

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.116 of 2006

JUDGMENT:

Dissatisfied with the amount of Rs.20,000/- granted as compensation by the order dated 23.06.2005 in O.P.No.1051 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal') as against the claim of Rs.2,00,000/- laid under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act') and the Rules framed thereunder, for the injuries sustained by the 1st petitioner in a road accident, the instant appeal is preferred by petitioner Nos.2 and 3, who are his legal representatives, seeking enhancement of compensation.

2. The appellants herein are the petitioners, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 06.07.1999, the 1st petitioner was travelling in a jeep bearing registration No.AP 1CT 3777 from Armoor to Nirmal, at about 12-00 noon, its driver since driven in a rash and negligent manner at high speed on national highway No.7, lost control over it, which resulted in the jeep turning upside down and the 1st petitioner, sustaining injuries to his ribs, skull, both bones of left leg and hands and injuries all over his person. He was immediately admitted in Government Hospital, Balkonda and from there he was referred to Government Headquarters Hospital, Nizamabad. He claimed that he had spent Rs.80,000/- towards medical expenses by undergoing treatment in private hospitals also subsequent to discharge from the Government Hospital and after petitioner Nos.2 and 3 came on record, put forth their plea that the 1st petitioner succumbed to injuries on 21.10.2003, and petitioner Nos.2 and 3, being wife of the deceased 1st petitioner and their daughter, sought a total claim of Rs.2,00,000/- with interest at 24% per annum, though, they have worked out it to a tune of Rs.12,60,000/-. Originally, the claim was laid for grant

of Rs.1,00,000/- by the deceased-1st petitioner.

5. Respondent No.1-owner of the accident vehicle remained *ex parte* before the Tribunal. Respondent No.2 filed counter opposing the claim by reserving its rights under Sections 147, 149, 170 of the Act and filed an application and obtained permission from the Tribunal to agitate the defences.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the petitioner is entitled to compensation sought for?

2. To what relief the petitioner is entitled to?"

7. During enquiry, the 2nd petitioner examined himself as P.W.1 besides examining three more witnesses as P.Ws.2 to 4 and marked Exs.A.1 to A.6; whereas, on behalf of respondent No.2, no witnesses were examined and no documents were marked.

8. The Tribunal, on issue No.1, having discussed the manner in which the accident had occurred and the injuries sustained by the petitioner and the treatment he had undergone and then referring to the fact that four years later his death occurred and that there is no legally acceptable evidence that the proximate cause of death was due to the injuries sustained in the said accident, discarded that stand put forth by the 2nd and 3rd petitioners and holding that the 2nd and 3rd petitioners are entitled to the amount spent for treatment and loss of estate, granted Rs.10,000/- towards treatment, Rs.5,000/- towards extra nourishment and Rs.5,000/- towards transport charges.

9. It is the aforesaid order which is under challenge in the instant appeal seeking enhancement of compensation contending in the grounds that the Tribunal did not properly appreciate the evidence despite the evidence of P.W.4 proving that the death of 1st petitioner was on account of the injuries he sustained in the said accident, still, the Tribunal ignored it and, somehow, granted meager amount as against Rs.2,00,000/- sought by the petitioners, and, hence, requested to grant the balance amount.

10. Heard Sri P.Radhiv Reddy, learned counsel for the appellants-claimants, and Sri P.Harinath Gupta, learned Standing Counsel for the 2nd respondent-Insurance

Company. Despite service of notice on 1st respondent, none appears for him.

11. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioners. The main submission of the learned counsel for the appellants is that, though, the death occurred on account of the injuries sustained by the deceased-1st petitioner in the accident, and though, P.W.4-Medical Officer, who treated the deceased-1st petitioner, has asserted the same, still, the Tribunal overlooked the same without assigning any reasons, and, therefore, sought to grant the compensation claimed. Whereas, the learned counsel for the 2nd respondent-Insurance Company submits that the 2nd and 3rd petitioners are entitled for the sums towards loss of estate, extra nourishment, transport charges and medical expenses as per the settled proposition of law and they are not entitled for any amount towards pain and suffering by the deceased-1st petitioner. It is also his submission that the evidence of P.W.4 is rightly rejected by the Tribunal as no nexus was established between the death of the deceased-1st petitioner and the injuries sustained by him in the accident.

12. In support of their respective submissions, the learned counsel for the petitioners placed reliance on a decision of this Court in **Reliance General Insurance Co. Ltd., Secunderabad v. B.Mallaiah (died) by LRs. and another** for the proposition that when the cause of action was alive during the petitioner's lifetime, it does not die with his death and the claim for pain and suffering laid by the petitioner, the petition cannot be rejected on the ground that the 1st petitioner who sustained injuries was no more and the claim is certainly, maintainable and, consequently, continued by the petitioner Nos.2 and 3 on the demise of the 1st petitioner basing on the provisions of Section 306 of the Indian Succession Act, 1925. As against the said proposition, the learned counsel for the 2nd respondent-Insurance Company placed reliance on the decisions of this Court in **S.Vykuntam (died) by LRs. v. G.Narayana and others, E.Jangaiah died per LRs. v. S.Prathap Reddy and another** and **Oriental Insurance Co. Ltd., Khammam v. Athmakuri Rama Rao and another**.

13. In **S.Vykuntam's** case (2 supra), this Court held that in a similar fact-situation that the legal representatives are entitled to compensation for loss of estate, transport charges, medical expenses, extra nourishment, but they are not entitled for

the amount awarded by the Tribunal towards future loss of earnings on account of partial permanent disability and the amount awarded towards pain and suffering in that accident, while placing reliance on the decision of the Hon'ble Supreme Court in **Melepurath Sankunni Ezhuthassan v. Thekkittil Geopalankutty Nair** and other judgments referred to therein in paragraph-7 at page 514. To the same effect, the decision of **E.Jangaiah's** case (3 supra) is relied on. In **Athmakuri Rama Rao's** case (4 supra) rendered by the very same Judge, who rendered the decision in **B.Mallaiah's** case (1 supra), held in paragraph-15 that once the deceased died, the claim of compensation for pain and sufferance becomes unsustainable so far as the dependants, the legal representatives or the heirs of the deceased are concerned, and, consequently, the claimant is not entitled to any amount of compensation towards pain and sufferance for his father's death.

14. When the order of the Tribunal is perused, the finding recorded by the Tribunal that the 2nd and 3rd petitioners failed to establish that the death of 1st petitioner did occur only on account of the injuries sustained by him in the accident and consequently rejecting the evidence of P.W.4 and the claim of the 2nd and 3rd petitioners therefor does not suffer from any legal infirmity warranting interference. Further finding, that the petitioners are only entitled to the compensation towards extra nourishment, hospital expenses and transport charges also cannot be faulted with. However, the Tribunal has not granted any amount towards loss of estate, but only granted the amount of Rs.20,000/- towards treatment, extra nourishment and transport charges, and, therefore, a sum of Rs.15,000/- is granted towards loss of estate.

15. Thus, petitioner Nos.2 and 3 are entitled to a total sum of Rs.35,000/- (Rupees thirty five thousand) as against Rs.20,000/- granted by the Tribunal, towards compensation and the same is accordingly granted, with interest at 7.5% per annum on the entire amount from the date of petition till realisation, as against 9% granted by the Tribunal, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

16. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

27th March, 2015

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