

**THE HON'BLE SMT. JUSTICE ANIS**

**M.A.C.M.A. No. 834 OF 2005**

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**JUDGMENT:**

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 31.01.2001, passed by the Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, Nizamabad, in O.P.No.283 of 1995, awarding compensation of Rs.62,500/-.

2. The claimants filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.1,50,000/- on account of the death of one Smt. G.Rajavva (hereinafter referred to as 'the deceased') in a motor vehicle accident.

3. The brief averments made in the petition are that on 05.02.1995 the deceased was travelling in the lorry bearing No.ATJ 407 along with the petitioners from Nizamabad towards Adilabad side. The driver of the said lorry drove it on the side of the road very slowly and cautiously. At about 6.15 a.m., when the lorry reached near Chincholi cross road on Hyderabad to Nagpur road on NH7, a lorry bearing No.AP25T 1452 came from opposite direction driven by its driver with high speed in a rash and negligent manner and dashed the lorry in which the deceased was travelling. Due to the said accident, the deceased received grievous and crush injuries and died on the spot.

The petitioners stated that at the time of accident, the deceased was aged 40 years, attending agricultural work and earning Rs.3,000/- per month. The deceased was contributing her

entire income for the welfare of the petitioners. Due to the death of the deceased, the petitioners are suffering mental shock and agony.

The first respondent is the owner of the lorry and the second respondent is the insurance company, and the insurance policy was in subsisting. Therefore, both the respondents are jointly and severally liable to pay compensation to the petitioners.

4. The brief averments made in the counter filed by the first respondent are as follows:

The respondent put the petitioners to prove the manner of accident, age, income of the deceased and also dependency of the petitioners, and denied that the accident occurred due to rash and negligent driving of the lorry bearing No.AP25T 1452 by its driver. The respondent also contended that about 60 persons were travelling in the lorry bearing No.ATJ 407 and carrying the passengers in the goods vehicle is prohibited under law. The respondent further contended that due to carrying of huge number of persons in the lorry as well as in the cabin, the driver could not have driven the vehicle cautiously, therefore the respondent is not liable to pay compensation. It is also contended that the offending lorry was duly insured with the second respondent and insurance policy was in force. It is finally contended that the claim of the petitioners is high and excessive, and prayed the Court to dismiss the petition.

5. The brief averments made in the counter filed by the second respondent are as follows:

The petition filed by the petitioners is not maintainable either in law or on facts. As the owner of the lorry bearing No.ATJ 407 is neither made as a party nor named in the petition, as such the

petition is not maintainable. The respondent denied that the deceased was travelling in the lorry bearing No.ATJ 407 on 05.02.1995 and received injuries in the accident. The respondent also denied the manner of accident. It is contended that the accident was caused due to rash and negligent driving of the lorry in which the deceased was travelling. The lorry bearing No.ATJ 407 is a goods vehicle and it cannot carry 60 passengers against the provisions of the Act. The respondent further denied the age, avocation and income of the deceased, and finally, prayed the Court to dismiss the petition.

6. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs 1 and 2 were examined and got marked Exs.A.1 to A.3. On behalf of the respondents, RWs 1 to 3 were examined and got marked Exs.B.1 to B.19.

7. After considering the oral and documentary evidence, the Tribunal awarded compensation of Rs.62,500/- to the petitioners along with 12% interest.

8. Not satisfied with the compensation awarded by the Tribunal, the petitioners preferred the present appeal.

9. The learned counsel for the appellants argued that the deceased was aged about 40 years at the time of accident and she was earning Rs.3,000/- by doing agriculture. The Tribunal, without considering all the above aspects, granted meagre amount. Therefore, prayed the Court to enhance the compensation.

10. On the other hand, the learned counsel for the insurance company contended that after considering the evidence on record, the Tribunal rightly awarded Rs.50,000/- towards no fault liability as the petitioners failed to prove the age and income of the

deceased. The post-mortem examination report clearly establishes that the deceased was aged about 65 years at the time of accident. Further, the deceased was not having any income at the time of accident. Therefore, prayed the Court to dismiss the appeal.

11. Having regard to the submissions made by the learned counsel for both the parties, the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellants are entitled for enhancement of compensation?

12. **Points:**

Admittedly, the petitioners have not produced any evidence to show that the deceased was earning Rs.3,000/- per month by raising agricultural crops. Likewise, the petitioners have not produced any document to prove that the age of the deceased is less than 65 years. As per Ex.A.3 post-mortem examination report, the deceased was aged about 65 years. Admittedly, the petitioners are the major sons and they are not dependants on the deceased. Therefore, considering all these aspects, the Tribunal rightly awarded Rs.50,000/- under no fault liability and the said finding needs no interference by this Court.

13. Coming to the compensation towards love and affection and funeral expenses, the learned counsel for the second respondent rightly conceded that in view of the judgment of the Hon'ble Supreme Court, funeral expenses can be granted at Rs.25,000/-. Further, this Court can enhance the reasonable and just

compensation under the head of loss of love and affection.

14. After hearing both the sides and after considering the facts and circumstances of the case, an amount of Rs.25,000/- is awarded towards funeral expenses and Rs.5,000/- is awarded towards loss of love and affection. Thus, the total compensation payable to the petitioners/claimants comes to Rs.80,000/- (Rs.50,000/- + Rs.25,000/- + Rs.5,000/-) from Rs.62,500/-.

15. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.62,500/- to Rs.80,000/-. For the enhanced amount of Rs.17,500/-, an interest at 7.5% is awarded in view of the judgment of the Hon'ble Supreme Court reported in *Sarla Verma and others Vs. Delhi Transport Corporation and another* <sup>[1]</sup> from the date of appeal till the date of realisation.

16. In the result, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

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(ANIS, J)

29.06.2015  
Anr

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