

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

**CIVIL MISCELLANEOUS APPEAL No.2196 OF 2004**

**JUDGMENT:**

The United India Insurance Company Limited, represented by its Divisional Manager, Regional Office, Hyderabad, which is respondent No.2 in O.P. No.798 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Adilabad (for short, 'the Tribunal'), aggrieved by the order dated 22.01.2003, whereby and whereunder, the Tribunal awarded a sum of Rs.2,85,936/- with interest at 9% per annum as against the claim of Rs.3,00,000/- laid under Section 166(1)(c) of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one Palde Prem Kumar in a road accident, preferred the instant appeal under Section 173 of the Act on the ground that the Tribunal fastened liability on it without there being any joint and several liability against the insured and the insurer, and, therefore, the order of the Tribunal is liable to be set aside.

2. The appellant herein is respondent No.2, while respondent Nos.1 to 3 herein, who are the wife and children of the deceased, are the petitioners, respondent No.4 herein, who is the owner of the jeep bearing registration No.AP-1/9945, is respondent No.1 and respondent No.5 herein, who was the father of the deceased, is respondent No.3, 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 29.10.1998, while the said Palde Prem Kumar (deceased) was proceeding in jeep bearing registration No.AP-1/9945 from Adilabad to Utnoor and when it reached near Nagapur cross road, having crossed Shampur village, it dashed a double bullock cart coming in opposite direction and, thereafter, hit a tree due to rash and negligent driving of the jeep driver, due to which, the deceased received injuries and died instantly and other two persons received injuries. Concerned police also registered a case in Crime No.97 of 1998 against the driver of the jeep for the offences punishable under Sections 304-A, 337 and 429 IPC. The petitioners, being the wife and children as legal representatives, claiming that the deceased was 35 years old, earning Rs.4,000/- per month by running a kirana shop in Asifabad town and also a flour mill and due to his death, they lost their bread earner, sought to grant the aforesaid amount.

5. Respondent No.1-owner of the jeep reported to have died, which was recorded by the Tribunal in its order in paragraph No.3 and further recorded that the claim petition stood abated against him. Even concerning

respondent No.3-father of the deceased, he was reported dead by the time the trial has taken place, and, therefore, the Tribunal recorded in paragraph No.5 even the claim petition stands abated against him. Thus, the only contesting respondent is insurer-respondent No.3, who filed counter raising various pleas.

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

"i) Whether the deceased viz., Palde Prem Kumar died in the accident occurred on 29-10-98 due to rash and negligent driving of Jeep No.AP-1/9945 by its driver?

ii) Whether the petitioners are entitled to any compensation? If so, to what amount and against whom?

iii) To what relief ?"

7. During enquiry, petitioner No.1 examined herself as P.W.1 besides marking Exs.A.1 to A.7 to substantiate their claim; whereas, on behalf of respondent No.2, no witnesses were examined and no documents are filed.

8. On appraisal of evidence let in by the petitioners, the Tribunal held issue No.1 in favour of the petitioners; and on issue No.2, taking the income of the

deceased as Rs.2,000/- by rejecting the stand of the petitioners that the deceased was earning Rs.4,000/- and deducting 1/3<sup>rd</sup> therefrom, taken the reminder Rs.1,333/- per month towards contribution to the family or Rs.15,996/- per annum and taking the age of the deceased as 35 years, applied multiplier '16' in view of Second Schedule of Section 163-A of the Act and arrived loss of dependency at Rs.2,55,936/-. Besides the same, the Tribunal also has granted Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.15,000/- towards loss of consortium, and, thus, granted a total sum of Rs.2,85,936/- with interest at 9% per annum thereon apportioning the same among petitioner Nos.1 to 3 respectively.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that without there being any joint and several liability on the insured along with insurer, the award and decree passed by the Tribunal is not sustainable. Concerning the quantum of compensation granted by the Tribunal, there has been no challenge in the grounds of appeal raised by the appellant-Insurance Company.

10. No representation for respondent No.2 (appellant-Insurance Company) and the petitioners (respondent Nos.1 to 3 herein).

11. Perused the order under challenge and the

evidence on record, both, oral and documentary, let in by the petitioners. It is true that against the owner of the vehicle, who is shown as respondent No.1 in the original petition, the Tribunal recorded as died and also recorded that claim abated against him. At this point of time, on that ground can the order and the decree under challenge be set aside. The accident had taken place on 29.10.1998, the claim petition was laid in the year 1999, the order and decree were passed on 22.01.2003 and the appeal was preferred in the year 2004, and it is coming up for hearing today. When there is no challenge as to the quantum of compensation by respondent No.2-Insurance Company and mere taking hyper technical view at this distance of time, it is difficult to accede to the request of respondent No.2-Insurance Company to hold that the award and decree passed by the Tribunal are unsustainable. It is not even the case of the insurer that there was no valid policy covering the risk of the deceased at the relevant time. Further, the Tribunal has not granted any amount towards future prospects.

12. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum, but 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**<sup>[1]</sup>.

13. 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.

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

---

**A. SHANKAR NARAYANA, J**

29<sup>th</sup> February, 2016

siva

---

[\[1\]](#) 2013 ACJ 1403