

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

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**M.A.C.M.A. No.954 of 2005**

**JUDGMENT:**

Dissatisfied with the amount of Rs.1,27,000/- granted as compensation by the order dated 10.02.2005 in O.P.No.239 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Adilabad (for short, 'the Tribunal') as against the claim of Rs.3,00,000/- laid under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one Md. Jaffar Baig in a road accident, the petitioners, who happened to be his parents and younger sister, preferred the instant appeal seeking enhancement of compensation.

2. The appellants herein are the petitioners, while the respondent Nos.1 to 4, who are the respective owner and insurer of the lorry bearing registration No.AAH 3344 and auto bearing registration No.AP 1T 3267 respectively, were respondents 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 05.07.2001 at about 8-15 p.m., the said Md. Jaffar Baig (deceased) was proceeding towards Balapur in an auto bearing registration No.AP 1T 3267 from Adilabad and when it reached Ganesh temple on national highway No.7, a lorry bearing registration No.AAH 3344 driven in a rash and negligent manner at high speed coming in opposite direction dashed against the auto, due to which, he died instantly. The petitioners claim that the deceased was earning Rs.3,000/- per month by attending the coolie work and selling vegetables, and, therefore, sought Rs.3,00,000/- against respondent Nos.1 to 4, who are the owner and insurer of the lorry and

owner and insurer of the auto respectively.

5. Before the Tribunal, Respondent Nos.1 and 4 remained *ex parte*.

The claim petition was dismissed against Respondent No.3 as reflected from the order under challenge. It appears, the 2<sup>nd</sup> respondent alone opposed the claim by filing counter. While denying the material allegations, contended that the claim was excessive and sought dismissal of the claim petition.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the 1<sup>st</sup> petitioner examined himself as P.W.1 besides examining one Muneer Khan as P.W.2 and marked Exs.A.1 to A.7; whereas, on behalf of the contesting respondent, no witnesses were examined and no documents were marked.

7. The Tribunal, on appraisal of evidence of P.W.2 supported by Exs.A.1 to A.4, held issue No.1 in favour of the petitioners; and on issue No.2, disbelieving the earnings projected by the petitioners since there was no variance between the plea and proof, however, taken Rs.60/- as daily wages for an unskilled labourer and computing the same for 25 days in a month, arrived at Rs.1,500/- per month and deducted 50% therefrom towards personal expenses of the deceased since the deceased died in an unmarried status and taken the contribution to the family at Rs.750/- per month and worked out the same at Rs.9,000/- per annum and since the age of the deceased was shown as 18 years in Exs.A.2 and A.3 and he died in an unmarried status, the average age of the parents being at 46 years was taken, for which multiplier '13' was considered and applying the same arrived at Rs.1,17,000/- towards loss of dependency, besides granting Rs.10,000/- towards non-pecuniary compensation on all heads, and,

thus, determined the compensation at Rs.1,27,000/- fastening joint and several liability on respondent Nos.1 and 2, while dismissing the claim petition against respondent Nos.3 and 4 since finding was tendered holding that the accident had occurred due to rash and negligent driving of the lorry driver.

9. Aggrieved of the aforesaid order, the instant appeal is preferred by the petitioner seeking enhancement of compensation on the ground that the compensation awarded by the Tribunal was very meager and the Tribunal ought to have believed the evidence of P.W.1 and ought to have taken the earnings from Rs.3,000/- to Rs.4,000/- per month as coolie and the Tribunal ought not to have restricted the daily wages to 25 days alone and ought not to have deducted 1/3<sup>rd</sup> of the income towards personal expenses and ought to have granted more amount as against Rs.10,000/- towards non-pecuniary compensation, and sought to grant balance amount.

10. Heard Sri S.Surender Reddy, learned counsel for the appellants. No representation for the 1<sup>st</sup> respondent and so also on behalf of the 2<sup>nd</sup> respondent-insurer of the lorry. It is endorsed in the grounds of appeal that respondent Nos.3 and 4 are not necessary parties to the instant appeal.

11. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioners. The Tribunal has taken daily wage at Rs.60/- and taken the working days as 25 days in a month. However, 30 working days per month is taken in which event the income of the deceased works out to Rs.1,800/- per month. Since the deceased died in an unmarried status, 50% of his income has to be deducted and when deducted, the contribution of the deceased to his family works out to Rs.900/- per month and Rs.10,800/- per annum.

Since the deceased was 20 years old according to the petitioners, but Exs.A.2 and A.3 reflect that he was 18 years old, but even the age of the deceased is taken as 20 years, relevant multiplier would be '18' as per the decision of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**<sup>[1]</sup> and also basing on the ratio laid down by the Hon'ble Apex Court in **Amrit Bhanu Shali and others v. National Insurance Company Limited and others**<sup>[2]</sup> and when applied the multiplier '18', the loss of dependency works out to Rs.1,94,400/- (Rs.10,800/- x '18'). Towards non-pecuniary compensation, a sum of Rs.10,000/- was granted by the Tribunal, which is enhanced to Rs.20,000/-.

12. Thus, the petitioners are entitled to a total sum of Rs.2,14,400/- (Rupees two lakhs fourteen thousand and four hundred) as against Rs.1,27,000/- granted by the Tribunal, towards compensation and the same is accordingly granted, with interest at 7.5% per annum on the entire amount from the date of petition till realisation, as against 9% granted by the Tribunal, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**<sup>[3]</sup>. The petitioners shall apportion their respective shares of compensation as ordered by the Tribunal.

13. Accordingly, the instant appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and 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 disposed of.

12<sup>th</sup> March, 2015

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[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) (2012) 11 SCC 738

[\[3\]](#) 2013 ACJ 1403