

THE HON'BLE SMT JUSTICE ANIS

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MACMA.NO.2931 OF 2005

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JUDGMENT:

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1) This appeal is filed by the appellants/petitioners under Section 173 of Motor Vehicles Act, 1988 (for short 'the Act') aggrieved by the order dt.08.06.2004 passed in O.P.No.319 of 2003 on the file of XXI Chief Additional Judge for Accident Claims Tribunal-cum-VII Additional Metropolitan Sessions Judge for COD, Redhills, Hyderabad awarding compensation of Rs.61,000/-.

2) The petitioner filed the above said O.P. under Section 166 of the Act, claiming compensation of Rs.1,00,000/-.

3) For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4) The brief averments made in the petition are that the petitioner Nos.1 and 2 are the parents of the deceased Mahareddy Sai Krishna Reddy (herein after referred to as 'the deceased'). On 11.06.2002 at about 11.30 a.m., the deceased, his parents and one Harshavardhan Reddy are travelling in an auto bearing No.AP11V 9712 from Chowdur village in order to go to Hyderabad and when the said auto

reached outskirts of Raikal village near the bridge on N.H.7, one RTC bus bearing No.AP11Z-570 of Shadnagar Depot came in an opposite direction with high speed and in a rash and negligent manner and dashed the auto, in which the deceased was travelling. Consequently, the inmates of the auto sustained serious injuries and fractures and the deceased died on the spot. On a complaint made by the petitioners, Shadnagar police registered a case in Crime No.174 of 2002 under Sections 337 and 304-A of I.P.C., against the driver of RTC bus bearing No.AP11Z-570. It is also stated that at the time of accident, the deceased was aged three years and was hale and healthy and was an active student and due to the death of the deceased, the petitioners lost their loving son and they are entitled to compensation of Rs.1,00,000/- from respondents 1 and 2 jointly and severally, along with interest at the rate of 24% per annum from the date of petition, till the date of realization.

5) In the counter affidavit filed by the respondents, the petition averments were denied and it is specifically stated that the bus bearing No.AP11Z-570 was plying on the route from Hyderabad to Maktyal on 11.06.2002 and while reaching Raikal bridge at about 12.05 p.m., the driver of the bus observed that

an auto bearing No.AP11V-9712 was coming in the opposite direction in a rash and negligent manner at high speed, the driver of the bus immediately slow down and took his vehicle to the extreme right side of the road. But the driver of the auto lost control of his vehicle due to the high speed and dashed against the centre of the bus and caused injuries to the inmates of the auto. Therefore, the driver of R.T.C bus was not negligent and that the accident had taken place on account of rash and negligent driving of the auto driven by its driver. As such, the respondents are not liable to pay any compensation to the petitioners and prayed to dismiss the petition.

6) Basing on the pleadings, the court below framed three issues and to substantiate the claim, the first petitioner himself was examined as PW-1 and got marked Exs.A-1 to A-5 documents in support of their case. On behalf of the respondents, no oral or documentary evidence is adduced.

7) Basing on the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of R.T.C.bus and awarded compensation of Rs.61,000/- along with interest at the rate of 9% per annum from the date of petition, till the date of realization.

8) Being not satisfied with the compensation awarded by the Tribunal, the petitioners preferred the present appeal.

9) The learned counsel for the appellants argued that the deceased is aged three years at the time of accident and he is studying in a school and due to the sudden death of the deceased, the appellants lost their son, and the Tribunal without considering the evidence on record, granted meager compensation and relied on a decision of the Hon'ble Supreme Court reported in **MANJU DEVI AND ANOTHER VS. MUSAFIS**

PASWAN AND ANOTHER^[1], wherein it was held as follows:

“As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-.”

10) The learned counsel also relied on a decision of this Court reported in **ADAM INDUR MUTTEMA AND OTHERS VS. RATHOD REDDIA AND OTHERS**^[2] wherein this court held as follows:

“Thereafter, the very same question fell for consideration of the Supreme Court in Nagappa v.

Gurudayal Singh and others, 2003 (1) ALD 1 (sc= (2003) 2 SCC 274 and the question was answered in the affirmative holding that in the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only upto the amount claimed by the claimant. In appropriate case, wherefrom the evidence brought on record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is it should be just compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. Such observations were made in the light of the provisions contained in Sections 166 (1) and (4), 158 (6) and 168 of the Motor Vehicles Act, 1988. This view was thereafter reiterated by the Supreme Court in Rajesh and others vs. Rajbir Singh and others, (2013) 9 SCC 54; Sanjay Verma v. Haryana Roadways, (2014) 3 SCC 210 and Jitendra Khimshankar Trivedi and others vs. Kasam Daud Kumbhar and others, 2015 (3) ALD 141 (SC) = (2015) 4 SCC 237.”

11) The learned counsel finally prayed the Court to enhance the compensation.

