

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.10 OF 2008

-

JUDGMENT:

This appeal is preferred by M/s New India Assurance Company Limited – 2nd respondent in O.P. No.320 of 2002, aggrieved of the order, dated 16-05-2007, in O.P. No.320 of 2002, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Nizamabad (for short 'the Tribunal'), whereby and whereunder, a sum of 2,18,000/- was awarded as compensation for the death of Bjarang Yadav, as against the claim laid for Rs.10,00,000/- (Rupees ten lakhs only) under Section 166(1)(c) of the Motor Vehicles Act, 1988 (for short 'the Act') by wife and mother of the deceased originally. The instant appeal is preferred mainly on the ground that the father-in-law and mother-in-law, who are respondent Nos.3 and 4 herein cannot be construed as dependants on the deceased.

2. The appellant herein is respondent No.2, in the O.P. before the Tribunal, while deceased respondent Nos.1 and 2, who are wife and mother of the deceased – Bjarang Yadav, are petitioner Nos.1 and 2; respondent Nos.3 and 4, who are father-in-law and mother-in-law of the deceased, are petitioner Nos.3 and 4, who were subsequently brought on record on the demise of petitioner Nos.1 and 2, as per orders, dated 06-02-2007, in I.A. No.228 of 2007 and respondent No.5, who is owner of the vehicle, is respondent No.1.

3. For the sake of convenience, the parties are hereinafter

referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 25-01-2002, the deceased – Bajarang Yadav along with others was going on foot from Sarangapur to Bodhan and at about 7.45 P.M., when they reached the outskirts of Sarangapur village, a tractor bearing registration No.AP 25/E 6755 with sugarcane load in the trailer bearing registration No. AAJ 5462 driven by its driver at high speed in a rash and negligent manner, due to which, the driver lost control and trailer along with sugarcane load turned upside down which fell on Bajarang Yadav causing his instant death.

i) Originally, the wife and the mother laid the claim. During pendency of the petition, the 2nd petitioner, mother of the deceased died on 29-10-2006, while the 1st petitioner, wife of the deceased, died on 12-11-2006. Later, petitioner Nos.3 and 4, who are father-in-law and mother-in-law of the deceased, came on record as per the orders, dated 06-02-2007 in I.A. No.228 of 2007, as the legal representatives contending that the entire estate belonged to the deceased devolved on them and, therefore, they sought to grant compensation.

5. The 1st respondent filed written statement opposing the claim.

6. The 2nd respondent also opposed the claim by raising various pleas. Contending that the claim is highly excessive, arbitrary, sought to dismiss the claim.

7. Based on the pleadings, the Tribunal framed three issues about fixing responsibility for the accident. During inquiry,

on behalf of the petitioners, 3rd petitioner examined himself as PW.1, besides examining one Gulshan Kumar as PW.2, who is an eye witness to the occurrence, and marked Exs.A-1 to A-7. On behalf of the respondents, no witnesses were examined, but copy of insurance policy was marked as Ex.B-1.

8. The Tribunal found issue No.1 in favour of the petitioners basing on the evidence let in by the petitioners.

9. On issue No.2, the Tribunal determined the compensation at Rs.2,18,000/- as to the entitlement of petitioners No.3 and 4 placing reliance on the decision of the Hon'ble Supreme Court in **Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbai and another**^[1], held that petitioner Nos.3 and 4 are entitled to the compensation being legal representatives of the deceased.

10. Heard Mrs.I. Mammu Vani, learned counsel for the appellant and Sri Y.S. Yellanand Gupta, learned counsel for respondent No.5 – Insured. Though, served with notices, none appears for respondent Nos.3 and 4.

11. The controversy is very short in the instant appeal, as it involves the issue whether petitioner Nos.3 and 4 can be construed as legal heirs and dependants on the deceased. In that direction, evidence of PW.1, who is petitioner No.3, is material. In fact, the answers given by him, in his cross-examination, would cut at the root of claim they made on the ground that they are legal representatives and are entitled for the compensation. Instead of referring to each answer, it would be appropriate to extract the relevant portion in his cross-examination which runs thus:

“...The deceased used to reside in Sarangapoor. The witness again says, I do not know where the deceased was residing. I was not residing along with deceased. I can not say the house number of Bajrang Yadav. The petitioner Nos.1 and P2 were not residing along with the deceased at Sarangapoor prior to accident. The deceased is married. I can not give in which year the deceased was born and he was an uneducated. I have not filed any document to show the date of birth of deceased. I can not give the date of death of the deceased. After the accident I came to Nizamabad and the deadbody of the deceased was cremated at Nizamabad....”

“...I obtained Ex.A-6 & 7 about 5 or 6 months ago. It is not true to say that I am not the father-in-law of the deceased and that P4 is not the mother-in-law of the deceased. It is not true to say that Ex.P-6 & P-7 are created for the purpose of this case without proper seal. I can not give the name of company in which the deceased was working, but he was working at Sarangapoor. I have not brought any record to show that the deceased was working in a company and that he was earning.....”

Nothing more is required to adjudicate upon the controversy herein when viewed in the light of the answers given by PW.1 in his cross-examination, as extracted in the above, but they cannot be construed as dependants as the above answers would condemn their stand. When viewed in that perspective on which decisions relied on by the learned counsel for the appellant in **Manjuri Bera v. Oriental Insurance Company Ltd.**^[2] Rendered by the Hon'ble Supreme Court and in **New India Assurance Co.Ltd., Warangal**

v. Samala Agaiah and another^[3] rendered by this Court, the relevant observations made by the Hon'ble Supreme Court in **Manjuri Bera's Case** (Supra 2) would, certainly, disentitle petitioner Nos.3 and 4 to contend that they are dependants on the deceased. However, since they are legal representatives, they are entitled to Rs.50,000/- under section 140 of the Act as per the decision of the Hon'ble Supreme Court in **Manjuri Bera's Case** (Supra 2). Therefore, the compensation awarded by the Tribunal is reduced to Rs.50,000/- from Rs.2,18,000/-. Concerning rate of interest granted by the Tribunal, since the Tribunal has awarded at 7.5%, the same is maintained in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[4].

12. In the result, the appeal is allowed in part, reducing the compensation to Rs.50,000/- (Rupees fifty thousand) from Rs.2,18,000/- granted by the Tribunal with interest at 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 19, 2015.
Mgr

[\[1\]](#) . 1987 ACJ (II) 561

[\[2\]](#) . 2007 (3) ALD 55(SC)

[\[3\]](#) . 2012 (5) ALD 322

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