

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1480 OF 2005

JUDGMENT:

The instant appeal is preferred by the petitioners, who are parents of the deceased – Srinikethan, dissatisfied with the award of Rs.65,000/- (Rupees sixty five thousand) as compensation, by the learned Chairman, Motor Accidents Claims Tribunal – cum – V Additional District Judge (Fast Track Court), Ranga Reddy District at L.B. Nagar, by order and decree, dated 20-02-2004, in O.P. No.909 of 2000, as against the claim of Rs.1,00,000/- (Rupees one lakh) laid by them under Section 166 of the Motor Vehicles Act, 1988, (for short 'the Act').

2. The appellants herein are petitioners in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of lorry bearing registration No.TN-1-3334, respectively, are respondent Nos.1 and 2, respectively.

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

4. The facts in brief are, that on 24-07-2000 at about 5.30 a.m., the petitioners along with their son - Srinikethan and Yamuna Bai were travelling in an auto-rickshaw bearing registration No.AP 11U 2329 from Imlibun Bus Depot towards Uppal via Chaderghat Cross-roads and when it reached near Chaderghat Bridge, a lorry bearing registration No.TN1-3334 proceeding from Chaderghat towards Koti driven by its driver in a rash and negligent manner, hit the auto-rickshaw, due to which,

petitioner No.2, deceased sustained grievous injuries initially and they were shifted to Osmania General Hospital, Hyderabad, where their son succumbed to injuries. Hence, they sought Rs.1,00,000/- as compensation.

5. Respondent No.1, owner of the lorry, remained *ex parte* before the Tribunal.

6. Respondent No.2 filed its counter opposing the claim.

7. The Tribunal has framed three issues in the direction of fixing responsibility for the accident.

8. In the accident, petitioner No.2 herein, their son and Smt. Yamuna Bai sustained injuries initially and, therefore, petitioner No.2 filed separate claim petition O.P. No.926 of 2000 for the injuries she sustained, while Smt.Yamuna Bai filed O.P. No.925 of 2000. Since the present claim petition and the aforesaid claim petitions arise from one and the same accident, the Tribunal recorded common evidence in all three OPs. During inquiry, petitioner Nos.1 and 2 herein examined themselves as PWs.1 and 3, respectively, while petitioner in O.P. Nos.925 of 2000 was examined herself as PW.2, and marked Exs.A-1 to A-7, whereas, on behalf of respondent No.2 – Insurance Company, no witnesses were examined, but, the copy of insurance policy was marked as Ex.B-1 on consent.

9. The Tribunal disposed of the instant claim petition along with O.P. Nos.925 of 2000 and 926 of 2000 by a common order. The Tribunal, on appraisal of evidence held issue No.1 in favour of the petitioners in all the OPs. On issue No.2, the Tribunal granted 50,000/- under 'no-fault liability' as the deceased was aged

10 years by the date of accident and studying 4th class. By taking the age of the deceased, even Rs.15,000/- was granted additionally towards loss of estate and mental agony, funeral/burial expenses etc. on the ground that the said amount is just, reasonable and would meet the ends of justice and, thus, the Tribunal granted a total sum of Rs.65,000/- with interest at 9% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal ought to have granted total amount instead of awarding Rs.65,000/-, as the deceased was 10 years old and studying 4th class. Hence, sought to grant balance amount.

11. Heard Sri B. Parameswara Rao, learned counsel for the appellants, and Sri B. Devanand, learned Standing Counsel for respondent No.2. The appellants have already endorsed in the cause title of the appeal that respondent No.1 is not a necessary party.

12. Now, the short question that arises for consideration is whether the compensation granted by the Tribunal is just and reasonable or, whether the petitioners are entitled to any enhancement of compensation?

13. Perused the evidence on record and the order passed by the Tribunal which is under challenge herein.

14. The facts are not in dispute that the deceased was 10 years old and prosecuting 4th class on the date of accident. No doubt, the deceased cannot be construed as an earning member.

But, however, in view of the decision of the Hon'ble Apex Court in **Puttamma v. K.L. Narayana Reddy**^[1], the petitioners are entitled to Rs.1,50,000/-, since, while referring to the amendment proposed to Schedule - II of the Act by the Central Government, it was directed by the Hon'ble Supreme Court that till such amendment is made, children up to the age of five (5) years shall be entitled for a fixed compensation of Rs.1,00,000/- (Rupees one lakh only) and persons more than five years of age shall be entitled for a fixed compensation of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) or the amount that may be determined in terms of Schedule - II of the Act; whichever is higher. The relevant observations of the Hon'ble Supreme Court contained in paragraph No.58 of **Puttamma's Case** (Supra 3) are, thus:

“58. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs.1,00,000/-(rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs.1,50,000/-

(rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163A of the Act, 1988.”

No doubt, the claim in the instant case has been made under Section 166 of the Act, but so far as payment of compensation is concerned, same principle can be applied to the claims laid under Section 166 of the Act also. Since, in the instant case, the deceased was aged more than five years on the date of his death, the petitioners are entitled to Rs.1,50,000/- towards compensation.

15. Turning to whether the compensation exceeding the claim can be awarded, it is well settled that the Courts are empowered to grant compensation exceeding the amount claimed while determining just and reasonable compensation to which the claimants are entitled. In the instant case, the petitioners laid the claim for Rs.1,00,000/- only, but, certainly, they cannot be deprived of ‘Rs.1,50,000/-’ though, it exceeds the claim made by them, in view of the decisions of the Hon’ble Apex Court 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], wherein, it was held that it is duty of the Courts to award just, equitable, fair and reasonable compensation with reference to the settled principles of law irrespective of the claim made.

16. Concerning the rate of interest, Tribunal granted it at 9% per annum and the same is confirmed on the amount awarded by the Tribunal. However, on the enhanced amount, interest at the rate of 7.5% per annum is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 4).

17. In the result, the appeal is allowed, and the order and decree, dated 20-02-2004, in O.P. No.909 of 2000, passed by the Tribunal, are modified enhancing the compensation to Rs.1,50,000/- (Rupees one lakh and fifty thousand) from Rs.65,000/- (Rupees sixty five thousand) with interest at the rate of 9% per annum on the amount of Rs.65,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.85,000/- (Rupees eighty five thousand) from the date of petition till realization. However, the petitioners are directed to pay deficit court fee within a period of three (03) months from today. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

November 24, 2015.

Mgr

[\[1\]](#) 2014 ACJ 526

[\[2\]](#) AIR 2003 SC 674

[\[3\]](#) 2012 ACJ 191 (SC)

[\[4\]](#) 2013ACJ1403 = 2013(4)ALT35