

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.507 of 2005

JUDGMENT:

Aggrieved of the order dated 22.09.2004 in O.P.No.119 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad (for short, 'the Tribunal'), whereby and whereunder, a sum of Rs.60,000/- was granted as compensation as against the claim for Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') and the Rules framed thereunder, the instant appeal is preferred by the husband, daughter and grand-daughter of the deceased-Bonda Ashamma, who died in a road accident.

2. The appellants herein are the petitioners, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

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

4. The facts in brief are that on 15.01.1999, the said Bonda Ashamma while travelling in a jeep bearing registration No.AP 25T 5661 from Nizamabad towards Indalvai at about 12-30 noon, when they reached Nagpur gate, a lorry bearing registration No.AP 25T 4317 driven in a rash and negligent manner at high speed coming in wrong direction, dashed the jeep, resulting in the head injury to her and she died while being shifted to the hospital. Since the respondent Nos.1 and 2 are the owner and insurer of the said lorry, the petitioners laid claim against them seeking Rs.5,00,000/- as compensation.

5. Before the Tribunal, the 1st respondent-owner of the accident vehicle, denied the allegations made in the claim, whereas, the 2nd

respondent Insurance Company also filed counter by taking various pleas opposing the claim.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the 1st petitioner examined himself as P.W.1 besides examining three more witnesses as P.Ws.2 to 4 and marked Exs.A.1 to A.6; whereas, on behalf of the respondents, no witnesses were examined, but copies of driving licence and insurance policy were marked as Exs.B.1 and B.2 respectively, on consent.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioners; and on issue No.2, concerning the dependency of the petitioner Nos.2 and 3, did not agree with the stand taken by them, but however, granted Rs.60,000/- observing in paragraph-10 thus:

"Had the deceased was alive, there was possibility for the petitioners 2 and 3 to expect some thing in the kind of cash or otherwise from the deceased. In such circumstances, I am satisfied to award a compensation of Rs.50,000/- to the petitioners 2 and 3 towards loss of services of the deceased to petitioners 2 and 3 and also towards loss of love and affection of the deceased to them because under no fault liability, minimum amount of Rs.50,000/- has to be granted as compensation on account of death of deceased. That apart, a sum of Rs.5,000/- is awarded towards loss of estate and Rs.5,000/- towards funeral expenses and transportation of dead body of the deceased. Thus, a sum of Rs.60,000/- is awarded to the petitioners 2 and 3."

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal ought to have awarded minimum compensation of Rs.15,000/- towards loss of estate instead of awarding Rs.5,000/- under the said head and ought to have awarded more amount than Rs.5,000/- awarded towards funeral expenses and transportation of dead body. The Tribunal was

also not right in appreciating the evidence in proper perspective for the reason that the Tribunal sidelined the vital circumstance that the 2nd petitioner being deserted by her husband, living with her parents, i.e., the deceased and 1st petitioner, and, therefore, sought to enhance the compensation by granting the balance amount of Rs.4,40,000/-.

9. Heard Sri P.Radhive Reddy, learned counsel for the appellants, in part on 10.02.2015, and listed this matter today under the caption 'part-heard' and there is no representation on behalf of the appellants. Hence, heard Sri K.Ashok Rama Rao, learned Standing Counsel for the 2nd respondent-Insurance Company. None represents the 1st respondent.

10. Learned counsel for the petitioners-appellants placing reliance on the decisions of the Hon'ble Apex Court in **Montford Brothers of St. Gabriel and another v. United India Insurance Co. Ltd. and another**^[1], **United India Insurance Co. Ltd., Hyderabad v. G.Satish Kumar and others**^[2] and **Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and another**^[3], contends that the appeal is maintainable and the petitioners 2 and 3 can be construed as dependents on the deceased, as well as the husband of the 1st petitioner, whose death occurred during the pendency of the petition before the Tribunal, and, therefore, they are vested with the right to seek enhancement of compensation through the instant appeal.

12. On the other hand, the learned counsel for the 2nd respondent-Insurance Company submits that the law is well settled that a married daughter cannot be construed as a dependent and to fortify his submission, he placed reliance on the decision of the Hon'ble Apex Court in **Amrit Bhanu Shali and others v. National Insurance Co.**

Ltd. and others^[4] and the decision of the Allahabad High Court in **Chandrawati v. Ram Sewak and another**^[5].

13. Perused the order under challenge and the evidence let in by the parties. The short point that arises for consideration is, whether the 2nd appellant, who is the married daughter of the deceased and the 1st appellant, and the 3rd appellant being the daughter of the 2nd appellant, can be construed as dependents and are entitled for enhancement of compensation?

14. The decisions relied on by the learned counsel for the appellants would not assist them so as to construe the appellant Nos.2 and 3, though, they are legal representatives, but in the fact-situation occurring in the instant appeal, they cannot be construed as dependents, more particularly, in view of the law laid down by the Hon'ble Apex Court in **Amrit Bhanu Shali's** case (4 supra) relied on by the learned counsel for the 2nd respondent-Insurance Company, wherein it was specifically held that the sister of the deceased could not be treated as dependent upon the deceased as she was married by the time when the compensation was determined, though, she was unmarried on the date of the accident. The other decision in **Chandrawati's** case (5 supra) is to the effect that the married daughter as a legal representative of the deceased is not entitled to the claim. The High Court of Allahabad placing reliance on the decision of the Hon'ble Apex Court in **Manjuri Bera v. Oriental Insurance Co. Ltd.**^[6], where the claim petition was laid by married daughter of the deceased, held that she would maintain the claim under Section 140 of the Act but not under Section 166 of the Act, where she was not dependent on the deceased. Thus, viewed from any angle, there is no merit in the appeal and it cannot be maintained for seeking enhancement by a married daughter along with her daughter.

15. In the result, the appeal is dismissed confirming the order and decree dated 22.09.2004 passed by the Tribunal in O.P.No.119 of 1999. 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

18th February, 2015

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[\[1\]](#) 2014 ACJ 667

[\[2\]](#) 2012(3) ALD 226

[\[3\]](#) AIR 1987 SC 1690(1)

[\[4\]](#) 2012(6) SCALE

[\[5\]](#) 2014 ACJ 1669

[\[6\]](#) 2007 ACJ 1279 (SC)