12) On the other hand, the learned counsel for the respondents argued that after considering the evidence on record, the Tribunal rightly awarded the compensation and the said compensation is just and reasonable and needs no

interference. He relied on a decision of the Apex Court in

PUTTAMMA AND OTHERS VS. K.L.NARAYANA REDDY

AND ANOTHER^[3] wherein it was held as follows:

“In Sarala Verma v. Delhi Transport Corporation, 2009 ACJ 1298 (SC), this court compared section 163-A with section 166 of the Act, 1988 and reiterated that the principles relating to determination of liability and quantum of compensation were different for the claims under section 163-A and claims made under section 166.

Thus it will be evident from the provisions of the Act that the structured formula as prescribed under Second Schedule and the multiplier mentioned therein is not binding for claims under section 166 of the Act, 1988.”

13) Having regard to the submissions made by the learned counsel for both the parties, the points that arise for consideration are:

- 1) Whether the compensation awarded by the Tribunal is just and reasonable?
- 2) Whether the appellant are entitled for enhancement of compensation?

14) **POINTS:** After considering the oral and documentary evidence, it is not in dispute that the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP 11Z-570 and the

finding of the Tribunal regarding manner of accident needs no interference.

15) Coming to the quantum of compensation, there is no dispute that the appellants are parents of the deceased and the deceased was aged about three years at the time of accident. On the date of accident, the deceased and his parents are travelling in an auto bearing No.AP11V 9712 and the deceased died on the spot due to serious injuries received by him. The first petitioner himself was examined as PW-1 and marked Exs.A-1 to A-5. It is no doubt true that the deceased was only three years at the time of accident and the appellants who are the parents of the deceased lost their son in the accident. The Supreme Court in **Manju Devi's** case (Supra-1) held that as per Second Schedule to the Motor Vehicles Act, 1988, the deceased being a non-earning person, a sum of Rs.15,000/- must be taken as the income and also held that as per Second Schedule of the Act, relevant multiplier can be taken as '15'. In the present case, the Tribunal awarded a sum of Rs.50,000/- as minimum compensation under no fault liability and awarded a sum of Rs.11,000/-

under other heads like incidental expenses, future prospects and also pain and suffering. Considering the judgment of the Apex Court in **Manju Devi's** case (Supra-1) an amount of Rs.15,000/- can be taken as notional income of non-earning person and relevant multiplier would be '15'. Thus the appellants are entitled to Rs.2,25,000/- ($15,000 \times 15 = 2,25,000/-$) towards loss of dependency. It is well settled principle of law laid down by the Hon'ble Supreme Court in **RAMILABEN CHINUBHAI PARMAR AND OTHERS VS. NATIONAL INSURANCE CO. LTD., & OTHERS**^[4] that an amount of Rs.50,000/- has to be awarded as conventional amount. Therefore, following the said principle, the said amount can be awarded to the appellants. Thus, the appellants are entitled to a total sum of Rs.2,75,000/- ($2,25,000 + 50,000/- = 2,75,000/-$) towards compensation. As far as the rate of interest is concerned, in view of different rates of interests granted by the Hon'ble Supreme Court in the decisions reported in **SANOBANU NAZIRBHAI MIRZA AND OTHERS VS. AHMEDABAD MUNICIPAL TRANSPORT**

**SERVICE^[5] ABD REBECA MINZ AND OTHERS VS.
DIVISIONAL MANAGER, UNITED INDIA INSURANCE
COMPANY LIMITED AND ANOTHER^[6]**

, I am of the view that interest at 7.5% per annum shall be awarded on the enhanced amount from the date of appeal till the date of realization.

16) In view of the judgment relied on by the learned counsel in **Puttamma's** case (Supra-3) there is no dispute about the findings, but the fact remains that the appellants filed O.P.No.319 of 2003 under Section 166 of the Act, but not under Section 163-A of the Act. As such, the claimants are entitled to get more amount than the amount prayed for them in the present appeal.

17) In view of the above discussion, the appeal is allowed enhancing the compensation awarded by the Tribunal from Rs.61,000/- to Rs.2,75,000/- along with interest at 7.5% per annum on the enhanced amount from the date of appeal till the date of realisation. The appellants are permitted to withdraw the said amount as soon as the deposit is made. It is also made clear that as

more compensation than what was claimed by the claimants has been awarded to them, they are directed to pay the requisite Court fee for the enhanced amount. No order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

ANIS, J

Dt.29.01.2016
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- [\[1\]](#)) 2005 ACJ 99
 - [\[2\]](#)) 2015 (4) ALD 585 (LB)
 - [\[3\]](#)) 2014 ACJ 526
 - [\[4\]](#)) 2014 ACJ 1430
 - [\[5\]](#)) 2013 ACJ 2733
 - [\[6\]](#)) 2012 ACJ 2328