HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1646 OF 2009

JUDGMENT:

The New India Assurance Company Limited-respondent No.2 in O.P. No.891 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), Warangal at Mahabubabad (for short, 'the Tribunal'), aggrieved by the order and decree dated 31.03.2005, whereby and whereunder, the Tribunal granted Rs.2,00,000/- with interest at 9% per annum, which was the claim also laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), preferred the instant appeal under Section 173 of the Act on the ground that the compensation granted by the Tribunal was excessive and arbitrary.

2. The appellant herein, who is the insurer of the accident vehicle, is respondent No.2, while respondent Nos.1 to 4 herein are the petitioners and respondent No.5 herein, who is owner of the accident vehicle, 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 fact-situation occurring in the instant case leading to the death of a student studying 9th class is not in dispute. The claim was opposed by the Insurance Company before the Tribunal. The owner of the vehicle remained *ex parte* and submitted himself for the decree passed by the Tribunal ultimately.

5. The Tribunal, in fact, having framed three issues and examining P.Ws.1 and 2 besides marking Exs.A.1 to A.6 on behalf of the petitioners and also marking Ex.B.1-copy of insurance policy on behalf of respondent No.2-Insurance Company and placing reliance on the decision of the Hon'ble Apex Court in **Manju Devi v. Musafir Paswan**[1], where the Hon'ble Apex Court assessed compensation at Rs.2,25,000/-, held that the petitioners are entitled to Rs.2,00,000/- as claimed and granted the said amount with interest at 9% per annum.

6. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal was not right in deducting 1/3rd amount and ought not to have granted Rs.2,00,000/- and the rate of interest at 9% is on higher.

7. Heard Smt. A.Jayanthi, learned counsel for the appellant-insurer. Though, service of notice was

completed on respondent Nos.1 to 4 herein, none appears for them. Though, respondent No.5 was not served, since the notice was taken out to the address given in the cause title of the original petition, it can be viewed that the notice was properly sent. Even otherwise, respondent No.1 suffered decree being the owner of accident vehicle. Hence, in his absence, the issue in this case can be adjudicated upon.

8. It is no doubt true, the deceased was 13 years old as could be gathered from the evidence on record. The Tribunal even referred to the notional income of Rs.15,000/- provided in the Second Schedule to Section 163-A of the Act, but however, placed reliance on the decision of the Hon'ble Supreme Court in **Manju Devi's** case

(1 supra) and granted Rs.2,00,000/-. The deceased, though, was 13 years old, still, the fact of deceased studying 9th class at the relevant time itself is sufficient enough to hold that the amount granted by the Tribunal cannot be construed as excessive, more particularly, when kept in view, the agony of the parents, who are the claimants herein. Therefore, there is no merit in the appeal.

9. 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**[2].

10. 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.

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

A. SHANKAR NARAYANA, J

22nd July, 2016

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[1] 2005 ACJ 99

[2] 2013 ACJ 1403