**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

**C.M.A.No.3228 of 2003**
**AND**
**CROSS OBJECTIONS (SR) No.106925 of 2003**

**COMMON JUDGMENT:**

C.M.A.No.3228 of 2003 is preferred by the second respondent in O.P.No.240 of 2001 on the file of the Motor Accident Claims Tribunal – cum – District Judge, East Godavari, Rajahmundry.

The said petition was filed by respondent Nos.1 to 4 in the appeal claiming a compensation of Rs.3,00,000/- on account of the death of the husband of the first respondent and father of respondent Nos.2 to 4. The Tribunal held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.AP 16 W 1431. The Tribunal awarded an amount of Rs.1,95,000/- together with interest at 6% per annum from the date of the petition till realization.

The claimants also filed Cross Objections seeking enhancement of the compensation.

The deceased was engaged in the occupation of timber carving and was stated to have been earning Rs.10,000/- per month. As on the date of the accident he was aged about 40 years as per Ex.A2-post mortem certificate. Since there was no proof of income of the deceased, the Tribunal took nominal income of Rs.15,000/- per annum under Schedule II of Section 163-A of the Motor Vehicles Act and deducted 1/3$^{rd}$ thereof. It applied multiplier of 16 and the net loss of income was arrived at Rs.1,60,000/-. An amount of Rs.15,000/- was awarded under the head loss of consortium and another amount of Rs.15,000/- was awarded under loss of estate. The funeral and transportation chargers were awarded to a tune of Rs.5,000/-. Thus, in all, an amount of Rs.1,95,000/- was awarded.

The award of compensation underwent drastic changes subsequent to the order passed by the Tribunal. The Supreme Court in **Rajesh v. Rajbir Singh**[1] and the Larger Bench of this Court in **Adam Indur Muttemma v. Rathod Reddia**[2] held that the Tribunal can award more than the amount claimed in the application.

In the circumstances, the amount awarded by the Tribunal for the death of the breadwinner of the family needs revision. Even in those days the workers engaged in unorganized sector were earning not less than Rs.100/- per day and if that is applied, the deceased must be earning Rs.2,500/- per month. The annual income on that basis would be Rs.30,000/-. Out of the said income, in view of the four dependants, if 1/5$^{th}$ is deducted, the annual income comes to Rs.24,000/-. To the said amount, 30% should be enhanced in view of likelihood of increase of income and the annual income, if thus enhanced, comes to Rs.31,200/-. If multiplier 16 is applied, as applied by the Tribunal, the total loss of income comes to Rs.4,99,200/-. The loss of consortium should be enhanced to Rs.50,000/- and funeral expenses and transportation charges also should be enhanced to Rs.10,000/-. Thus, the claimants are entitled for the following amounts:

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|---|---|---|
| Loss of income | - | Rs.4,99,200.00 |
| Loss of consortium | - | Rs. 50,000.00 |
| Funeral expenses and transportation charges | - | Rs. 10,000.00 |
| Loss of estate | - | Rs. 15,000.00 |
| Total | - | **Rs.5,74,200.00** |

In all, an amount of Rs.5,74,200/- is awarded as just compensation to the claimants.

The learned Counsel for the appellant-Insurance Company, submits that as on the date of the accident the driver of the vehicle was not having a valid licence as the license which was obtained by him on

27.07.1983 and renewed from time to time expired on 27.12.2000 and the accident occurred on 06.02.2001. But, the renewal was made only on 11.10.2001, much after the date of accident. He relied on the decision of the Supreme Court in **Ram Babu Tiwari v. United India Insurance Company Limited**[3], wherein the Supreme Court, after considering the cases of **National Insurance Company Limited v. Swaran Singh**[4], **National Insurance Company Limited v. Kusum Rai**[5] and **Ishwar Chandra v. Oriental Insurance Company Limited**[6], held that in such cases the compensation shall be paid by the Insurance Company and the claim amount shall be recovered from the driver and the owner of the vehicle and, accordingly, upheld the order passed by the High Court in that case.

In view of the above, the amount of compensation, as determined above, shall be paid by the appellant-Insurance Company, and the same can be recovered from the fifth respondent in the appeal without filing a separate proceedings, except filing Execution Petition.

The Cross Objections of the claimants are thus allowed and the enhanced compensation shall be paid to the claimants after payment of the deficit Court fee as the claim petition was filed only for an amount of Rs.3,00,000/-. The enhanced amount shall carry the same rate of interest as was awarded by the Tribunal and the said amount shall be paid by the Insurance Company with liberty to recover the same from the fifth respondent in the appeal.

The appeal and the Cross Objections are, accordingly, allowed as above modifying the award passed by the Tribunal. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

**(A.RAMALINGESWARA RAO, J)**

18.11.2015
vs

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[1] 2013 ACJ 1403

[2] 2015 (4) ALT 775 (LB)

[3] 2008 ACJ 2654

[4] 2004 ACJ 1 (SC)

[5] 2006 ACJ 1336 (SC)

[6] 2007 ACJ 1067 (SC)