

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.739 of 2006

JUDGMENT:

The 1st appellant-Kunchala Srinivasa Reddy initially preferred the instant appeal having got dissatisfied with the amount of Rs.1,47,250/- granted by the Chairman, Motor Accidents Claims Tribunal-cum-IX Additional District Judge, Guntur (for short, 'the Tribunal') in M.V.O.P.No.218 of 2004 by order dated 31.01.2006 as against his claim for Rs.2,35,000/- laid under Sections 140, 141, 163-A and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') and the Rules framed thereunder for the injuries sustained by him in a road accident.

2. During pendency of the appeal, the said Srinivasa Reddy had expired, his wife Govindamma is brought on record as his legal heir and representative as the 2nd appellant by the order dated 29.04.2008 in M.A.C.M.A.M.P.No.2118 of 2008, who pursued the instant appeal.

3. The 1st appellant (died, per LR 2nd appellant herein, his wife) herein is the petitioner, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

5. The facts in brief are that on 14.01.2004 at about 12 noon, while the petitioner was proceeding on his bullock cart along with sugarcane load from the fields to the factory, riding it on the left side of Nadakuduru road and when he reached Nadakuduru Karakatta bridge, the driver of the lorry belonging to the 1st respondent driven it in a rash and negligent manner at high speed, dashed the bullock cart and the petitioner who jumped from the cart to avert sustaining injuries, but came under the wheels of the lorry and received crush injury to his right leg. He was taken to a private nursing home at Challapalli and after first-aid was given, he was shifted to Government General Hospital, Guntur, where he underwent treatment as an inpatient. The Station House Officer, Challapalli Police Station registered a case in

Crime No.9 of 2004 against the lorry driver. According to the petitioner, he had undergone treatment and his right leg was amputated upto the knee joint, and, thus, he was unable to move out of the bed and to attend his personal duties. It is also his case that he was 28 years old earning Rs.120/- per day as a coolie, and, therefore, he laid the claim against the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle.

6. Before the Tribunal, respondent No.1 remained *ex parte* and respondent No.2 filed counter opposing the claim raising various pleas.

7. Basing on the aforesaid pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner-deceased appellant examined himself as P.W.1 besides examining Dr.V.N.Krishna Prasad as P.W.2 and marked Exs.A.1 to A.4 and X.1; whereas, on behalf of respondent No.2, one R.Adi Seshu from its local branch, was examined as R.W.1 and marked Exs.B.1 and B.2.

8. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioner; and on issue No.2, referring to the injuries spoken to by P.W.2, which are finding place in Ex.X.1, and the disability at 50%, taken notional income at Rs.15,000/- per annum, and, thus, worked out the loss of future earning capacity at Rs.1,35,000/-, besides arriving at Rs.5,000/- reimbursement of medical expenses, though, no medical bills were filed, Rs.10,000/- towards pain and suffering and Rs.5,000/- towards loss of amenities in his life, and, thus, a total sum of Rs.1,55,000/- was granted, but, however, found the contributory negligence on the part of the petitioner-deceased appellant and apportioned it at 5% and in proportionate thereto, a sum of Rs.7,750/- was deducted from Rs.1,55,000/-, and, thus, granted Rs.1,47,250/- with interest at 6% per annum.

9. It is the aforesaid order which is under challenge in the instant appeal filed by the deceased appellant-petitioner originally, subsequently when his death occurred, his wife came on record.

10. Heard Sri P.Hari Babu, assisting Sri N.Subba Rao, learned counsel for the appellants. No representation for the 2nd respondent-Insurance Company. The 1st respondent, though, served with notice, none appears for him.

11. Perused the order under challenge and the evidence on record, both, oral and

documentary, let in by the parties. Since the instant appeal is filed for enhancement of compensation, this Court is very limited, that too, since the sole-appellant, who filed the instant appeal, died during pendency of the appeal and his wife came on record as his legal heir and representative. Therefore, in view of the settled principle of law as per the decisions in **Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair**, **Umed Chand Golcha v. Dayaram and others** and **Smt. Sipra Bhowmik vs. Shri Soumendra Ch. Sasha and others**, the 2nd appellant herein is only entitled to the amount granted by the Tribunal so far as the loss of future earning capacity is concerned. However, towards transport charges, no amount was granted by the Tribunal. Therefore, a sum of Rs.5,000/- is granted keeping in view the amputation sustained by the deceased-1st appellant.

12. Thus, the 2nd appellant is entitled to a total sum of Rs.1,52,250/- (Rupees one lakh fifty two thousand two hundred and fifty) as against Rs.1,47,250/- granted by the Tribunal, towards compensation and the same is accordingly granted. The Tribunal granted interest at 6% per annum and the same is enhanced to 7.5% per annum on the entire amount from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

13. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation as well as the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

02nd April, 2015.

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