

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.2684 OF 2009

JUDGMENT:

Seeking enhancement of compensation, petitioners - claimants preferred the present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, as they were dissatisfied with the award of Rs.1,00,000/-, a lump sum amount, granted by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Srikakulam, by the order and decree dated 16.03.2009 in M.V.O.P. No.19 of 2003, as against their claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. Heard Sri Aravala Rama Rao, learned counsel for the petitioners - appellants.

3. Though, service of notice was completed on respondent No.2, insurer of the lorry bearing No.AP-31-W-3668 that involved in the accident, none appears.

4. So far as respondent No.1 - insured, owner of the lorry involved in the accident, is concerned, the petitioner has endorsed in the cause title of the grounds of appeal itself that she is not a necessary party. Therefore, no process was taken out against her.

5. For the death of Savara Tata Rao, aged 26 years, working as Secondary Grade Teacher in MPUP School, Kesarapada on a consolidated pay of Rs.1,500/- as per the evidence of PW.3, the

Tribunal, having framed three (3) issues, examining PWs.1 to 3 and marking Exs.A-1 to A-4 and Exs.X-1 to X-5, held all the three (3) issues in favour of the petitioners. But, granted Rs.1,00,000/- having opined that it would be just and reasonable amount to compensate the petitioners. The same is under challenge in the instant appeal.

6. Learned counsel for the petitioners (appellants) would submit that PW.3's evidence would show that after two years of service, the deceased would have become entitled to draw the pay scale of Rs.4,903/- and, therefore, sought to determine the compensation on that basis.

7. A perusal of the order under challenge would reflect that PW.3, though, asserted in her chief-examination that on completion of two (2) years of service, the deceased would have become entitled to draw regular pay at the rate of Rs.4,903/-, when confronted in her cross-examination, she answers to a question that she has not brought the rules with her to show that as per the rules, salary was drawn and that service of the deceased was not a permanent one. Thus, the rules, to which PW.3 referred, since not filed, her evidence to the effect that the deceased would have become entitled to the scale of pay at the rate of Rs.4,903/- after completion of two years, cannot be accepted which the Tribunal rightly did.

8. The salary certificate also shows that a consolidated pay of Rs.1,500/- was being tendered towards monthly salary. Petitioner

No.1, who is the father of the deceased originally laid the claim, but died during the pendency of proceedings before the Tribunal, and, therefore, the brothers and sisters of the deceased came on record as legal representatives, but all are majors. Mother of the deceased is no more as she predeceased the father of the deceased as could be seen from the cause title in the O.P.

9. It is, therefore, difficult to construe that petitioner Nos.2 to 6 can be strictly viewed as dependants on the deceased when even petitioner No.2 is elder to the deceased. However, a lump sum amount of Rs.1,00,000/- granted by the Tribunal towards compensation appears to be wholly unreasonable. The Tribunal ought to have resorted to structural formula when there is definite income forthcoming from the evidence of PW.3 and the documentary evidence referred to in the above. Admittedly, the deceased was not married on the date of accident. Therefore, 50% of his income requires deduction towards his personal living expenses and the other 50% has to be construed as his contribution to the family; in which case, out of Rs.18,000/- per annum, Rs.9,000/- ($\text{Rs.18,000/-} \times 50\%$) would be the contribution to his family. Since the deceased was 26 years old at the relevant time, multiplier factor '17' is applicable and when applied, would work out to Rs.1,53,000/- ($\text{Rs.9,000/-} \times 17$). Besides the same, the petitioners are also entitled to a sum of Rs.10,000/- towards funeral expenses and transport. Thus, the petitioners are totally entitled to Rs.1,63,000/- towards compensation.

10. Thus, the petitioners are totally entitled to an amount of Rs.1,63,000/- (Rupees one lakh sixty three thousand only) as against Rs.1,00,000/- granted by the Tribunal and the same is accordingly granted while maintaining the interest at 7.5% per annum on the entire amount, which includes enhanced amount, granted by the Tribunal, since the same is in tune with the rate of interest awarded by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹, from the date of petition till realization.

11. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the order under challenge by enhancing the compensation as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

November 11, 2016.

PV

1. 2013ACJ1403 = 2013(4)ALT35