

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

CIVIL MISCELLANEOUS APPEAL No.858 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.84,000/- granted as compensation for the death of one Mudavath Shanker as against the claim for Rs.1,00,000/-, laid under Section 166 of the Motor Vehicles Act, 1988, the instant appeal is preferred by the appellants against the order and decree, dated 21.12.2004, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - V Additional District Judge(Fast Track Court), Ranga Reddy District, at L.B.Nagar, in O.P. No.276 of 2002.

2. The appellants herein are the claimants and respondent Nos.1 and 2, who are owner and insurer, respectively, of the steering auto bearing No.AP-13-U-8637 that involved in the accident, are respondent Nos.1 and 2, respectively, in the O.P. before the Tribunal.

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

4. The facts in brief are that the petitioners being legal heirs of the deceased sought the said amount since the deceased, Mudavath Shanker on 21.10.2001, while proceeding on foot from Gachibowli towards Mehdiapatnam, near Decent Function Hall, Mehdiapatnam, was hit by a steering auto bearing No.AP 13 U 8637 proceeding from Rethibowli towards Mehdiapatnam driven by its driver in a rash and negligent manner. Due to which, he fell down

and sustained injuries and he was shifted to Osmania General Hospital, where he succumbed to injuries while undergoing treatment. The petitioners as legal heirs of the deceased claimed the above said compensation against respondents 1 and 2, who are the owner and insurer respectively.

5. The 1st respondent, owner of the lorry, remained *ex parte*. The 2nd respondent, insurer, resisted the claim requiring the petitioners to prove the material averments mentioned in the petition.

6. The Tribunal has framed three issues in the direction of fixing responsibility for the accident. On 09.12.2004 an additional issue was framed with regard to the driver of the offending vehicle not possessing valid driving licence at the time of accident. During enquiry, the first petitioner was examined as PW.1 and also examined one Shanker as PW.2 and Exs.A-1 to A-5 were marked to substantiate their claim. On behalf of the insurer, no witnesses were examined, however, a copy of the insurance policy was marked as Ex.B-1 on consent.

7. The Tribunal, on additional issue, while referring to Ex.A2 copy of charge sheet found that the driver of the auto was charged for the offences punishable under Sections 304-A IPC and 181 of Motor Vehicles Act and the latter offence relating to failure to possess valid and effective driving licence and as the learned counsel for the second respondent conceded for depositing the amount initially by the second respondent and thereafter to recover the same from the first respondent, recorded the finding in favour of the petitioners. The Tribunal however taking the age of the deceased as 60 years basing on the inquest panchanama

contents and the monthly income at Rs.1800/- and after deducting 1/3rd towards personal expenses of the deceased, arrived at Rs.1200/- per month and Rs.14,400/- per annum and rounded it off to Rs.15,000/- towards contribution and applied multiplier 4.25 basing on the law then holding the field and determined the amount at Rs.63,750/-(Rs.15,000/- X 4.25), rounded it off to Rs.64,000/-. The Tribunal also granted Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and, thus, a total amount of Rs.84,000/- was awarded and apportioned the said amount amongst the petitioners. Interest at 9% per annum was granted.

The aforementioned order is under challenge in the instant appeal on the grounds that the Tribunal awarded a meagre sum and the Tribunal ought to have taken the age of the deceased as 55 years and ought not to have based on Ex.A3, inquest panchanama and ought to have taken the income at Rs.3,000/- per month and ought not to have taken the income at Rs.1800/- per month.

8. Heard Sri B.Parameswara Rao, learned counsel for the appellant and Srinivasa Rao Vutla, learned counsel for the second respondent – insurance company. It is endorsed in the grounds of appeal that R1 is not necessary party.

9. Perused the order and oral and documentary evidence let in by the petitioners.

10. It is not in dispute that the relevant multiplier is '9' as per the version of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**^[1]. Therefore, if the multiplier '9' is applied, it works out to Rs.1,29,600/-. The Tribunal has granted Rs.10,000/- towards loss of consortium. The said amount and

also the amount of Rs.10,000/- granted towards loss of estate are enhanced to Rs.15,000/- each. Since no amount is awarded towards funeral expenses, a sum of Rs.5,000/- is awarded.

11. Thus, the petitioners are entitled to a total compensation of Rs.1,29,600/- + 15,000/- + 15,000/- + 5,000/- = Rs.1,64,600/- (Rupees one lakh sixty four thousand and six hundred only) as against Rs.84,000/-, awarded by the Tribunal, and the same is accordingly awarded. However, the petitioners are entitled to interest on the compensation of Rs.1,74,600/- at 7.5% per annum throughout, i.e., from the date of petition till realisation, as against 9% per annum awarded by the Tribunal, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**^[2]. It is no doubt true the amount determined exceeds the amount claimed, however, in view of the decision of the Hon'ble Apex Court in Rajesh's case (2 supra) the petitioners are entitled to enhanced compensation of Rs.1,74,600/-, since it accounts for just and reasonable compensation to which the petitioners are entitled.

12. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned award passed by the Tribunal, by enhancing the compensation as stated supra. There shall be no order as to costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

February 27, 2014.

Rns

[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) 2013ACJ1403 = 2013(4)ALT35