

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.1655 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.1,11,000/- granted as compensation by the order dated 20.04.2005 in O.P.No.157 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy (for short, 'the Tribunal') as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of Begari Adivamma (deceased), the instant appeal is preferred by her legal representatives seeking enhancement of compensation.

2. The appellants herein are the petitioners, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 31.01.2004 at about 8-30 a.m., while the deceased was waiting for a bus at Lingampally bus stop, a DCM van bearing registration No.AP 22U 0833 driven at high speed and in a rash and negligent manner dashed her, due to which, she sustained severe injuries and succumbed to the injuries while undergoing treatment. The petitioners claim that the deceased was 38 years old on the date of accident and earning Rs.4,500/- per month as supplier of beedi-leaves. The petitioners being the husband and children sought compensation as mentioned above.

5. Before the Tribunal, the respondent Nos.1 and 2 filed counters contending that the deceased herself contributed to the accident, but

the 1st respondent, however, pleaded that since the vehicle was insured with the 2nd respondent and validly in force on the date of accident, the 2nd respondent alone is liable to pay compensation to the petitioners. The 2nd respondent, of course, opposed the entire claim seeking dismissal of the same by raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the 1st petitioner examined himself as P.W.1 besides examining one Sangam Narsimulu as P.W.2 and marked Exs.A.1 to A.5; whereas, on behalf of the respondents, no witnesses were examined, but a copy of the insurance policy was marked as Ex.B.1 on consent.

7. The Tribunal, on appraisal of evidence on record, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal, having assessed the evidence, though, in Exs.A.3 and A.5, which are certified copies of postmortem report and inquest report, the age of the deceased was recorded as 40 years, but basing on the suggestion to P.W.1, her age was 50 years, to strike a balance, taken the age of the deceased at 45 years and since there is no proof to show that the deceased was earning Rs.4,500/- per month by supplying beedi-leaves, fixed daily wages of the deceased at Rs.40/- and Rs.1,200/- per month, and deducting 1/3rd therefrom towards personal expenses of the deceased, arrived the contribution of the deceased to the family at Rs.9,600/- per annum and applying multiplier '10', arrived the loss of dependency at Rs.96,000/-, it can be construed as loss of domestic assistance and her services as there is no positive evidence to prove the profession set up by the petitioners. Besides the same, the Tribunal granted Rs.15,000/- towards loss of consortium to the 1st petitioner being the

husband of the deceased. Thus, the Tribunal granted a total sum of Rs.1,11,000/- with suitable directions for apportionment and withdrawal of the respective amounts.

8. Aggrieved of the aforesaid order, the petitioners preferred the instant appeal seeking enhancement of the compensation contending in the grounds of appeal that the Tribunal was not right in taking the age of the deceased as 50 years on mere suggestion made by the learned counsel for the 2nd respondent in the cross-examination of P.W.1, and Exs.A.3 and A.5 would reflect that the age of the deceased as 40 years and ought to have taken the earnings of the deceased at Rs.150/- per day instead of Rs.40/- and even the minimum wage for labourer was not less than Rs.70/- per day, and, therefore, sought to grant the balance amount.

9. Heard Sri P.Sriharinath, learned counsel for the appellants-petitioners, Sri Sriman, learned counsel for the 2nd respondent-Insurance Company. None appears for the 1st respondent.

10. The short question that arises for consideration is, whether the petitioners are entitled to enhancement of compensation as prayed for ?

11. It is no doubt true the wage at Rs.40/- taken by the Tribunal appears to be on lower side even construing it as the services rendered by her towards domestic assistance. Since there is no proof to show that he was coolie engaged for supplying beedi-leaves. This apart, so far as the dependency is concerned, the Tribunal itself observed in paragraph-9 that the petitioner No.2 is a major son and the petitioner Nos.3 and 4 are the married daughters and there is nothing on record to dispute the same on the side of the petitioners. Therefore, they cannot be construed as dependents on the deceased. In which

event, 1/3rd has to be deducted towards personal expenses of the deceased taking the income of the deceased as Rs.70/- per day, which works out to Rs.2,100/- per month and when Rs.700/- is deducted, the contribution of the deceased to the family works out to Rs.16,800/- per annum. Concerning the multiplier, since the age of the deceased was taken as 45 years by the Tribunal, discarding the age mentioned in Exs.A.3 and A.5 as 40 years, though, the Tribunal recorded that finding based on the evidence of P.W.1 that the deceased was 50 years old, but even when kept in view, the age of the 2nd petitioner at 28 years, certainly, the age of the deceased cannot be viewed as 40 years on the date of the accident, and, therefore, the age taken by the Tribunal at 45 years and finding recorded by the Tribunal therefor since does not suffer from any infirmity warranting interference. The multiplier for the persons in the age group of 40 years to 45 years is '14' as per the decision of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another** ^[1]. Thus, when the same is applied, the loss of dependency works out to Rs.2,35,200/- (Rs.16,800/- x '14'). Besides the same, a sum of Rs.15,000/- granted to the 1st petitioner towards consortium is maintained. Thus, the petitioners are entitled to a total sum of Rs.2,50,200/- (Rupees two lakhs fifty thousand and two hundred) as against Rs.1,11,000/- granted by the Tribunal, but however, with interest at 7.5% per annum on the said amount from the date of petition till realization as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others** ^[2].

12. In the result, the appeal is allowed in part and the order and decree dated 20.04.2005, passed by the Tribunal in O.P.No.157 of 2004 is modified, enhancing the compensation to Rs.2,50,200/- (Rupees two lakhs fifty thousand and two hundred) from Rs.1,11,000/-

(Rupees one lakh and eleven thousand), with interest at 7.5% per annum from the date of petition till realization throughout the award and the amount of compensation shall be apportioned among the petitioners as directed by the Tribunal. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

25th February, 2015

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[\[1\]](#) (2009) 6 Supreme Court Cases 121

[\[2\]](#) 2013 ACJ 1403