

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 846 of 2005

Judgment:

Dissatisfied with the award of Rs.56,000/- as compensation, by the order, dated 05.08.2004, in MVOP No. 109 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Srikakulam, as against the claim for Rs.1,80,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the petitioners requesting to grant balance amount.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 12.07.1998 the second petitioner, who is the mother of the deceased boy - three years old, went to fetch water at 9.30 AM accompanied by the deceased boy. While so, a lorry bearing registration No.WB-11/5351 coming from Kasibugga side, driven in a rash and negligent manner by the first respondent, dashed the deceased boy, due to which he sustained grievous injury to his head and he was immediately admitted in the Government Hospital, Palasa for treatment and from there he was shifted to King George Hospital, Visakhapatnam, but he succumbed to injuries on 14.07.1998 while undergoing treatment. Even the Station House Officer, Kasibugga Police Station, registered a case in Crime No. 138 of 1998, initially, under Section 337 IPC, later converted to Section 304-A IPC against the driver of the lorry, hence, a claim is laid for Rs.1,80,000/- from the respondents 1 to 3 towards compensation who were the driver, owner and insurer respectively.

4. The first and second respondents i.e., driver and owner of the

offending vehicle remained *ex parte*. The third respondent - Insurance Company opposed the claim raising various pleas.

5. The Tribunal framed as many as six issues and two additional issues later. During enquiry, the second petitioner besides examining herself as PW.1 also examined one Pondara Kamesh as PW.2 and marked Exs.A1 to A4. On behalf of the third respondent – Insurance Company, RW.1 was examined and Exs.B1 to B3 were marked.

6. The Tribunal, based on the evidence through PWs.1 and 2 and Exs.A1 to A4, held issues 1 and 2 in favour of the petitioners. On issue No.3, the Tribunal held that the parents cannot be considered as dependents on the deceased minor child, who was 3 years old without earning capacity. On issue No.4 and additional issue No.1, the Tribunal determined the compensation at Rs.50,000/- under no fault liability, Rs.5,000/- towards transport charges and Rs.1,000/- towards funeral expenses. Thus, a total sum of Rs.56,000/- was granted. On issue No.5 and additional issue No.2, while discussing elaborately the evidence of RW.1, did not agree with the third respondent's contention that the driver of the lorry was not possessing valid driving license at the relevant time and held it against them. On issue No.6, the amount was granted with interest at 9% p.a., directing the respondents 1 to 3 jointly and severally liable to pay and apportioning the same in equal shares to the petitioners.

7. The aforesaid order is under challenge in the instant appeal contending in the grounds of appeal that what was granted by the Tribunal towards compensation is very meagre and the deceased was the only issue for the petitioners, there are no prospects of their begetting any children further and, therefore, sought to enhance the compensation by granting the balance amount.

8. Heard Sri A. Rama Rao, learned counsel for the appellants. It

was recorded that the first respondent was not necessary party. The appeal against the second respondent was dismissed for default, by an order dated 03.01.2012, but, it would not make any difference in deciding the request herein since the second respondent remained *ex parte* before the Tribunal. None appears for the third respondent- Insurance Company.

9. Perused the order and the evidence on record both oral and documentary let in by the petitioners. Admittedly, the Insurance Company has not challenged the findings recorded by the Tribunal as regards failure to possess valid driving license, as pleaded by it. So far as the death of the deceased boy is concerned, the same is admitted and the age of the deceased being 4 years also not in dispute and, the compensation granted by the Tribunal is concerned, the Tribunal granted Rs.50,000/- on the premise that he was not an earning member and the petitioners cannot be construed as dependents on him.

10. Learned counsel for the appellants has relied on a decision of the Hon'ble Apex Court in **Sanobanu Nazirbhai Mirza v. Ahmedabad Municipal Transport Service**^[1], in support of the contention that the Tribunal can grant exceeding the amount sought by the petitioners in case the Tribunal or the Court finds that it is just and adequate compensation on determination by the Tribunal following the legal principles laid down by the Hon'ble Apex Court in earlier judgment in **Nagappa v. Gurudayal Singh**^[2]. However, in a later judgment in **Puttamma v. K.L. Narayana Reddy**^[3], the Hon'ble Apex Court, while dealing with the claims under Sections 163-A and 166 of the Act and the II Schedule in relation to structured formula and multiplier mentioned therein, held that where the deceased is a child aged up to 5 years fixed compensation of Rs.1,00,000/- is just and adequate, till II Schedule is amended. The observations contained in

Paragraph '56' are thus:

"56. 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 & Highway 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 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 163-A of the Act, 1988 or amendment is made by Parliament, we hold and direct that the children up to 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 a fixed compensation of Rs.1,50,000/0 (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 163-A of the Act, 1988."

11. In such an event, the petitioners are entitled to Rs.1,00,000/- as compensation for the death of the deceased boy. Further, since the accident took place on 12.07.1998, whereas the deceased boy succumbed to injuries on 14.07.1998 i.e., two days thereafter, the petitioners are entitled to additional amount of Rs.20,000/- besides the amount of Rs.5,000/- granted by the Tribunal towards transportation charges and Rs.1,000/- towards funeral charges, as the amount towards funeral expenses granted by the Tribunal appears to be on lower side. Thus, the petitioners are totally entitled to Rs.1,26,000/-, but, however, rate of interest is limited to 7.5% p.a., as against 9% p.a., granted by the Tribunal, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[4]. Concerning the apportionment of compensation amount, the same shall be in

proportion to the amounts apportioned towards the shares of petitioners by the Tribunal.

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

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 13.03.2015

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[\[1\]](#) 2013 ACJ 2733

[\[2\]](#) 2003 ACJ 12 (SC)

[\[3\]](#) 2014 ACJ 526

[\[4\]](#) 2013 ACJ 1403 = 2013(4) ALT 35