

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal No.3738 OF 2004

JUDGMENT:

The present Appeal is preferred seeking enhancement of compensation under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') having got dissatisfied with the award of Rs.65,000/- for the death of the son of the petitioner/appellant, aged 8 years, though, the petitioner's claim that the age of their son was 15 years on the date of accident, but, the Tribunal taken the age as eight years basing on the Postmortem Examination Certificate, as no other evidence is forthcoming on behalf of the petitioner/claimant seeking to award the balance amount.

2. Heard Sri P. Radhive Reddy, learned counsel for the appellant, and Sri P. Rajesh Babu, learned counsel for the 2nd respondent. Though, the present appeal was dismissed against respondent No.1 by order dated 8.2.2106, the said dismissal is of no consequence in view of the decision of the Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹ as the respondent No.1 in O.P., who is the 2nd respondent herein, remained *ex parte* and suffered decree passed by the Tribunal.

3. The fact situation is not in dispute, and, therefore, there is no need to advert to the same once again.

¹ 2001(1) ALT 495 (D.B.)

4. The learned counsel for the appellant, no doubt, places reliance in **Kishan Gopal and another v. Lala and Others**² and urges to fix Rs.15,000/- as 'annual income', as per Schedule-II of Section 163-A of the Motor Vehicles Act, adopted by the Supreme Court, but, in fact, the aforesaid citation is based on the compensation awarded in **Lata Wadhwa v. State of Bihar**³, which cannot be made applicable to the fact-situation occurring in the present case. Even otherwise, in view of the law declared by the Hon'ble Supreme Court in **Puttamma and others v. K.L. Narayana Reddy and another**⁴ the deceased being eight-year-old and being a non-earning member and there is no proof of income on behalf of the petitioners/appellants therefor, the appellants are entitled to Rs.1,50,000/- as against Rs.65,000/- granted by the Tribunal.

5. In the result, the Appeal is partly allowed enhancing the compensation from Rs.65,000/- (Rupees Sixty five thousand only) to Rs.1,50,000/- (Rupees One lakh and fifty thousand only) against the respondents 1 and 2. The rate of interest at 9% p.a. granted by the Tribunal on Rs.65,000/- is maintained and on the enhanced amount of Rs.85,000/- interest at the rate of 7.5% p.a. is awarded from the date of claim petition till realization keeping in view, the ruling in **Rajesh v. Rajbir Singh**⁵. There shall be no order as to costs.

² (2014) 1 SCC 244

³ (2001) 8 SCC 197

⁴ 2013 ACJ 1403 = 2013 (4) ALT 35

⁵ (2013) 9 Supreme Court Cases 54

As a sequel thereto, miscellaneous petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA,J

Dt. 09.10.2017
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