

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-
M.A.C.M.A.No.596 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.2,22,000/- awarded as compensation with interest at 9% per annum by the order dated 10.02.2005 in M.V.O.P.No.581 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Kakinada (for short, 'the Tribunal') as against the claim of Rs.4,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the instant appeal is preferred.

2. The appellants herein are the petitioners, while the respondent Nos.1 to 3, who are the driver, owner and insurer of the lorry bearing No.AHV 5118 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 09.09.2002, the deceased Nagabhushanam along with G.Mangaraju and B.Donababu were proceeding to N.F.C.L. Factory, Kakinada on their respective bicycles from Unuduru. When they reached petrol bunk, Nagamalli Thota Centre, Kakinada, the 1st respondent, being driver of the lorry bearing No.AHV 5118, driven it in a rash and negligent manner and at high speed and hit the bicycle of the deceased, due to which, he fell down. He was immediately shifted to Government General Hospital, Kakinada where he died on the same day. The petitioners being the legal heirs claiming that said Nagabhushanam/deceased was 28 years old, earning Rs.4,000/- per month in J.K. Shipping Agency and was also doing toddy business. Since the said lorry was owned by the 2nd respondent and insured with 3rd respondent, claim was made against respondent Nos.1 to 3 making them jointly and severally liable

to pay compensation.

5. All the respondents filed separate counters opposing the claim. The 3rd respondent, more particularly, required the petitioners to prove various averments mentioned in the petition while seeking protection under Sections 147, 149 and 170 of the Act. Of course, the 3rd respondent also filed I.A.No.642 of 2003 under Section 170 of the Act seeking permission to put forth defence available to the owner of the vehicle and obtained orders.

6. Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the 1st petitioner herself was examined as P.W.1 besides examining Golusu Mangaraju-eye witness as PW.2 and P.V.V. Satyanarayana said to be proprietor of the employer of the deceased as PW.3 and marked Exs.A.1 to A.3. On behalf of the 3rd respondent-Insurance Company, no witnesses were examined, but a copy of the insurance policy was marked as Ex.B.1.

7. The Tribunal, having appreciated the evidence let in by the petitioners, held issue No.1 in favour of the petitioners observing that due to rash and negligent driving of the lorry driver, the accident had occurred. On issue No.2, while discarding the evidence of PW.3, the Tribunal disbelieved Ex.A3-salary certificate said to have issued by PW.3 and, thus, having found that there was no definite proof as to the income on the side of the petitioners, has taken notional income at Rs.1,500/- per month. Deducting 1/3rd therefrom towards personal expenses of the deceased, the reminder i.e., Rs.1,000/- towards contribution to the family worked out the annual income at Rs.12,000/- and applied multiplier '16' taking the age of the deceased as 29 years on the date of accident and, thus, arrived at Rs.1,92,000/- as compensation. Besides the same, the Tribunal has also granted Rs.15,000/- towards consortium, Rs.10,000/- towards loss of estate

and Rs.5,000/- towards transportation of dead body and funeral expenses. Thus, the total compensation of Rs.2,22,000/- awarded by the Tribunal with interest @ 9% per annum by giving further direction as to apportionment and withdrawal.

8. It is the aforementioned order which is under challenge in the instant appeal seeking enhancement by the petitioners contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record, more particularly, Ex.A3, despite the fact that the evidence of PW.3 proving the contents of Ex.A3, the Tribunal ought to have taken the earnings at Rs.3,000/- per month instead of Rs.1,500/- per month and, hence, sought to grant balance amount of Rs.1,78,000/-.

9. Heard Sri N. Siva Reddy, learned counsel for the petitioners/appellants. None appears for respondent Nos.1 and 2 and no representation on behalf of the 3rd respondent.

10. Perused the order and oral and documentary evidence let in by the petitioners. It is no doubt true that the Tribunal disbelieved the evidence of PW.3 and excluded Ex.A3, from the purview of consideration, since PW.3 projected himself as proprietor, though, he was only supervisor in the said company and thereby taken notional income at Rs.1,500/- per month. It appears that the Tribunal, somehow, went wrong in taking notional income at Rs.1,500/- per month when there is positive evidence to show that he was a coolie in J.K. shipping company. However, there is no material to show that he was also doing toddy business. Ex.A1, which is certified copy of F.I.R., would show that the deceased Nagabhushanam along with G.Mangaraju and B.Donababu were proceeding for night duty to the factory on their respective bicycles. This one averment is sufficient enough to arrive at that the deceased was an employee in J.K. shipping company and, therefore, even in the absence of positive evidence to show that the deceased was drawing monthly salary of

Rs.2,220/-, still, it can be viewed that he was drawing a salary of Rs.1,800/- per month which works out to Rs.21,600/- per annum. In view of the decision of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1], since the dependants are numbering six, deduction of 1/4th, i.e., Rs.5,400/- is permissible and the reminder works out to Rs.16,200/- per annum towards contribution to the family. It is not in dispute that the deceased was aged about 28 or 29 on the date of accident. The Tribunal has taken the age of the deceased as 29 years. As per the decision in **Sarla Verma's** case (1 Supra), the multiplier is '17' for the age group of persons between 26 and 30 years, it works out to Rs.2,75,400/- to which the petitioners are entitled towards compensation. Besides the same, the petitioners are also entitled to a sum of Rs.15,000/- as against Rs.10,000/- towards loss of estate, Rs.5,000/- towards transportation of dead body and another sum of Rs.5,000/- towards funeral expenses, and the amount of Rs.15,000/- towards consortium granted by the Tribunal is maintained. Thus, the petitioners are totally entitled to Rs.3,15,400/- (Rupees three lakhs fifteen thousand and four hundred only). Interest at 9% per annum is maintained on the amount granted by the Tribunal i.e., Rs.2,22,000/-, but on the enhanced amount i.e., Rs.93,400/-, interest at 7.5% per annum is granted as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[2].

11. In the result, the appeal is allowed in part and the award and decree dated 10.02.2005 passed by the Tribunal in M.V.O.P.No.581 of 2002 is modified, enhancing the compensation to Rs.3,15,400/- (Rupees three lakhs fifteen thousand and four hundred only) from Rs.2,22,000/- (Rupees two lakh and twenty thousand only), with interest at the rate of 9% per annum on the amount of Rs.2,22,000/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.93,400/- from the date of petition till realization and the

same be apportioned among the petitioners as directed by the Tribunal. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 04.02.2015.
ska

[\[1\]](#) (2009) 6 Supreme Court Cases 121

[\[2\]](#) 2013 ACJ 1403