

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1002 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.52,000/- as compensation by the order dated 05.01.2005 in O.P. No.168 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge Mahbubnagar (for short, 'the Tribunal') as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one Kondaiah, who was father of the appellants, in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellants herein are the petitioners, while the respondent herein, who is the Andhra Pradesh State Road Transport Corporation, represented by its Managing Director, Musheerabad, Hyderabad (Corporation), is the respondent 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 the petitioners are daughters of one Kondaiah (deceased), whose death occurred in the instant accident on 11.01.1999 at about 7-30 p.m., while he was sitting in front of old bus stand, an

RTC bus bearing registration No.AP 10Z 2673 driven by its driver in a rash and negligent manner at high speed coming from Pargi to Mahbubnagar dashed against the deceased, due to which he succumbed to injuries in the hospital. The petitioners, claiming that they were unmarried daughters and the deceased was earning Rs.70/- per day as a Hamali and contributing the same to the family, sought a sum of Rs.1,00,000/- as compensation.

5. Respondent-Corporation resisted the claim by raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, petitioner No.1 examined herself as P.W.1 besides marking Exs.A.1 to A.4 to substantiate their claim; whereas, on behalf of the respondent-Corporation, its driver was examined as R.W.1, but no documents were filed.

7. On appraisal of evidence on record, the Tribunal on issue No.1, recorded a finding that due to rash and negligent driving of the driver of the RTC bus, i.e., R.W.1, the accident had occurred. On issue No.2, the Tribunal observing that no whisper is made about the wife of the deceased in the evidence of P.W.1 and thereby, deriving the probability that the wife of the deceased must be alive, while granting Rs.52,000/- towards

compensation with interest at 9% per annum, given a direction that the petitioner shall file succession certificate and then entitled to receive the compensation equally.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that except the claimants, no other persons have filed any other claim petition arising out of the same accident to disprove the contention of the petitioners and, therefore, that direction given by the Tribunal to obtain succession certificate is unsustainable and, thus, sought to grant the balance amount.

9. No representation for the appellants-petitioners. Heard Sri B. Mayura Reddy, learned Standing Counsel for the respondent-Corporation.

10. Learned Standing Counsel for the respondent-Corporation would submit that the interest granted by the Tribunal is on higher side and, therefore, to reduce the same and the compensation of Rs.52,000/- granted by the Tribunal and the direction given by the Tribunal to the petitioners to obtain succession certificate for withdrawal of the amount are proper and, therefore, sought to maintain the order and decree passed by the Tribunal.

11. Perused the order and the evidence on record, both, oral and documentary, let in by the

petitioners and the respondent-Corporation. A scanning of the claim petition reveals that no whisper at all is made that the wife of the deceased is alive or no more having been predeceased him. When Secondary School Certificate filed by P.W.1 marked as Ex.A.4 is seen, the father's name is shown as 'Kondanna K', but the deceased herein is Kondaiah, as could be seen from the certified copy of the F.I.R. marked as Ex.A.1. Except filing the notarized affidavit that they are the unmarried daughters of Chinna Kondaiah, nothing else is forthcoming to show that the wife of the deceased is not alive and they are the only legal heirs. Certainly, the direction given by the Tribunal to the petitioners to obtain succession certificate cannot be faulted and it has to be confirmed.

12. So far as the compensation granted by the Tribunal is concerned, the Tribunal discussed the evidence elaborately and recorded a finding that the deceased was a coolie as could be seen from Exs.A.1 and A.3, which are copies of F.I.R. and postmortem report, and granted an amount of Rs.52,000/- opining it as just and adequate, which is improper. The claim is for Rs.1,00,000/-. Therefore, the entire amount is granted enhancing the compensation from Rs.52,000/- to Rs.1,00,000/-.

13. Thus, the petitioners are entitled to a total sum

of Rs.1,00,000/- (Rupees one lakh) as against Rs.52,000/- granted by the Tribunal towards compensation and the same is accordingly granted. However, the order in regard to the entitlement of the petitioners on submitting succession certificate is maintained. 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 interest at 7.5% per annum is granted on the enhanced amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1]. The petitioner-appellant is permitted to withdraw the entire amount of compensation.

14. 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 same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

28th March, 2016

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