

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

**M.A.C.M.A. No.624 OF 2005**

**JUDGMENT:**

The National Insurance Company Limited, represented by its Divisional Manager, Anantapur, which is respondent No.2 in M.V.O.P. No.88 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Kurnool (for short, 'the Tribunal'), aggrieved by the order dated 28.09.2004, whereby and whereunder, the Tribunal awarded a sum of Rs.2,66,700/- with interest at 9% per annum as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one K.Noor Mohammad in a road accident, preferred the instant appeal under Section 173 of the Act on the ground that the compensation granted by the Tribunal is very excessive and the vehicle involved in the accident, i.e., lorry bearing registration No.AP 21T 0252, was planted and the evidence of P.W.2 ought not to have been believed.

2. The appellant herein is respondent No.2, while respondent Nos.1 to 3 herein, who are the wife and parents of the deceased, are the petitioners, respondent No.4 herein, who is the owner of the lorry bearing registration No.AP 21T 0252, is respondent No.1, 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 21.10.2002, one K.Noor Mohammed (deceased) started from Atmakur on his bicycle to go to Karivena village and at about 9-30 p.m., when he reached near S.N.R. Degree College near Karivana village, a lorry bearing registration No.AP 21T 0252 driven by respondent No.1 in a rash and negligent manner at high speed, coming from Kurnool side, dashed him, due to which, he fell down and died instantly. The petitioners, claiming that the deceased was 26 years old earning Rs.2,500/- per month as a lorry driver, sought a sum of Rs.3,00,000/- as compensation from respondent Nos.1 and 2, who are owner and insurer of the accident vehicle.

5. Respondent No.1-owner of the lorry remained *ex parte*. Respondent No.2-insurer opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1) Whether the accident occurred on 21.10.2002 was due to rash and negligent driving of the lorry

bearing No.AP-21T.0252 by its driver belonging to first respondent?

2) Whether the petitioners are entitled to claim compensation, if so, to what amount and from which of the respondents?

3) To what relief ?"

7. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining as alleged eyewitness as P.W.2 and marked Exs.A.1 to A.6 to substantiate their claim; whereas, on behalf of respondent No.2, no witnesses were examined, but copy of insurance policy was marked as Ex.B.1 on consent.

8. The Tribunal, on issue No.1, based on the contents of charge sheet and the evidence of P.W.2, recorded a finding that due to rash and negligent driving of the driver of the lorry, the accident had occurred and, thus, held it in favour of the petitioners. On issue No.2, basing on the entries in Ex.A.6, arrived that the deceased was a lorry driver, fixed the income at Rs.1,800/- per month or Rs.21,600/- per annum and deducted 1/3<sup>rd</sup> towards personal expenses and taken balance of Rs.14,400/- as contribution to the family and applying multiplier '18', arrived the loss of dependency at Rs.2,59,200/-, besides granting a sum of Rs.5,000/- towards consortium and Rs.2,500/- towards loss of estate, making a total sum of

Rs.2,66,700/- with interest at 9% per annum.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal went wrong in believing the evidence of P.W.2, though, Ex.A.1-F.I.R. does not disclose the description of the vehicle with its registration number and, therefore, sought to set aside the order and decree passed by the Tribunal.

10. Heard Sri T. Ramulu, learned Standing Counsel for respondent No.2 (appellant-Insurance Company), and Sri K. Rathangapani Reddy, learned counsel for the petitioners (respondent Nos.1 to 3 herein). Despite service of notice, respondent No.1-owner (respondent No.4 herein) has not entered appearance.

11. Perused the order and decree and the evidence on record. The Motor Vehicles Inspector's report, which inspection was done on 07.11.2002, shows that there are no mechanical defects in the lorry involved in the accident and further, even the charge sheet was laid against the driver of the said lorry touching the offence punishable under Section 304-A IPC and, thus, these two circumstances, certainly, would show that P.W.2 was not shown in the list of witnesses appended to the charge sheet and the allegation of planting of the present lorry cannot be accepted. In fact, the Insurance Company has

not taken steps to examine relevant witnesses by summoning them to prove non-involvement of the lorry in the instant case as the accident vehicle. In that view of the matter, certainly, the finding recorded by the Tribunal as to involvement of the lorry bearing registration No.AP 21T 0252 cannot be disturbed. However, as could be gathered from the reasoning adopted by the Tribunal, in fact, multiplier factor '18' is applied, but relevant multiplier is '17' in view of the age of the deceased as 26 years in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others Vs. Delhi Transport Corporation and another**<sup>[1]</sup>. Therefore, when multiplier factor '17' is applied taking the multiplicand as Rs.14,400/-, loss of dependency works out to Rs.2,44,800/- as against Rs.2,59,200/-. The other amounts of Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate are maintained.

12. Thus, the petitioners are entitled to a total sum of Rs.2,52,300/- (Rupees three lakh fifty two thousand and three hundred) as against Rs.2,66,700/- 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 9% per annum and the same is reduced to 7.5% on the entire amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir**

**Singh and others**<sup>[2]</sup>.

13. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by reducing the compensation as well as the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

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**A. SHANKAR NARAYANA, J**

1<sup>st</sup> April, 2016

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<sup>[1]</sup> (2009) 6 SCC 121

<sup>[2]</sup> 2013 ACJ 1403