

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

**M.A.C.M.A.No.2902 of 2005**

**JUDGMENT:-**

The instant appeal is preferred by the parents of one Mohd. Feroz (hereinafter, referred to as "the deceased"), whose death occurred in a motor accident on 18.4.2003, dissatisfied with the amount of Rs.80,000/- granted as compensation by the order dated 01.07.2005 in O.P.No.1197 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal') as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), seeking enhancement of compensation.

2. The appellants herein are the petitioners while respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, are the respondents in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts, in brief, are that on 18.4.2003, at about 12.00 noon, a tractor-cum-trolley bearing No.AP 28 T 4858 and 4959 driven by its driver in a rash and negligent manner, dashed the deceased near L.B.Nagar, Old Bowenpally, Secunderabad and due to the said accident, the deceased received injuries and died instantly. Therefore, the petitioners claimed an amount of Rs.1,50,000/- as compensation.

5. Respondent No.1-owner of the accident vehicle opposed the claim by filing counter. Even respondent No.2-insurer opposed the claim by filing a separate counter.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, petitioner

No.1 examined himself as P.W.1 besides examining the eye witness as P.W.2 and marked Exs.A.1 to A.7 to substantiate their claim. On behalf of the respondents, no witnesses were examined, but copy of the insurance policy was marked as Ex.B-1.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the petitioners, held issue No.1 in favour of the petitioners; and on issue No.2, after appreciation of the evidence on record, it observed that the petitioners have claimed an amount of Rs.1,05,000/- out of Rs.1,50,000/- towards loss of dependency and the same does not arise as the deceased was aged 9 years on the date of the accident and he was not an earning member, and granted Rs.80,000/-. The other amounts claimed by the petitioners are Rs.25,000/- and Rs.20,000/- towards pain and suffering, extra nourishment, medicines and transportation to the hospital were discarded by the Tribunal and thus, granted a total sum of Rs.80,000/- with interest at 9% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal by the petitioners seeking enhancement of compensation contending in the grounds that the award passed by the Tribunal is not just and reasonable and the Tribunal overlooked the fact that they suffered pain and suffering. The Tribunal discarded the amounts claimed under the heads "Pain and suffering and funeral expenses and therefore, sought to grant balance amount.

9. Heard Sri K.Venkat Ram Reddy, learned counsel for the appellants-claimants. No representation for respondent No.2. Though the appeal was dismissed for default against respondent No.1 – owner of the vehicle, it makes no difference in adjudicating upon the issue herein.

10. Perused the order under challenge and the evidence on record both oral and documentary let in by the petitioners.

11. It is not in dispute that the deceased boy was aged more than 9 years. No proof is required in determining the compensation in view of the latest pronouncement of the Hon'ble Supreme Court in **Puttamma and others v. K.L. Narayana Reddy and another**<sup>[1]</sup> wherein it is held at para No.58 as under:

*"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 up to 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."*

Therefore, the petitioners are entitled to Rs.1,50,000/- as claimed by them. However, the rate of interest granted by the Tribunal at 9% per annum is maintained on Rs.80,000/-, and on the enhanced amount of Rs.70,000/-, interest is granted at 7.5 % per annum in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**<sup>[2]</sup>.

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

Date: 20.01.2016  
AMD

\_\_\_\_\_

-  
-  
**M.A.C.M.A.No.2902 of 2005**

-  
-  
**DATE: 20.01.2016**

AMD

---

[\[1\]](#) 2014 ACJ 526

[\[2\]](#) 2013 ACJ 1403 = 2013 (4) ALT 35