

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1197 OF 2005

JUDGMENT:

Seeking enhancement of compensation, the instant appeal is preferred by the petitioners, dissatisfied by the order and decree, dated 09-03-2005, in M.V.O.P. No.311 of 2003, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge, Kakinada (for short 'the Tribunal'), whereby and where-under, a sum of Rs.1,40,000/- was granted as compensation with interest at 9% per annum thereon as against the claim of Rs.3,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the death of Shaik Alibabu.

2. The appellants herein are petitioners in the O.P. before the Tribunal, while respondent No.1, driver and Respondent No.2 – Andhra Pradesh State Road Transport Corporation, owner of bus bearing registration No.AP 10Z 9114, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 02-10-2002, deceased – Shaik Alibabu was proceeding on his bicycle to Gaigolupadu, and when he reached Ashram Public School, Kakinada, a bus bearing registration No.AP 10Z 9114 driven by its driver – 1st respondent at high speed in a rash and negligent manner, hit the cyclist causing injuries to him. He was immediately shifted to Government General Hospital, Kakinada, where he was declared dead by the duty doctor. The concerned Station House Officer also registered a case in Crime No.212 of 2002 under Section 304-A IPC against the driver of bus.

i) The petitioners being parents of the deceased, projecting that the deceased was 20 years old on the date of accident, earning Rs.100/- per day as carpenter, sought to grant Rs.3,50,000/- as compensation against the respondents.

5. Respondent No.1, driver of the bus, remained *ex parte* before the Tribunal.

6. Respondent No.2 - APSRTC filed counter opposing the claim. Contending that had the deceased been a bit alert while going on his bicycle, taking place of accident would have been averted. Even other pleas were also taken, but they are not worth mentioning, since APSRTC has not preferred the appeal.

7. Based on the pleadings, the Tribunal framed three issues about fixing responsibility for the accident. During inquiry before the Tribunal, the 1st petitioner examined himself as PW.1, besides examining one Mr. N. Srinivas, an eye witness to the occurrence, as PW.2 and marked Exs.A-1 to A-3. On behalf of the respondents, the 1st respondent, driver of the bus, examined himself as RW.1, but no documents were filed.

8. The Tribunal, on appraisal of evidence, held issue No.1 in favour of petitioners observing that due to rash and negligent driving of the driver of bus belonging to the 2nd respondent, the accident has occurred.

9. On issue No.2, basing on the evidence of PW.1, the Tribunal determined the compensation taking the age of the younger parent between 40 and 45 years and taken the monthly income at Rs.1800/- on an average and having deducted 1/3rd there-from towards his personal expenses, though, arrived his contribution to the petitioners at Rs.1,200/- per month, still, taken only Rs.750/- per month which the deceased may contribute to his parents even after the marriage also and, accordingly, arrived at Rs.9,000/- per annum [Rs.750/- x 12]

and applied multiplier '15' and, thus, arrived at Rs.1,35,000/- towards loss of dependency, besides granting Rs.5,000/- towards transportation of dead body and funeral expenses and, thus, a total sum of Rs.1,40,000/- was granted as compensation with interest at 6% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioners, contending in the grounds of appeal that the Tribunal has granted a meager amount and, therefore, sought to grant the balance amount.

11. Heard Sri N.V. Anantha Krishna, learned counsel for the appellants – petitioners. The instant appeal was dismissed against the 1st respondent, driver of RTC bus on 3-1-2012 and the said dismissal makes no difference in adjudicating upon the request herein. Despite service of notice on APSRTC – respondent No.2, none appears for it.

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12. Perused the order and the evidence on record let in by the petitioners.

13. The Tribunal while determining the compensation observed that no evidence is forthcoming to show that the deceased was earning Rs.100/- per day and taken the earnings at Rs.1800/- on an average, deducted 1/3rd there-from and since the deceased died in unmarried status, arrived at Rs.750/- per month as contribution had he been alive that much amount he would have contributed to his parents even after marriage and thereby arrived at Rs.9,000/- per annum towards loss of dependency. The Tribunal applied multiplier '15' basing on the age of the younger parent and awarded Rs.5,000/- towards transportation of dead-body and, thus, granted a sum of Rs.1,40,000/-. It is mentioned that the deceased was a carpenter and the learned counsel contends that he was a skilled worker and, therefore, it cannot be doubted that he was earning Rs.100/- per day during those days, and the Tribunal, somehow, taken Rs.1800/- per month as against Rs.3,000/- which the Tribunal ought to have taken.

14. Though, the petitioners contended that the deceased was earning Rs.100/- per day, certainly, it suffers from exaggeration in the absence of any documentary proof. The Tribunal has not assigned any reasons as to why it arrived at Rs.1800/- per month. Since the deceased was a carpenter, even according to the evidence of PW.2 which assertion was not shattered in his cross-examination, the earnings of the deceased can be taken at Rs.2,000/- per month, in which case, it accounts for Rs.24,000/- per annum. Since the deceased died in unmarried status at the age of 20 years, half of his earnings have to be deducted towards his personal expenses and, therefore, his contribution works out to Rs.12,000/- per annum. The relevant multiplier is '18' as per the decisions of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another** and **Amrit Bhanu Shali and others v. National Insurance Co.Ltd. and others**, and if the multiplier '18' is applied, it works out to Rs.2,16,000/- [Rs.12,000 x 18] towards loss of dependency. The Tribunal has granted Rs.5,000/- towards transport of dead body and funeral expenses, treating the said amount towards transport of dead body, another sum of Rs.5,000/- is granted towards funeral expenses. Towards loss of love and affection to the parents, a sum of Rs.20,000/- is granted at Rs.10,000/- each. Thus, in all, the petitioners are entitled to Rs.2,46,000/- (Rupees two lakhs and forty six thousand) as against Rs.1,40,000/- granted by the Tribunal. Concerning interest, the Tribunal granted it at 9% per annum, but the same is reduced to 7.5% per annum as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

15. In the result, appeal is allowed in part, and the order and decree, dated 09-03-2005, in M.V.O.P. No.311 of 2003, passed by the Tribunal are modified, enhancing the compensation to Rs.2,46,000/- (Rupees two lakhs and forty six thousand) from Rs.1,40,000/- granted by the Tribunal with interest thereon at 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any, pending in the

appeal, stand disposed of.

A. SHANKAR NARAYANA, J

March 31, 2015.

Mgr