

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1232 OF 2005

JUDGMENT:

On the ground that the award of compensation of Rs.3,12,085/- granted by the order dated 09.06.2004 in O.P. No.381 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nalgonda (for short, 'the Tribunal'), is excessive and exceeds the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of K.Ranga Reddy (hereinafter referred to as 'deceased'), who was husband of respondent No.2 and father of respondent Nos.3 and 4, the United India Insurance Company Limited preferred the instant appeal under Section 173 of the Act seeking to set aside the order or to modify the compensation awarded by the Tribunal.

2. Appellant herein, who is insurer of the auto bearing registration No.AP 24 U 5733, is respondent No.2, while respondent No.1 herein, who is driver-cum-owner of the said auto, is respondent No.1 and respondent Nos.2 to 4 herein, who are wife and children of the deceased, are petitioner Nos.1 to 3, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the

Tribunal in the original petition.

4. The facts in brief are that on 12.02.2002, the deceased was travelling in an auto bearing registration No.AP 24U 5733, when it reached Narketpally, Nalgonda District, since the driver-cum-owner of the auto, who is respondent No.1, was driving it at high speed in a rash and negligent manner, lost control, resulting in the auto turning upside down towards left side of the road occasioning grievous injuries to the passengers therein. The deceased was initially shifted to Kamineni Hospital at Narketpally and, thereafter, for better treatment, shifted to Sri Venkateshwara Nursing Home, Y.M.C.A., Narayanaguda, Hyderabad, but he succumbed to the injuries on 17.02.2002, i.e., five days after the accident. The petitioners, claiming that the deceased was aged 48 years earning Rs.3,000/- per month on agriculture and, on account of untimely demise, they lost their bread earner, sought a sum of Rs.1,50,000/-.

5. Both the respondents filed separate counters and resisted the claim by raising various pleas.

6. Basing on the said pleadings, the Tribunal formulated a point for determination in deciding all the disputed facts comprehensively thus:

"Whether the petitioners are entitled to a compensation of Rs.1,50,000/- from R-1 and R-

2 jointly and severally for the rash, negligent and high speed driving of auto, AP-24-U-5733, owned and driven by R-1 on 12-2-2002 at about 8.00 p.m. in front of KIMS, Narkepally, and insured by R-2?"

7. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining D.Manemma, an eyewitness to the accident, as P.W.2 and marked Exs.A.1 to A.13 to substantiate their claim; whereas, on behalf of the respondents, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

8. The Tribunal, on appreciation of evidence on record, both, oral and documentary, let in by the petitioners, held that due to rash and negligent driving of respondent No.1, the accident had occurred and the insurance policy was in force on the date of accident. The Tribunal also recorded finding that the death of the deceased had occurred on account of the injuries sustained by him in the said accident and taking Rs.3,000/- as monthly earnings, considering it as notional income in the absence of any material on record, deducted 1/3rd thereof towards personal expenses and arrived the contribution to the family at Rs.2,000/- per

month and applying multiplier '11' taking the age of the deceased as 55 years, worked out the loss of dependency at Rs.2,64,000/-. Besides the same, the Tribunal has also granted Rs.15,000/- towards consortium, Rs.15,000/- towards loss of estate, love, affection, care, guidance, etc., Rs.3,000/- towards funeral expenses and Rs.15,085/- towards treatment expenses. Thus, the Tribunal granted a total sum of Rs.3,12,085/- with interest at 9% per annum as against the claim of Rs.1,50,000/-.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence, more particularly, Ex.A.3, which shows only one simple injury, and the finding recorded by the Tribunal that the death of deceased had occurred on account of the road accident is wrong, as no postmortem examination report is forthcoming and even the Tribunal ought not to have applied multiplier '11' by following the Second Schedule to Section 163-A of the Act, as the claim was laid under Section 166 of the Act and, therefore, sought to set aside the award and decree.

10. Heard Sri V.Sambasiva Rao, learned Standing Counsel for the appellant-Insurance Company, and Sri Chandra Sekhar Reddy Gopireddy, learned counsel for respondent Nos.2 to 4. Respondent No.1, despite receipt

of notice, not entered appearance.

11. Perused the order under challenge and the evidence available on record, both, oral and documentary. It is not in dispute that the death of the deceased had occurred while undergoing treatment even five days from the date of taking place of the accident. The injury sustained by the deceased was to the cervical spine and, therefore, it cannot be said that the death of the deceased did not occur on account of the injury sustained by him in the accident.

12. Concerning the monthly earnings taken by the Tribunal at Rs.3,000/- notionally, it cannot also be disturbed, as the Tribunal has recorded reasons that unless the deceased was earning not less than Rs.3,000/- , the family of the deceased would not have got admitted him in a corporate hospital, and even deduction of 1/3rd towards personal expenses of the deceased, is well reasoned. Even multiplier '11' applied by the Tribunal, as the deceased was aged 55 years on the date of the accident, cannot be faulted in view of the decision of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1] and the same is confirmed. Concerning the ground that the compensation awarded by the Tribunal far exceeds the amount claimed, in view of the decisions in **Nagappa v. Gurudayal Singh**

and others^[2], Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited^[3] and Rajesh and others v. Rajbir Singh and others^[4], no legal infirmity can be viewed. Thus, viewed from any angle, the amount determined by the Tribunal at Rs.3,12,085/- is just and adequate compensation and cannot be withheld and, therefore, the same is confirmed. The Tribunal has granted interest at 9% per annum and the same is reduced to 7.5% in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[5].

13. Accordingly, the instant appeal is allowed in part confirming the award of compensation at Rs.3,12,085/- passed by the Tribunal, by reducing the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

10th December, 2015

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[\[1\]](#) (2009) 6 SCC 121
[\[2\]](#) AIR 2003 SC 674
[\[3\]](#) 2012 ACJ 191 (SC)
[\[4\]](#) 2013ACJ1403 = 2013(4)ALT35
[\[5\]](#) 2013 ACJ 1403