

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.1048 of 2009

JUDGMENT:

Aggrieved by the award and decree dated 12.07.2007, in O.P.No.1887 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IX Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad (for short, 'the Tribunal'), respondent No.2 - Insurance Company preferred the present appeal on the main ground that there was contributory negligence on the part of the deceased and, thereby, to modify the award.

2. By the aforesaid order, the Tribunal granted a compensation of Rs.4,92,500/- for the death of the son of respondent Nos.1 and 2 herein, who are the claimants before the Tribunal, as against the claim of Rs.9,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

3. The appellant and respondent No.3 herein are the insurer and the owner of the truck bearing registration No. AP 9V 2988, respectively, while respondent Nos.1 and 2 herein were petitioner Nos.1 and 2, respectively, in the original petition.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the

Tribunal in the original petition.

5. The fact-situation would show that on the intervening night of 27.07.2002 at about 12.45 a.m., when one Dhrubaden Yonzon (deceased) along with his cousin was going on a motor bike bearing No.AP 9 AA 5574 and when they reached Yashodha Hospital situate at Raj Bhavan Road, Somajiguda, one truck bearing registration No.AP 9 V 2988, coming in opposite direction driven by its driver at high speed, collided with motor bike, causing serious injuries to the said Dhrubaden Yonzon and he succumbed to injuries while undergoing treatment in Gandhi Hospital. The petitioners, being the parents, stating that the deceased, who was their only son, was in software profession earning Rs.10,000/- per month and he used to contribute the same to the family, sought a compensation of Rs.9,00,000/-.

6. Respondent Nos.1 and 2, the owner and the insurer of the truck, contested the claim by filing separate counters, raising various pleas.

7. The Tribunal, basing on the pleadings of the parties, framed three issues about the responsibility for the accident.

8. During trial, petitioner No.2, besides examining himself as P.W.1, has examined an eyewitness to the occurrence of the accident as P.W.2 and marked Exs.A1 to

A13. On behalf of the respondents, no witnesses were examined and no documents were marked.

9. On issue No.1, the Tribunal, on appraisal of evidence, more particularly, the contents of Exs.A1 to A3 and the evidence of P.W.2, held that due to rash and negligent driving of the driver of the truck, the accident had occurred and, accordingly, recorded a finding in favour of the petitioners.

10. In regard to the determination of compensation, as could be seen from the order under challenge, the Tribunal has taken contribution of the deceased, who died in unmarried status, at Rs.4,000/- per month, considering his earnings at Rs.10,000/- per month, as he was working in a Software Company. The Tribunal has taken the age of the mother of the deceased as 53 years and applied multiplier '11' as per the Second Schedule to Section 163-A of the Act and worked out the loss of dependency at Rs.4,80,000/-, besides granting Rs.10,000/- towards loss of love and affection and Rs.2,500/- towards loss of estate, making a total compensation of Rs.4,92,500/-. The Tribunal granted the rate of interest at 7.5% per annum.

11. It is the aforesaid order which is questioned in the instant appeal preferred by the Insurance Company, contending in the grounds that there was contributory negligence to the extent of 50% of the deceased to the

accident and the Tribunal ought to have applied multiplier '5.63' taking into account the age of the mother of the deceased as 53 years, in view of the decision of this Court in **Bhagwandas v. Mohd. Arif**^[1].

12. Heard Sri G.Ramachandra Reddy, learned Standing Counsel for the appellant, and Sri V.Achutha Ram, learned counsel for respondent Nos.1 and 2. Though, service of notice was completed on respondent No.3, none appears.

13. Learned Standing Counsel, of course, fairly submits that in view of the law declared by the Hon'ble Supreme Court in **Sarla Verma & Others v. Delhi Transport Corporation and another**^[2] and **Rajesh and others v. Rajbir Singh and others**^[3], the amount awarded by the Tribunal may not be construed as excessive and arbitrary.

14. At the outset, it is to be observed that there is no merit in the appeal, in view of the fact that if latest pronouncements of the Hon'ble Supreme Court are followed, the quantum of compensation would be more than what was awarded by the Tribunal, which would be dealt with at a later stage.

15. So far as the contributory negligence is concerned, except stating the same in the grounds of

appeal, nothing could be substantiated by way of evidence. In fact, no witnesses were examined on behalf of the Insurance Company and no documents were filed on its behalf. In the absence of rough sketch of scene of occurrence, the contention that there was contributory negligence on the part of the deceased cannot be accepted. Admittedly, the relevant documents were not exhibited to prove the contributory negligence and, though, a duty is cast on respondent No.2 – Insurance Company to produce relevant documents in that regard, it did not do so. Therefore, this submission is rejected.

16. In fact, the multiplier applicable in this case is '18' as per the age of the deceased. Further, no future prospects at 50% were granted, which should be in addition to the loss of dependency determined by the Tribunal. Thus, viewed in the light of the aforesaid judgments, certainly, the petitioners – claimants would be entitled to more than what was granted by the Tribunal. In that view of the matter, there is no merit in the instant appeal.

17. Accordingly, the instant appeal is dismissed, confirming the award and decree passed by the Tribunal in all respects, including the rate of interest. No order as to costs.

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

**JUSTICE A.SHANKAR
NARAYANA**

04.08.2016
v v

[\[1\]](#) AIR 1988 AP 99
[\[2\]](#) (2009) 6 Supreme Court Cases 121
[\[3\]](#) 2013 ACJ 1403