

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4527 OF 2004

JUDGMENT:

The United India Insurance Company Limited, represented by its Branch Manager, Branch Office, Jaggaiahpet, Krishna District, which is respondent No.2 in O.P. No.113 of 2004 (Old O.P. No.697 of 2002) on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nalgonda at Suryapet (for short, 'the Tribunal'), aggrieved by the order dated 06.08.2004, whereby and whereunder, the Tribunal awarded a sum of Rs.1,50,000/- with interest at 9% per annum, which was also the claim laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of a minor boy-Rupavath Krishna @ Sakru, aged 9 years, in a road accident, preferred the instant appeal under Section 173 of the Act challenging the quantum of compensation.

2. Appellant herein is respondent No.2, while respondent No.1 herein, who is the owner of lorry bearing registration No.AP 16T 939, is respondent No.1 and respondent Nos.2 and 3 herein are the petitioners 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 10.05.2002, the

said Rupavath Krishna @ Sakru (deceased) along with petitioner No.2, who was his mother and others were proceeding to attend marriage at Nandya Thanda in a tractor, on the way they halted at Haliya centre for taking tea, during that time, when the deceased boy was returning having attended to nature call at about 5-00 a.m. on 10.05.2002, a lorry bearing registration No.AP 16T 939 coming from Miryalguda side driven in a rash and negligent manner at high speed, hit the boy and the front tyre of the lorry ran over him occasioning the instant death of the said boy. The driver of the lorry escaped from the spot. Concerned police also registered a case in Crime No.27 of 2002 for the offence punishable under Section 304-A IPC against the driver of the lorry. The petitioners, who are the parents of the deceased, claiming that the deceased boy was hale and healthy and brilliant boy prosecuting studies, sought a sum of Rs.1,50,000/- from respondent Nos.1 and 2, who are owner and insurer of the lorry.

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 three issues about the responsibility for the accident. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining eyewitness as P.W.2

and marked Exs.A.1 to A.5 to substantiate their claim; whereas, on behalf of respondent No.2, no witnesses were examined and no documents were filed.

7. On appraisal of evidence let in by the parties, the Tribunal held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal having taken into consideration that the deceased boy was aged 6 years and studying third class, awarded a total sum of Rs.1,50,000/- with interest at 9% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal ought not to have granted Rs.1,50,000/- as no evidence was placed that the boy was studying third class, and, thus, only on the quantum of compensation, challenge is made.

9. No representation on either side.

10. Perused the order under challenge and the evidence on record, both, oral and documentary let in by the petitioners. 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**^[1], the petitioners are entitled to Rs.1,50,000/-, 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. 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.”

Since the deceased boy was aged more than 5 years and

a non-earning person, the amount of Rs.1,50,000/- granted by the Tribunal cannot be interfered with. However, concerning the rate of interest, the Tribunal granted the same at 9% per annum and the same is reduced to 7.5% per annum on the entire amount of compensation from the date of petition till realization in view of the decision of the Hon'ble Apex Court in **Rajesh and others Vs. Rajbir Singh and others**^[2].

11. Accordingly, the instant appeal is partly allowed reducing the rate of interest, as indicated above, while maintaining the order in all other respects so far as the quantum of compensation. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

1st March, 2016

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^[1] 2014 ACJ 526

^[2] 2013 ACJ 1403