

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

* * * *

C.M.A. No.2550 of 2004

Between:

Majjari Vijayalakshmi & 5 others

.. Appellants/ claimants

And

S.Abdul Kareem & another

..
Respondents

DATE OF JUDGMENT PRONOUNCED: 23-07-2015

SUBMITTED FOR APPROVAL:

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

1. Whether Reporters of Local newspapers

Yes/No

may be allowed to see the Judgment?

2. Whether the copies of judgment may be

Yes/No

marked to Law Reporters/Journals

3. Whether Their Lordship wish to

see the fair copy of the Judgment?

Yes/No

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

C.M.A. No.2550 of 2004

JUDGMENT:

Having got dissatisfied with the award of Rs.2,65,500/- as compensation by the award dated 11.03.2002 in M.V.O.P. No.882 of 2000 on the file of Motor Accidents Claims Tribunal-cum-District, Cuddapah, as against the claim of Rs.5,00,000/- laid under Section 166 of M.V. Act, the petitioners-claimants preferred the instant appeal seeking enhancement of compensation.

2. The appellants herein are the petitioners before the Tribunal, while the respondent Nos.1 and 2, who are the owner and insurer of the lorry bearing registration No.AP 21 T 0520 respectively, were respondents in the original petition.

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 on 25-03-2000, the deceased, M.Venkateswara Prasad, who was working as cleaner in a lorry bearing No.AP 21 T 0520, started with lorry which was loaded with melon to go to Mumbai and when it reached near Jagadambivadi Village of Umarga Tahsil, at 4.00 pm on 26.03.2000 on National High-way No.9, the driver of the said lorry driven it in a rash and negligent manner and lost control. Thereby, the lorry fell from the bridge into 20ft deep pit and the said

M.Venkateswara Prasad sustained injuries to his head and chin and died instantly. The petitioners claiming that he was earning Rs.3,500/- per month working as cleaner and contributing the entire amount towards maintenance of his family, sought compensation of Rs.5,00,000/- from the respondents 1 and 2 who are the lorry owner and insurer respectively.

5. 1st Respondents remained *ex parte* in the O.P. before the Tribunal.

5. 2nd Respondent, Insurer of the lorry, opposed the claim raising various pleas.

6. The Tribunal, basing on the pleadings framed three (3) issues about the responsibility for the accident. During enquiry, the petitioner examined himself as PW.1 besides examining one Shaik Mahaboob Basha as PW.2 and S.Abdul Kareem, who is the 1st respondent-owner of the lorry, as PW.3 and marked six documents as Exs.A-1 to A-6. On behalf of respondents, R.Pratap Reddy, Assistant Administrative Officer in 2nd respondent's company, was examined as RW.1 and copy of Insurance policy was marked as Ex.B1.

7. The Tribunal, on appraisal of evidence on record, held issue No.1 in favour of petitioners-claimants. On issue No.2, basing on the evidence of PW.3, the Tribunal

has taken monthly earnings of the deceased as Rs.1800/- and deducting 1/3rd therefrom towards personal expenses of deceased, arrived at the annual income of Rs.14,400/-. Taking the age of the deceased as 36 years as per Ex.A2—Inquest report, the Tribunal applied multiplier '16' and thereby arrived at Rs.2,30,4000/- towards loss of dependency. The Tribunal has also granted a sum of Rs.10,000/- towards loss of consortium, Rs.5,000/- each towards loss of love and affection, so far as the petitioners 2 to 4 are concerned, Rs.8,000/- towards transport charges besides Rs.2,000/- towards funeral expenses. In all, it came to Rs.2,65,400/- and rounded it off to Rs.2,65,500/- by granting interest at 9% per annum fixed the liability on respondents 1 and 2 jointly and severally.

8. The petitioners being the wife, children and parents respectively, preferred the instant appeal having not satisfied with the compensation granted by the Tribunal, contending in the grounds of appeal that the Tribunal somehow overlooked the fact that the deceased was earning Rs.3,800/- per month and ought to have taken the monthly income of deceased at Rs.3,500/- per month instead of Rs.1800/-. It is also stated that granting of Rs.10,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses is not reasonable and, therefore, sought to grant the balance amount.

