

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2953 of 2004

JUDGMENT:

Dissatisfied with the amount of Rs.30,000/- granted by the order and decree, dated 11.08.1995, in O.P.No.267 of 1993 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Mahabubnagar (for short, 'the Tribunal'), as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, the present appeal is preferred by petitioners in the O.P requesting to grant the balance amount.

2. The appellants are the petitioners, whereas respondent Nos.1 and 2, who are the owner and insurer, are respondent Nos.1 and 2, respectively, in the O.P.

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

4. The petitioners, who are parents of the deceased G.Yadaiah, laid a claim petition in the aforesaid O.P for the death of their son, who was working as a cleaner on lorry bearing No. AAT 4515, which met with an accident on 23.06.1992 at about 9.00 a.m., near Rangapur village due to rash and negligent driving of the driver of the lorry. Before the Tribunal, on behalf of the petitioners, petitioner No.1 was examined as PW.1 and an eye witness was examined as PW.2 and Exs.A1 to A13 were marked. On behalf of

respondent No.2 – insurer, who is the contesting respondent, no witnesses were examined. The Tribunal, by order dated 11.08.1995, awarded a sum of Rs.30,000/- with proportionate costs and interest at 12% per annum from the date of filing of the petition till the date payment. Aggrieved by the said order, the petitioners preferred the present appeal requesting to grant the balance amount.

5. Heard Sri A.Vishnuvardhan Reddy, learned counsel for the appellants - petitioners, and Ms. I. Maamu Vani, learned Standing Counsel for respondent No.2 - insurer. The present appeal was dismissed for default against respondent No.1 on 08.02.2016. Of course, he remained *ex parte* before the Tribunal and suffered decree.

6. Learned counsel for the appellants would submit that the Tribunal, having accepted Exs.A4 to A6, A8, A9 and A12, ought to have believed that the deceased died in the said accident and ought to have awarded compensation for the death of the deceased to his parents, who are the claimants, but the Tribunal, some how, overlooking the said fact and just taking into consideration that the death of the deceased has occurred four months after taking place of the accident, did not grant anything towards compensation, but granted only a sum of Rs.30,000/- towards medical expenses, thus, the Tribunal went wrong in

recording such a finding and, therefore, the order under challenge warrants interference.

7. Learned Standing counsel for respondent No.2 supports the order of the Tribunal.

8. Not much discussion is needed to view that the findings recorded by the Tribunal, certainly, warrant interference for the reason that the Tribunal did not properly appreciate the discharge card marked as Ex.A8, which was issued by NIMS Hospital and which contains vivid details indicating the seriousness of the condition of the deceased on account of the injuries he sustained. Ex.A8 records thus:

“pt was not able to pass urine following injury.
PUPILS NSRL C.N.S. NORMAL. Tenderness cervical
spine C4 – C7, para spinal spasm.

RUL	LUL	RLL	LLL
Power III	V	O	V
Reflexes -	-	-	-

Sensory loss below level of C6.”

9. The aforesaid document shows that the deceased was required to come for review two months thereafter. He was discharged on 15.07.1992 having been admitted on 23.06.1992. The death of the deceased had occurred on 28.10.1992. When viewed the details mentioned in the discharge card, certainly, the proximate cause for the death of the deceased was the injuries sustained by the

deceased in the said accident. Therefore, the petitioners are entitled to enhancement.

10. The petitioners claimed Rs.1,00,000/-, but the Tribunal has awarded Rs.30,000/-. There is no dispute that the deceased was working as a cleaner and he died in unmarried status. Without resorting to structural formula, the balance amount of Rs.70,000/- claimed by the parents of the deceased can be awarded, keeping in view that the accident did occur in the year 1992.

11. Thus, the petitioners are entitled to a total sum of Rs.1,00,000/- as against Rs.30,000/- granted by the Tribunal, and the same is, accordingly, granted.

12. So far as the rate of interest is concerned, the Tribunal granted the same at 12% per annum and the same is maintained on the amount of Rs.30,000/- granted by the Tribunal, but on the enhanced amount of Rs.70,000/-, interest at 7.5% per annum is granted from the date of petition till realisation as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**¹.

13. Accordingly, the instant appeal is allowed modifying the order passed by the Tribunal, by enhancing the compensation as

¹ 2013 ACJ 1403

indicated above, and confirming the same in all other respects.

There shall be no order as to costs.

14. Miscellaneous applications, if any pending in the present appeal, shall stand closed. No order as to costs.

JUSTICE A.SHANKAR NARAYANA

05.09.2017

v v

