

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1640 OF 2005

JUDGMENT:

Dissatisfied with the amount of Rs.3,30,000/- granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Nizamabad, by order, dated 21-03-2005, in O.P. No.877 of 2002 as against the claim of Rs.6,00,000/- laid under Section 166 (1) of the Motor Vehicles Act, 1988 (for short 'the Act') read with rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989, the instant appeal is preferred by the petitioners under Section 173 of the Act seeking enhancement.

2. The appellants herein, who are legal representatives of the Ranga Vittal, are the petitioners in O.P. before the Tribunal and respondent Nos.1 and 2 herein, who are owner and insurer of auto-rickshaw bearing registration No.AP 36U 5856, respectively, are Respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 04-06-2002 at about 7.00 p.m., one Ranga Vittal was travelling in an auto-rickshaw bearing registration No.AP 36U 5856 from Armour towards Nizamabad, and when it reached near Boregaon Bridge on Armour – Nizamabad road, since the driver of autorickshaw drove it in a rash and negligent manner at high speed, he fell down and came under the wheels, resulting multiple injuries. Immediately, he was shifted to Government Hospital, Nizamabad, where he succumbed

to injuries at about 7.45 p.m. A crime was also registered against the driver of auto-rickshaw by the concerned police. The petitioners being legal representatives as wife and children, claiming that the deceased was earning Rs.16,000/- per month by working as a private accountant, sought a total sum of Rs.6,00,000/- as compensation against respondent Nos.1 and 2, who are owner and insurer of the auto-rickshaw.

5. Respondent No.1, owner of the auto-rickshaw, remained *ex parte*.

6. Respondent No.2, its insurer, filed counter opposing the claim.

7. On the basis of pleadings, the Tribunal has framed three issues about the responsibility for the accident.

8. During inquiry, the 1st petitioner, besides examining herself as PW.1, has examined the eye witness as PW.2 and also examined PW.3 and marked Exs.A-1 to A-4. On behalf of respondent No.2, no witnesses were examined, but copy of insurance policy was marked as Ex.B-1 on consent.

9. The Tribunal on appraisal of evidence on record held issue No.1 in favour of the petitioners holding that due to rash and negligent driving of the driver of the auto-rickshaw, the accident had occurred. On issue No.2, taking the age of the deceased as 45 years based on entry recorded in Ex.A-4, post-mortem examination report, and the income at Rs.2,500/- per month for want of proof through documentary evidence that the deceased was earning Rs.10,000/- and deducting 1/3rd there-from, taken the

contribution towards 25%, the Tribunal applied multiplier '15' and arrived at Rs.3,00,000/-. Besides the same, the Tribunal granted Rs.15,000/- towards loss of consortium and Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses and transportation of dead body and, thus, a total sum of Rs.3,30,000/- was granted as compensation with interest at 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal seeking enhancement of compensation contending in the grounds that the Tribunal has not properly appreciated the evidence on record and that the earnings at Rs.16,000/- ought to have taken and ought to have granted interest at 12% per annum and, therefore, sought to grant balance amount.

11. Heard Sri P. Radhive Reddy, learned counsel for the appellants – petitioners, and no representation for the 2nd respondent – Insurance Company. The appeal was dismissed against respondent No.1 on 05-01-2012 for default, however, the same would not come in the way of adjudicating the request in the instant appeal.

12. Perused the order and the evidence, both oral and documentary let in by the parties.

13. Even by taking the income at Rs.2,500/- per month since the dependants are numbering five, deduction of 1/4th amount is permissible as per the decision of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1]. The relevant multiplier '14' is applicable for the

age group of persons between 41 – 45 years. Thus, when 1/4th amount is deducted towards his personal expenses, contribution would work out to Rs.23,500/- per annum and when multiplier '14' is applied, the loss of dependency would work out to Rs.3,15,000/- . In view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[2], the petitioners are entitled to 30% of the earnings towards future prospects which works out to Rs.94,500/-. The petitioners are also entitled to Rs.50,000/- towards conventional sum as per the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**^[3]. Thus, in all, the petitioners are entitled to Rs.4,59,500/- as compensation.

14. Concerning rate of interest, the Tribunal has granted the same at 9% per annum, the same is not disturbed on the amount awarded by the Tribunal. However, on the enhanced amount of Rs.1,29,500/-, interest is granted at the rate of 7.5% per annum from the date of petition in view of the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 2).

15. In the result, the appeal is allowed in part, and the order and decree, dated 21-03-2005, in O.P. No.877 of 2002, passed by the Tribunal, are modified, enhancing the compensation to Rs.4,59,500/- (Rupees four lakhs fifty nine thousand and five hundred) from Rs.3,30,000/- with interest at the rate of 9% per annum on the amount of Rs.3,30,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.1,29,500/-(Rupees one lakh twenty nine thousand and five hundred) from the date of petition till realization. The

compensation amount shall be apportioned among the petitioners in the same proportion in which the original compensation amounts were directed to be apportioned and disbursed by the Tribunal. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

January 06, 2016.

Mgr

[\[1\]](#) . (2009) 6 Supreme Court Cases 121

[\[2\]](#) . 2013 ACJ 1403

[\[3\]](#) . 2014 ACJ 1430