

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1634 of 2006

JUDGMENT:

The appellant-Vasireddy Venkat Rao preferred the instant appeal having got dissatisfied with the amount of Rs.1,67,000/- granted by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Khammam (for short, 'the Tribunal') in M.V.O.P.No.695 of 2003 by order dated 02.06.2006 as against his claim for Rs.6,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') with interest at 16% per annum for the injuries sustained by him in a road accident.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the driver-cum-owner and insurer of the lorry bearing registration No.AP 20U 5616 respectively, were respondents in the original petition.

3. The basic facts have been extensively narrated in the order under challenge, which, in the present circumstances, need not require any advertence, but it is suffice to say that the 1st respondent-owner of the accident vehicle remained *ex parte* and the Insurance Company alone contested the claim opposing the same.

4. Basing on the pleadings, the Tribunal framed three issues about the responsibility for the accident and conducted an enquiry and held issues 1 to 3 in favour of the petitioner. But however, granted Rs.1,67,000/- as compensation by assigning reasons resorting to multiplier method since the Tribunal agreed with the petitioner's stand that he sustained permanent disability at 20% and took annual income at Rs.10,000/-.

5. The petitioner, having got dissatisfied with the award passed by the Tribunal, preferred the instant appeal contending that the disability sustained by the petitioner has been 45% but not 20% as arrived at by the Tribunal and since he was aged 55 years the Tribunal ought to have taken the same instead of 60 years. It is also contended that the Tribunal ought to have considered Rs.66,000/- towards medical expenses instead of Rs.50,000/- and the Tribunal granted Rs.5,000/- towards pain and suffering, which is on lower side, and, therefore, sought to grant balance amount.

6. The instant appeal was preferred in the year 2006, but the original appellant expired during the pendency of the appeal and his legal representatives were brought on record as the appellants 2 to 4, *vide* orders dated 12.11.2009 in M.A.C.M.A. M.P. No.5041 of 2009.

7. Heard Sri K.Prabhakar Rao, learned counsel for the appellants, and Sri B.Devanand, learned Standing Counsel for the 2nd respondent. None appears for the 1st respondent.

8. It is contended by the learned counsel for the present appellants that the appellants have right to claim for enhancement stepping into the shoes of their ancestor (deceased appellant) though, his death occurred during the pendency of the appeal, and, therefore, the present appeal is, still, maintainable. On the other hand, it is the contention of the learned counsel for respondent No.2 that once the death occurs subsequently, where the claim relates to injuries sustained by a person, nothing remains in this appeal in view of the fact that the original appellant died during the pendency of the instant appeal, and, therefore, the present appellants have no right to continue the proceedings for enhancement of compensation.

9. Now, the short point that arises for consideration is, whether in the

absence of the original appellant, whose death occurred during the pendency of the appeal, his legal representatives can continue the proceedings seeking enhancement of compensation?

10. The learned counsel for the appellants has not placed any decisional law on this aspect. It is true, that the present appellants are brought on record as legal representatives of the deceased original appellant. The accident in this case took place on 06.02.2003, resulting injuries to the deceased appellant. He laid the claim in the year 2003. The decree was passed on 02.06.2006. The present appeal was preferred on 09.08.2006. The death of the original appellant occurred on 24.05.2009 as per the averments in MACMAMP No.5041 of 2009.

11. It is a case where the Tribunal has already granted compensation and the death of the injured had occurred only during the pendency of the appeal. This is not an appeal preferred by the Insurance Company challenging the grant of compensation by the Tribunal. Therefore, what all granted by the Tribunal to the injured, when his death occurred at the appellate stage, has to be construed as the estate of the deceased appellant, and, therefore, the right of the present appellants is to succeed to the extent of the estate of the deceased appellant in accordance with the established principles of law as laid down in ***Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair***^[1]. Therefore, it has to be held that the present appellants are not entitled to seek enhancement in the instant appeal.

12. Therefore, the appeal is dismissed confirming the order and decree dated 02.06.2006 passed by the Tribunal in M.V.O.P.No.695 of 2003. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any, pending

in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

02nd February, 2015.

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[\[1\]](#) . (1986) 1 SCC 118