

HON'BLE SMT JUSTICE ANIS

MA CMA No. 2633 OF 2005

JUDGMENT:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 01.02.2005, passed by the Motor Accidents Claims Tribunal-cum-District Judge, Chittoor, in M.V.O.P.No.174 of 1998, awarding compensation of Rs.70,000/-.

2. The claimants filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.2,00,000/- on account of death of their minor daughter Rani, aged 12 years (hereinafter referred to as 'the deceased') in a road traffic accident.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that the petitioners are the parents of the deceased, aged 12 years, who was studying 5th class. While so, on 5.12.1997 the deceased attended the school and when she was in the classroom of MPUP school, the tractor bearing No. AP 04 T 1311 and trailer No. AP 04 T 131, driven by its driver, rashly and negligently came in the reverse direction and dashed against the classroom wall, as a result of which, the wall fell down on the students. The deceased sustained grievous head

injuries and died on the spot. It is stated that the deceased was the only daughter to the petitioners besides a son and they wanted to provide good education to their children and due to sudden death of their daughter the petitioners put to immense mental pain and agony. The first respondent is the owner of the crime vehicle and as such he is vicariously liable while the second respondent being the insurer of the said vehicle are jointly and severally liable to pay the compensation to the petitioners.

5. The brief averments made in the written statement filed by the first respondent are that there is no rash and negligence on the part of the first respondent while driving the vehicle as the wall was in a dilapidated condition; that the accident was occurred due to an act of God; that the vehicle was entrusted to one V. Ramachandra Naidu and the vehicle was insured with the second respondent and therefore, the first respondent was not liable to pay the compensation.

6. The brief averments made in the written statement filed by the second respondent are that the vehicle did not directly hit the deceased and the driver had no driving licence and as such the second respondent was not liable to pay the compensation.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs 1 & 2 were examined and got marked Exs.A.1 to A.3. On behalf of the respondents, no oral and documentary evidence was adduced.

8. Basing on the evidence on record, the Tribunal held that the deceased died only due to rash and negligent driving of the first respondent, as such both the respondents are jointly and severally liable to pay the compensation, and awarded compensation of Rs. 70,000/- along with interest at 9%.

9. Not satisfied with the compensation awarded by the Tribunal, the petitioners preferred the present appeal.

10. Learned counsel for the appellants argued that the deceased was aged about 12 years and studying 5th class and she was having bright future and the Tribunal has not considered the law laid down by the Hon'ble Supreme Court in various judgments and prayed the Court to enhance the compensation of Rs. 2,00,000/- as claimed.

11. On the other hand, the learned counsel appearing for the Insurance Company fairly conceded that the compensation awarded by Tribunal maybe enhanced from Rs. 70,000/- to Rs. 2,00,000/- in view of the law laid down by the Hon'ble Supreme Court in various decisions, but prayed the Court that the rate of interest may be reduced from 9% to 7.5% per annum from the date of the appeal till realisation.

12. Having regard to the submissions made by the learned counsel for appellants, the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal is just and reasonable?

2. Whether the appellants are entitled for enhancement of

compensation?

13. **POINTS:**

On perusal of the evidence of PWs 1 and 2 and Exs. A1 to A3, it is true that the accident was occurred due to rash and negligent driving of Tractor bearing No. A.P.04-T1311 and trailer bearing No. AP 04 T 131 by its driver and the finding of the Tribunal regarding the manner in which the accident occurred needs no interference.

14. Coming to the quantum of compensation is concerned, it is an admitted fact that the deceased is aged about 12 years and studying 5th class and she is only daughter to the petitioners and due to sudden demise of their daughter, petitioners suffered mental agony and irreparable loss, which cannot be compensated but the learned counsel for the Insurance Company rightly conceded in view of the judgments of the Hon'ble Supreme Court, this Court may enhance the compensation from Rs. 70,000/- to Rs. 2,00,000/-.

15. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.70,000/- to Rs.2,00,000/-. The enhanced compensation amount of Rs.1,30,000/-, shall carry interest at 7.5% per annum in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and Others V. Ahmedabad Municipal Transport Service***^[1] and ***Rebeka Minz and others v. Divisional Manager, United India Insurance Company Limited and another***^[2].

16. In the result, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 04.12.2015
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[\[1\]](#) 2013 ACJ 2733

[\[2\]](#) 2012 ACJ 2328