

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.712 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.50,000/- granted as compensation by the order dated 18.12.2004 in M.O.P.No.415 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Visakhapatnam (for short, 'the Tribunal') as against the claim for Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one T.Sanyasirao, father of the petitioners/ appellants, the instant appeal is preferred.

2. The appellants herein are the petitioners, while the respondent Nos.1 and 2, who are the owner and insurer of the auto bearing registration No.AP 31W 6508 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 10.01.2003 at about 8-00 a.m., the said T.Sanyasi Rao along with others started in an auto bearing registration No.AP 31W 6508 from Thrinadhapuram to attend the work at RCL and when it reached Sathavahana at about 8-30 a.m., since the driver of the auto driven it in a rash and negligent manner and applied sudden brakes, the auto fell down and the said T.Sanyasi Rao also fallen down and sustained injuries. He was shifted to Giri Hospital and from there to Prathima Nursing Home and first aid was given and he was shifted to King George Hospital, Visakhapatnam on advise of the doctors, and he succumbed to the injuries at 7-00 p.m. on the same day. The petitioners, being the legal heirs of the deceased, sought a sum of Rs.3,00,000/- against the respondent Nos.1 and 2,

who are the owner and insurer respectively, of the said auto.

5. Before the Tribunal, the 1st respondent remained *ex parte* and the 2nd respondent opposed the claim by raising various pleas even the violation of the terms and conditions of the policy stating that the auto was carrying four passengers, though, it was supposed to carry three passengers, and, therefore, sought to dismiss the claim.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the 2nd petitioner examined himself as P.W.1 besides examining one B.Ramana, an eyewitness, as P.W.2 and marked Exs.A.1 to A.6; whereas on behalf of the 2nd respondent-Insurance Company, its Officer in the local branch, T.Vishnuvarthana Rao, was examined as R.W.1 and marked Ex.B.1, which is copy of insurance policy, on consent.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the parties, held on issue No.1 that due to rash and negligent driving of the driver of the auto, the accident had occurred, resulting in the death of the said T.Sanyasi Rao. On issue No.2, the Tribunal, taking the age of the deceased as 55 years, basing on Ex.A.4, copy of inquest report, discarding the stand of the petitioners that the deceased was 50 years old on the date of the accident and fixing the contribution at Rs.900/- per month, applied multiplier '4.27' as per the decisional law then holding the field and arrived at Rs.46,116/-, but since even under no fault liability, the limit is prescribed at Rs.50,000/-, the amount of Rs.50,000/- was awarded with interest at 9% per annum.

8. It is that order which is challenged by preferring the instant appeal contending in the grounds of appeal that the Tribunal, without

assigning any reasons, fixed the contribution at Rs.900/- and applied multiplier '4.27' instead of '11', taking the age of the deceased as 50 years but not 55 years, and, therefore, sought to grant the balance amount by allowing the appeal.

9. Heard Smt. N. (P). Anjana Devi, learned counsel for the appellants and Sri T.Ramulu, learned Standing Counsel for the 2nd respondent-Insurance Company. None appears for the 1st respondent.

10. Perused the order under challenge and the evidence let in by the petitioners and contesting respondent. It is submitted by the learned counsel for the appellants/petitioners that, though, P.W.1 asserted that the deceased was working in shipyard earning Rs.3,000/- per month, there is absolutely nothing in the cross-examination to rebut such assertion, and, therefore, the Tribunal was not right in fixing the contribution to the family at Rs.900/-, and, hence, sought to fix the same at Rs.2,000/- towards contribution of the family.

11. A perusal of the evidence of P.W.1 would show that nothing is brought out in the cross-examination of P.W.1 that the deceased was not earning Rs.3,000/-. Therefore, monthly income is taken at Rs.3,000/-. So far as deduction is concerned, 1/3rd is deducted and the rest of Rs.2,000/- per month is taken as contribution to the family. It is no doubt true that the 2nd petitioner is shown as labourer, but that cannot be a ground to reduce the contribution to the family, while the 1st respondent was shown as unmarried daughter. In such an event, taking the contribution at Rs.2,000/- and the multiplier at '11' taking the age of the deceased as 55 years as shown in Ex.A.4, inquest report, as per the guidelines laid down by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1], when the same is applied, it works out to Rs.2,64,000/-

(Rs.2,000/- x 12 x '11'). So far as the conventional amounts are concerned, the petitioners are entitled to Rs.5,000/- towards funeral expenses only, and, therefore, the same is granted.

12. Thus, the petitioners are totally entitled to a sum of Rs.2,69,000/- (Rupees two lakhs and sixty nine thousand) as against Rs.50,000/- granted by the Tribunal towards compensation and the same is accordingly granted, with interest at 7.5% per annum from the date of petition till realisation, as against 9% granted by the Tribunal, on the entire compensation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[2]. The petitioners shall apportion their respective shares of compensation as ordered by the Tribunal.

13. Accordingly, the instant appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

11th February, 2015

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^[1] (2009) 6 Supreme Court Cases 121

^[2] 2013 ACJ 1403