased moved towards left and in that process hit the last portion of the lorry on its rear side and sustained injuries. Ex. A2 is the inquest report. The version of P.Ws 2 and 3 reflects in the inquest report. Ex. A4 is the Post Mortem Certificate. Ex. A10 are photos and negatives. These photos also clearly show that the tyres of the lorry are on the back top road. Thus, it is clear that the lorry driver had not even moved to the road margin at the time of parking lorry. It is the duty and responsibility of the lorry drivers to take precautions while parking the lorries.

13. Sections 122 and 126 of the Motor Vehicles Act, reads as follows:

"122. Leaving vehicle in dangerous position.--No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.

126. Stationary vehicles.--No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver."

14. It is clear from the photos and the evidence of P.Ws 2 and 3 that the driver of the lorry has violated Sections 122 and 126 of the Motor Vehicles Act. It is also clear that there were no parking lights. It appears that even stones were not put around the lorry to indicate that a lorry was parked. The very fact that the lorry was not parked in the road margin but on the road occupying atleast half of the portion in the road clearly go to show that the lorry driver was negligent in parking the lorry. Added to that there were no parking lights. Negligent driving does not only pertain to the act of rash and negligent driving but includes parking the lorry negligently or keeping the lorry in such a position whereby it may result in causing accidents or endangering the human life.

15. The learned counsel for the petitioners/appellants argues that the Tribunal went wrong in not observing the material evidence on record. It is also his submission that the evidence of P.Ws 2 and 3 proves that the lorry driver was negligent. He relied upon the judgments of this Court in *Saudagarsing Chhajusing and Others Vs. Jashodaben and Another and Ranjitsingh Valusing Jadeja, , New India Assurance Co. Ltd. V. Maya Wati* 1992 ACJ 620, *Cassell and Co. Ltd. v. Broome*, (1972) 1 All ER 801 and *National Insurance Company Ltd. Vs. Y.S. Madhavi Latha and 9-Ors. in Respondents 1 to 5, . Relying on National Insurance Co. Ltd. V. Y.S. Madhavi Latha*, he submitted that the F.I.R. cannot be treated as substantial evidence.

16. Learned Standing Counsel for the 2nd respondent submits that the deceased while proceeding by the side of the lorry, having noticed that another lorry was coming in opposite direction, had taken a turn, came back and hit the stationed lorry and therefore, there is no negligence on the part of the lorry driver. It is his submission that the element of negligence has to be proved in a claim under Section 166 of the Motor Vehicles Act. Learned counsel for the petitioners/appellants in reply submits that the insurance company had not taken a plea that the deceased had taken a turn and dashed the lorry from its rear side.

17. As seen from the averments, it is clear that the insurance company had not pleaded anything with regard to the manner in which the accident occurred. The insurance company did not take any plea that the deceased had taken "U" turn and came back and dashed on the rear side of the lorry. The evidence of P.W. s 2 and 3 makes it clear that while passing by the side of the lorry the deceased had just moved towards left side to avoid the accident and as there was darkness, he could not observe the parked lorry and in that process dashed the lorry on its rear side tyre portion.

18. From a close reading of entire material it is clear that the deceased was proceeding by the side of the lorry, but, however, on seeing another lorry coming in opposite direction he tried to move his motor cycle towards further left and in that process the motor cycle hit the rear side portion of the lorry. In fact, before proceeding by the side of parked lorry, the deceased should have observed whether any lorry is coming from opposite direction or not. Therefore, in the circumstances it appears that both the deceased and the lorry driver of the parked lorry were negligent. But as far as the role of the parked lorry driver is concerned, he is mainly responsible for parking the lorry in a careless manner, without any parking lights and indicators. The deceased would have observed the parked lorry and the space between himself and the parked lorry had parking lights or indicators at the time of accident. Therefore, the negligence has to be apportioned between the lorry driver and deceased at 75% and 25%, respectively. This point is answered accordingly.

