

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.1348 of 2005

J U D G M E N T:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 21.02.2005, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-Principal District Judge, Warangal, (for short 'the Tribunal') in O.P.No.474 of 2003, awarding compensation of Rs.60,000/-.

2. The appellants/petitioners filed the above O.P under Section 166 of the Act, claiming compensation of Rs.3,00,000/-, on account of the death of one Venkatamallu (hereinafter referred to as 'the deceased') in a motor vehicle accident.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that the petitioners are the sons of the deceased. On the date of incident, the deceased along with another were travelling in the Auto bearing No.AP.36U.7679 and when they reached near Patel Saw Mill, a Tractor/Trailer bearing No.AP.24.H46 & H47 driven by its driver came in rash and negligent manner and dashed the Auto. As a result, the deceased and another received multiple injuries and died. The petitioners stated that the deceased was aged 45 years and was earning Rs.3,000/- p.m; that they are the dependants on his income and as such, claimed compensation of Rs.3,00,000/-. The first respondent is the owner and respondent Nos.2 & 3 are the Insurers of the vehicle and they are jointly and severally liable to pay compensation to the petitioners.

5. Before the Tribunal, the first respondent has not filed any counter.

6. The third respondent filed a counter and second respondent

adopted the same.

7. The brief averments made in the counter filed by the third respondent are as follows:

The third respondent put the petitioners to prove the manner of accident, age and income of the deceased and also their dependency. The third respondent denied that the driver of the tractor was rash and negligent while driving the vehicle. According to the respondents, the incident happened due to the negligence of the deceased person and finally stated that the compensation claimed by the petitioners is high and excessive and prayed the Court to dismiss the petition.

8. As one Gajji Sreenu also died in the same accident along with the deceased, the case filed by the legal representatives of Gajji Sreenu was clubbed along with this case and tried jointly.

9. Basing on the above pleadings, the Tribunal framed four issues and to substantiate the claim, the petitioners along with others got examined PWs.1 to 3 and got marked Exs.A.1 to A.8 on their behalf. On behalf of the contesting respondents, no oral evidence was adduced but Ex.B1 Insurance Policy was got marked.

10. After considering the oral and documentary evidence, the Tribunal held that the accident was caused due to rash and negligent driving of the driver of the Tractor/Trailer bearing No.AP.24.H46 & H47, awarded compensation of Rs.60,000/- to the petitioners.

11. Being not satisfied with the award passed by the Tribunal, the petitioners preferred the present appeal.

12. The learned counsel appearing for the appellants/petitioners argued that at the time of accident, both the petitioners were dependants on the income of the deceased; that they lost their father and the Tribunal granted a meagre amount of compensation and prayed the Court to enhance the compensation as the petitioners lost the love and affection

of their father.

13. On the other hand, the learned counsel appearing for respondent Nos.2 & 3 contended that the Tribunal has granted just and reasonable compensation to the petitioners and further, left to the Court regarding awarding of compensation towards love and affection.

14. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellant/petitioner is entitled for enhancement of compensation as prayed for?

15. **P O I N T S:** A perusal of the evidence shows that there is no dispute of the fact that the accident was caused due to rash and negligent driving of the driver of the Tractor/Trailer bearing No.AP.24.H46 & H47, due to which the father of the petitioners died. A perusal of the record shows that the petitioners are the major sons of the deceased. Therefore, the question of granting compensation for the dependency does not arise. The Tribunal after considering this aspect, granted Rs.60,000/- as compensation.

16. The learned counsel appearing for the appellants/petitioners contended that the compensation awarded by the Tribunal is meagre and no compensation was awarded towards love and affection to the petitioners. Admittedly, the petitioners are majors and therefore, considering the facts and circumstances of the case

I am of the view that an amount of Rs.10,000/- shall be awarded under the head of loss of love and affection and an amount of Rs.10,000/- shall be awarded towards funeral expenses. Thus, the appellants/petitioners are entitled for a total amount of Rs.80,000/-.

17. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellants

from Rs.60,000/- to Rs.80,000/- and the appellants shall share the amount equally. No order as to costs.

18. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 30.06.2015

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