

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.3003 OF 2005

JUDGMENT:

Feeling dissatisfied with the award of Rs.1,69,500/- towards compensation for the death of one P. Thirupathaiah in a road accident, as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') laid by his legal heirs, they (petitioners) preferred this Civil Miscellaneous Appeal against the order and decree, dated 05.08.2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District and Sessions Judge, Mahbubnagar, in O.P. No.618 of 2002, seeking enhancement of compensation.

2. The appellants herein, who are wife and minor daughters of P. Thirupathaiah, who died in the accident, are petitioners in the O.P. before the Tribunal, while respondent Nos.1 and 2, which are owner and insurer, respectively, of the lorry bearing No.AP-16-4812 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

the Tribunal and Thirupathaiah, who died in the accident as 'deceased.'

4. The facts in brief are that on 30.03.2002, while Thirupathaiah was working as a labourer at Malikheda in Madhya Pradesh State along with others, met with an accident, since lorry bearing No.AP-16-4812 driven by its driver in a rash and negligent manner at high speed, hit him at the work spot and while he was being shifted to hospital, he succumbed to injuries on the same day.

The petitioners claiming that the deceased was 30 years old at the relevant time working as a labourer, earning Rs.3,000/- per month and due to his untimely death, they lost their financial support, sought Rs.3,00,000/- towards compensation.

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

6. Respondent No.2, insurer of the lorry that involved in the accident, opposed the claim requiring the petitioners to prove the material allegations levelled by them, while reserving the right provided under Section 170 of the Act.

7. The Tribunal, based on the pleadings, framed

three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

8. During enquiry, petitioner No.1, wife of the deceased, examined herself as PW.1 and marked Exs.A-1 to A-7, but no other witnesses were examined. On behalf of the insurer, no oral evidence was adduced except marking a copy of the insurance policy of the lorry involved in the accident as Ex.B-1.

9. The Tribunal, having recorded the finding in favour of the petitioner so far as issue No.1 is concerned, holding that the accident occurred due to rash and negligent driving of the lorry driver resulting in death of the deceased; on issue No.2, for want of proof to show that the deceased was earning Rs.3,000/- per month, resorted to notional income at Rs.15,000/- per annum as provided in Schedule - II to Section 163 of the Act, applying multiplier '17', arrived at Rs.2,14,000/- and deducting 1/3rd therefrom towards personal expenses of the deceased, awarded Rs.1,60,000/- towards loss of dependency with interest at 7.5% per annum observing that 'in addition, petitioner No.1 is entitled to Rs.9,500/- towards funeral expenses, loss of consortium and loss of estate' and, thus, granted a total sum of Rs.1,69,500/-

10. On the ground that the compensation awarded was very meagre, the instant appeal is preferred by the

petitioners contending in the grounds of appeal that the nature of work and monthly earnings of the deceased were clearly spoken to by PW.1 in her evidence, but the Tribunal has not considered the same as the minimum wages as a labourer as per the national average income as per the Act, and, therefore, sought to grant the balance amount.

11. No representation for the petitioners (appellants) and also for respondent No.2, insurer.

12. Despite service of notice, none appears for respondent No.1, owner of the lorry involved in the accident.

13. Perused the order and decree under challenge and the evidence available on record.

14. It is true, there is no material to arrive at that the deceased was earning Rs.3,000/- per month. Even otherwise, taking Rs.15,000/- per annum as his notional income, deducting $\frac{1}{3}^{\text{rd}}$ therefrom towards his personal expenses and $\frac{2}{3}^{\text{rd}}$ towards his contribution to the family, an amount of Rs.1,60,000/- arrived at by the Tribunal towards loss of dependency has to be supplemented with the additional amount to be granted towards future

prospects at 50% thereof, in view of the decision of the Hon'ble Supreme Court in

Sarla Verma v. Delhi Transport Corporation^[1] **Rajesh and others v. Rajbir Singh and others**^[2], which works out to Rs.80,000/- (Rs.1,60,000/- x 50%), and, thus, the petitioners are entitled to Rs.2,40,000/- (Rs.1,60,000/- + Rs.80,000/-) towards loss of dependency.

15. The Tribunal has granted Rs.9,500/- towards conventional sum and the same is enhanced to Rs.50,000/- in view of the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**^[3]. Besides the same, even for transport, as the deceased died in hospital, for shifting his body from hospital and incidental expenses, a sum of Rs.10,000/- is granted.

16. Thus, the petitioners are entitled to a total compensation of Rs.3,00,000/- (Rupees three lakhs only) as against Rs.1,69,500/- awarded by the Tribunal, and the same is accordingly awarded with interest at 7.5% per annum, as granted by the Tribunal, on the entire compensation from the date of petition till realisation. The enhanced compensation shall be apportioned between the petitioners as directed by the Tribunal.

17. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned order 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

March 23, 2016.

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[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) 2013ACJ1403 = 2013(4)ALT35

[\[3\]](#) . 2014 ACJ 1430