

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3069 OF 2005

JUDGMENT:

The appellants, who are the petitioners in M.V.O.P. No.803 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Guntur (for short, 'the Tribunal') aggrieved by the orders dated 02.09.2005, preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') mainly attacking on two grounds. Firstly, that the Tribunal went wrong in attributing contributory negligence to the deceased, who was driver of the lorry bearing registration No.AHH 2278; and second, the compensation awarded by the Tribunal was very low.

2. The appellants herein are the petitioners, while respondent Nos.1 and 2 herein, who are owner and insurer of the lorry bearing registration No.KA 39 4601, respectively, are respondent Nos.1 and 2, 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 04.12.2000 at about 8-30 a.m., while one Yerramaneni Venkata Krishna Rao (deceased), who was son of petitioner Nos.1 and 2

and elder brother of petitioner No.3, was driving the lorry bearing registration No.AHH 2278 from Palasa towards Tekkali in Srikakulam District and when it reached near Sankilimetta village, a lorry bearing registration No.KA 39 4601 owned by respondent No.1 driven by its driver in a rash and negligent manner at high speed came in opposite direction and dashed the right side portion of the lorry which the deceased was driving, due to which, the driver, cleaner and others received injuries and both the vehicles also got damaged. A crime was also registered against the driver of lorry bearing registration No.KA 39 4601. The petitioners, claiming that the deceased was earning Rs.2,000/- per month besides batta of Rs.500/- to Rs.600/- as a driver and aged 22 years, sought a sum of Rs.2,85,000/- as compensation under Sections 163-A and 166 of the Act.

5. Respondent No.1 remained *ex parte*. Respondent No.2 opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining an eyewitness to the occurrence as P.W.2 and marked Exs.A.1 to A.5 to substantiate their claim; whereas, on behalf of respondent No.2-Insurance Company, no

witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

7. On appraisal of evidence on record, the Tribunal on issue No.1, arrived at contributory negligence of the deceased as well as the driver of the accident vehicle at 50% each for taking place of the accident. On issue No.2, the Tribunal, taking the age of deceased as 22 years, but his mother's age as between 50 and 55 years, though, her age is shown as 38 years in the petition, fixed salary of Rs.24,000/- and deducted 1/3rd therefrom and the remainder Rs.16,000/- was multiplied by the multiplier '11' and arrived at Rs.1,76,000/-. Besides the same, another sum of Rs.10,000/- is granted, as petitioner Nos.1 and 2 being old aged parents, making a total of Rs.1,91,000/- and granted half of it, i.e., Rs.95,500/-, as the deceased contributed for taking place of the accident, with interest at 7.5% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has granted meager amount of compensation and, therefore, sought to grant balance amount.

9. Heard Sri N. Subba Rao, learned counsel for the appellants-petitioners. No representation for respondent No.2-Insurance Company. Despite service of notice, none appears for respondent No.1.

10. Perused the order and the evidence on record, both, oral and documentary, let in by the petitioners. So far as finding recorded by the Tribunal attributing 50% of contributory negligence on the part of the deceased is concerned, Ex.A.1-F.I.R. would clearly show that due to rash and negligent driving of the driver of the opposite lorry bearing registration No.KA 39 4061, the accident had occurred. In fact, there is nothing forthcoming from respondent No.2-Insurance Company in the form of scene of occurrence panchanama and the rough sketch of the scene and summoning any witness and examining them to prove its stand. Therefore, that finding recorded by the Tribunal is hereby set aside.

11. Concerning determination of compensation, the Tribunal ought to have deducted 50% towards personal expenses of the deceased as he died in an unmarried status, in which case, the contribution of the deceased to the family works out to Rs.12,000/- and the Tribunal also ought to have taken multiplier '18' instead of '11' keeping in view of age of the deceased in view of the decisions of Hon'ble Supreme Court in **Amrit Bhanu Shali and others v. National Insurance Co. Ltd. and others**^[1] and **Sarla Verma & others Vs. Delhi Transport Corporation and another**^[2]. When the multiplier '18' is applied to the multiplicand Rs.12,000/-,

loss of dependency works out to Rs.2,16,000/- (Rs.12,000/- x 18) and the petitioners are entitled to the same. Besides the same, petitioner No.1 being mother of the deceased, is entitled 50% additionally in view of the decisions of the Hon'ble Supreme Court in **Sarla Verma's** case (supra 1) and **Rajesh and others v. Rajbir Singh and others**^[3], which works out to Rs.1,08,000/-. The petitioners are also entitled to a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards love and affection and Rs.5,000/- towards funeral expenses.

12. Thus, the petitioners are entitled to a total sum of Rs.3,59,000/- (Rupees three lakh and fifty nine thousand) as against Rs.95,500/- granted by the Tribunal towards compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted the same at 7.5% per annum and the same is maintained on the entire amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 2).

13. Accordingly, the instant appeal is allowed modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and also setting aside the order to the extent of attributing contributory negligence of the deceased at 50% for taking place of the accident. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

30th March, 2016

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[\[1\]](#) 2012(6) SCALE

[\[2\]](#) (2009) 6 SCC 121

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