Point No. 2:

19. Coming to the aspect of quantum of compensation, the settled legal position is that the notional income of the deceased can be taken at Rs. 12,000/-. The Division Bench of this Court in B. Ramulamma and Others Vs. Venkatesh, Bus Union and Another, has considered this aspect in detail. This Court observed as follows:

"For non-scheduled jobs the salary fixed by the Government at entry level can be taken as guidance. The job, which the deceased would have secured had he not died in the Motor accident, and the salary of his classmates should be the basis.

Similarly where the students have acquired basic qualifications such as Electrician, Fitter, Technician, Driver etc., and who died or sustained permanent disability, their income may be fixed on the basis of the income prescribed under the Minimum Wages Act or on the basis of the income earned by the newly appointed persons to such jobs whichever is on higher side. As far as the students, who completed or in final year or last semester of B. Tech., B.E., B.C.A.M. Tech., ME., or MBA, MCA., etc., courses and who died in motor accidents or sustained permanent disability, their salaries also can be fixed on the basis of the salary of their classmates when they entered into jobs. Some percentage say e.g., 10% per year can be deducted in respect of the students studying III year or II year as the case may be."

20. In view of the present salaries, being earned by the Computer Engineers, there cannot be any doubt to say that the deceased would have minimum Rs. 12,000/- to Rs. 15,000/- per month.

21. A similar question came up for consideration by another Division Bench of this Court in Setty Chandra Sekhar and another Vs. Mohd. Ghouse and another, , wherein it was observed that the income of graduates in engineering, etc., cannot be fixed less than Rs. 12,000/- per month.

22. The learned Standing counsel has relied upon the Apex Court decision in Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, . In that case earnings of the deceased were assessed at Rs. 60,000/- per annum. It was observed that earnings of the deceased are assessed at Rs. 60,000/- per annum taking salary and allowances payable to Assistant Engineer in public employment. The scales of salary, D.A. etc., may differ from State to State. Therefore, there is no need to consider above judgment for fixing the income of deceased in this case. Even an office Subordinate (Attender) is getting about Rs. 12,000/- p.m. nowadays.

23. In the circumstances, the income of the deceased is taken at Rs. 12,000/- p.m. As per the judgment of the Apex court in Sarla Verma v. Delhi Transport Corporation, 50% of the income should be deducted towards personal and living expenses in case of bachelors. If 50% is deducted, loss of dependency would come to Rs. 6,000/- p.m., at Rs. 72,000/- p.a. The age of the mother of the deceased is "48" years. The appropriate multiplier applicable for the said age group as per Sarla Verma(supra) is "13". If the loss of dependency is multiplied with multiplier "13", the total loss of dependency would come to Rs. 9,36,000/-. In case of death of young children, the parents may not have any assistance in their old age. Therefore, for the loss of love and affection and assistance in old age, the claimants are entitled to a sum of Rs. 1,00,000/-. The claimants are also entitled to a sum of Rs. 25,000/- towards funeral expenses. Thus, the total amount awarded is Rs. 10,61,000/-. The Tribunal awarded interest at 7.5% p.a. and the same appears to be just and reasonable and therefore, the same cannot be interfered with.

24. In Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Co. Ltd., and in Rajesh v. Rajbir Singh, wherein the Apex Court categorically held that the Courts have to award just and reasonable compensation irrespective of the total amount claimed by the claimants, but they have to pay the court fees. In the circumstances, I hold that even though the claimants claimed lesser amount they can be awarded the amount which appears to be just and reasonable compensation. However, the claimants are directed to pay the deficit court fees on the amount now awarded before drafting the decree.

25. Accordingly, the MACMA is allowed enhancing compensation from Rs. 50,000/- to Rs. 10,61,000/-. The same shall be apportioned to the claimants equally. The enhanced compensation shall carry interest at 7.5% p.a. However, in the circumstances, no costs.

26. As a sequel, the miscellaneous petitions, if any, pending in this appeal shall stand closed.