9. Heard Sri D.Kodanda Rami Reddy, learned counsel for appellants (claimants) and Sri Srinivasa Rao Vutla, learned counsel for respondent No.2. The appeal against respondent No.1—driver of the vehicle was dismissed by order dated 05.04.2004. However, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v Yelubandi Babu Rao**^[1], dismissal of appeal against 1st respondent is of no consequence in deciding the controversy.

10. Perused the order and the material on record. It is the submission of the learned counsel for appellants that the Tribunal ought to have taken the income of the deceased at Rs.3,500/- per month basing on the evidence of PW.3, who is no other than owner of lorry in which the deceased was working as a cleaner. Learned counsel also submits that the appellants 5 and 6, parents of deceased, are entitled to Rs.1,00,000/- towards loss of love and affection and so also the children and placed reliance on the decision of Supreme court in **Neeta and others v Divisional Manager, Maharashtra State Road Transport Corporation**^[2]. It is also his submission that even if the amount determined exceeds the claim made by the petitioners—claimants, still, this court is empowered to grant the same in view of the law laid down by the Hon'ble Supreme Court in 1) **Nagappa v.**

Gurudayal Singh and others^[3] and 2) Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited^[4].

11. It is contended that the deceased used to earn Rs.3,500/- per month basing on the evidence of PW.3. It is clear that from the evidence on record the salary certificate shows that the deceased was working as cleaner and earning Rs.1,000/- towards his salary, besides batta of Rs.50/- per day and the evidence of PW.3 further shows that the deceased was getting 5% commission. Therefore, the finding recorded by the Tribunal as regards the monthly earnings of the deceased at Rs.1800/- is confirmed, as it does not suffer from any infirmity.

12. So far as the contribution to the family concerned, the Tribunal has taken $\frac{1}{3}^{\text{rd}}$ towards personal expenses and $\frac{2}{3}^{\text{rd}}$ towards contribution to the family. Since the dependents are five in number, in view of the decision of Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation^[5]** deduction of $\frac{1}{4}^{\text{th}}$ amount is permissible, in which case the contribution would be Rs.1,350/- per month or Rs.16,200/- per annum. Since the relevant multiplier applicable is '15', but not '16' as per the said decision if the same is applied, it works out to Rs.2,43,000/- towards loss of dependency.

The petitioners are also entitled to 50% of the earnings of the deceased towards future prospects for which the petitioners are entitled to Rs.1,21,500/-. Thus, the petitioners-claimants are entitled to Rs.3,64,500/- towards loss of dependency besides the petitioners-claimants are entitled to Rs.50,000/- towards conventional sum as per the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar and Others vs National Insurance Company Limited and others**^[6]. Thus, the petitioners are totally entitled to Rs.4,14,500/-.

13. It is the submission of the learned counsel for appellants that in Neeta's case (surpa) the Hon'ble Supreme Court granted interest at 12% per annum and, therefore, sought to enhance the rate of interest at 12% per annum on the amount of compensation. But in view of the decision of Hon'ble Supreme Court in **Rajesh v Rajbir Singh**^[7], the petitioners are entitled to interest at 7.5% per annum on the compensation of Rs.4,14,500/-.

13. Thus, the compensation is enhanced from Rs.2,65,500/- to Rs.4,14,500/- and the rate of interest is reduced to 7.5% from 9% per annum from the date of petition till realisation.

14. Accordingly, the Appeal is partly allowed. There shall be no order as to costs.

15. As a sequel thereto, Miscellaneous

Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

23rd July, 2015
Knl

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

C.M.A. No.2550 of 2004

-
-
-
-
-
-
-
-
-
-
-
-
-

Date:23.07.2015

knl

[\[1\]](#) 2001 (1) ALD 453
[\[2\]](#) 2015 ACJ 598
[\[3\]](#) AIR 2003 SC 674 (DB)
[\[4\]](#) 2012 ACJ 191 (SC) (DB)
[\[5\]](#) (2009) 6 SCC 121
[\[6\]](#) 2014 ACJ 1430 (FB)
[\[7\]](#) 2013 ACJ 1403 (FB)