

**THE HON'BLE SRI JUSTICE A. RAJASHEKER
REDDY**

M.A.C.M.A.No. 239 of 2013

JUDGMENT:

This Appeal is preferred by the appellants/claimants under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act") questioning the order dated 23.09.2011 passed by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, West Godavari at Eluru (for short "the Tribunal") in O.P.No.572 of 2009.

For the sake of convenience, the parties will hereinafter be referred to as arrayed in the main O.P.

The case of the claimants is that they are dependents and legal heirs of Panakala Srinubabu (hereinafter referred as "deceased"). While the deceased was taking a load of centering material on his auto bearing No.AP 37X 2556 on 20.06.2009 from Nattarameswaram to Rajahmundry and when the auto reached Dongaravipalem, Siddantham bridge on N.H.5 road, a lorry bearing No.AP 16TX 5576 driven by its driver in a rash and negligent manner dashed the auto from behind, as a result of which, the deceased sustained severe injuries on his head and vital parts. While he was being taken to hospital, he succumbed to injuries. The deceased was aged about 28 years and earning more than Rs.500/- per day and he used to spend the said amount for the welfare of the claimants who are his dependents. It is stated that the accident occurred due to rash and negligent driving of the

lorry by the 1st respondent. Being the driver, owner and insurer of the lorry, the respondents are jointly and severally liable to pay compensation of Rs.20,00,000/-.

The 1st and 2nd respondents remained *ex parte*, while the 3rd respondent filed counter disputing the age, avocation and income of the deceased. It is contended that there is contributory negligence on the part of the deceased and the driver of the lorry. It is also contended that the driver of the lorry has no valid driving licence and it amounts to breach of terms of policy and therefore the 3rd respondent is liable to be exonerated from the liability and at any rate the compensation claimed is highly excessive.

In support of their claim, the claimants examined P.Ws.1 and 2 and also got marked Exs.A.1 to A.7. No oral evidence was adduced on behalf of the respondents, but they got marked Ex.B.1, a copy of insurance policy.

After analyzing the evidence available on record, the Tribunal held that the accident took place due to rash and negligent driving by the driver of the lorry and, accordingly, awarded a sum of Rs.4,79,000/- as compensation along with interest at 6% p.a. from the date of petition till the date of realization. Seeking enhancement of the said compensation, the claimants filed the present appeal.

Though notices are served on the

respondents, there is no appearance on their behalf.

The learned counsel for the claimants/appellants contends that though the claimants pleaded that the deceased was earning Rs.500/- per day and the evidence of P.W.2 also supported the same, the Tribunal has taken his monthly salary at Rs.3,000/- which is on lower side. She submits that in ***Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited***^[1], while dealing with the compensation to be awarded to a vegetable vendor in respect of an accident that took place in 1994, the Apex Court fixed the income of the vegetable vendor at Rs.6,500/- per month and the same has to be taken into consideration in the facts and circumstances of the case. She also contends that the Apex Court in ***Rajesh and others Vs. Rajbir Singh and others***^[2] held that in case of self-employed persons or persons with fixed wages, the actual income of the deceased must be enhanced for purpose of computation of compensation by 50% where his age was below 40 years, but the Tribunal has not taken that aspect into consideration while computing the compensation. She further contends that the Tribunal awarded a meagre amount of Rs.10,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses, though the Apex Court in ***Rajesh case (2 supra)*** enhanced the same to Rs.1,00,000/- and Rs.25,000/- respectively. She further contends that the interest awarded is on lower side and the same has to be enhanced, as the

Apex Court is consistently granting interest not less than 7.5% p.a.

With regard to the nature of accident, basing on the oral and documentary evidence placed before it, the Tribunal has rightly held that the accident occurred due to rash and negligent driving of the lorry by its driver the 1st respondent and hence the same is not interfered with.

According to the claimants, the deceased was earning Rs.500/- per day at the time of accident and P.W.1 supported the same. But, the claimants have not filed any documentary evidence to substantiate the earnings of the deceased. Therefore, the Tribunal took the monthly income of the deceased at Rs.3,000/-. In ***Syed Sadiq case (1 supra)***, while dealing with the compensation to be awarded to a vegetable vendor in respect of an accident that took place in 1994, the Apex Court fixed the income of the vegetable vendor at Rs.6,500/- per month. In view of the same, the income of the deceased in the instant case can be fixed as Rs.6,500/- as the accident occurred in the year 2009. Further, 50% of the monthly income should be added as future prospects while arriving at the income of the deceased and loss of consortium and funeral expenses are also to be enhanced, in view of the judgment of the Apex Court in ***Rajesh case (2 supra)***.

In view of the above, by applying the principles laid down in the above judgments, the compensation

has to be reassessed as follows:

Sl.No.	Heads	Calculation
1	Monthly income	Rs.6,500/- p.m.
2	50% of (1) above to be added towards future prospects	(Rs.6,500/- + Rs.3,250/-) = Rs.9,750/- p.m.
3	1/4 th of (2) deducted as personal expenses of the deceased	(Rs.9,750/- - Rs.2,437.50 ps) = Rs.7,312.50 ps.
4	Compensation awarded after multiplier 17 is applied as per Schedule II of the Act	(Rs.7,312.50 ps x 12 x 17) = Rs.14,91,750/-
5	Loss of consortium	Rs.1,00,000/-
6	Funeral expenses	Rs.25,000/-
7	Loss of estate	Rs.5,000/-
	Total compensation awarded	Rs.16,21,750/-

Now coming to the rate of interest, the Tribunal awarded interest at 6% per annum. The Apex Court in

TN Transport Corporation v. Raja Priya^[3] referring to Section 171 of M.V.Act and by considering the steep fall in the bank rate of interest, held that interest at 7.5% p.a. is just and reasonable to award and the decision in ***Rajesh case (2 supra)*** also held that the interest at 7.5% p.a. is

reasonable. Accordingly, the interest awarded at 6% p.a. is increased to 7.5% p.a.

In the result, the appeal is partly allowed. The claimants are entitled to enhanced compensation of Rs.16,21,750/- with interest @ 7.5% p.a. from the date of petition till the date of realization. The claimants are entitled to their shares in the same proportion and subject to the conditions as imposed by the Tribunal. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in the appeal shall stand dismissed.

**A. RAJASHEKER
REDDY, J.**

17th November, 2015
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[\[1\]](#) (2014) 2 SCC 735

[\[2\]](#) (2013) 9 SCC 54

[\[3\]](#) (2005) 6 SCC 236