

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.2415 OF 2009

JUDGMENT:

The wife and minor son of one P. Rama Chary, deceased in the instant case, who are petitioners (claimants) before the learned Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Nalgonda (for short 'Tribunal') preferred the instant Civil Miscellaneous Appeal seeking enhancement of compensation as the Tribunal awarded only an amount of Rs.2,25,500/- through the order and decree dated 26.02.2008 in O.P. No.26 of 2007, as against the claim of Rs.3,00,000/- laid under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (for short 'the Act') and Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 against the erstwhile Andhra Pradesh State Road Transport Corporation, Musheerabad, Hyderabad (for short 'APSRTC').

2. The facts would show that on 08.06.2006, the said Rama Chary, having attended his brother's-in-law marriage at Chandur village, was returning to Hyderabad, on Hero Honda motorcycle bearing No.AP-29-K-6992 as pillion rider along with his brothers, and when they reached Jagigudem bus stop at Donipamula Village limits, at about 3-30 p.m., the bus bearing No.AP-10-Z 6381 belonging to APSRTC, driven at high speed in a rash and negligent manner, came and hit their motorcycle, due to which, all of them fell down and sustained injuries, but Rama Chary succumbed to injuries

immediately. The petitioners being wife and son, respectively, of the deceased Rama Chay, claiming that the deceased was earning Rs.10,000/- per month as a motor-winding mechanic and maintaining an electrical shop at Nagole locality of Hyderabad, sought compensation of Rs.3,00,000/- against the APSRTC.

3. The APSRTC filed counter disputing over material allegations levelled in the petition and sought dismissal of the claim petition.

4. Based on the pleadings, the Tribunal framed three (3) issues in order to fix responsibility in taking place of the accident and to determine just compensation to which the petitioners are entitled.

5. On behalf of the petitioners, petitioner No.1, wife of the deceased, examined herself as PW.1 and one Pasunoori Vasudeva Chary as PW.2 and marked Exs.A-1 to A-6 to prove their claim. On behalf of the APSRTC, no witnesses were examined and no documents were filed.

6. The Tribunal having appreciated the evidence on record, held issue No.1 in favour of the petitioners. On issue No.2, taken earnings of the deceased at Rs.1,500/- per month or Rs.18,000/- per annum, deducted $\frac{1}{3}$ rd i.e., Rs.6,000/- (Rs.18,000/- x $\frac{1}{3}$) towards his personal and living expenses, the remainder, Rs.12,000/- (Rs.18,000/- - Rs.6,000/-) as his contribution to his family and taking his age as 30 years as per the postmortem report, by applying multiplier '18',

arrived at Rs.2,16,000/- (Rs.12,000/- x 18) towards loss of dependency. The Tribunal also granted Rs.2,500/- towards loss of estate, Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium to petitioner, granted a total sum of Rs.2,25,500/- towards compensation with interest at 7.5% per annum. Thus, a total compensation of Rs.2,25,000/- was granted with interest at 7.5% per annum apportioning the same between the petitioner Nos.1 and 2.

7. Dissatisfied with the amount awarded, the present appeal is preferred by the petitioners raising various grounds asking to apply multiplier factor '20', and to take the earnings of the deceased at Rs.10,000/- per month, and to grant Rs.50,000/- towards pecuniary damages, Rs.50,000/- towards loss of consortium and Rs.25,000/- towards transportation and funeral expenses.

8. Heard Sri M. Rajamall Reddy, learned counsel for the petitioners (appellant).

9. The APSRTC (respondent), though, served with notice, has not entered appearance.

10. The learned counsel for the petitioners would submit that a minimum income of Rs.100/- per day ought to be taken, though, the petitioner was earning Rs.6,000/- per month as motor winding mechanic which the Tribunal totally ignored and, therefore, sought to grant the balance amount.

11. Perused the order and decree under challenge and the evidence on record.

12. Even in the inquest report, certified copy of which is marked as Ex.A-2, in the description against column No.2, the deceased was shown as 'electrician'. Therefore, so far as the petitioners' stand that the deceased was working as motor-winding mechanic, the same cannot be doubted.

13. Now turning to the question, what would be the monthly earnings of the deceased, the Tribunal has taken Rs.1,500/- per month, of course, which is just based on guess work. Admittedly, no documentary evidence is forthcoming as the deceased was working privately. In such an event, by guess work, the notional income of the deceased can be arrived at Rs.24,000/- per annum since he was said to be mechanic of motor-winding which requires skill. Since the petitioners are numbering two, $\frac{1}{3}^{\text{rd}}$ deduction is permissible towards his personal living expenses. When $\frac{1}{3}^{\text{rd}}$ i.e., Rs.8,000/- (Rs.24,000/- x $\frac{1}{3}$) is deducted from Rs.24,000/-, contribution of the deceased to his family would work out to Rs.16,000/- (Rs.24,000/- - Rs.8,000/-) per annum. For the age group of the deceased, who was 30 years old as per the postmortem report under Ex.A-3, multiplier factor '17' is applicable and when the same is applied, it works out to Rs.2,72,000/- (Rs.16,000/- x 17) towards loss of dependency. The petitioners are also entitled to 50% thereof towards future prospects. Thus, in addition to Rs.2,72,00/-, they are entitled to Rs.1,36,000/-

(Rs.2,72,000/- x 50%). Thus, the petitioners are entitled to, both, put together, Rs.4,08,000/-. Besides the same, the petitioners are also entitled to Rs.50,000/- towards conventional sum.

14. Thus, the petitioners are entitled to a total compensation of Rs.4,58,000/- (Rupees four lakhs fifty eight thousand only) as against Rs.3,00,000/- awarded by the Tribunal, and the same is accordingly awarded, though, it exceeds the amount claimed by the petitioners, in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh & others**¹ **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**² and **Rajesh and others v. Rajbir Singh and others**³, wherein it is held that there is no prohibition to grant just and reasonable compensation arrived at, even if the same exceeds the amount claimed, by maintaining the rate of interest at 7.5% per annum, granted by the Tribunal, on the entire compensation, which includes enhanced compensation, placing reliance on the decision in **Rajesh's Case** (Supra 3), from the date of petition till realisation. The enhanced compensation shall be apportioned between the petitioners as directed by the Tribunal. The petitioners are directed to pay Court fee on the excess amount of Rs.1,58,000/- (Rupees one lakh fifty eight thousand only) granted by this Court within a period of three (3) months from today.

¹ AIR 2003 SC 674

² 2012 ACJ 191 (SC)

³ 2013ACJ1403 = 2013(4)ALT35

15. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the order under challenge and enhancing the compensation, as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

October 26, 2016.

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