

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

C.M.A. No.2660 OF 2004

JUDGMENT:

Dissatisfied with the amount of Rs.35,000/- (Rupees thirty five thousand) granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Vizianagaram, in O.P. No.83 of 1996, by order and decree, dated 15-04-1997, as against the claim of Rs.1,00,000/-(Rupees one lakh) laid under Section 166 of Motor Vehicles Act, 1988(for short 'the Act'), the instant appeal is preferred by the petitioner seeking to grant balance amount.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are driver, owner and insurer of Lorry bearing registration No.AP 16U 1402, respectively, are respondent Nos.1 to 3, respectively.

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

4. The fact-situation occurring in the instant case would reveal that the petitioner is no other than the elder brother of Virothu Venkayamma, aged 16 years, according to the medical record filed before the Tribunal which is also not in dispute. On 17-05-1994 at about 3.00 P.M., while the Virothu Venkayamma was on foot on the left side of the road proceeding towards her residence near Alamanda Railway Station (Santha Bus Stop), the 1st respondent since drove his lorry bearing registration No.AP 16U 1402 in a rash and negligent manner at high speed, hit her,

due to which, she died instantly. The concerned police also registered

a case in Crime No.21 of 1994 under Section 304-A IPC, and even it was taken cognizance vide C.C. No.118 of 1994 by the learned Judicial Magistrate of First Class at Srungavarapukota. The petitioner claiming that the deceased was earning Rs.35/- per day by doing agricultural coolie work and he being her legal heir, sought to grant a sum of Rs.1,00,000/- as compensation against Respondent Nos.1, 2 and 3, who are driver, owner and insurer of the lorry, respectively.

5. Respondent Nos.1 and 2, driver and owner of the lorry, remained *ex parte* before the Tribunal.

6. Respondent No.3 – Insurance Company opposed the claim, requiring the petitioner to prove the material allegations. Contending that the claim is excessive, sought to dismiss the petition.

7. Based on the pleadings, the Tribunal framed three issues about the responsibility for the accident.

8. During inquiry before the Tribunal, the petitioner besides examining himself as PW.1 has examined one Sayyed Makthum as PW.2 and marked Exs.A-1 to A-4. On behalf of respondent No.3, no witnesses were examined, but a copy of insurance policy was marked as Ex.B-1.

9. The Tribunal recorded a finding that due to rash and negligent driving of the driver of the lorry, the accident has occurred and, thus, found issue No.1 in favour of the petitioner. On issue No.2, observing that the petitioner failed to submit legally

acceptable evidence to prove the daily wage of the deceased at Rs.35/-, granted Rs.30,000/- towards loss of estate keeping in view, that the amount under the provisions of Section 140 of the Act itself fixed at Rs.25,000/- as on the date of accident, and also granted Rs.5,000/- towards transportation charges and funeral expenses and, thus, granted a total sum of Rs.35,000/- as compensation with interest at 12% per annum.

10. Aggrieved by the aforesaid order, the instant appeal is preferred by the petitioner, contending in the grounds that the Tribunal, at least, ought to have awarded Rs.50,000/- under 'no fault liability' instead of Rs.30,000/- as per the amendment to the provisions of Section 140 of the Act, however, sought to grant balance amount of Rs.65,000/-.

11. Heard Sri Venkateshwara Rao Gudipati, learned counsel for the appellant, and Sri R. Venkat Rao, learned counsel for respondent No.3 – Insurance Company. The appeal against respondent Nos.1 and 2 was dismissed, by orders, dated 16-09-2011 and 04-11-2003, respectively, but the same makes no difference in deciding the controversy herein in view of the decision of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**^[1].

12. The learned counsel for respondent No.3 – Insurance Company submits that the amount granted by the Tribunal is just and adequate during relevant time and, thus, supported the order and decree of the Tribunal.

13. Perused the order and the evidence on record.

14. The Tribunal tendered finding in favour of the petitioner on issue No.1. So far as issue No.2 is concerned, the Tribunal refused to accept the stand taken by the petitioner that the deceased was earning Rs.35/- per day, as no further evidence was adduced to prove the said stand, more particularly, observing that a girl of 16 years age may not be in a position to earn income and maintain the petitioner. That has been the reason, the Tribunal resorted to fix Rs.30,000/- slightly more than the amount that was provided by the Act under 'no fault liability'.

15. As seen from the record, the accident took place on 17-05-1994. Of course, provisions of Section 140 of the Act were amended and came into force on 14-11-1994, whereas the accident took place on 17-05-1994. Therefore, the new provisions cannot be made applicable to the case on hand.

16. However, keeping in view, that the deceased was sixteen years old, irrespective of daily earning of the deceased was proved or not, since the amount of Rs.1,00,000/- sought for by the petitioner for the death of his younger sister, certainly, can be acceded to, without resorting to any formula provided by the Second Schedule, or in **Bhagwan Das v. Mohd. Arif**^[2], or in **Sarla Verma v. Delhi Transport Corporation**^[3]. Hence, the compensation is enhanced to Rs.1,00,000/- from Rs.35,000/- granted by the Tribunal. Concerning the rate of interest, the Tribunal has granted the same at 12% per annum, but the same is reduced to 7.5% per annum as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[4].

17. In the result, appeal is allowed and the order and decree, dated 15-04-1997, in O.P. No.83 of 1996, passed by the Tribunal are modified, enhancing the compensation to Rs.1,00,000/- (Rupees one lakh) from Rs.35,000/-(Rupees thirty five thousand) and reducing the rate of interest from 12% to 7.5% per annum thereon from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

June 19, 2015.

Mgr

[\[1\]](#) . 2001 (1) ALD 453 (DB)

[\[2\]](#) . 1987 (2) ALT 137

[\[3\]](#) . 2009 ACJ 1298

[\[4\]](#) . 2013 ACJ 1403