HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3119 OF 2005

JUDGMENT:

M/s. United India Insurance Company Limited, the respondent No.2 in O.P. No.1244 of 2003, on the file of the Chairman, Motor Accidents Claims Tribunal – cum – V Additional District and Sessions Judge, Nalgonda at Miryalguda (for short 'the Tribunal'), is the present appellant. Aggrieved by the order and decree, dated 22-08-2005 in the said O.P. passed by the Tribunal, whereby and whereunder a sum of Rs.2,25,000/- was granted as compensation as against the claim of Rs.1,00,000/- laid under Sections 166 read with 140 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the appellant under Section 173 of the Act seeking interference on the ground that there was no justification to grant such amount merely referring to the authorities rendered by the Hon'ble Supreme Court.

2. The appellant and respondent No.3, who are insurer and insured of car bearing registration No.AP 01B 6789, respectively, are respondent Nos.1 and 2, respectively, in O.P. before the Tribunal, while respondent Nos.1 and 2 are the petitioners, who are parents of deceased – Ravula Goutham.

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 07-09-2003 at about 4.30 p.m., the deceased – Ravula Goutham, who was 14 years old and studying 9^{th} Class, was hit by an Ambassador Car bearing

registration No. AP 01B 6789 at Peddavoora Gram Panchayat on Hyderabad – Nagarjuna Sagar Road, due to which, he succumbed to injuries on the way at Miryalguda while he was being shifted to Hyderabad. Even the Station House Officer of the concerned police station registered a crime against the driver of the car. The petitioners sought joint and several liability against respondent Nos.1 and 2, seeking a sum of Rs.1,00,000/-.

5. Before the Tribunal, respondent No.1, owner of the car, remained *ex parte*. Whereas, respondent No.2 – Insurance Company, filed counter opposing the claim.

6. Basing on the pleadings, the Tribunal framed three issues about the responsibility for the accident.

7. During inquiry, on behalf of petitioners, petitioner No.1 besides examining himself as PW.1, has examined one P. Yadagiri, an eye-witness to the accident, as PW.2 and marked Exs.A-1 to A-7 in order to substantiate their claim. On behalf of respondent No.2, no witnesses were examined and no documents were filed.

8. On issue No.1, the Tribunal, on appraisal of evidence on record, held it in favour of the petitioners. On issue No.2, the Tribunal treating the deceased being minor as non-earning person, has taken the income at Rs.15,000/- per annum and by applying multiplier ‘15’ arrived at Rs.2,25,000/- towards loss of dependency, and though the petitioners sought Rs.1,00,000/- as compensation, but relying on certain decisions of the Hon’ble Supreme Court, awarded the aforesaid amount with interest at

7.5% per annum thereon by apportioning the same equally.

9. It is the aforesaid order which is under challenge in the instant appeal preferred by the Insurance Company seeking to set aside the award contending in the grounds that the Tribunal has granted the compensation more than the claim made by the petitioners, which is not correct and, therefore, sought to set aside the award and decree.

10. Heard Sri Naresh Byrapaneni, learned Standing Counsel for the appellant – Insurance Company. Despite service of notice on respondent Nos.1 and 2 – petitioners, none appears. As per the memo filed by the learned counsel for the appellant, respondent No.3 – respondent No.1 is not a necessary party to the instant appeal.

11. Perused the order and the evidence on record, both, oral and documentary.

12. So far as the finding recorded on Issue No.1 is concerned, there is no challenge and, therefore, the same is confirmed.

13. On issue No.2, the Tribunal basing on the decision of the Hon’ble Supreme Court in **Manju Devi and another v. Musafir Paswan and another**[1]**,** has granted Rs.2,25,000/- without discussing the principles laid down therein and the case on hand would really fall within the fact-situation occurring therein. However, in view of the principle laid down by the Hon’ble Supreme Court in **Puttamma v. K.L. Narayana Reddy**[2]**,** the petitioners are entitled to Rs.1,50,000/-, since, while referring to

the amendment proposed to Schedule - II of the Act by the Central Government, it was directed by the Hon'ble Supreme Court that till such amendment is made, children up to the age of five (5) years shall be entitled for a fixed compensation of Rs.1,00,000/- (Rupees one lakh only) and persons more than five years of age shall be entitled for a fixed compensation of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) or the amount that may be determined in terms of Schedule - II of the Act; whichever is higher. The relevant observations of the Hon'ble Supreme Court contained in paragraph No.58 of **Puttamma's Case** (Supra 3) are, 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 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 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for 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

163A of the Act, 1988."

In view of the above decision, the petitioners are entitled to Rs.1,50,000/- but not Rs.2,25,000/- and, therefore, the compensation is reduced to Rs.1,50,000/- from Rs.2,25,000/-.

14. Concerning rate of interest, the Tribunal has granted 7.5% per annum. The same is maintained in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[3].

15. In the result, the appeal is allowed in part, and the order and decree, dated 22-08-2005, in O.P. No.1244 of 2003, passed by the Tribunal, are modified, reducing the compensation to Rs.1,50,000/- (Rupees one lakh and fifty thousand) from Rs.2,25,000/- with interest at the rate of 7.5% per annum thereon from the date of petition till realization. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

February 15, 2016.
Mgr

[1]. 2005 ACJ 99

[2] **2014 ACJ 526**

[3]. 2013 ACJ 1403