

**HON'BLE SRI JUSTICE A. SHANKAR**

**NARAYANA**

**M.A.C.M.A. No.3180 OF 2005**

**JUDGMENT:**

The instant appeal is preferred by the petitioners having got dissatisfied with the award of Rs.10,000/- (Rupees ten thousand), as compensation, by order and decree, dated 23-06-2005, in O.P. No.1112 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – III Additional District and Sessions Judge (Fast Track Court), Nizamabad (for short 'the Tribunal'), as against the claim of Rs.3,00,000/- (Rupees three lakhs) laid under Section 166 of the Motor Vehicles Act, 1988 ( for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, seeking enhancement.

2. The appellants herein, who are wife and daughter of Kannam Sailoo, are the petitioners in O.P. before the Tribunal and respondent Nos.1 and 2 herein, who are owner and insurer of lorry bearing registration No.ATV 1688, respectively, are Respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 12-09-1999 at about 7.30 a.m., one Kannam Sailoo was peddling his bicycle from Station Road to Gandhi Chowk and when he reached in front of Government Hospital, a lorry bearing registration No.ATV 1688 driven at high speed in a rash and negligent manner came from behind and hit his bicycle, due to which, he fell down and front

wheel of the lorry ran over him, on account of which, he sustained wedge compression fracture, injuries to skull, head and all over his body. He was immediately admitted in Government Headquarters Hospital, Nizamabad, where he has undergone surgical intervention and, even according to the petitioners, he was treated in a private hospital. Due to injuries, his health condition deteriorated and he succumbed to injuries on 08-04-2001 (i.e., five years seven months after the accident had taken place). Claiming that deceased was earning Rs.6,000/- per month as Hamali – cum – labourer and they were depending on him totally, though, worked out the claim at Rs.34,02,000/-, still, restricted the claim to Rs.3,00,000/- and sought the same against respondent Nos.1 and 2, who are owner and insurer of the accident vehicle as compensation.

5. Respondent No.1, owner of the lorry, did not choose to file counter.

6. Respondent No.2, its insurer, opposed the claim by filing counter, contending that there was no nexus between the accident and the death of the deceased. Stating the death of the deceased did not occur on account of injuries said to have sustained in the accident, sought to dismiss the claim petition.

7. On the basis of pleadings, the Tribunal has framed the following three issues about the responsibility for the accident thus:

- “ 1. Whether the accident was due to rash and negligent driving of the lorry bearing No.ATV-1688 by its driver?
2. Whether the petitioner is entitled to compensation.  
If so to what amount and against which of the

respondents?

3. To what relief? ”

8. During inquiry, on behalf of the petitioners, PWs.1 to 4 were examined and Exs.A-1 to A-35 and Ex.C-1 were marked to substantiate their claim. On behalf of respondents, no witnesses were examined and no documents were filed.

9. On issue No.1, the Tribunal on appraisal of evidence on record held that due to rash and negligent driving of the driver of the lorry the deceased received injuries and thus recorded a finding in favour of the petitioners. On issue No.2, the Tribunal considering the circumstances that the accident had taken place on 12-09-1999 and the death of the deceased occurred on 08-04-2001 which was more than five years seven months after the accident and observing that in the absence of any supporting evidence that the deceased died of injuries in the accident being placed by the petitioners, disbelieved the stand, and taken the age of the deceased as 75 years from Ex.C-1 though, the petitioners claimed that he was 55 years old, rejected the same and granted Rs.10,000/- towards cost of medicines, extra nourishment and transport charges.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioners seeking enhancement of compensation contending in the grounds that the Tribunal went wrong in appreciating the evidence on record and recording the finding that the deceased did not die due to the accident. It is also stated that the Tribunal ought to have held that the death of the deceased was on account of injuries he sustained

in the accident and, therefore, sought to grant balance amount.

11. Heard Sri P. Radhive Reddy, learned counsel for the appellants – petitioners. Despite service of notice on respondent No.2, none appears for Insurance Company. The instant appeal was dismissed against respondent No.1, by order, dated 06-01-2012, and the same would not make any difference since he suffered a decree in the O.P. passed by the Tribunal.

12. Perused the order and the evidence, both, oral and documentary let in by the parties.

13. As seen from the record, the finding recorded by the Tribunal is well reasoned, based on appreciation of evidence on record and the probabilities derived from proved facts. Absolutely, there is no material to show that the death of the deceased had occurred only due to the injuries he sustained in the accident. The circumstance that the death of the deceased occurred on 08-4-2001, though the accident occurred on 12-09-1999, certainly, stands adverse to the case of petitioners.

14. This apart, no material is placed by the petitioners to show the proximate cause of the death was on account of injuries sustained by the petitioner. What all to be found on record is, that the deceased was treated as in-patient for 19 days initially and thereafter, he was treated in a private hospital. Hence, the finding recorded by the Tribunal that the death of the deceased did not occur on account of injuries sustained by him is maintained. Concerning the amount of Rs.10,000/- granted by the Tribunal towards cost of medicines, extra nourishment and transport charges, the same is enhanced to Rs.25,000/- keeping in view, the

fact that the deceased sustained fracture of ulna for which he was treated in Government Hospital for 19 days.

15. Regarding rate of interest, the Tribunal has granted the same at 9% per annum and the same is not disturbed on the amount awarded by the Tribunal. However, on the enhanced amount of Rs.15,000/-, interest is granted at the rate of 7.5% per annum from the date of petition in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**<sup>[1]</sup>.

16. In the result, the appeal is allowed in part, and the order and decree, dated 23-06-2005, in O.P. No.1112 of 2001, passed by the Tribunal, are modified, enhancing the compensation to Rs.25,000/- (Rupees twenty five thousand) from Rs.10,000/- with interest at the rate of 9% per annum on the amount of Rs.10,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.15,000/-(Rupees fifteen thousand) from the date of petition till realization. The compensation amount shall be apportioned between the petitioners in the same proportion in which the original compensation amounts were directed to be apportioned and disbursed by the Tribunal. There shall be no order as to costs.

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

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**A. SHANKAR NARAYANA, J**

**February 03, 2016.**

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[\[1\]](#). 2013 ACJ 1403