

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.1641 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.2,00,000/- towards compensation as against the claim of Rs.5,00,000/- laid under

Section 166(1)(C) of the A.P. Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the A.P. Motor Vehicles Rules, 1989, petitioners preferred this Civil Miscellaneous Appeal against the order and decree, dated 03.02.2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Nizamabad, in O.P. No.1100 of 2001, seeking enhancement of the compensation.

2. The appellants herein, who are parents of Manoj, who died in the accident, are petitioners in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.AP-10-T-8600, which involved in the accident, are respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before the Tribunal and Manoj, who died in the accident as 'deceased'.

4. According to the petitioners, their son, Manoj was working as Cleaner on the lorry bearing No.AP-10-T-8600 belonging to respondent No.1. They claim that on 06-05-2001, at 1-00 p.m., while their son was sleeping on the side of the road near the lorry in front of VII Battalion, Dichapally, driver of the lorry started the lorry without observing their son sleeping near the lorry and moved it, thereby front portion of the lorry ran over him, due to which, he sustained crush injury and immediately he was admitted in Government Hospital, Nizamabad, where he succumbed to the injuries while undergoing treatment. They claim that the deceased was earning Rs.5,000/- per month.

5. Respondent No.1, owner of the lorry involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the above lorry, opposed the claim.

7. The Tribunal based on the pleadings, framed the following three (3) issues:

“1. Whether the accident was due to rash and negligent driving of the lorry bearing No.AP-10-T-8600 by its driver?

2. Whether the petitioners are entitled for compensation. If so, to what amount and against which of the respondent?

3. To what relief?"

8. During enquiry, petitioner No.1, mother of the deceased, examined herself as PW.1 besides examining eyewitnesses to the occurrence viz., Rahman Khan and Shaik Ahmed as PWs.1 and 2 respectively, and marked Exs.A-1 to A-5. On behalf of the insurer, one of its officials was examined as RW.1 and marked Ex.B-1, copy of the insurance policy of the lorry involved in the accident.

9. The Tribunal held issue No.1 in favour of the petitioners and on issue No.2, taking the age of the deceased as '18' year, his income at Rs.1,500/- per month and after deducting 1/3rd therefrom, by applying multiplier '16', arrived at Rs.1,92,000/- towards loss of dependency besides Rs.5,000/- towards loss of estate and Rs.3,000/- towards funeral and transportation expenses; and, thus, granted a total sum of Rs.2,00,000/- to the petitioners towards compensation.

The Tribunal has rejected stand of the insurer in view of the admission made by RW.1, in his cross-examination, that the insurance policy under Ex.B-1 is a comprehensive policy and that he (RW.1) admitted that risk of the Cleaner (deceased) was also covered by the policy.

Even based on Ex.B-2, Tribunal rejected the stand of the insurer as to driver of the lorry was not holding effective

valid driving licence at the relevant time.

10. Be that as it may, no appeal is preferred by the insurer challenging the very same award.

11. Heard Sri P. Radhive Reddy, learned counsel for the petitioners (appellants), and Sri A.V.K.S. Prasad, learned counsel for respondent No.2, insurer.

12. Despite service of notice, none appears for respondent No.1, insured.

13. Admittedly, there is no documentary proof to show that the deceased was earning Rs.6,000/- per month as contended by the petitioners. The Tribunal, somehow, took notional income at Rs.15,000/- per annum based on Schedule - II to Section 163 of the Act. The accident had occurred in May, 2001. Since it is not in dispute that the deceased was working as 'Cleaner' on the date of accident, his earnings can be fixed at Rs.2,000/- per month, and, when 50% therefrom is deducted towards his personal expenses since he died in unmarried status, his contribution to his family works out to Rs.1,000/- (Rs.2,000/- - 50%) per month and Rs.12,000/- (Rs.1,000/- x 12) per annum.

14. The Tribunal has taken the multiplier based on the age of the younger parent of the deceased. Placing reliance on the decision of the Hon'ble Supreme Court in

Amrit Bhanu Shali and others v. National Insurance Company Limited and others^[1] and **Munnalal Jain and another v. Vipin Kumar Sharma and others**^[2], learned counsel for the petitioners submits that age of the deceased has to be taken for selection of multiplier irrespective of the fact that the deceased died in unmarried status. Therefore, relevant multiplier for the age group of the deceased, who was eighteen (18) years old at the relevant time as per Ex.A-2 - post-mortem examination report, is '18' as per the table formulated by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**^[3], and, when applied the same to the multiplicand Rs.12,000/-, it works out to Rs.2,16,000/- (Rs.12,000/- x 18) towards loss of dependency. Besides the same, Rs.15,000/- is granted towards loss of estate instead of Rs.5,000/- granted by the Tribunal and Rs.15,000/- towards funeral and transportation expenses as against Rs.3,000/- granted by the Tribunal.

15. Thus, the petitioners are entitled to a total compensation of Rs.2,46,000/- (Rupees two lakhs and forty six thousand only) as against Rs.2,00,000/- awarded by the Tribunal, and the same is accordingly awarded. However, the petitioners are entitled to interest on the amount granted by the Tribunal at 9% per annum, but on

the enhanced compensation at 7.5% per annum, from the date of petition till realisation as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[4]. The petitioners are entitled to enhanced compensation in the same ratio as apportioned by the Tribunal.

16. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation with interest, as stated supra.

There shall be no order as to costs.

17. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

January 6, 2016.

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^[1] 2012 AIR SCW 3901

^[2] (2015) 6 SCC 347

^[3] (2009) 6 SCC 121

^[4] 2013ACJ1403 = 2013(4)ALT35