

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2718 OF 2005

JUDGMENT:

Respondent No.3-New India Assurance Company Limited is the present appellant. In fact, the main contention is that the alleged accident vehicle is not involved in the accident at all and, therefore, the Tribunal went wrong in awarding compensation of Rs.2,63,068/- to respondent Nos.1 to 3 herein and, therefore, challenged the order dated 08.03.2004 in O.P. No.570 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, West Godavari at Eluru (for short, 'the Tribunal') seeking to set aside the order and decree so far as the appellant is concerned.

2. The appellant herein, who is insurer of the scooter bearing registration No.AP 37D 6724, is respondent No.3, while respondent Nos.1 to 3 herein, who are the wife and children of Sheik Basha (deceased), are petitioner Nos.1 to 3 and respondent Nos.4 and 5 herein, who are the driver and owner of scooter, 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 11.08.2000, one Sheik Basha (deceased), who was the husband of petitioner No.1 and father of petitioner Nos.2 and 3, while returning on his cycle on the left side of the road at Tanuku on Co-operative Society road and when he reached near Indian Gas booking office, a scooter bearing registration No.AP 37D 6764 driven by respondent No.1 in a rash and negligent manner coming from opposite direction dashed him, due to which, he suffered fatal injuries and referred to Dr. M.V.V.Prasada Rao's hospital and then shifted to Government Hospital, Tanuku, for better treatment, who succumbed to injuries on 14.08.2000. Stating that the deceased was earning Rs.4,500/- as a driver of a transport lorry, besides getting Rs.50/- per day as batta and aged 39 years, sought a sum of Rs.3,00,000/- under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') from respondent Nos.1 to 3, who are driver, owner and insurer of the scooter.

5. Respondent Nos.1 and 2 remained *ex parte*. Respondent No.3 opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed four issues about the responsibility for the accident. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining an eyewitness to the

incident as P.W.2 and marked Exs.A.1 to A.5 and Exs.C.1 to C.5 to substantiate their claim; whereas, on behalf of respondent No.3-Insurance Company, R.Ws.1 to 4 were examined, but no documents were filed.

7. The Tribunal held issue No.1 in favour of the petitioners by thoroughly examining the evidence on record, more particularly, the evidence of P.W.2 and R.Ws.1 to 4, declining to accede to the stand of respondent No.3 that the vehicle was not involved in the accident and recorded a definite finding that the scooter was involved in the accident and, on account of rash and negligent driving of the driver of scooter only, the accident had occurred. The Tribunal, on issue No.2 concerning determination of compensation, taking the age of the deceased as 40 years and the income at Rs.80/- per day or Rs.2,400/- per month, deducted $\frac{1}{3}^{\text{rd}}$ therefrom towards personal expenses of the deceased and applying multiplier 12.79, arrived the loss of dependency at Rs.2,45,568/-. Beside the same, the Tribunal also granted Rs.15,000/- towards loss of consortium and Rs.2,500/- towards funeral expenses, making a total sum of Rs.2,63,068/- with interest at 9% per annum from the date of petition till realization.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the scooter bearing registration No.AP 37D 6769 was

not involved in the accident much less on 11.08.2000. Except that ground, no other grounds were agitated.

9. Heard Sri Kota Subba Rao, learned Standing Counsel for respondent No.3 (appellant herein). The instant appeal was dismissed for default on 05.01.2012 against petitioner No.1 (respondent No.1 herein), who was also the next friend and mother of petitioner Nos.2 and 3 (respondent Nos.2 and 3) and no steps were taken to get the dismissal order set aside.

10. In fact, the Tribunal has examined the fact that the scooter bearing registration No.AP 37D 6724 was involved in the accident in paragraph No.10 of its order and analyzing the evidence of R.Ws.2 to 4 and P.W.2 even derived probabilities in aid of the proved facts and documentary evidence, recorded a definite finding that the death of deceased took place in the said accident. Hence, there is absolutely no merit in the instant appeal.

11. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum but the same is reduced to 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

12. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by reducing the rate of interest, as indicated above, and

confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

30th March, 2016

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