

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No. 3011 of 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.3,00,000/- granted as compensation by the order dated 31.08.2005 in O.P. No.693 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy (for short, 'the Tribunal') as against the claim of Rs.4,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one Gajire Narsimulu, who was the husband, father, son and brother of appellants-petitioners, respectively, in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellants herein are the petitioners, while respondent Nos.1 and 2 herein, who are the owner and insurer of container/lorry bearing registration No.TN 01Q 4062, respectively, are respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts, in brief, are that on 19.10.2004 at about 8.00 p.m., while the said Narsimulu (deceased) was

standing near the Bus Stand at Ranjole Village, a container/lorry bearing registration No.TN 01Q 4062, driven by its driver in a rash and negligent manner came from Hyderabad and dashed him, due to which, he sustained head injury and succumbed to injuries. The petitioners claim that the deceased was earning Rs.6,000/- p.m. as a skilled labourer, who was aged 28 years, and sought Rs.4,00,000/- as compensation.

5. Respondent No.1 filed counter denying the allegations, but however, contended that the lorry was insured with respondent No.2 and, therefore, an obligation cast on respondent No.2 to indemnify the liability.

6. Respondent No.2 filed separate counter resisting the claim raising various pleas, which, of course, are unnecessary to advert to in this appeal, since the appeal is preferred by the claimants.

7. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the accident occurred due to rash and negligent driving of the driver of crime vehicle?

2. What is the just compensation the petitioners are entitled and from whom?

3. To what relief ?"

8. During enquiry, petitioner No.1 examined herself as P.W.1, besides examining one Mahaboob Ali as P.W.2 and marked Exs.A.1 to A.5 to substantiate their claim; whereas, on behalf of the respondents, no witnesses were examined, but a copy of insurance policy of the accident vehicle was marked as Ex.B.1 by mutual consent.

9. On analyzing the evidence let in by the petitioners, the Tribunal on issue No.1 recorded finding in favour of the petitioners. On issue No.2 as to determination of compensation, the Tribunal has taken the daily wage of a casual labourer at Rs.75/-, keeping in view that the deceased was a casual labourer and worked out the monthly income of the deceased at Rs.2,250/-, and Rs.1,500/- per month or Rs.18,000/- per annum after deducting 1/3rd therefrom towards personal expenses of the deceased and applying multiplier "15" taking the age of the deceased as 32 years, arrived at Rs.2,70,000/- towards loss of dependency, besides granting Rs.15,000/- towards loss of consortium and Rs.15,000/- towards loss of estate, thus, awarding a total compensation of Rs.3,00,000/- and apportioned the same amongst petitioner Nos.1 to 3 by granting interest at 7.5% per annum, while dismissing the claim petition of petitioner No.4 who is younger brother of the deceased and also a major.

10. It is the aforesaid order which is under challenge in the instant appeal on the ground that the compensation granted by the Tribunal was very meager and proper appreciation was not made by the Tribunal and, therefore, sought to grant the balance amount.

11. Heard Sri P. Sriharinath, learned counsel for the appellants-petitioners and Sri V. Srinivasa Rao, learned counsel for respondent No.2. Despite service of notice on respondent No.1, none appears for him.

12. Perused the order and the oral and documentary evidence let in by both sides. It is not in dispute that the deceased was a casual labourer and taking his daily wage at Rs.75/- and deducting 1/3rd therefrom towards personal expenses cannot be faulted, as the accident had taken place during the year 2004, in the absence of any evidence adduced by the petitioners as regards the income derived by the deceased at Rs.6,000/- per month. However, the multiplier "16" is applicable, in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others Vs. Delhi Transport Corporation and another**^[1]. When the same is applied, the loss of dependency works out to Rs.2,88,000/-. In view of the decisions in **Sarla Verma case (1 supra) and Rajesh and others Vs. Rajbir**

Singh and others^[2], since the deceased was aged 32 years, the petitioners are entitled to addition of 50% of loss of dependency towards future prospects, which works out to Rs.1,44,000/-. Besides the same, a conventional sum of Rs.50,000/- is granted, in view of the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**^[3]. Thus, the petitioners are entitled to a total sum of Rs.4,82,000/- (Rupees four lakhs eighty two thousand only) as against Rs.3,00,000/- granted by the Tribunal, towards compensation and the same is accordingly granted. It is, no doubt, true the amount now determined exceeds the claim, as the claim was Rs.4,00,000/-, however, in view of the decisions of the Apex Court in **Nagappa v Gurudayal Singh**^[4], **Sarla Verma case (1 supra)** and **Rajesh case (2 supra)**, there cannot be any embargo in granting compensation in excess of what is claimed, when the amount determined is just and fair.

13. Accordingly, the instant appeal is allowed, modifying the order passed by the Tribunal, by enhancing the compensation from Rs.3,00,000/- to Rs.4,82,000/-. So far as the rate of interest is concerned, the Tribunal has granted interest at 7.5% p.a. The same is maintained for the enhanced amount also, in view of the decision of the Apex Court in **Rajesh case (2 supra)**. The order of the

Tribunal in all other respects is confirmed. There shall be no order as to costs

14. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

4th March, 2016
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[\[1\]](#) (2009) 6 SCC 121

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

[\[3\]](#) LAWS (SC) -2014-4-67

[\[4\]](#) 2003 ACJ 12.