

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.Nos.1794, 1796 AND 1860 OF 2009

COMMON JUDGMENT:

These three appeals, though, arise out of different orders and decrees, since relate to one and the same accident, they are heard together and disposed of by this common judgment.

2. In fact, though, notice was served on respondent No.2 - insurer of the ambulance that involved in the accident, none appears for it. The appellants have endorsed in the cause title of the appeals that respondent No.1, owner of the ambulance, is not a necessary party.

3. Heard Sri B. Parameswara Rao, learned counsel for the appellants.

M.A.CMA.No.1794 of 2009:

4. This appeal is preferred by the petitioner in M.V.O.P.No.805 of 2007 on the file of Chairman, Motor Accidents Claims Tribunal – cum – X Additional District and Sessions Judge (Fast Track Court), Guntur at Narasaraopet, assailing the order and decree, dated 12.01.2009, passed in the said O.P., whereby and whereunder, a sum of Rs.59,000/- was granted as compensation, as against the claim of Rs.2,00,000/- laid under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the fracture of right femur bone and

fracture of both bones of left leg sustained by the petitioner in a road accident.

5. By the aforesaid order, the Tribunal, assessing the disability at 15% and taking the notional income at Rs.15,000/- per annum, basing on the second schedule to Section 163A of the Act, granted Rs.36,000/- towards 15% disability, besides granting Rs.2,000/- towards pain and suffering, Rs.6,000/- towards attendant charges, conveyance and extra nourishment and Rs.15,000/- towards medical expenses covered by bills/vouchers, thus, making a total of Rs.59,000/-.

6. The Tribunal, somehow, overlooked the fact that the appellant was an earning member and, merely, because no documentary evidence was filed, it ought not to have taken the notional income at Rs.15,000/- per annum, since the evidence shows that the appellant was an agriculturist and, thus, if the average monthly earnings of the appellant is taken at Rs.2,000/- i.e., Rs.24,000/- per annum, by applying multiplier '18', since the appellant was aged between 25 and 30 years, 15% disability works out to Rs.64,800/-. Therefore, the same is granted towards disability. Towards pain and suffering, the second schedule to Section 163-A of the Act itself has fixed the amount at Rs.5,000/-. Therefore, the amount of Rs.2,000/- granted by the Tribunal towards pain and suffering is enhanced to Rs.5,000/-. The amount of Rs.6,000/- granted

towards attendant charges, conveyance and extra nourishment is maintained. Since, the amount of Rs.15,000/- granted towards medical expenses is as per the second schedule to Section 163-A of the Act, the same is maintained. Thus, the appellant is totally entitled to Rs.90,800/- as against Rs.59,000/- granted by the Tribunal. The rate of interest granted by the Tribunal at 7.5% per annum is maintained on the enhanced amount also.

7. Accordingly, the appeal is allowed in part enhancing the compensation from Rs.59,000/- to Rs.90,800/- with interest at 7.5% per annum from the date of petition till realisation.

M.A.CMA.No.1796 of 2009:

8. This appeal is preferred by the petitioners in M.V.O.P.No.806 2007 on the file of Chairman, Motor Accidents Claims Tribunal – cum – X Additional District Judge (Fast Track Court), Guntur at Narasaraopet, assailing the order and decree, dated 12.01.2009, passed in the said O.P., whereby and whereunder, a sum of Rs.1,69,500/- was granted as compensation with interest at 7.5% per annum, as against the claim of Rs.2,50,000/- laid under Section 163-A of the Act for the death of wife of petitioner No.1, of course, mother of petitioner Nos.2 to 4, in the said road accident.

9. By the aforesaid order, the Tribunal, taking the notional income at Rs.15,000/- per annum, by deducting 1/3rd therefrom towards personal expenses of the deceased and applying multiplier

‘16’, as per second schedule to Section 163-A of the Act, taking the age of the deceased as 40 years, arrived at Rs.1,60,000/- towards loss of dependency and granted the same, besides granting Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate and Rs.5,000/- towards loss of consortium, thus, making a total of Rs.1,69,500/-.

10. Irrespective of the fact whether the earnings of the deceased being proved or not, the Tribunal was not right in taking the notional income, since, some of the milk supply cards have been marked as Ex.A6. Therefore, even if Rs.2,000/- per month is taken as the minimum monthly earnings of the deceased, certainly, the appellants would be entitled to Rs.2,50,000/- as claimed by them. Therefore, the claim made by the appellants for grant of Rs.2,50,000/- as compensation is just and reasonable, under the circumstances. Hence, the same is granted. The rate of interest granted by the Tribunal at 7.5% per annum is maintained on the enhanced amount also.

11. The enhanced amount shall be apportioned among the appellants – petitioners in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal.

12. Accordingly, the appeal is allowed enhancing the compensation from Rs.1,69,500/- to Rs.2,50,000/- with interest at 7.5% per annum from the date of petition till realisation.

M.A.CMA.No.1860 of 2009:

13. This appeal is preferred by the petitioners in M.V.O.P.No.807 2007 on the file of Chairman, Motor Accidents Claims Tribunal – cum – X Additional District Judge (Fast Track Court), Guntur at Narasaraopet, assailing the order and decree, dated 12.01.2009, passed in the said O.P., whereby and whereunder, a sum of Rs.51,500/- was granted as compensation with interest at 7.5% per annum, as against the claim of Rs.1,50,000/- laid under Section 163-A of the Act for the death of one Vasantha Yeswanth, son of the appellants, in the said road accident.

14. In this appeal, death was of a small boy, who is 40 days old. Learned counsel for the appellants would place reliance on the decision of the Honourable Supreme Court in **Puttamma and others v. K.L. Narayana Reddy and another**¹ and requests to grant Rs.1,00,000/- as compensation, though, the claim was laid for Rs.1,50,000/-.

15. The Honourable Supreme Court in the aforesaid decision held in paragraph No.58 thus:

“58. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue

¹ 2014 ACJ 526 (SC)

specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163-A of Act, 1988 or amendment is made by the Parliament, we hold and direct that the children upto the age of 5 years shall be entitled for fixed compensation of Rs.1,00,000/-(rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs.1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the Act, 1988.”

16. Hence, the appellants are entitled to Rs.1,00,000/- as compensation as against Rs.51,500/- granted by the Tribunal. The rate of interest granted by the Tribunal at 7.5% per annum is maintained on the enhanced amount also.

17. The enhanced amount shall be apportioned among the appellants – petitioners in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal.

18. Accordingly, the appeal is allowed in part enhancing the compensation from Rs.51,500/- to Rs.1,00,000/- with interest at 7.5% per annum from the date of petition till realisation.

19. Miscellaneous Petitions, if any, pending in these appeals, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

September 01, 2016.
MD

