

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1416 OF 2005

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JUDGMENT:

Having got Dissatisfied with the amount of Rs.54,000/- as compensation granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District Judge, Kurnool (for short 'the Tribunal'), by order and decree, dated 08-11-2004, in M.V.O.P. No.87 of 2003, as against the claim of Rs.1,00,000/- laid under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the petitioners under Section 173 of the Act, seeking enhancement of compensation.

2. The appellants herein, who are parents of deceased son - C.M. Shahajit Ali, are the petitioners in M.V.O.P. before the Tribunal while respondent Nos.1 and 2, who are owner and insurer of Tractor and Trailer bearing registration No.AP 21T 7859 and 7860, respectively, are Respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 04-12-2001 at

about 4.30 p.m., while the son of the petitioners - Mr. C.M. Shahajit Ali, aged about five years, was returning to his house from the school in Vadlaramapuram village, a tractor and trailer bearing registration No.AP 21T 7859 and 7860 driven by its driver in a rash and negligent manner came and hit him, due to which, he fell under the wheel of the tractor and it ran over him and thereby he died instantly. The petitioners being the parents of deceased, laid claim for grant of Rs.1,00,000/- against respondent Nos.1 and 2 being owner and insurer of the vehicle.

5. The claim was opposed by respondent No.2 - Insurance Company, whereas, respondent No.1, owner of the vehicle, remained *ex parte*.

6. On the basis of pleadings, the Tribunal framed three issues about the responsibility for the accident.

7. During inquiry before the Tribunal, to substantiate the claim, petitioner No.1 examined himself as PW.1 and also examined an eye-witness to the occurrence as PW.2 and marked Exs.A-1 to A-6. On behalf of respondent No.2, RW.1 was examined and Ex.B-1 was marked.

8. On issue No.1, the Tribunal recorded a finding holding that due to rash and negligent driving of the driver of the tractor and trailer, the accident had occurred and,

thus, favoured the petitioners. On issue No.2, the Tribunal taking contents of Ex.A-3, postmortem certificate, fixed the age of the deceased as four years and relying on the judgment of this Court in **Yerraballi Ibrahim and another v.**

G. Chenna Reddy and another^[1], held that the petitioners are entitled to Rs.54,000/- as compensation.

9. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioner contending in the grounds that the Tribunal has not properly evaluated the evidence on record and that a meager compensation was granted and, therefore, sought to grant balance amount.

10. Heard Sri K. Rathangapani Reddy, learned counsel for appellants - petitioners. No representation for respondent No.2 and none appears for respondent No.1.

11. Perused the order and evidence on record, both, oral and documentary let in by the parties.

12. There is absolutely nothing to debate except to hold that in view of the ratio laid down by the Hon'ble Supreme Court in **Puttamma v. K.L. Narayana Reddy**^[2], the petitioners are entitled to Rs.1,00,000/-, since, while referring to the amendment proposed to Schedule - II of

the Act by the Central Government, it was directed by the Hon'ble Supreme Court that till such amendment is made, children up to the age of five (5) years shall be entitled for a fixed compensation of Rs.1,00,000/- (Rupees one lakh only) and persons more than five years of age shall be entitled for a fixed compensation of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) or the amount that may be determined in terms of Schedule - II of the Act; whichever is higher. The relevant observations of the Hon'ble Supreme Court contained in paragraph No.58 are, thus:

“58. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs.1,00,000/-(rupees one lakh) and persons more than 5 years of age shall be entitled for

fixed compensation of Rs.1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163A of the Act, 1988.”

In view of the above decision, since the deceased boy was aged below five years, the petitioners are entitled to Rs.1,00,000/- and, accordingly, the compensation is enhanced to Rs.1,00,000/- from Rs.54,000/- granted by the Tribunal.

13. Concerning 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.46,000/-, interest is granted at the rate of 7.5% per annum from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[3].

14. In the result, the appeal is allowed, and the order and decree, dated 08-11-2004, in M.V.O.P. No.87 of 2003, passed by the Tribunal, are modified, enhancing the compensation to Rs.1,00,000/- (Rupees one lakh) from Rs.54,000/- with interest at the rate of 9% per annum on the amount of Rs.54,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of

Rs.46,000/-(Rupees forty six thousand) from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 26, 2016.

Mgr

[\[1\]](#) . 1994 (2) An.W.R. 220

[\[2\]](#) **2014 ACJ 526**

[\[3\]](#) . 2013 ACJ 1403