

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.963 OF 2005

JUDGMENT:

Aggrieved by the order and decree, dated 19-10-2004, in M.V.O.P. No.292 of 2000, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Guntur, whereby and where-under the Tribunal awarded a sum of Rs.50,000/- (Rupees fifty thousand) as compensation as against the claim of Rs.2,25,000/- (Rupees two lakh and twenty five thousand) laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the appellant - petitioner preferred the instant appeal under Section 173 of the Act, seeking enhancement of compensation.

2. The appellant and respondent Nos.3 and 4 herein, who are wife and parents of deceased – Atukuri Srinivasa Rao, respectively, are petitioner and respondent Nos.3 and 4, respectively, in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of Lorry bearing registration No.AP 9T 8292, respectively, are respondent Nos.1 and 2, respectively.

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 fact-situation occurring in the instant case is, that on 13-12-1999, one Atukuri Srinivasa Rao was proceeding on Lorry bearing registration No.AP 9T 8292 as cleaner and at about 11.00 A.M., when the lorry reached near Badenapalli, due to rash and negligent driving of its driver, the lorry turned upside down resulting instantaneous death of the said Srinivasa Rao.

i) The Station House Officer, Vanastalipuram Police Station, registered a case in Crime No.383 of 1999 under Section 304-A of the Indian Penal Code, 1860 against the driver of the lorry.

ii) According to the petitioner, herself and respondent Nos.3 and 4 being wife and parents of the deceased, are the only legal heirs of the deceased, and claiming that the deceased was earning Rs.1,500/- per month, sought a sum of Rs.2,25,000/- as compensation against respondent Nos.1 and 2 being owner and insurer of the crime vehicle.

5. Respondent No.1, owner of the lorry, remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurance Company filed counter raising various pleas, and also required the petitioner to prove that the driver was holding a valid driving license, and finally sought to dismiss the claim on the ground that the compensation sought is excessive and unreasonable.

7. Respondent Nos.3 and 4 also filed counter sailing with the petitioner and stating that they were dependants on the deceased .

8 . The Tribunal, basing on the pleadings, framed three issues about the responsibility for the accident.

9. During inquiry before the Tribunal, the petitioner examined herself as PW.1 and marked Exs.A-1 to A-3, which are certified copies of First Information Report; Inquest Report; and Certificate issued by Vanastalipuram Police Station. On behalf of the respondents, neither oral nor documentary evidence was adduced.

10. The Tribunal, on appraisal of evidence on record, recorded the finding that failure on the part of the petitioner to prove rash and negligent driving of the driver of the lorry, the petitioner and respondent Nos.3 and 4 were only entitled to compensation under 'no-fault liability', and thereby a sum of Rs.50,000/- was

granted with interest at the rate of 6% per annum thereon placing reliance on a decision of the Hon'ble Supreme Court in **Abati Bezbaruah v. Deputy Director General, Geological Survey of India**, and apportioned the same at Rs.15,000/- each to respondent Nos.3 and 4 and Rs.20,000/- to the petitioner.

11. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal went wrong in recording a finding that the petitioner is entitled to the amount under 'no-fault' liability, and the very fact that no eye-witness was examined, despite the fact that the First Information Report was issued by the Station House Officer of Vanastalipuram Police Station showing the rash and negligent driving of the driver of the lorry and other evidence substantiating the same.

12. Heard Sri A. Rajendra Babu, learned counsel for the appellant – petitioner. No representation for respondent No.2 – Insurance Company. The appeal was dismissed against respondent Nos.3 and 4, but the same is of no consequence as they being parents of the deceased. So far as dismissal of appeal against respondent No.1 is concerned, since he remained *ex parte* before the Tribunal and suffered the decree, the same is also of no consequence in view of the decision of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**.

13. Now, the only point that arises for consideration is, whether the petitioner is entitled to enhancement?

14. Perused the evidence on record and the award. On perusal of the award, the Tribunal except recording the finding that since the petitioner has not examined the eye-witness, it has to be construed that she failed to prove the rash and negligent driving on the part of the driver of the lorry and thereby granted compensation under 'no-fault' liability, nothing has been discussed about the other evidence on record. However, Ex.A-1 and A-2, which are certified copies of First Information Report and Inquest Report, are sufficient

enough to hold that the driver of the lorry was shown as accused and the death of the deceased was the result of rash and negligent driving of the lorry driver. In such an event, certainly, it cannot be said that on account of non-examination of eye-witness, the claim shall fail and the petitioner is only entitled to the compensation under 'no-fault' liability. Therefore, to the extent of that finding, the same is withheld.

15. Now, turning to the just and reasonable compensation, according to the petitioner and also respondent Nos.3 and 4, as seen from the counter filed by them, the deceased, as a cleaner, was earning Rs.1,500/- per month. Nothing has been placed to substantiate such earnings. In such an event, it would be appropriate to hold that annual income of the deceased can be fixed at Rs.15,000/-(Rupees fifteen thousand) as per the Second Schedule appended to Section 163-A of the Act, and by deducting 1/3rd there-from, contribution of the deceased to his family can be arrived at Rs.10,000/-(Rupees ten thousand) per annum. Since the deceased was aged 30 years, relevant multiplier is '17' as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**. When the same is applied, loss of dependency works out to Rs.1,70,000/- [Rs.10,000/- x 17]. The petitioner is also entitled to a sum of Rs.50,000/- towards conventional sums under the head of loss of consortium and loss of estate. Thus, in all, the petitioner and respondent Nos.3 and 4 are entitled to a sum of Rs.2,20,000/- as compensation.

16. Concerning rate of interest, the Tribunal granted the same at 6% per annum, but the same is enhanced to 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**.

17. In the result, the appeal is allowed in part, and the order and decree, dated 19-10-2004, in M.V.O.P. No.292 of 2000, passed by the Tribunal, are modified enhancing the compensation to Rs.2,20,000/- (Rupees two lakh and twenty thousand) from Rs.50,000/-(Rupees fifty thousand) and also the rate of interest to 7.5% per annum from 6% per annum from the date of petition till realization. The compensation shall be apportioned among the petitioner and respondent

Nos.3 and 4 in the same proportion in which the original compensation was directed to be apportioned and disbursed by the Tribunal. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

October 27, 2015.

Mgr