

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4092 OF 2004

JUDGMENT:

Having got dissatisfied with the amount of Rs.1,12,000/- granted as compensation by the order dated 30.06.2004 in O.P. No.521 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Khammam (for short, 'the Tribunal') as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one Kamana Venkanna, who was the son of the appellants, in a road accident, the instant appeal is preferred under Section 173 of the Act challenging mainly on two grounds; first, for enhancement of compensation; and second, that the deceased was travelling in the accident lorry as a owner of goods and, therefore, the finding recorded by the Tribunal that he was travelling in the goods vehicle as unauthorized passenger and, thereby, directing the Insurance company to initially deposit the amount of compensation awarded by the Tribunal and recover the same from the owner.

2. The appellants herein are the petitioners, while respondent Nos.1 to 3 herein, who are the driver, owner and insurer of lorry bearing registration No.AP 20T 4449, respectively, are respondent Nos.1 to 3, respectively, 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 18.04.2000 at about 10-45 p.m., the said Kamana Venkanna (deceased) boarded a lorry bearing registration No.AP 20T 4449 with a load of onions and fruits at Bhadrachalam to go to Chintoor village and even some other persons also boarded the same lorry and when it reached outskirts of Buddagudem village at about 12-00 mid-night, since respondent No.1-driver drove it in a rash and negligent manner at high speed lost control over it occasioning the said lorry turning upside down and causing the instant death of the deceased as he received injuries on vital parts of his person. Concerned police also registered a case in Crime No.27 of 2000 for the offences punishable under Sections 337 and 304-A IPC against respondent No.1. The petitioners, claiming that the deceased who is their son was 20 years old on the date of accident doing business in fruits and onions at Bhadrachalam and he was the only son to them and they were dependents on him, sought a sum of Rs.2,00,000/- as compensation from respondent Nos.1 to 3, who are driver, owner and insurer of the lorry, respectively.

5. Respondent Nos.1 and 2-driver and owner of the lorry remained *ex parte* before the Tribunal. Respondent No.3-insurer of the lorry opposed the claim specifically pleading that the owner of the vehicle contravened the terms and conditions of the insurance policy as the deceased was allowed to travel in a goods vehicle, and, therefore, sought to dismiss the claim.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, petitioner No.2 examined herself as P.W.1 besides marking Exs.A.1 to A.4 to substantiate their claim; whereas, on behalf of respondent No.3, its Branch Manager was examined as R.W.1 and Exs.B.1 and B.2 were marked.

7. On appraisal of evidence let in by the petitioners, the Tribunal has tendered finding on issue No.1 that on account of rash and negligent driving of the driver of lorry, the accident had occurred causing the death of deceased. On issue No.2, the Tribunal has taken the age of deceased as 20 years, earnings at Rs.1,000/- and deducted $\frac{1}{3}^{\text{rd}}$ therefrom towards personal expenses and taken $\frac{2}{3}^{\text{rd}}$ towards contribution to the family and arrived the contribution to the family at Rs.8,000/- per annum and taken the age of younger parent of the deceased as 40 years and applied multiplier

'14' based on the entries in the Second Schedule to Section 163-A of the Act, and, thus, arrived the loss of dependency at Rs.1,12,000/- and, accordingly, granted the same. However, the Tribunal recorded a definite finding directing respondent No.3 to initially deposit the amount of compensation and recover the same from respondent No.2-owner of the vehicle.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal granted meager compensation and the Tribunal went wrong in holding that the deceased was unauthorized passenger travelling in the goods vehicle and that the Tribunal ought to have taken income of the deceased as Rs.2,000/- per month, which was the minimum wage payable to a skilled person and ought to have awarded Rs.50,000/- towards pain and suffering, and, therefore, sought to grant balance amount.

9. No representation on either side, however, taken up for disposal on merits.

10. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the parties. The fact that the deceased was travelling in goods a vehicle is not in dispute. But, according to the petitioners' case, number of passengers got into the lorry

at the same spot. Further, there is no clinching evidence to show that the deceased was travelling in the lorry having engaged it on hire for carrying his goods. Hence, the finding recorded by the Tribunal that the deceased was travelling in the goods vehicle cannot be disturbed. However, this is not an appeal challenging the direction that respondent No.3-insurer has to first deposit the amount of compensation awarded by it and recover the same from respondent No.2-owner. Hence, the said finding cannot be disturbed.

11. Now turning to whether the petitioners are entitled to enhancement of compensation, the Tribunal, in fact, ought to have taken Rs.15,000/- for non-earning member based on the entry in the Second Schedule instead of Rs.1,000/- without there being any basis. Therefore, the income of the deceased is fixed at Rs.15,000/- per annum and since he died in an unmarried status, 50% thereof has to be deducted towards his personal expenses and the other 50% has to be taken as contribution to the family, which works out to Rs.7,500/- per annum. In view of **Munna Lal Jain and another Vs. Vipin Kumar Sharma and others**^[1] case, the age of the deceased is criteria to consider relevant multiplier and since the deceased was aged 20 years, the relevant multiplier is '18' in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others Vs. Delhi**

Transport Corporation and another^[2]. When the same is applied, loss of dependency works out to Rs.1,35,000/- (Rs.7,500/- x 18). Towards future prospects, 50% thereof has to be added additionally to the amount towards loss of dependency, which works out to Rs.67,500/-. Thus, the petitioners are totally entitled to a sum of Rs.2,02,500/- towards loss of dependency. The petitioners also entitled to Rs.5,000/- towards funeral expenses.

12. Petitioners laid the claim for Rs.2,00,000/- only, but, certainly, they cannot be deprived of Rs.2,07,500/-, 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**^[3], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**^[4], **Sarla Verma's case** (supra 2) and **Rajesh and others v. Rajbir Singh and others**^[5], 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. 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.

13. Thus, the petitioners are entitled to a total sum of Rs.2,07,500/- (Rupees two lakh seven thousand and five hundred) as against Rs.1,12,000/- granted by the Tribunal

towards compensation and the same is accordingly granted. Respondent No.3-Insurance Company is not liable to pay the enhanced amount of Rs.95,500/-. Therefore, even a direction to initially pay the enhanced amount cannot be ordered and, thus, liability so far as the enhanced amount of Rs.95,500/- is concerned, the same is fastened on the owner of the vehicle, who is respondent No.2 herein. In case any appeal is preferred by respondent No.3-Insurance Company and still pending, the direction given by the Tribunal to initially deposit Rs.1,12,000/- awarded by it as compensation and recover the same from respondent No.2-owner is subject to the decision in the said appeal. 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 interest at 7.5% per annum is granted on the enhanced amount from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 5).

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

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

closed.

A. SHANKAR NARAYANA, J

3rd March, 2016

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[\[1\]](#) (2015) 6 SCC 347
[\[2\]](#) (2009) 6 SCC 121
[\[3\]](#) AIR 2003 SC 674
[\[4\]](#) 2012 ACJ 191 (SC)
[\[5\]](#) 2013ACJ1403 = 2013(4)ALT35