HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1121 OF 2005

JUDGMENT:

The United India Insurance Company Limited, represented by its Branch Manager, Mukarampura, Karimnagar, which is respondent No.2 in O.P. No.538 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Karimnagar (for short, 'the Tribunal'), preferred the instant appeal aggrieved by the order dated 30.11.2004, whereby and whereunder, the Tribunal awarded a sum of Rs.2,24,000/- with interest at 9% per annum as against the claim of Rs.2,50,000/- laid under Section 166(1)(c) of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of mother of respondent Nos.1 and 2 herein (claimants) in a road accident, under Section 173 of the Act on the ground that the Tribunal went wrong in granting compensation to the claimants, as the very accident was caused by the next friend of the claimants, who was no other than their father, and when the claim was originally laid, their grand father was brought on record in place of their father, who died, and there was no proper appreciation of Exs.A.1, A.2 and A.4 and that the framing of issue No.1, as such, is wrong.

2. The appellant herein is respondent No.2, while

respondent Nos.1 and 2 herein, who are children of the deceased, are the petitioners, and respondent No.3 herein is respondent No.1, 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 22.05.2003, the deceased along with her husband went to Jagitial from Nusthulapoor on Bajaj motorcycle to visit the mother of deceased, who was ailing, and while they were returning and reached near outskirts of Kothapalli village, since the husband of the deceased drove the motorcycle in a rash and negligent manner, the rear tyre of it got punctured, due to which, he could not control the same and fell down, on account of which, the deceased sustained head injury and while she was being shifted to the hospital, she died. The petitioners, through their next friend-grand father, claiming that the deceased was aged 29 years and earning Rs.50/- to Rs.100/- per day as tailor, sought a sum of Rs.2,50,000/- under Section 166 of the Act.

5. Respondent No.1 remained *ex parte*. Respondent No.2-insurer filed counter opposing the claim.

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

"1. Whether the accident had occurred due to rash and negligent driving of the vehicle bearing No.AP 15-N-225 by Respondent No.1?

2. Whether the petitioners are entitled to recover compensation and if so to what amount and from whom?

3. To what relief?"

7. During enquiry, the next friend of petitioners examined himself as P.W.1 besides examining an eyewitness as P.W.2 and marked Exs.A.1 to A.4; whereas, on behalf of respondent No.2, no witnesses were examined, but copy of insurance policy was marked as Ex.B.1 on consent.

8. On appraisal of evidence on record, both, oral and documentary, let in by the petitioners, the Tribunal recorded finding on issue No.1 that the accident had occurred in the manner stated by P.W.3, somehow, wrongly mentioned as P.W.3 instead of P.W.2, and held accordingly in favour of the petitioners. On issue No.2, the Tribunal taking the age of the deceased as 29 years and income at Rs.1,500/- per month, deducted 1/3rd therefrom, taken the remainder, Rs.1,000/- per month or Rs.12,000/- per annum and applied multiplier '17' in working out the compensation at Rs.2,04,000/-, besides granting Rs.10,000/- to each petitioner towards loss of

love and affection, thus, making a total sum of Rs.2,24,000/- with interest at 9% per annum.

9. Heard Sri Naresh Byrapaneni, learned Standing Counsel for respondent No.2-Insurance Company (appellant), and Sri Ramachandra Rao Vemuganti, learned counsel for the petitioners (respondent Nos.1 and 2 herein). Though, respondent No.1 (respondent No.3 herein) was served with notice, none appears for him.

10. Learned Standing Counsel for respondent No.2-Insurance Company (appellant) would submit that the Tribunal went wrong in deciding issue No.1 and the very frame of issue No.1 was wrong as it shows that due to rash and negligent driving of respondent No.1, the accident had occurred.

11. On the other hand, learned counsel for the petitioners (respondent Nos.1 and 2 herein) would submit that though, the issue was wrongly framed showing respondent No.1 in place of father of the petitioners, still, since the parties proceeded on the assumption that the father of the petitioners was the driver of the two wheeler when the accident had occurred and that would not be material as the parties entered into trial with that assumption and the Tribunal also tendered finding on the said assumption without proper appreciation.

12. When perused the claim petition, in the body it is clearly mentioned that the father of petitioners was driving the accident vehicle at the relevant time when the accident had occurred. In that view of the matter, the wrong framing of issue No.1, more particularly, in regard to the fact that respondent No.1 was driving the vehicle would not be material so as to set aside the order and decree. Learned Standing Counsel for respondent No.2-Insurance Company fairly concedes that the policy issued was a comprehensive policy, in which case, the petitioners are entitled for compensation, though, the tortfeasor is no other than the father of the petitioners and their next friend. However, the petitioners are minors and their mother and father died and their grand father came on record as per the orders of the Tribunal dated 11.10.2004 in I.A. No.1043 of 2004 to represent the petitioners. Thus, viewed from any angle, the compensation determined by the Tribunal cannot be faulted. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is reduced to 7.5% on the entire amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[1].

13. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by

reducing the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

1st April, 2016

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[1] 2013 ACJ 1403