

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.2869 of 2005

JUDGMENT:

The instant appeal is preferred by the New India Assurance Company Limited, which is respondent No.2 in O.P.No.71 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (F.T.C.), Anantapur District (for short, 'the Tribunal'), under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the order, dated 13.07.2005, passed in the said original petition, whereby and whereunder a sum of Rs.2,00,000/- was granted for the death of the driver of an R.T.C bus, which occurred when a lorry bearing registration No.AP Q 9495 hit the bus.

2. The appellant herein is respondent No.2, while respondent Nos.1 to 3 are the petitioners and respondent No.4 herein, who is the owner of lorry bearing registration No.AP Q 9495, was respondent No.1 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 fact-situation occurring in the instant case is that on 19.07.2000, the deceased Viswakarma Chari was driving an R.T.C. bus bearing registration No. AP 10 Z 520, which was scheduled to Bangalore from Anantapur, along with another driver, E.Subbarayudu sitting by the side of the driver's seat, and in the early hours at about 1.30 a.m., when the bus reached Ammavaripalli near Penukonda, a lorry bearing registration No.AP Q 9495 coming

towards Anantapur side, since driven by its driver in a rash and negligent manner, dashed the R.T.C bus, due to which, the driver and other passengers in the bus sustained injuries, but the said Viswakarma Chari died instantly. The petitioners claimed Rs.3,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the lorry respectively.

5. Respondent No.1-owner of the lorry remained *ex parte* before the Tribunal. Respondent No.2-insurer of the lorry filed counter opposing the claim by raising various pleas and finally sought to dismiss the petition on the ground that the compensation claimed was excessive.

6. Basing on the said pleadings, the Tribunal has framed three issues about the responsibility for the accident. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining one Y.Narasimha Reddy, an eyewitness to the occurrence, as P.W.2 and marked Exs.A1 to A5 to substantiate their claim; whereas, on behalf of respondent No.2, one Thyagarajan is examined as R.W.1 and marked Exs.B1 to B3, which are copy of insurance policy, certified copy of the statement recorded under 162 Cr.P.C. and the certified copy of M.V.I. Report.

7. The Tribunal, on issue No.1, on appraisal of evidence let in by both parties, recorded a definite finding that only due to rash and negligent driving of the driver of lorry, the accident had occurred. On issue No.2, basing on the contents in Ex.A5, which is a pay slip of the deceased indicating that he was getting Rs.8,300/- per month, worked out the annual income of the deceased at Rs.99,600/-; deducted 1/3rd therefrom towards personal expenses

and the remaining amount of Rs.66,400/- was taken towards contribution to the family; applied multiplier '4.59' considering the age of the deceased as 54 years, and worked out the loss of earnings at Rs.3,04,776/-. Taking note of the fact that the petitioners claimed compensation of Rs.3,00,000/- and the son of the deceased was provided with a job in the R.T.C by deducting Rs.1,00,000/- from the retiral benefits of the deceased, the Tribunal restricted the compensation to Rs.2,00,000/- making both the respondents jointly and severally liable to pay the compensation with interest at 9% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal mainly on the quantum of compensation contending in the grounds that the Tribunal ought not to have considered gross monthly income of the deceased, while determining the compensation, in view of the decision of the Apex Court in **Asha and others vs. United India Insurance Company Limited and another**^[1] and ought to have taken net salary and, therefore, sought to set aside the award and decree passed by the Tribunal.

9. Heard Sri B.Devanand, learned counsel for the appellant, and Sri K. Maheswara Rao, learned counsel for respondent Nos.1 to 3/claimants. So far as respondent No.4, who is the owner of the lorry, is concerned, the instant appeal was dismissed for default by the orders dated 05.01.2012. Of course, the dismissal order is of no consequence in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**^[2], wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not

challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

10. The only submission made by the learned counsel for the appellant is that the Tribunal ought not to have taken gross salary and ought to have taken the net salary in determining the compensation. Absolutely there is no merit in the stand taken by the appellant and in the argument advanced by the learned counsel for the appellant. The order of the Tribunal in arriving at the amount of compensation awarded to the petitioners is narrated above, which by itself would reflect that the Tribunal restricted the amount of Rs.3,04,776/-, arrived at in determining the compensation, to Rs.2,00,000/-, on the ground that the son of the deceased was provided with employment in the Corporation even though, the Corporation also deducted Rs.1,00,000/- from the retiral benefits to which the petitioners were entitled. Therefore, nothing else is required to probe further, except to hold that whatever granted by the Tribunal, in fact, is not even just and adequate and, therefore, absolutely there is no merit in the instant appeal.

11. The instant appeal is, therefore, dismissed. There shall be no order as to costs.

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

**JUSTICE A.SHANKAR
NARAYANA**

10.12.2015
v v

[\[1\]](#) 2004 ACJ 448

[\[2\]](#) 2001(1) ALT 495 (D.B.)