

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA  
PRADESH**

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**M.A.C.M.A. No.1171 OF 2005**

Between:

S.Pydiraju & another

...Appellants/ Petitioners

AND

N.Rambabu & 2 others

.. Respondents/ Respondents

-  
DATE OF JUDGMENT PRONOUNCED: 23-07-2015

**SUBMITTED FOR APPROVAL:**

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

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|---------------------------------------------------------------------------------|--------|
| 1. Whether Reporters of Local newspapers<br>may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be<br>marked to Law Reporters/Journals    | Yes/No |
| 3. Whether Their Lordship wish to<br>see the fair copy of the Judgment?         | Yes/No |

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

**M.A.C.M.A No.1171 of 2005**

**JUDGMENT:**

Dissatisfied with the amount of Rs.32,000/- granted as compensation by the order dated 24.02.2005 in M.V.O.P. No.1057 of 2003 on the file of the Motor Accidents Claims Tribunal-cum-X Additional District & Sessions Judge (Fast Track Court) Visakhapatnam at Anakapalle (for short, 'the Tribunal') as

against the claim of Rs.1,25,000/- under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of a minor boy, the petitioners, who happened to be his parents, preferred the instant appeal seeking enhancement of compensation.

2. The appellants herein are the petitioners, while respondent Nos.1 to 3, who are the respective driver, owner and insurer of the lorry bearing registration No.AP 21 U 3299, were respondents in the original petition before the Tribunal.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in Original Petition.

4. The facts in the instant appeal are that on 19.09.2000, the deceased boy about nine years old playing in front of their house, situated at SC Colony, Sankaram Village, Anakapalle. While so, the lorry bearing registration No.AP 21 U 3299 driven by 1<sup>st</sup> respondent in a rash and negligent manner at high speed dashed the boy causing serious injuries. The boy was shifted to Anakapalle Government Hospital, where he succumbed to injuries.

5. The petitioners stating that their son was studying 4<sup>th</sup> class and attending the agricultural work during holidays and earning Rs.30/- per day, sought the total amount of Rs.1,25,000/-. It is also stated that Anakapalle Rural Police registered a case in crime No.108 of 2000 under Section 304-A IPC against respondent Nos.1 to 3, who are driver, owner and insurer of the instant lorry.

6. Before the Tribunal, respondent Nos.1 and 2 remained *ex parte*. The 3<sup>rd</sup> respondent filed counter opposed the claim raising various pleas.

7. Basing on the said pleadings, the Tribunal framed four issues about the responsibility for the accident. During enquiry, the 1<sup>st</sup> petitioner examined himself as PW.1 besides examining PW.2 as an eye witness and marked Exs.A1 to A4 to substantiate the claim; whereas, on behalf of contesting respondent, no witnesses were examined and no documents were

exhibited.

8. The Tribunal on analysis of the evidence of petitioners, held that due to rash and negligent driving of the lorry driver, the accident was occurred. Concerning determination of compensation, the Tribunal having found that there is no evidence worth the name to prove the earning capacity of the deceased fixed Rs.25,000/- towards loss of earning power, Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium with interest at 9% per annum on the total compensation of Rs.32,000/- granted by it.

9. Having dissatisfied with the amount awarded by the Tribunal, the petitioners preferred the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence i.e., Exs.A1 to A4 and oral evidence of PWs.1 and 2 and the Tribunal ought to have taken the earnings of the deceased at Rs.30/- per day, thus sought for granting balance amount.

10. Heard Sri Nimmagadda Satyanarayana, learned counsel for appellants. No representation for the 1<sup>st</sup> respondent and so also on behalf of 2<sup>nd</sup> respondent. It is endorsed in the grounds of appeal that respondents 1 and 2, who are driver and owner of the lorry are not necessary parties to the instant appeal. Though the 3<sup>rd</sup> respondent—Insurance Company was served with notice, none appears on its behalf.

11. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioners. The deceased was nine years old on the date of accident is not in dispute. Even the deceased was prosecuting 4<sup>th</sup> class is also not in dispute. The finding of the Tribunal that there is no acceptable evidence on record to prove the earnings of the deceased at Rs.30/- per day cannot be disturbed for the reason that no legally acceptable evidence is forthcoming. Be that as it may, in view of the decision of Hon'ble Supreme Court in **Puttamma and others v. K.L.Narayan Reddy and another**<sup>[1]</sup>, the petitioners are entitled to Rs.1,50,000/- as the deceased has to be construed as non-earning member

since he was 9 years old as on the date of accident. Thus, the petitioners are entitled to Rs.1,50,000/- though their claim was Rs.1,25,000/- only, in view of the law laid down by the Hon'ble Supreme Court in **1)Nagappa v. Gurudayal Singh and others**<sup>[2]</sup> and 2) **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**<sup>[3]</sup>.

12. So far as rate of interest is concerned, the Tribunal granted 9% per annum on the compensation, but the same is reduced to 7.5% per annum in view of the Apex Court's expression in **Rajesh vs Rajbir Singh**<sup>[4]</sup>. Thus, the amount of Rs.32,000/- granted by the Tribunal is enhanced to Rs.1,50,000/- by reducing the rate of interest from 9% per annum to 7.5% per annum.

13. Accordingly, the appeal is partly allowed with the above modification. There shall be no order as to costs.

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

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**A. SHANKAR NARAYANA, J**

23<sup>rd</sup> July, 2015  
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**THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

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**M.A.C.M.A No.1171 of 2005**

Date:23.07.2015

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[\[1\]](#) 2014 ACJ 526 (DB)

[\[2\]](#) AIR 2003 SC 674 (DB)

[\[3\]](#) 2012 ACJ 191 (SC) (DB)

[\[4\]](#) 2013 ACJ 1403 (FB)