

**HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

**CIVIL MISCELLANEOUS APPEAL No.1302
OF 2004**

JUDGMENT:

Feeling aggrieved as the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Ongole (for short, 'the Tribunal') has not mulcted liability on respondent No.2-Oriental Insurance Company Limited and also on the ground that the compensation awarded by the order dated 27.01.2004 in O.P. No.404 of 2000 was very meager, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation and to mulct liability on respondent No.2-Insurance Company.

2. Appellant Nos.1 to 3 herein are petitioner Nos.1 to 3, while respondent Nos.1 and 2 herein, who are the owner and insurer of lorry bearing registration No.AAQ 3000, respectively, are respondent Nos.1 and 2, respectively, 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 petitioner Nos.1 and 2 are the sons and petitioner No.3 is daughter of one Vallela Peda Rangamma (deceased), who died in a road accident. Their stand is that their mother-Vellela Peda Rangamma, on 30.03.2000, left their village along with some others to attend coolie work, i.e., loading of bamboos in the lorry bearing registration No.AAQ 3000, while returning in the same lorry at about 11-00 a.m., when the lorry reached near Gunturivari Bhavi, since its driver drove it in a rash and negligent manner at high speed and could not control the same, occasioning the lorry turning upside down and the deceased along with others sitting on the bamboos fell down and received injuries, but the deceased died instantly. The petitioners, claiming that the deceased was earning Rs.50/- to Rs.60/- per day doing all types of works, sought a sum of Rs.1,50,000/- against the owner and insurer of the lorry, respectively.

5. Respondent No.1-owner of the lorry remained *ex parte* before the Tribunal. Respondent No.2-insurer of the lorry resisted the claim. A specific plea was taken that the deceased was travelling in a goods vehicle and, thus, that

amounted to violation of terms and conditions of the insurance policy and, therefore, sought to exonerate it from liability.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, petitioner No.1 examined himself as P.W.1 besides examining an eyewitness as P.W.2 and marked Exs.A.1 to A.4 to substantiate their claim; whereas, on behalf of respondent No.2, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

7. On appraisal of evidence let in by the petitioners, the Tribunal held issue No.1 in favour of the petitioners recording a finding that due to rash and negligent driving of the driver of the lorry, the accident had occurred. On issue No.2, the Tribunal has fixed daily earnings at Rs.30/- per day or Rs.900/- per month and deducted $\frac{1}{3}$ rd of it, which works out to Rs.300/-, and taken Rs.600/- per month or Rs.7,200/- per annum as contribution to the family and applying multiplier '13', since the deceased was 45 years old, arrived loss of dependency at Rs.93,600/-. Besides the same, the Tribunal also granted Rs.15,000/- towards

consortium and, thus, granted a total sum of Rs.1,08,000/- as compensation. However, the Tribunal declined to fasten liability on respondent No.2-Insurance Company on the ground that the deceased was travelling in a goods vehicle and she has to be construed as a gratuitous passenger and she was only meant for loading and unloading and, thereby, exonerated respondent No.2 by dismissing the claim petition against respondent No.2, however, fastened liability on respondent No.1 alone and, that too, dismissing the claim petition so far as petitioner No.3 is concerned.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not appreciated the evidence on record properly and ought to have taken Rs.60/- per day and ought to have fastened liability on the Insurance Company as the deceased was engaged as loading and unloading coolie and, therefore, sought to set aside the order of the Tribunal dismissing the claim petition against respondent No.2.

9. No representation for the appellants and respondent No.2-Insurance Company. Though, no notice was served on respondent No.1,

still, this Court by the order dated 02.02.2015 observed thus:

"It is represented by the learned counsel for the appellants that no notice is necessary for respondent No.1, owner of the vehicle, as he remained *ex parte* before the Tribunal vide **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others** [2001(1) ALT 495 (DB)]."

10. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioners. The fact-situation *ex facie* reveals that the deceased was travelling in a goods vehicle and, in fact, she was not the employee under the owner authorized to travel on the vehicle and, therefore, the finding recorded by the Tribunal exonerating respondent No.2-Insurance Company from liability to pay compensation cannot be faulted in view of the judgments of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**^[11] and **National Insurance Company Ltd., v. Baljit Kaur and others**^[21].

11. So far as enhancement of compensation is concerned, the Tribunal ought to have applied multiplier '14' in view of the decision of the

Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[3].

When the same is applied, loss of dependency works out to Rs.1,00,800/-. The Tribunal has granted Rs.15,000/- towards consortium, which ought not to have granted because her husband is not a party hereto. However, treating the same as the amount towards loss of love affection and sum o f Rs.5,000/- towards funeral expenses and Rs.5,000/- towards transport charges are granted.

12. Thus, the petitioners are entitled to a total sum of Rs.1,25,800/- (Rupees one lakh twenty five thousand and eight hundred) as against Rs.1,08,600/- granted by the Tribunal towards compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the amount granted by the Tribunal and the interest at 7.5% per annum is granted on the enhanced amount from the date of petition till realization in view of the decision of the Hon'ble Supreme Court i n **Rajesh and others v. Rajbir Singh and others**^[4].

13. Accordingly, the instant appeal is allowed

in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the finding recorded by the Tribunal exonerating respondent No.2-Insurance Company from the liability while giving liberty to the petitioners to recover the compensation from respondent No.1-owner of the lorry. 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

8th March, 2016

siva

[\[1\]](#) (2003) 2 SCC 223

[\[2\]](#) 2004 ACJ 428 (SC)

[\[3\]](#) (2009) 6 SCC 121

[\[4\]](#) 2013 ACJ 1403