

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.855 OF 2009

JUDGMENT:

The petitioners in M.V.O.P.No.267 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal – cum – I Additional Chief Judge, City Civil Court, Secunderabad, being not satisfied with the award of Rs.69,500/- towards compensation by order and decree, dated 10.07.2008, passed in the said O.P., as against the claim of Rs.2,50,000/- laid under Section 163-A of the Motor Vehicles Act, 1988, preferred the instant appeal seeking enhancement of compensation.

2. The appellants are petitioners, whereas respondent Nos.1 and 2, who are the owner and insurer of the vehicle that involved in the accident, are respondent Nos.1 and 2, respectively, in the O.P. before the Tribunal.

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

4. The facts in brief are that on 20.11.2005 at about 10:45 AM, while one Master Lakka Dheeraj along with his parents and others was proceeding in a car bearing registration No.AP-36-H-8024 from Veerlapally,

Shadnagar towards Gowlipura, Hyderabad, and when their car reached the outskirts of Mylardevpally in front of Maheshwari Oil Mill, a lorry tanker bearing registration No.AP-31-T-8457 coming in opposite direction driven by its driver at high speed in a rash and negligent manner hit the car, due to which impact, the inmates of car sustained injuries and the said Master Lakka Dheeraj succumbed to injuries on the way to Owaisi Hospital. Thus, the petitioners, who are the parents of the deceased Lakka Dheeraj, aged about four years on the date of accident, sought a sum of Rs.2,50,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle, respectively.

5. Respondent No.1, owner of the lorry, remained *ex parte* before the Tribunal.

6. Respondent No.2 – insurer opposed the claim contending that the car was overloaded beyond the seating capacity and even complained that the compensation sought for is highly excessive.

7. Based on the said pleadings, in order to determine the liability as well as the compensation, the Tribunal has framed three issues.

8. During enquiry, petitioners examined themselves

as PWs.1 and 2, respectively, and marked Exs.A1 to A7 to substantiate the claim laid. On behalf of respondent No.2, no oral evidence was let in, but a copy of the policy was marked as Ex.B1.

9. The Tribunal, having recorded finding in favour of the petitioners on issue No.1, placing reliance on certain decisions of the Honourable Supreme Court, granted a total sum of Rs.69,500/- as compensation under various heads.

10. Dissatisfied with the amount awarded by the Tribunal, the petitioners preferred the instant appeal seeking to grant the balance amount.

11. Heard Sri A.P. Venugopal, learned counsel for the appellants, and Sri Katta Laxmi Prasad, learned counsel for respondent No.2. Despite service of notice on respondent No.1, none appears.

12. The petitioners filed Exs.A1 to A5, which are police records and Ex.A6 is the original Fee Certificate showing that the deceased boy was admitted in St. Mary's High School in L.K.G. and the fee for four terms was Rs.3,000/- i.e., at Rs.750/- per term. When, kept in view, the facts that the petitioners along with the deceased were travelling in a car and the deceased was admitted in a

school with considerable reputation, it would be reasonable to grant a sum of Rs.1,25,000/- towards compensation as against Rs.69,500/- granted by the Tribunal. Accordingly, the said amount is granted.

13. Concerning the rate of interest, the Tribunal has granted interest at 7.5% per annum. The same is maintained on the enhanced amount also in view of the decision of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

14. Accordingly, the appeal is allowed in part enhancing the compensation from Rs.69,500/- to Rs.1,25,000/- with interest at 7.5% per annum. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR

NARAYANA, J

July 28, 2016.
MD

^[1] (2013) 9 SCC 54