

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.2262 OF 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.59,000/- granted as compensation by the order dated 12.09.2001 in M.V.O.P. No.404 of 1998 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Guntur (for short, 'the Tribunal') as against the claim of Rs.1,50,000/- laid under Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of son of the appellants-petitioners by name Nagaiah, who was aged 14 years, in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. Appellant Nos.1 and 2 herein, who are the parents of the deceased minor boy, are petitioner Nos.1 and 2, while respondent Nos.1 and 2 herein, who are the owner and insurer of the lorry bearing registration No.AAE 4866, respectively, are respondent Nos.1 and 2, respectively, in the original petition.

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

4. The fact-situation occurring in the instant case is that the son of the petitioners by name, Nagaiah, who was aged 14 years and a student, along with his grand-father was returning to home on 09.01.1998 on a bicycle and when they reached near Kollicharla drain bridge at Mulukuduru village, a lorry bearing registration No.AAE 4866 driven by its driver in a rash and negligent manner at high speed came from opposite direction and dashed the bicycle, due to which, both of them fallen down and when shifted to

Government Hospital, Ponnur, the boy was declared dead, whereas, the grand-father was shifted to Government General Hospital, Guntur. The concerned police also registered a case in Crime No.3 of 1998 for the offences punishable under Sections 304-A and 337 I.P.C. against the driver of the lorry. The petitioners, therefore, sought Rs.1,50,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the lorry respectively.

5. Before the Tribunal, respondent No.1-owner of the lorry remained *ex parte*. Respondent No.2-insurer of the lorry opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1) Whether the accident is due to the rash and negligent driving of the vehicle Lorry No.AAE 4866?

2) Whether there is violation of policy condition by R1?

3) Whether petitioner is entitled for compensation, if so to what extent and from whom?

4) To what relief ?"

7. During enquiry, petitioner No.1 examined himself as P.W.1 besides examining one Jampani Venkata Rao, an eyewitness to the occurrence, as P.W.2 and marked Exs.A.1 to A.5 to substantiate their claim; whereas, on behalf of respondent No.2, no witnesses were examined and no documents were filed.

8. The Tribunal, on issue No.1, on appreciation of evidence on record, both, oral and documentary, let in by the petitioners, held it in favour of the petitioners; and on issue No.2, observing that there was no violation of policy conditions on the part of respondent No.1 answered it accordingly.

9. On issue No.3 relating to determination of compensation, the Tribunal, taking into account the age of the deceased boy as 14 years and applying the principle laid down in the decision of this Court in **Narasingoju Shanmukha Chary and others vs. Nirma Sampath Kumar and others**, granted a total sum of Rs.59,000/- and apportioned the same equally between the petitioners also granting interest at 9% per annum from the date of petition till realization.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not taken into consideration the evidence of P.Ws.1 and 2 and Exs.A.1 to A.5 and, though, the statute is welfare and beneficial legislation, the Tribunal awarded a very meager amount. It is stated that the Tribunal ought to have granted Rs.15,000/- towards loss of estate, funeral expenses and loss of love and affection by following the decision of the Hon'ble Supreme Court in **Sushma Thamas vs. Kerala Road Transport Corporation Ltd.**, and also ought to have granted future pecuniary benefits and service from the deceased as per the decision of the Hon'ble Supreme Court in **Parvath Chandra Dey vs. Oriental Insurance Co. Ltd.** It is also stated that in the case of **Mohammed Salar vs. Syed Ibrahim**, the compensation of Rs.51,500/- granted by the Tribunal was enhanced to Rs.1,52,000/- and, therefore, sought to enhance the compensation herein. The other decisions were also relied on by the appellants-petitioners referred to in ground Nos.10, 11 and 12, and thereby, sought to grant the balance amount.

11. Heard Sri B.Parameswara Rao, learned counsel for the appellants. It is endorsed in the cause title of the grounds of appeal that respondent No.1 is not necessary party to the instant appeal. No representation on behalf of respondent No.2-Insurance Company.

12. Perused the order and the evidence on record. There is no dispute in regard to the fact-situation occurring in the instant case including the age of the deceased as 14 years on the date of

accident and prosecuting studies supported by Ex.A.5. Hence, there is no need to probe further, in view of the decision of the Hon'ble Supreme Court in **Puttamma and others vs. K.L.Narayana Reddy and another** in determining compensation at Rs.1,50,000/-, keeping in view that the deceased was aged more than five years and below 15 years on the date of accident. Hence, the amount of Rs.59,000/- granted by the Tribunal is enhanced to Rs.1,50,000/-.

13. Thus, the petitioners are entitled to a total sum of Rs.1,50,000/- (Rupees one lakh and fifty thousand), as against Rs.59,000/- granted by the Tribunal, towards compensation and the same is accordingly granted and the same is apportioned equally between the petitioners. So far as the interest is concerned, the Tribunal granted interest at 9% per annum and the same is maintained on the amount granted by the Tribunal, but on the enhanced amount, interest at 7.5% per annum is granted from the date of petition till realization in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

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

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

A. SHANKAR NARAYANA, J

25th November, 2015