

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.749 OF 2009

JUDGMENT:

The present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') is preferred by the petitioners seeking enhancement of compensation having got dissatisfied with the amount of Rs.1,62,000/- granted as compensation through the order and decree, dated 23.02.2006, in M.V. O.P. No.1903 of 2004 by the learned Chairman, Motor Accidents Claims Tribunal - cum - XXI Additional Chief Judge - cum - Additional Metropolitan Sessions Judge for trial of Communal Offence Cases - cum - VII Additional Metropolitan Sessions Judge, Red Hills, Nampally, Hyderabad (for short 'Tribunal'), as against their claim of Rs.2,00,000/- laid under Section 166 of the Act.

2. The appellants herein, who are parents of Shah Nawaz Khan (who died in the accident), are the petitioners in the O.P. before the Tribunal while the respondent viz., Andhra Pradesh State Road Transport Corporation (APSRTC), Hyderabad, owner of the bus bearing No.AP-11-Z-1624 of Rajendra Nagar Depot which involved in the accident, is the sole respondent.

3. For the sake of convenience, the parties are

referred to as arrayed in the O.P. before the Tribunal.

4(a) The facts would show that on 01.06.2004 at about 12.30 p.m., while Shah Nawaz Khan was proceeding on a scooter bearing No.AIB - 516 on Salarjung Bridge, APSRTC Bus bearing No.Ap-11-Z-1624 of Rajendra Nagar Depot, came from behind driven in a rash and negligent manner and hit the scooter, due to which, he fell down, sustained injuries and died instantly.

(b) The petitioners being the parents of the deceased, claiming that the deceased was 19 years old, he was a student and also doing part time job as automobile mechanic, earning Rs.2,500/- per month and contributing the entire earnings for maintenance of the family, sought a sum of Rs.2,00,000/- as compensation.

(c) The sole respondent - APSRTC has opposed the claim by filing counter.

8. The Tribunal, based on the pleadings, framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

9. During enquiry, on behalf of the petitioners, petitioner No.1, mother of the deceased, besides examining herself as PW.1, examined one Md. Mateen, an eye-witness to the accident, as PW.2 and marked Exs.A-1 to A-6. On behalf of the APSRTC, no oral or

documentary evidence was adduced.

10. The Tribunal has recorded a finding in favour of the petitioner on issue No.1 basing on the evidence of PW.2 supported by the documentary evidence under Exs.A-1 to A-5. On issue No.2, taking notional income of the deceased at Rs.15,000/- per annum, since no legally acceptable evidence was adduced by the petitioners to show that the deceased was earning Rs.2,500/- as claimed by them, deducted $1/3^{\text{rd}}$ i.e., Rs.5,000/- ($\text{Rs.15,000/-} \times 1/3$) towards his personal expenses and the remainder Rs.10,000/- towards contribution to his family, taking the age of the younger parent (mother) of the deceased as 42 years, applying multiplier factor '15', arrived at Rs.1,50,000/- ($\text{Rs.10,000/-} \times 15$) towards loss of dependency besides granting Rs.2,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, making a total of Rs.1,62,000/- with interest at 7.5% per annum.

11. The aforesaid order is under challenge in the instant appeal on the ground that the amount granted is not fair and just compensation and thus, sought to grant the balance compensation.

12. Perused the order under challenge and the evidence on record, both, oral and documentary let in by the petitioners.

13. The petitioners, though marked Ex.A-6 said to be salary employment letter of the deceased, the Tribunal has assigned reasons in discarding the same as the evidence of Md. Azeem examined as PW.3 was not convincing since he has not produced any other documents to show that he has established mechanic shed in the name and style of City Motor Garage and was running it. Therefore, that finding recorded by the Tribunal does not warrant interference.

14. Of course, the Tribunal ought to have deducted 50% out of the notional income of the deceased and taken the reminder towards his contribution to his family as he died in unmarried status and ought to have applied suitable multiplier according to the age of the deceased, who was 16 years old, but not her mother's age. In which case, the multiplier factor would be '18'. Be that as it may, since the deceased died at his prime age, keeping in view, the mental agony of the parents of the deceased who are claimants herein, the amount of Rs.2,00,000/- claimed by the petitioners can be granted as the amount towards funeral expenses and loss of estate granted by the Tribunal are also on lower side.

15. Accordingly, the Civil Miscellaneous Appeal is allowed granting Rs.2,00,000/- (Rupees two lakhs only) as against Rs.1,62,000/- granted by the Tribunal. The rate of interest granted by the Tribunal at 9% per annum

on the compensation of Rs.1,62,000/- granted by it is maintained. However, on the enhanced compensation, it is fixed at 7.5% per annum from the date of petition till realisation, in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

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

A. SHANKAR NARAYANA, J

July 8, 2016.

PV

^[1] 2013ACJ1403 = 2013(4)ALT35