

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.2625 OF 2005

JUDGMENT:

The petitioners in M.V.O.P. No.133 of 2003, who are wife and parents of deceased - Baliya Neela Gopal, are the present appellants. Dissatisfied with the amount of Rs.1,15,000/- granted by the learned Chairman, Motor Accident Claims Tribunal - cum – III Additional District Judge, Kurnool District at Nandyal (for short 'the Tribunal') as compensation towards 50% liability of the Insurance Company and the other 50% to the deceased himself by the Tribunal, by the order and decree, dated 23-08-2003, in M.V.O.P. No.133 of 2003, the instant appeal is preferred by the petitioners under Section 173 of the Act seeking enhancement.

2. The appellant Nos.1 to 3 herein are the petitioners 1 to 3, respectively, in M.V.O.P. before the Tribunal and respondent Nos.1 and 2, who are owner and insurer of Tipper bearing registration No.AP 09T 9851, respectively, are respondent Nos.1 and 2, respectively.

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3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the M.V.O.P. before the Tribunal.

4. The facts would shows that one Baliya Neela Gopal was working as a Cleaner on tipper bearing registration No.AP 09T 9851. On 22-12-2000 at about 9.00 A.M., the said tipper was stopped at the side of the road near Polur village to unload the sand and its driver instructed him (Baliya Neela Gopal) to give signal ensuring proper place for unloading and, while lift was moving up since the driver failed to take proper care about passing over head electric wires, despite the fact that persons standing nearby cautioned the driver about probable contact of the tipper body to the electric live wires, still, the driver did not heed to them and further moved the lift up resulting in the electric live wires getting into contact with the body of the tipper and since the Gopal was at the end of the tipper, he received electricity shock. Immediately, he was shifted to Government Hospital, Nandyal, and from there to Vishwabharathi Nursing Home at Kurnool, where he succumbed to injuries on 25-01-2001 while undergoing treatment.

i) The petitioners claiming that the deceased was working as cleaner, earning Rs.1800/- per month, sought a total sum of Rs.3,00,000/- as compensation from respondent Nos.1 and 2, who are owner and insurer of the tipper, respectively.

5. Respondent No.1, owner of the tipper, remained

ex parte before the Tribunal.

6. Respondent No.2 - M/s. National Insurance Company Limited opposed the claim attributing entire negligence to the deceased.

7. Based on the pleadings, the Tribunal framed three issues about fixing the responsibility for accident.

8. During inquiry before the Tribunal, petitioner No.1 examining herself as PW.1 has examined an eye witness as PW.2 and marked Exs.A-1 to A-5 and Ex.X-1 to substantiate their claim. On behalf of respondent No.2, RWs.1 to 3 were examined and Ex.B-1 was marked.

9. On issue No.1, the Tribunal recorded a finding holding that the deceased contributed negligence in taking place of the accident to the extent of 50% and, accordingly, held the issue. On issue No.2 in regard to determination of compensation, the Tribunal taking the age of the deceased as 20 years, his income at Rs.1500/- at the rate of Rs.50/- per day, deducted 1/3rd there-from and arrived at Rs.1000/- per month or Rs.12,000/- per annum towards contribution, and applying multiplier '17' arrived at Rs.2,04,000/- [Rs.12,000/- x 17]. The Tribunal also granted Rs.1000/- towards funeral expenses; Rs.15000/- towards loss of consortium; Rs.8000/- towards loss of amenities and Rs.2000/- additionally towards loss of earnings and thus, arrived at

a total sum of Rs.2,30,000/- and 50% thereof amounting to Rs.1,15,000/- was granted to the petitioners as compensation. The Tribunal apportioned the said amount between petitioner Nos.1 and 2 at Rs.75,000/- and Rs.40,000/-, respectively, since petitioner No.3 died during pendency of the claim petition.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal without there being any material on record to show that there was contributory negligence of the deceased, still, recorded a finding there-from, which is not correct. It is also stated that the Tribunal ought to have granted higher rate of interest than 9% granted by it.

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11. Heard Sri T. Nagarjuna Reddy, learned counsel for the appellants - petitioners. No representation for respondent No.1 and none appears for respondent No.2 - Insurance Company, despite service of notice.

12. Perused the order and the material on record, both, oral and documentary let in by the parties.

13. RW.1, who was the head constable in Nandyal Taluq Police Station, stated that he received MLC intimation from Nandyal Government Hospital on 22-12-2000, but he has not registered any case on the said date

and that there was a delay of 35 days in registering the case. In fact, there is nothing in his evidence to show that there was contributory negligence on the part of the deceased. The evidence of RW.2 shows about the admission of deceased in their hospital, taking treatment and death having taken place subsequently.

14. PW.2 asserts in his evidence that despite the persons nearby standing cautioned the driver about the probable contact of tipper body to the electric live wires, he did not listen to them and went on moving the lift up, on account of which, body of the tipper came into contact with the electric live wires and thereby the deceased was electrocuted. There is absolutely no material on record to record a definite finding that the deceased did contribute for taking place of the accident. Therefore, that finding recorded by the Tribunal is liable to be set aside and accordingly, the same is set aside.

15. Turning to the compensation granted by the Tribunal, though, it is claimed that the deceased was paid Rs.1800/- per month, except the statement of PW.1, there is no other evidence on record. Respondent No.1 has not stepped into box to speak about the same. The incident had taken place in the year 2000. Therefore, the finding recorded by the Tribunal that he must be getting Rs.1500/- per month as salary cannot be interfered with.

In such an event, 1/3rd deduction made by the Tribunal is permissible. However, relevant multiplier for the age group of persons between 16 and 20 years, is '18', and when the same is applied instead of '17', which multiplier factor was taken by the Tribunal, it works out to Rs.2,16,000/- [Rs.12,000/- x 18]. Towards future prospects, the petitioners are entitled to 50% thereof in view of the decision of the Hon'ble Supreme Court in **Munnalal Jain and another v. Vipin Kumar Sharma and others**^[1], which works out to Rs.1,08,000/-. Thus, towards loss of dependency, the petitioners are entitled to Rs.3,24,000/-[Rs.2,16,000/-+Rs.1,08,000/-]. Besides the same, they are also entitled to Rs.50,000/- towards conventional sum instead of the amounts granted by the Tribunal towards loss of estate, funeral expenses, transport charges etc. as per the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**^[2]. Thus, in all, the petitioners are entitled to Rs.3,74,000/- as compensation against respondent Nos.1 and 2 jointly and severally as against the amount of Rs.1,15,000/- granted by the Tribunal. 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.

16. 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.2,59,000/-, interest is granted at the rate of 7.5% per annum from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[3].

17. In the result, the appeal is allowed, and the order and decree, dated 23-08-2003, in M.V.O.P. No.133 of 2003, passed by the Tribunal, are modified, enhancing the compensation to Rs.3,74,000/- (Rupees three lakhs and seventy four thousand) from Rs.1,15,000/- against respondent Nos.1 and 2 with interest at the rate of 9% per annum on the amount of Rs.1,15,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.2,59,000/-(Rupees two lakhs and fifty nine thousand) from the date of petition till realization. The compensation amount shall be apportioned between the petitioners in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal. There shall be no order as to costs.

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

of.

March 11, 2016.
Mgr

A. SHANKAR NARAYANA, J

[\[1\]](#). (2015) 6 SCC 347
[\[2\]](#). 2014 ACJ 1430
[\[3\]](#). 2013 ACJ 1403