

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.219 of 2005

JUDGMENT:

The petitioners, who are the wife and minor son of the deceased Yelukuru Babu, are the present appellants. On the ground that the Chairman, Motor Accidents Claims Tribunal-cum-District Judge at Mahbubnagar (for short, 'the Tribunal') determined the compensation at Rs.3,18,000/- as against the claim they made for Rs.2,00,000/- under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') by order dated 20.07.2004 in O.P.No.79 of 1998, but restricted the compensation to Rs.2,00,000/- with interest at 9% per annum for the death of the said Yelukuru Babu (deceased) in a road accident, preferred the instant appeal praying to grant the entire amount of Rs.3,18,000/- as determined by the Tribunal.

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 28.12.1996, the deceased was travelling in a trax jeep bearing registration No.AP 28D 7955 from Kurnool and when it reached outskirts of Jimkalapally village at about 4-30 a.m., the driver of the said jeep drove the same at high speed and in order to overtake a stationed lorry, lost control over the same and dashed against a lorry bearing registration No.AP 12T 5529, due to which, he sustained injuries and succumbed to the injuries in Government Hospital, Kurnool at about 7-30 a.m. on the same day. The concerned police registered a case in Crime No.72 of 1996

against the driver of the jeep. They sought Rs.2,00,000/- from the respondent Nos.1 and 2, who are the owner and insurer of the jeep, on the ground that the deceased used to earn Rs.100/- per day.

5. Before the Tribunal, the 1st respondent-owner of the accident vehicle remained *ex parte* and the 2nd respondent-insurer opposed the claim 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 herself as P.W.1 besides examining an eyewitness, J.Shankar, as P.W.2 and marked Exs.A.1 to A.6; whereas on behalf of the 2nd respondent-Insurance Company, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1, on consent.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal, by taking the age of the deceased as 21 years and earnings at Rs.2,250/- per month as a stone crusher and quarry labourer being Vaddera by caste, arrived the annual income of the deceased at Rs.27,000/-, deducted 1/3rd therefrom and worked out the remainder at Rs.18,000/- and by applying multiplier '16', arrived at Rs.2,88,000/- towards loss of dependency and granted additional amount of Rs.15,000/- towards loss of estate, and, thus, arrived at a total sum of Rs.3,18,000/-. But the Tribunal granted only a sum of Rs.2,00,000/- as claimed by the petitioners with interest at 9% per annum on the ground that it is just and reasonable.

8. Aggrieved of the aforesaid order, the petitioners preferred the instant appeal seeking enhancement of the compensation of Rs.3,18,000/- as determined by the Tribunal.

9. Heard Sri V.Manohar Rao, learned counsel for the appellants. No representation on behalf of the 2nd respondent-Insurance Company. A memo is filed so far as the 1st respondent is concerned dated 08.02.2012, stating that the 1st respondent is un-served. However, non-service has no significance in deciding the controversy herein.

10. The learned counsel for the appellants placed reliance on a judgment of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1]. The controversy is squarely covered by the decision of the Hon'ble Apex Court. In the said case, the Hon'ble Apex Court, while reminding the duty of the Court, held thus:

"In a report on accident, there is no question of any reference to any claim for damages, different heads of damages or such other details. It is the duty of the Tribunal to build on that report and award just, equitable, fair and reasonable compensation with reference to the settled principles on assessment of damages. Thus, on that ground also we hold that the Tribunal/court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation."

11. The order under appeal clearly shows that the Tribunal, based on appreciation of evidence, determined the compensation as Rs.3,18,000/-, which is just and reasonable to which the petitioners are legitimately entitled. Therefore, the petitioners are granted Rs.3,18,000/-, but however, the interest is fixed at 7.5% per annum as against 9% per annum granted by the Tribunal as per **Rajesh's** case (1 supra).

12. In the result, the appeal is allowed and the order and decree dated 20.07.2004, passed by the Tribunal in O.P.No.79 of 1998 is modified, enhancing the compensation to Rs.3,18,000/- (Rupees three

lakhs and eighteen thousand only) from Rs.2,00,000/- (Rupees two lakhs only), with interest at 7.5% per annum from the date of petition till realization throughout and the said amount shall be apportioned between 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

23rd February, 2015

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