

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CMA No. 2498 of 2004

Judgment:

Having got dissatisfied with the award of Rs.25,000/- as compensation, by the order, dated 08.10.1996, in OP No.2 of 1995 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Karimnagar, as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the petitioners seeking enhancement.

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 petitioners case is that they are the parents and younger sister of the deceased Yekula Shyamala, whose death occurred in a road accident on 20th May 1994, at about 11.00 AM, while she was proceeding to see the marriage procession by walking on the left side of the road opposite Inspection Bungalow on PWD road at Sulthanabad, a Van bearing No.APH-T-1898 driven by the first respondent at high speed in a rash and negligent manner dashed her occasioning her death instantaneously. The Station House Officer, Sulthanabad, also registered a case in Crime No.50 of 1994, under Section 304-A IPC, against the driver of the Van, who is the first respondent herein, which Van belongs to the second respondent and insured with the third respondent – Insurance Company. The petitioners claiming that the deceased was 7 years old, prosecuting the I Class besides assisting the petitioners 1 and 2 in their bamboo business, laid a claim of Rs.1,00,000/- against the respondents 1 to 3.

4. The respondents 1 and 2 filed their common counter attributing

the negligence to the deceased. It is also stated by them that the vehicle was insured with the third respondent and, therefore, the third respondent is liable to pay the compensation indemnifying the second respondent.

5. The third respondent filed counter opposing the claim and sought to dismiss the claim on the ground that the claim is high, excessive and exorbitant.

6. The Tribunal, based on the said pleadings, framed the following issues.

- “1. Whether the accident in question occurred on the PWD road Sulthanabad to Peddapalli i.e., opposite to Inspection Bungalow on 20.05.1994 at 11.00 AM at the rash and negligent drive of the Van bearing No.APH-T-1898 by respondent No.1 resulting the demise of the deceased?
2. Whether the third petitioner is not necessary party to the petition?
3. Whether the respondent No.1 was not having valid driving licence at the time of accident?
4. Whether the age of the deceased and relationship with the petitioners is true?
5. Whether the amount of compensation claimed is excessive and exorbitant and disproportionate?
6. To what relief?”

7. During enquiry, the first petitioner himself was examined as PW.1 and an eye witness to the occurrence was examined as PW.2 and marked Exs.A1 to A3. The first respondent – driver of the Van was examined as RW.1 and marked Exs.B1 and B2, which are copy of insurance policy and driving licence.

8. The Tribunal, having appreciated the evidence on record, held issue No.1 in favour of the petitioners observing that due to rash and negligent driving of the first respondent the accident had occurred resulting in demise of the deceased by disbelieving the evidence of

RW.1. On issue No.2, the Tribunal held that the third petitioner is not a necessary party to the proceedings. On issue No.3, rejected the stand of the third respondent and held that the first respondent was holding valid driving licence at the time of accident and, thus, found the issue in favour of the petitioners and against the third respondent. On issue No.4, the Tribunal recorded a finding that Exs.A1 to A3 would reflect that the petitioners 1 and 2 are parents of the deceased and, thereby, held it in favour of the petitioners 1 and 2. On issue No.5, placing reliance on a decision in the case of **APSRTC v. G. Ramanai**^[1], granted Rs.15,000/- towards the death of the deceased as just compensation and Rs.10,000/- towards mental agony suffered by the petitioners 1 and 2 and, thus, a total compensation of Rs.25,000/- was awarded with interest at 12% p.a.

9. Not satisfied with the award of Rs.25,000/- as compensation, the petitioners preferred the instant appeal contending in the grounds of appeal that the Tribunal has not properly appreciated the evidence on record and ought to have granted the balance amount of Rs.75,000/- also with interest at 18% p.a., but not @ 12% p.a.

10. No representation for the appellants and even there is no representation for the third respondent – Insurance Company. The instant CMA was dismissed against the respondents 1 and 2 for default, by the order of this Court, dated 29.10.2003. The first respondent being driver and the second respondent being owner of the accident vehicle and even they suffered the decree, the dismissal order passed against them by this Court is of no consequence in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**^[2].

11. Perused the material on record. The short question that arises for consideration is whether the amount of Rs.25,000/- awarded by the

Tribunal as compensation is just and adequate in the circumstances of the case?

12. The factual aspect is not in dispute. The deceased was aged seven (7) years on the date of accident. She was prosecuting I Class. The findings recorded by the Tribunal that the third petitioner is not a necessary party cannot be upset for the reason that the third petitioner who was 1 ½ years old cannot be construed as a dependant on the deceased who was seven (7) years old on the date of accident.

13. Irrespective of the fact whether the deceased was really helping petitioners 1 and 2 in their business, in view of the decision of the Hon'ble Apex Court in **Puttamma v. K.L. Narayana Reddy**^[3], they are entitled to Rs.1,50,000/-, since, while referring to the amendment proposed to Schedule - II of the Act by the Central Government, the Hon'ble Supreme Court directed 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 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 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.”

14. 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 seven years old on the date of her death, the petitioners are entitled to Rs.1,50,000/- towards compensation.

15. 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**^[4], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**^[5] and **Rajesh and others v. Rajbir Singh and others**^[6], 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. So far as rate of interest is concerned, it is reduced to 7.5% per annum from 12%

p.a., in view of the decision of the Hon'ble Apex Court in **Rajesh's Case** (Supra 6).

16. Thus, the petitioners are entitled to a total compensation of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) as against Rs.25,000/-, granted by the Tribunal, and the same is accordingly granted with interest at 7.5% per annum on the entire compensation from the date of petition till realisation. However, the petitioners are directed to pay deficit court fee within a period of three (3) months from today.

17. Accordingly, the Civil Miscellaneous Appeal is allowed 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.

18. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

Date: 23.11.2015

Nsr/Pv

[\[1\]](#) 1988 ACJ 223 AP

[\[2\]](#) 2001(1) ALD 453 (DB)

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

[\[4\]](#) AIR 2003 SC 674

[\[5\]](#) 2012 ACJ 191 (SC)

[\[6\]](#) 2013ACJ1403 = 2013(4)ALT35