

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.3445 of 2004

J U D G M E N T:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 29.12.2003 passed by the II Additional District Judge-cum-Chairman, Motor Vehicle Claims Tribunal, Nalgonda, in O.P.No.375 of 2000, awarding compensation of Rs.2,26,000/-.

2. The appellants herein are the widow wife, daughter, mother and younger brother of one Waddeboina Ramulu (hereinafter referred to as 'the deceased') aged 24 years. Originally, they filed the above O.P under Sections 166, 163-A read with 140 & 168 of the Act claiming compensation of Rs.1,10,000/- on account of the death of the deceased in a motor vehicle accident that occurred on 16.02.2000 at Gattammagudem village of Warangal District. But subsequently, the appellants vide orders in I.A.No.208 of 2001 dated 02.08.2001, got enhanced the claim to Rs.2,00,000/-. Again, they filed I.A.No.863 of 2003 and got enhanced the claim to Rs.3,00,000/- on 01.10.2003 and further, as per the order in I.A.No.863 of 2003 dated 01.10.2003, they got deleted Section 166 of the Act.

3. The brief averments made in the petition are that all the appellants belong to Panagal village of Nalgonda District. The deceased was the driver of the Jeep bearing No.APG.5219 belonging to the first respondent. The monthly salary of the deceased was Rs.2,000/- p.m apart from daily batta of Rs.10/- per day. On the date of accident, the deceased was driving the Jeep and the relatives of the first respondent were travelling in it. When

the Jeep reached near Gattammagudem village, the spare rod was loosened and the Jeep became turtle. Due to the accident, the deceased received injuries and was shifted to Government Hospital, Mulugu, but he died in the hospital. The inmates of the Jeep also received injuries. The Police, Venkatapur Police Station, registered the case in Crime No.9 of 2000 for the offences punishable under Sections 304-A & 337 I.P.C against the deceased. According to the appellants, the accident occurred due to mechanical defects in the Engine and wheels of the Jeep. Thus, the appellants claimed the compensation.

4. Before the Tribunal, the first respondent appeared through his counsel but failed to file the counter.

5. The brief averments made in the counter filed by the second respondent are as follows:

The second respondent put the appellants to prove the manner of accident, age and income of the deceased and specifically stated that the accident was not reported to the Insurance Company by the owner of the Jeep; that the burden lies on the appellants to prove that the deceased was possessing valid driving license and vehicle was not roadworthy on the date of accident; and that there is collusion in between the appellants and respondent No.1, as such the Insurance Company is not liable to pay the claim to the appellants, and also sought permission to take defence under Section 170 of the Act.

6. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the first appellant got examined herself as PW.1 and got marked Exs.A1 to A5 on their behalf. On behalf of the contesting respondent, no oral evidence was adduced, but Ex.B1 Insurance Policy was got marked by

consent.

7. The Tribunal having considered the oral and documentary evidence on record held that the deceased died in the motor vehicle accident, in which Jeep bearing No.APG.5219 is involved in the accident and accordingly, awarded Rs.2,26,000/- as compensation along with interest at 9% p.a to the appellants. Aggrieved by the order of the Tribunal, the appellants preferred the present appeal for enhancement of compensation.

8. Learned counsel appearing for the appellants argued that at the time of accident, the deceased was aged about only 24 years; that the appellants are the dependents on the income of the deceased and due to his sudden demise they became destitute; that the Tribunal while granting compensation has not considered and has not awarded properly the compensation under the heads of Consortium, funeral expenses and future prospects of the deceased; that in view of the judgment reported in ***Sarla Verma and others Vs. Delhi Transport Corporation and another***^[1] the relevant multiplier applicable to the age group of the deceased is not '17' but it is '18' and further, 1/4th has to be deducted towards personal expenses, but not 1/3rd as deducted by the Tribunal; and that in a judgment of the Hon'ble Apex Court reported in ***Rajesh & Ors., v. Rajbir Singh & Ors.***^[2], the Apex Court has fixed the consortium as Rs.1,00,000/- as just and reasonable and further, awarded Rs.25,000/- towards funeral expenses and prayed the Court to enhance the compensation.

