

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1175 OF 2005

JUDGMENT:

The instant appeal is preferred by the petitioners having got dissatisfied with the amount of Rs.81,240/- (Rupees eighty one thousand two hundred and forty) awarded by the learned Chairman, Motor Accidents Claims Tribunal – cum – V Additional District Judge (Fast Track Court), Anantapur, by order, dated 22-01-2005, in O.P. No.372 of 2001 as against the claim of Rs.1,70,000/- (Rupees one lakh and seventy thousand) laid under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for short 'the Act') and rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989, seeking enhancement.

2. The appellants herein, who are legal representatives of the P. Venkataramana, 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.TN 21X 5148, 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 14-08-2001 at about 5.30 a.m., one P. Venkataraman, who is the husband of petitioner No.1, father of petitioner Nos.2 and 3 and son of petitioner No.4, was proceeding on his T.V.S. moped from his village to Kadiri and when he reached Ratnapalli village on Kadiri – Madanapalli road, a lorry bearing registration No.TN 21X 5148 driven by its driver in

a rash and negligent manner came from behind and hit him, due to which, he fell down and sustained grievous injuries. Immediately he was shifted to Government Hospital at Kadiri, and from there while he was being shifted to Head quarter's Hospital, Anantapur, he succumbed to injuries at 9.00 a.m. The concerned police registered crime No.21 of 2001 initially under Section 338 IPC and later altered to 304-A IPC. The petitioners being the legal representatives as wife, sons and mother, sought a total sum of Rs.1,70,000/- as compensation against respondent Nos.1 and 2, who are owner and insurer of the lorry, respectively.

5. Respondent No.1, owner of the lorry, remained *ex parte*.

6. Respondent No.2, its insurer, filed counter opposing the claim.

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

8. During inquiry, the 2nd petitioner, besides examining himself as PW.1, has examined the eye witness as PW.2 and marked Exs.A-1 to A-5. On behalf of respondent No.2, one T. Imtiyaz Ahmed was examined as RW.1 and marked Exs.B-1 and B-2.

9. The Tribunal on appraisal of evidence on record held issue No.1 in favour of the petitioners observing that due to rash and negligent driving of the driver of the lorry, the accident had occurred. On issue No.2, the Tribunal taken the age of the deceased as 50 years and income at Rs.1500/- per month, deducting 1/3rd there-from, taken the remainder as contribution to

the family and applied multiplier '4.27' and arrived at Rs.51,240/-. Besides the same, the Tribunal awarded Rs.15,000/- towards loss of consortium and Rs.15,000/- towards loss of estate and, thus, a total sum of Rs.81,240/- was granted as compensation with interest at the rate of 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal seeking enhancement of compensation contending in the grounds that the Tribunal has granted meager amount towards compensation overlooking the decision of the Hon'ble Supreme Court in **H.S. Ahammed Hussain and another v. Infram Ahammed and others**^[1] and, thus, sought to grant balance amount.

11. Heard Sri K. Maheswara Rao, learned counsel for the appellants – petitioners, and no representation for the 2nd respondent. Respondent No.1 is not a necessary party as per the cause title of the grounds of appeal.

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

13. The learned counsel for the appellants would submit that the petitioners are entitled to more amounts and, therefore, sought to grant compensation in view of the decision of the Hon'ble Supreme Court, however, such ground is not agitated in the grounds of appeal. Even otherwise, age of the deceased as 50 years was taken by the Tribunal, and there is no income proof forthcoming. Therefore, the Tribunal has taken Rs.1500/- per month as the income and even deducting 1/3rd there-from

determined the compensation, still, the petitioner would get Rs.1,75,500/- towards loss of dependency, when 1/4th there-from is deducted towards personal expenses and the multiplier '13' is applied as per the decision of Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[2]

[Rs.1000 x 12 x 13]. Hence, the said amount of Rs.1,75,500/- is granted, irrespective of the fact that the claim is only for Rs.1,70,000/-. Besides the same, the petitioners are also entitled to Rs.50,000/- towards conventional sum as against Rs.30,000/- granted by the Tribunal. Thus, in all, the petitioners are entitled to Rs.2,25,500/- as compensation. However, the petitioners are directed to pay court fee on the excess amount granted than the claim made by them within two (02) months from today.

14. 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.1,44,260/-, 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**^[3].

15. In the result, the appeal is allowed, and the order and decree, dated 22-01-2005, in O.P. No.372 of 2001, passed by the Tribunal, are modified, enhancing the compensation to Rs.2,25,500/- (Rupees two lakhs twenty five thousand and five hundred) from Rs.81,240/- with interest at the rate of 9% per annum on the amount of Rs.81,240/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of

Rs.1,44,260/-(Rupees one lakh forty four thousand two hundred and sixty) from the date of petition till realization. The compensation amount shall be apportioned among 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.

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

A. SHANKAR NARAYANA, J

January 06, 2016.

Mgr

[\[1\]](#) . 2002 (4) ALD 103 (SC)

[\[2\]](#) . (2009) 6 Supreme Court Cases 121

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