

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA
CIVIL MISCELLANEOUS APPEAL No.2037 OF 2004

JUDGMENT:

Having got dissatisfied with the amount of Rs.1,38,480/- granted as compensation by the order dated 27.12.2002 in O.P. No.720 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Adilabad (for short, 'the Tribunal') as against the claim of Rs.3,50,000/- laid under Section 166(1)(c) of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one Meera Buchanna, who was the husband of appellant No.1 and father of appellant Nos.2 to 5, 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 respondent Nos.1 and 2 herein, who are the owner and insurer of auto bearing registration No.AP 1T 2598, respectively, are respondent Nos.1 and 2, respectively, and respondent No.3, which is Union of India, represented by its General Manager, South Central Railway, Secunderabad, is respondent No.3 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 22.05.2000, while the said Meera Buchanna (deceased) along with others was proceeding to Gimma village from Adilabad in an auto bearing registration No.AP 1T 2698 and when it reached near Gimma unnamed railway level crossing and while it was crossing the railway line, all of a sudden, one light rail engine came from Adilabad side and dashed the auto, due to which, he received grievous injuries all over his body and succumbed to injuries while undergoing treatment in Government Hospital, Adilabad. Railway Police, Nizamabad, also registered a case in Crime No.32 of 2000 for the offences punishable under Sections 304-A, 337 and 338 IPC against the driver of the auto. The petitioners, claiming that the deceased was earning Rs.3,000/- per month as washer man and aged 35 years, sought a sum of Rs.3,50,000/- against respondent Nos.1 to 3, who are owner, insurer of the auto and the Union of India, represented by the General Manager, South Central Railway, Secunderabad, respectively.

5. Respondent No.1-owner of the auto remained *ex parte*. Respondent No.2-insurer opposed the claim raising various pleas. Respondent No.3 filed counter, also raising various pleas pleading that the claim petition was unsustainable as the accident had occurred due to negligent driving of the auto driver.

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 examining an eyewitness as P.W.2 and marked Exs.A.1 to A.3, which are copies of F.I.R., inquest panchanama and postmortem report, to substantiate their claim; whereas, on behalf of respondent Nos.2 and 3, no witnesses were examined and no documents were filed.

7. The Tribunal, on appraisal of evidence let in by the petitioners, on issue No.1, fixed liability to the extent of 80% on the driver of auto rickshaw and remaining 20% on the South Central Railways, Secunderabad, respondent No.3 herein. On issue No.2, the Tribunal has taken notional income of the deceased at Rs.15,000/- per annum and after deducting 1/3rd therefrom towards his personal expenses, arrived at Rs.10,000/- per annum towards contribution of the deceased to his family and taking the age of the deceased as 35 years, by applying multiplier '14.81' as per the decision of this Court in **Bhagwan Das v. Mohd. Arif**^[1], arrived loss of dependency at Rs.1,48,100/-, besides granting Rs.10,000/- towards loss of consortium and Rs.15,000/- towards loss of estate, and, thus, making a total of Rs.1,73,100/- and after deducting 20% therefrom, granted a sum of Rs.1,38,480/- with interest at 9% per annum from the date of petition till realization.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has granted meager amount as compensation and, therefore, sought to grant the balance amount as compensation.

9. No representation for the appellants. Heard Sri B.Devanand, learned Standing Counsel for respondent No.2. No representation for respondent No.3. Appeal was dismissed against respondent No.1 for default by the order dated 29.01.2011. However, dismissal of the appeal for default against respondent No.1-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**^[2].

10. The short point that arises for consideration is, whether the amount awarded by the Tribunal as compensation is just and adequate or is on lower side?

11. On apportionment of negligence, the finding recorded by the Tribunal appears to be improper. The reason being that the accident had occurred while the driver of auto rickshaw was taking the auto rickshaw on the railway level crossing despite knowing full well that it was unmanned crossing. In which case, the entire liability rests on the driver of auto rickshaw as he had not taken

proper care and precaution to avert taking place of the accident despite the fact that the things were visible from some distance, and tried to cross the railway level crossing, occasioning taking place of the accident. Therefore, the finding recorded by the Tribunal is hereby set aside.

12. So far as the age of the deceased taken by the Tribunal as 35 years is concerned, the same cannot be interfered with as there is no other material on record to show that his age was less than 35 years on the date of accident. Concerning proof of income, though, the petitioners have stated that the deceased being a washer man used to earn Rs.3,000/- per month, the Tribunal held that for want of any proof, the same cannot be accepted and even keeping in view, that the deceased must be deriving Rs.18,000/- per annum, i.e., Rs.1,500/- per month being washer man during the year 2000. Since the dependents are five in number and in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[3], 1/4th deduction is permissible towards personal expenses. Thus, contribution of the deceased to the family works out to Rs.13,500/- per annum. Relevant multiplier for the age group of persons between 31 and 35 years, as the deceased was 35 years as on the date of accident, is '16' in view of the decision of the Hon'ble Supreme Court in

Sarla Verma's case (supra 3). When the multiplier '16' is applied to the multiplicand, loss of dependency works out to Rs.2,16,000/-. Since no amount was granted by the Tribunal towards future prospects, in view of the decisions of the Hon'ble Supreme Court in **Sarla Verma's** case (supra 3) and **Rajesh and others v. Rajbir Singh and others**^[4], the petitioners are entitled to additional amount @ 50%, which works out to Rs.1,08,000/-. Besides the same, a sum of Rs.50,000/- is granted towards conventional amount, in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar v. National Insurance Company**^[5].

13. Petitioners laid the claim for Rs.3,50,000/- only, but, certainly, they cannot be deprived of Rs.3,74,000/-, though, it exceeds the claim made by them, in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**^[6], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**^[7] and **Rajesh's** case (supra 4), wherein, it was held that it is the duty of the Courts to award just, equitable, fair and reasonable compensation with reference to the settled principles of law irrespective of the claim made.

14. Thus, the petitioners are entitled to a total sum of Rs.3,74,000/- (Rupees three lakh and seventy four

thousand) as against Rs.1,38,480/- granted by the Tribunal towards compensation and the same is accordingly granted. However, the petitioners are directed to pay Court fee on the excess amount granted by this Court than the claim within a period of three months from today.

15. 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 of Rs.2,35,520/- from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 4).

16. Accordingly, the instant appeal is allowed modifying the order passed by the Tribunal, by enhancing the compensation with interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

1st March, 2016

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[\[1\]](#) 1987 ACJ 1052
[\[2\]](#) 2001(1) ALT 495 (D.B.)
[\[3\]](#) (2009) 6 SCC 121
[\[4\]](#) 2013 ACJ 1403
[\[5\]](#) LAWS (SC) -2014-4-67
[\[6\]](#) AIR 2003 SC 674
[\[7\]](#) 2012 ACJ 191 (SC)