

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A.No.568 of 2005

JUDGMENT:

The instant appeal is preferred by the petitioners in M.V.O.P.No.43 of 2003 dissatisfied with the amount of Rs.80,000/- awarded as compensation with interest at 9% per annum for the death of the daughter of the petitioners/appellants by the order dated 25.01.2005 in M.V.O.P.No.43 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Kakinada (for short, 'the Tribunal').

2. The appellants herein are the petitioners in the original petition before the Tribunal, while respondent Nos.1 to 3, who are the driver, owner and insurer of the auto bearing No.AP-05-X-9753 respectively, were respondent Nos.1 to 3 respectively.

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 12.08.2002, the daughter of the petitioners by name Durga along with the petitioners went to Peddapuram from Kakinada to attend the marriage function. While they were proceeding towards marriage hall in an auto bearing No.AP-05-X-9753 and when it reached Bangaramma Temple Street, Peddapuram, since the driver of the auto, who is the

1st respondent herein, driven it in a rash and negligent manner, the auto turned upside down due to which, the said Durga received injuries and died instantly. The petitioners claim that the deceased was aged about 20 years, earning Rs.3,000/- per month by attending coolie work and supporting them. Since the respondent Nos.1 to 3, are driver, owner and insurer of the auto, they are jointly and severally liable to pay compensation to the petitioners and, hence, sought Rs.3,00,000/- having laid the claim under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

5. The respondent Nos.1 and 2 remained *ex parte* before the Tribunal and the 3rd respondent-Insurance Company opposed the claim by raising various pleas.

6. Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the 2nd petitioner herself was examined as P.W.1 and marked Exs.A.1 and A.2. On behalf of the 3rd respondent-Insurance Company, no witnesses were examined, but a copy of policy was marked as Ex.B.1.

7. On appraisal of evidence both, oral and documentary, the Tribunal held issue No.1 in favour of the petitioners holding that due to rash and negligent driving of the auto driver, the accident had occurred resulting in death of the deceased-Durga who died in unmarried status. On issue No.2, the Tribunal basing on injuries shown in Ex.A.2-postmortem examination report found that the deceased was aged 16 years as on the date of the accident as there was no other proof from the side of the petitioners, thus, taken the age as '16' years and disbelieved that the deceased was earning Rs.3,000/- per month by attending coolie work. Therefore, the Tribunal granted Rs.50,000/- towards compensation, Rs.25,000/- towards expenses in bringing up the deceased by the petitioners and Rs.5,000/- towards transportation of dead body and funeral expenses and, thus, awarded a sum of Rs.80,000/- as compensation with interest @ 9% per annum by giving further directions as to apportionment and withdrawal.

8. It is the aforementioned order under challenge, in the instant appeal contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and the finding recorded by the Tribunal that the deceased was only 16 years old is contrary to the evidence on record and the Tribunal ought to have granted entire amount of Rs.3,00,000/- as claimed by them.

9. Heard Sri N. Siva Reddy, learned counsel for the appellants on 04.02.2015. No representation on behalf of 3rd respondent-insurance company and none appeared for the 1st respondent-driver of the vehicle. The appeal against respondent No.2-owner of the vehicle was dismissed for default by order dated 04.01.2012. However, dismissal of the appeal for default against the 2nd respondent-owner is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**, wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

10. The submission of the learned counsel for the appellants is that the deceased was aged 20 years as on the date of accident, working as a coolie earning Rs.3,000/- per month and the Tribunal would have awarded entire amount for the sustenance of the family and she was unmarried and, therefore, the Tribunal was not right in taking the age of the deceased as '16' years as on the date of accident and in awarding Rs.80,000/- only under all heads.

11. Perused the order and evidence on record through Exs.A.1 and A.2 and oral evidence of PW.1. Except self-serving statement in her chief-examination that the deceased was 20 years old as on the date of the accident, no documentary evidence is placed before the Tribunal. Exs.A.1 and A.2 are the attested copies of F.I.R. and Postmortem certificate respectively, that has been the reason, the Tribunal was compelled to arrive at the age of the deceased by placing reliance on Ex.A2 entries which shows that the age of the deceased as '16' years. In such event, the finding recorded by the Tribunal cannot be interfered with when no concrete evidence was placed before the Tribunal to show that the deceased was 20 years old.

12. Turning to the amount of compensation awarded by the Tribunal, it is just and adequate. The learned counsel for the appellants placing reliance on a decision in ***Kishan Gopal and another v. Lala and others***, contends that the Hon'ble Apex Court held that it would be just and reasonable to take notional income at Rs.30,000/- per annum where the deceased was aged 10 years old basing on the principles laid down in ***Latha Wadhwa v. State of Bihar***, and, therefore, sought to grant compensation accordingly. It would be apt to refer to a decision of the Hon'ble Apex Court in ***Puttamma and others v. K.L.Narayana Reddy and another***. The

Apex Court while referring the claims under Sections 166 and 163-A of the Act read with II schedule held in Para 56 as follows:

”The central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A, 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 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/- (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.”

13. Thus, in the instant case, there is no convincing or legally acceptable evidence that the deceased was a coolie earning Rs.3,000/- per month in which event, the petitioners are entitled to a sum of Rs.1,50,000/- as compensation against Rs.80,000/- granted by the Tribunal, with interest at 7.5% per annum as per the decision of the Hon’ble Apex Court in ***Rajesh and others v. Rajbir Singh and others***.

14. In the result, the appeal is allowed in part and the award and decree dated 25.01.2005 passed by the Tribunal in M.V.O.P.No.43 of 2003 is modified, enhancing the compensation to Rs.1,50,000/- from Rs.80,000/-, with interest at 7.5% per annum from the date of petition till realization, as against 9% per annum granted by the Tribunal, on entire compensation, as per the decision of the Hon’ble Apex Court in **Rajesh’s case** (Supra 5). There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 09.02.2015

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