

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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C.M.A. Nos.776 and 960 of 2004

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COMMON JUDGMENT:

These two appeals are being disposed of by this common order as they arise out of the same award in M.V.O.P.No.104 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Cuddapah (for short, 'the Tribunal')

C.M.A. No.776 of 2004 was filed by the National Insurance Company Limited challenging the quantum of compensation whereas C.M.A. No.960 of 2004 was filed by the claimants seeking enhancement of compensation.

Twelve claimants filed M.V.O.P.No.104 of 2001 claiming a compensation of Rs.6,00,000/- for the death of one Shaik Basha, who was working as a driver in A.P.S.R.T.C. at Rayachoti depot. Petitioner No.1 was the first wife and petitioner No.8 was the second wife of the deceased. Petitioners 2 to 7 are the children of deceased through his first wife whereas petitioners 9 to 11 are the children of deceased through his second wife, and petitioner No.12 is the mother of deceased.

In the claim petition, it was alleged that on 08.03.2000 at about 4.30 A.M. when the said Basha was standing on the extreme left side of the road in front of Hotel New Seema, a driver of the Mini Lorry bearing registration No.AP.03-U-2633 drove it in a rash and negligent manner and dashed against the electric pole and also hit the said Basha. In the said accident, the said Basha died on the spot and others received injuries. The deceased was working as a driver and was earning Rs.4,027.79 ps per month as salary.

Before the Tribunal, respondent No.1 remained *ex parte* and

the case was contested by respondent No.2-Insurance Company.

On the basis of the pleadings, the Tribunal framed the following issues:

- 1) Whether the deceased Shaik Basha died in motor vehicle accident on 8-3-2000 due to rash or negligent driving of R-1's mini lorry bearing No.AP03-U-2633 by its driver?
- 2) Whether the petitioners are entitled for compensation and if so to what amount and from whom?
- 3) To what relief?

Before the Tribunal, PWs 1 and 2 were examined and exhibits A1 to A6 were marked. No evidence was let in on behalf of the respondents.

On the basis of oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of Mini Lorry bearing registration No.AP.03-U-2633, driven by its driver.

Coming to the compensation payable to the claimants, the Tribunal noticed that the date of birth of the deceased was shown as 15.12.1955 and there was no dispute with regard to the gross salary of Rs.4,027.79 ps, though the net salary was much less. The Tribunal deducted 1/3rd of the amount towards personal expenses and taking the monthly contribution as Rs.5,000/-, applying the multiplier of '11', arrived at an amount of Rs.6,60,000/-. Since the claimants filed the claim petition for an amount of Rs.6,00,000/-, the compensation was awarded by restricting the amount to Rs.6,00,000/-, by award dated 24.11.2003.

As stated above, there is no dispute with regard to the salary drawn by the petitioner and the age of petitioner. There is no dispute with regard to the number of dependants also. In view of the decisions of the Supreme Court in **Sarla Verma v. Delhi**

Transport Corporation^[1] and **Rajesh v. Rajbir Singh**^[2], the contribution to the family, when the dependants are 12, will be more and the amount deducted towards personal expenses will be $\frac{1}{5}^{\text{th}}$ of the amount earned by the deceased. As per the decision in **Rajesh** (supra), for the future prospects personal salary should be taken as 30% keeping in view the age of deceased. If the same is applied, the monthly income would come to Rs.4,200/- $[(4000 + 30\%) - \frac{1}{5}^{\text{th}} = 4160, \text{ rounded to } 4200]$ and the appropriate multiplier for a person aged about 44 years is '14'. The total amount of contribution to the family would come to Rs.7,05,600/-. As per the latest decisions of the Supreme Court, the family is entitled for an amount of Rs.10,000/- towards funeral expenses and the wives of the deceased are entitled for loss of consortium to an amount of Rs.50,000/-. In view of the same, the total amount comes to Rs.7,65,600/-. Though the claim petition was filed for an amount of Rs.6,00,000/-, in view of the larger bench decision of this Court, this Court is competent to award over and above the compensation claimed, as it is the duty of the Court to award just compensation.

Accordingly, the appeal of the claimants in **C.M.A.No.960 of 2004** is allowed enhancing the compensation to Rs.7,65,600/- (Rupees seven lakhs sixty five thousand and six hundred only) from Rs.6,00,000/-, awarded by the Tribunal, and the enhanced amount of compensation shall carry interest @ 9% per annum from the date of petition till the date of realisation. However, the enhanced compensation shall be paid to the claimants after paying the difference in Court fee. No order as to costs.

In view of the justification for enhancing the compensation, the appeal preferred by the insurance company in **C.M.A. No.776**

of 2004, challenging the quantum of compensation, does not survive and the same is accordingly dismissed. No order as to costs.

Miscellaneous Petitions, if any, pending in these Appeals shall stand closed.

A.RAMALINGESWARA RAO, J

08.02.2016

MVA

[\[1\]](#) 2009 (6) SCC 121

[\[2\]](#) 2013 ACJ 1403