9. Though notice was served on respondent No.1, none appeared to argue on his behalf.

10. On the other hand, the learned counsel appearing for the second respondent argued that there is no evidence to prove the future prospects of the deceased and the Tribunal rightly awarded compensation to the appellants in spite of amending petition for three times; that in a decision of the larger Bench of the Hon'ble Supreme Court in ***Ramilaben Chinubhai Parmar and others v. National Insurance Co. Ltd., & others.***^[3], the Supreme Court awarded Rs.50,000/- as conventional amount to the widow of the deceased and finally prayed the Court to dismiss the petition.

11. Having regard to the submissions made by the learned counsel for both parties, the only point which is to be decided in this appeal is whether the appellants had made out any case to enhance the compensation awarded to them in the award passed by the Tribunal as prayed for?

12. **POINT:** A perusal of the evidence on record shows that there is no dispute regarding the manner of accident and the finding of the Tribunal that the deceased died in the motor vehicle accident, in which Jeep bearing No.APG.5219 is involved.

13. The contention of the learned counsel appearing for the appellants is that the deceased was aged 24 years and in view of the ***Sarla Verma's case*** (first cited supra), the relevant multiplier for the age group of the deceased is '18' and 1/4th has to be deducted towards personal expenses of the deceased, as the number of dependants on the income of the deceased is four. The learned counsel also contended that the income of the deceased is only taken as Rs.1,500/- p.m by the Tribunal instead of Rs.3,000/- p.m as the deceased was working as a driver of the jeep. To

prove all these facts, there is no evidence except the oral testimony of PW.1. The Tribunal rightly fixed the monthly income of the deceased as Rs.1,500/- p.m as he was working as the driver of the jeep. Further, as rightly contended by the counsel for appellants, to calculate the compensation under the head of loss of dependency, the law laid down in **Sarla Verma's case** (first cited supra) has to be taken into consideration. Therefore, in view of the said case, if 1/4th is deducted, the monthly income comes to Rs.1,125/- p.m and if the said amount is multiplied with the relevant multiplier '18' the compensation under the head of loss of dependency comes to Rs.1,125/- X 12 X 18 = Rs.2,43,000/-.

14. It is also contended by the learned counsel for appellants that in view of the **Rajesh's case** (second cited supra), the first appellant-wife of the deceased is entitled for Rs.1,00,000/- as consortium and the Tribunal has not considered this fact. On the other hand, the learned counsel for respondent No.2 contended that as per the rules, the Tribunal has rightly awarded the amount towards consortium, therefore the first appellant is not entitled for the said amount of Rs.1,00,000/-. In the latest judgment of the Hon'ble Supreme Court relied upon by the learned counsel for respondent No.2 in **Ramilaben Chinubhai Parmar's case** (third cited supra), it was held that the family of the deceased is entitled for conventional amount of Rs.50,000/-. Therefore, considering the said latest judgment, an amount of Rs.50,000/- is awarded to appellants towards conventional amount. Thus, the appellants are entitled in total for Rs.2,43,000/- + Rs.50,000/- = Rs.2,93,000/-.

15. Therefore, in view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellants/petitioners from Rs.2,26,000/- to

Rs.2,93,000/-. The appellant Nos.1 & 2/petitioner Nos.1 & 2 being the wife and minor daughter of the deceased are entitled to share the enhanced amount equally. On deposit of the said amount, the appellant No.1/petitioner No.1 is permitted to withdraw the amount of her enhanced share and the appellant No.2/petitioner No.2 is permitted to withdraw the amount of her enhanced share after attaining the age of majority. Till then, the amount of share of the minor shall be kept in Fixed Deposit in a Nationalized Bank. The remaining order regarding the share of appellant Nos.3 & 4/petitioner Nos.3 & 4 and the amount awarded to appellant Nos.1 & 2/petitioner Nos.1 & 2 by the Tribunal remains same. No order as to costs.

16. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 02.07.2015

sr

[\[1\]](#) (2009) 6 SCC 121

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

[\[3\]](#) 2014 ACJ 1430