

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A.NO.251 OF 2013

JUDGMENT:

This appeal is filed by the appellants against the order and decree dt.04.06.2012 passed in M.O.P.No.788 of 2011 wherein the Special Judge for Trial of Cases under the SC's & ST's (POA) Act-cum-Additional District & Sessions Judge, Vizianagaram granted compensation to the appellants at Rs.1,85,000/- with interest at the rate of 7.5% per annum, from the date of petition, i.e., 28.09.2011 till the date of realization, with proportionate costs of Rs.2,880/-.

The case of the appellants is that the deceased who is the wife of first appellant and mother of the second appellant died in a motor vehicle accident involving the auto bearing No.AP 31 w 7290. On 24.07.2011 at about 15.30 hours when the deceased boarded the said auto to go to Dannapeta Village and when the said auto reached near the road junction of the said village, the first respondent being its driver stopped the auto to enable one of its passenger to get down from the auto and after the passenger got down from the auto, the first respondent again started the same and while it was

proceeding, somebody shouted, upon which the first respondent stopped the auto and while the deceased was getting down from the auto, the first respondent suddenly moved the auto, as a result of which, she fell on the road and sustained injuries and succumbed to the same while taking treatment in KGH, Visakhapatnam. On a report given to the Station House Officer, Nellimarla Police Station, a case in Crime No.142 of 2011 was registered against the driver of offending vehicle. The appellants/claimants filed the above said M.O.P., under Section 163-A of the Act, claiming compensation at Rs.4,50,000/- under various heads, by stating that the accident occurred due to the rash and negligent driving of the driver of the Auto. The appellants also stated that the deceased was aged about 45 years and was hale and healthy and was earning Rs.100/- per day by working as a labourer.

The first respondent remained exparte. The second respondent filed counter denying the allegations made in the petition and disputed the manner of accident, age, income and avocation of the deceased and her relationship with the appellants and sought for dismissal of the appeal.

The Tribunal after considering the evidence of PW.1 and PW.2 and Exs.A1 to A.4 and Ex.B.1 granted compensation of

Rs.1,85,000/- against the claim of the appellants at Rs.4,50,000/-, with interest at the rate of 7.5% p.a., from the date of petition, i.e., 28.09.2011 till the date of realization with proportionate costs of Rs.2,880/-. Hence, the appeal.

Heard both the learned counsel.

The learned counsel appearing for the appellants submits that the age of the deceased as per Ex.A.2 Postmortem Certificate is 48 years, but the court below instead of taking multiplier '11', ought to have taken the multiplier 13, as per second schedule of Section 163 (A) of the Act. He also submits that though the appellants claimed the annual income of the deceased at Rs36,000/-, the Tribunal took the income of the deceased at Rs.2,000/- per month which comes to Rs.24,000/- annually and after deducting 1/3rd of the amount towards personal expenses, fixed the earning of the deceased at Rs.16,000/- per annum and granted an amount of Rs.1,76,000/- (Rs.16000 x 11) towards loss of dependency. He also submits that the Tribunal has granted only Rs.2,000/- towards loss of estate and Rs.2,500/- towards loss of consortium. But as per the judgment of the Supreme Court in RAJESH VS. RAJBIR SINGH^[1], the first appellant is entitled to an amount of Rs.1,00,000/- towards consortium and

Rs.25,000/- has to be granted towards funeral expenses. As such, he pleaded to take the said judgment into consideration while granting compensation under the above heads. He also submits that in view of the decision of the Apex Court in NEW INDIA ASSURANCE CO.LTD. VS. KALPANA (SMT) AND OTHERS^[2] & SANUBONU NAZIRBHAI MIRZA AND OTHERS VS. AHMEDABAD MUNICIPAL TRANSPORT SERVICE^[3], just compensation has to be granted.

The claim is under Section 163-A of the Act, but it has to be seen that as per Ex.A-4, the age of the deceased as on the date of accident is 48 years. The Tribunal has taken a sum of Rs.24,000/- per annum as provided in the Second Schedule to Section 163-A of the Act as notional income of the deceased. Since the deceased was aged 48 years at the relevant time, multiplier '13' has to be taken into consideration. In this case, though the appellants claim that the deceased was earning Rs.100/- per day by working as labourer, there is no rebuttal evidence from the respondents. As per the judgment of the Delhi High Court in BUM BAHADUR AND ANOTHER VS. DHIRAJ KUMAR AND OTHERS in MAC.APP.110/2011 when no proof of the income of the deceased on record, the Claims

Tribunal can take the minimum wage of an unskilled labourer as the basis for assessment of the income of the deceased. In view of the same, the income of the deceased can be taken as Rs.100/-, which works out Rs.3,000/- per month and Rs.36,000/- annually. After deducting one-third towards personal expenses of the deceased, loss of dependency comes to Rs.24,000/- annually ($36,000 \times 2/3$) and after applying the multiplier '13, loss of dependency would come to Rs.3,12,000 ($24,000 \times 13$). As held by the Apex Court in the case of RAJESH (4 supra), the first appellant is entitled to a sum of Rs.1,00,000/- towards consortium and Rs.25,000/- has to be granted towards funeral expenses. Thus, in all the claimants are entitled to an amount of Rs.4,37,000/ towards compensation instead of Rs.1,85,500/- awarded by the Tribunal. The enhanced amount of compensation shall carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

Accordingly, the appeal is allowed in part. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

Dt.16.11.2015

TJS

[\[1\]](#)) 2013 ACJ 1403

[\[2\]](#)) 2007(3) SCC 538

[\[3\]](#)) 2014 (1) ALD 116 (SC)