

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1136 OF 2005

JUDGMENT:

Respondent No.2 - M/s. National Insurance Company Limited, preferred the instant appeal aggrieved by the order and decree, dated 31-12-2004, in M.O.P. No.1406 of 2003, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - VII Additional District Judge (Fast Track Court), Visakhapatnam (for short 'the Tribunal'), whereby and where-under a sum of Rs.5,04,000/- was granted as against the claim of Rs.15,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') as compensation for the death of one Kandregula Rambabu, on the ground that the compensation awarded by the Tribunal was excessive and arbitrary.

2. Respondent No.3 and the appellant herein, who are owner and insurer of Jeep bearing registration No.AP 31W 9304, respectively, are respondent Nos.1 and 2, respectively in M.O.P. before the Tribunal, while respondent Nos.1 and 2 are petitioners, who are mother and insane brother of deceased - K. Rambabu.

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

before the Tribunal.

4. The fact-situation occurring in the instant case is that on 03-07-2003, while Kandregula Rambabu, who was an electrical contractor, was proceeding on his scooter bearing registration No.AP 32A 3712 from S.F.S. Quarters to his house along with pillion riders B. Trinadh and B. Ramprasad working under K. Rambabu, at about 2.30 p.m., near M.V.P. Super Market, a Jeep bearing registration No.AP 31W 9304 suddenly overtook their scooter and came to the left side and then again took a turn to his right side without indicating anything and having seen the same, Rambabu turned his vehicle to the right side. When the jeep driver turned the jeep to right side, the scooter hit the jeep, due to which, he received head injury and others also sustained injuries. While he was being shifted to K.G. Hospital, Visakhapatnam, he succumbed to injuries. Claiming that he was earning Rs.25,000/- to Rs.30,000/- per month as an electrical contractor, his mother and his brother, who is mentally challenged, petitioner Nos.1 and 2, respectively, filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') seeking a sum of Rs.15,00,000/- as compensation against respondent Nos.1 and 2.

5. Respondent No.1, owner of the jeep, remained

ex parte before the Tribunal. Whereas, respondent No.2 - its insurer opposed the claim disputing rash and negligent driving attributed to the driver of the jeep; while contributing rash and negligent driving to the deceased himself, sought to dismiss the claim petition.

6. Basing on the said pleadings, the Tribunal framed three issues for trial.

7. Before the Tribunal, petitioner No.1 herself examined as PW.1, besides examining one P. Trinadha Rao as PW.2, and marked Exs.A-1 to A-21. On behalf of respondent No.2, no witnesses were examined, but, however, Ex.B-1, copy of insurance policy, was marked.

8. The Tribunal having assessed the evidence on record, held issue No.1 in favour of the petitioners, recording a finding that due to the negligence of the driver of the jeep, the accident had occurred. On issue No.2, the Tribunal has taken monthly income of the deceased as Rs.3,500/- basing on the documentary evidence and taking his age as 32 years as he died in 'unmarried status' by placing reliance on the decision of this Court in **Bhagwandas v. Mohd. Arif**^[1], applied multiplier '18' which worked out Rs.5,04,000/- and, accordingly, granted the same with interest at 9% per annum thereon from the date of petition till the date of deposit.

9. It is the aforesaid order which is under challenge in the instant appeal preferred by respondent No.2 - Insurance Company on the ground that the Tribunal did not properly appreciate the evidence on record and ought to have rejected the evidence of PW.2 and ought not to have applied multiplier '18' as he was a bachelor and the age of his mother ought to have taken, and even ignored the fact that two more pillion riders were travelling on two wheeler of the deceased and, thereby sought to set aside the order and decree.

10. Heard Sri P. Harinatha Gupta, learned counsel for the appellant - Insurance Company, and Sri Jithender Rao Veeramalla, learned counsel for respondent Nos.1 and 2 - petitioners. Though, service of notice was effected on respondent No.3 herein, none appears for him.

11. Perused the order and the material on record. In fact, no evidence was let in by the respondent No.2 - Insurance Company. When the Tribunal recorded a finding as to the rash and negligent driving, unless respondent No.2 is successful in showing that such finding recorded by the Tribunal is tainted with illegality or utter perverse, certainly, the same cannot be interfered with. Respondent No.2 has not adduced any evidence and, in fact, a duty is cast on it to file copy of scene of

rough sketch and ought to have examined the driver of the jeep to upset the finding recorded by the Tribunal that due to rash and negligent driving of the driver of the jeep, the accident had occurred. Therefore, that finding recorded by the Tribunal cannot be upset.

12. Turning to quantum of compensation awarded by the Tribunal, it is no doubt true, the Tribunal has taken the age of the deceased, though he died in unmarried status, in reckoning the multiplier factor, but, it cannot be said that the Tribunal went wrong in adopting the same in view of the recent decisions of the Hon'ble Supreme Court in **Amrit Bhanu Shali v. National Insurance Company Limited**^[2] and **Munna Lal Jain v. Vipin Kumar Sharma**^[3].

13. Now, turning to whether the amount awarded by the Tribunal can be viewed as excessive or arbitrary as sought to be viewed by the respondent No.2, even, the multiplier factor was taken '18' as against '16', still, since future prospects have not been assessed by the Tribunal, certainly, the amount with future prospects far exceeds the compensation amount of Rs.5,04,000/- granted by the Tribunal if the ratio laid down by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[4] and **Rajesh and others v.**

Rajbir Singh and others^[5] is applied. Thus, viewed from any angle, the amount of Rs.5,04,000/- granted by the Tribunal cannot be construed as excessive. However, in so far as rate of interest is concerned, the Tribunal has granted it at 9% per annum, but the same requires reduction in view of the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 5). Therefore, the interest is reduced to 7.5% per annum from 9% per annum granted by the Tribunal.

14. In view of the foregoing discussion, the appeal is allowed in part to the extent of reducing the rate of interest from 9% per annum to 7.5% per annum on the amount of Rs.5,04,000/- granted by the Tribunal from the date of petition till the date of deposit, while maintaining the order and decree in all other respects. 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

June 23, 2016.

Mgr

^[1] . 1987 (2) ALT 137

^[2] . (2012) ACJ 2002

[\[3\]](#) . (2015) 6 SCC 347

[\[4\]](#) . (2009) 6 Supreme Court Cases 121

[\[5\]](#) . 2013 ACJ 1403