

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1430 OF 2009

JUDGMENT:

Dissatisfied with the award of Rs.1,32,700/- as compensation through the order and decree, dated 08.12.2006, in O.P. No.1031 of 2005 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Kurnool (for short 'Tribunal'), as against their claim of Rs.2,50,000/- laid under Sections 163(A) and 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), petitioners preferred the instant Civil Miscellaneous Appeal, under Section 173 of the Act, seeking to grant balance amount.

2. The appellants herein, who are mother and sisters, respectively, of one Rathnam, who died in the accident, are petitioners in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the tractor-trailer bearing No.AP-21-D-7910-2739 that involved in the accident, are respondent Nos.1 and 2 respectively.

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

4. The facts, in brief, are that one Rathnam, who was working as a coolie on the tractor-trailer bearing No.AP-21-D-7910-2739 of respondent No.1, loaded the tractor-trailer with ground nut bags at Parnapalli village in order to unload the same at Market Yard,

Kurnool, and after unloading the groundnut bags at Kurnool, started from Kurnool in the same tractor-trailer returning to Parnapalli village on the same night and on the intervening night of 24/25-06-2005 at about 00.30 hours, reached near Venkayapalli Yellamma Temples, Kurnool-Nandikotkur main road, since driver of the tractor-trailer drove it in a rash and negligent manner at high speed and applied sudden brakes to avoid a ditch on the margin of the road, he (Rathnam) fell down from the tractor-trailer and the trailer ran over him. He was immediately shifted to Kurnool hospital, but he succumbed to the injuries with in a short time. Claiming that the deceased was 22 years old, earning Rs.4,000/- per month by working as a coolie on the tractor-trailer, petitioners sought a compensation of Rs.2,50,000/-.

5. Respondent No.1, owner of the tractor-trailer that involved in the accident, remained *ex parte*.

6. Respondent No.2, insurer of the tractor-trailer, opposed the claim. Though, certain pleas were taken, no specific plea appears to have been taken.

7. Based on the pleadings, the Tribunal framed the following three (3) issues in order to fix responsibility in taking place of the accident and to determine the compensation, if any.

8. The Tribunal, on issue No.1, recorded a finding favouring the petitioners. On issue No.2, taking the age of petitioner No.1,

mother of the deceased, as 42 years, since he died in unmarried status at the age of 22 years, fixed his monthly income at Rs.1,200/- and after deducting $\frac{1}{3}^{\text{rd}}$ therefrom towards his personal expenses i.e., Rs.400/- (Rs.1,200/- $\frac{1}{3}$), taking the remainder i.e., Rs.800/- as his contribution to his family which works out to Rs.9,600/- per annum, applying multiplier '12' placing reliance on the decision of this Court in **Bhagwandas v. Mohd. Arif**¹, arrived at Rs.1,15,200/- towards loss of dependency besides Rs.7,500/- towards loss of expectation of life and Rs.7,500/- towards pain and suffering and loss of amenities in life, awarded an amount of Rs.1,32,700/- as compensation with interest at 7.5% per annum by fastening liability on the insured and insurer of the tractor-trailer.

9. Heard Sri B. Siva Kesava Reddy, learned counsel for the petitioners (appellants), and Sri N.S. Bhaskar Rao, learned counsel for the insurer.

10. Despite service of notice on respondent No.1, owner of the tractor-trailer, none appears on his behalf.

11. Learned counsel for the petitioners would submit that the insurer has not filed any appeal complaining violation of terms and conditions of the insurance policy and, therefore, there is no need to look at the finding recorded by the Tribunal with regard to joint and several liability fastened on the insured and the insurer.

¹ 1987 (2) ALT 137

12. In the grounds, it is stated that multiplier '15' ought to have been applied, Rs.3,000/- per month ought to have taken as income of the deceased and towards conventional sum Rs.30,000/- ought to have awarded in view of the decision of the Hon'ble Supreme Court in **General Manager, Kerala SRTC v. Susamma Thomas**², and, thus, sought to grant the balance amount.

13. The amount of Rs.1,200/- taken by the Tribunal as monthly income of the deceased is without any basis and, in fact, Rs.2,000/- can be fixed as his monthly earnings on sheer guess work which works out to Rs.24,000/- per annum. Since deceased died in unmarried status, 50% thereof has to be deducted towards his personal expenses. Thus, annual contribution of the deceased to his family would work out to Rs.12,000/-. Since deceased died at the age of 22 years, the appropriate multiplier for his age group is '18' in view of the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**³ and when the same is applied, it works out to Rs.2,16,000/-. This apart, since mother of the deceased claims dependency on the deceased, the petitioners are entitled to 50% towards future prospects out of the loss of dependency and the same works out to Rs.1,08,000/- (Rs.2,16,000/- x 50%). The conventional amounts i.e., Rs.7,500/- towards loss of expectation of life and Rs.7,500/- towards pain and suffering and loss of amenities granted by the Tribunal are maintained.

² AIR 1994 SC 1631

14. Thus, the petitioners are entitled to a total compensation of Rs.3,39,000/- (Rupees three lakhs thirty nine only) as against Rs.1,32,700/- awarded by the Tribunal, and the same is accordingly awarded. The rate of interest granted by the Tribunal at 7.5% per annum from the date of petition till realisation is maintained on the entire compensation since the same is in accordance with the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**⁴. The enhanced compensation shall be apportioned among the petitioners as directed by the Tribunal. The petitioners are directed to pay Court fee on the excess amount of Rs.89,000/- (Rupees eighty nine thousand) granted by this Court than the claim, within a period of three (3) months from today.

15. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the order and decree under challenge enhancing the compensation, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

August 11, 2016.
PV

³. (2009) 6 SCC 121

⁴ 2013ACJ1403 = 2013(4)ALT35