

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 362 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellants-petitioners in O.P. No.92 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Karimnagar (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.68,564/- with interest at 9% per annum from the date of petition till realisation, vide the order dated 31.10.2005, as against the claim of Rs.1,70,000/-, for the death of a girl-Balla Saritha aged 10 years, who is daughter of the appellants, in a road accident occurred on 23.07.2002.

2. The case of the appellants would show that on 23.07.2002, when their daughter-Balla Saritha (hereinafter will be referred as 'deceased') was waiting on the road side, the offending car bearing registration No.AP 15D 1062, belonging to respondent No.2 and insured with respondent No.3, driven by respondent No.1 in a rash and negligent manner at high speed, came and hit the deceased girl causing grievous injuries and immediately she was shifted at the first instance to Karimnagar Headquarters Hospital, from there to MGM Hospital, Warangal and from there to Jaya Hospital for better treatment, but she succumbed to injuries at 8-00 a.m. on 30.07.2002. A case in Crime No.56 of 2002 was registered by Kodimial Police against respondent No1. The appellants had incurred Rs.20,000/- towards treatment of the deceased girl. By the date of accident, the deceased girl was studying fourth class, she was a meritorious student in her school and had she not died in the accident, she would have bright future. They claimed Rs.1,70,000/- as compensation from respondent Nos.1 to 3, who are the driver, owner and insurer of the offending car.

3. Respondent No.1-driver of the offending car remained *ex parte* before the Tribunal. Respondent No.2-owner of the car did not file any counter. Respondent No.3-insurer filed counter before the Tribunal denying all the averments made in the petition and contended that the quantum of compensation claimed by the appellants is highly excessive, respondent No.1 was not holding valid driving licence and therefore, it is not liable to indemnify the liability of the insured if any. Finally, prayed to dismiss the claim petition.

4. The Tribunal, after framing three issues and considering the evidence of P.Ws.1 and 2 and Exs.A.1 to A.10 and Ex.B.1, awarded compensation of Rs.68,564/- with interest at 9% per annum from the date of petition till realisation, in favour of the appellants-petitioners against respondent Nos.1 to 3, permitting the appellants-petitioners to withdraw the entire amount. Challenging the said award, the appellants-petitioners preferred the present appeal seeking enhancement of compensation.

5. Heard both the learned counsel for the appellants-petitioners and the learned Standing Counsel for respondent No.3-insurer, apart from perusing the material available on record. Though served with notice, none appeared for respondent No.1-driver of the offending car. The appeal against respondent No.2-owner is dismissed on 14.07.2016 for default. However, dismissal of the appeal for default against respondent No.2-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹, wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance

¹ 2001(1) ALT 495 (D.B.)

Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

6. The contention of the learned counsel for the appellants-petitioners is that the deceased girl was aged 10 years, studying fourth class and a meritorious student; the amount of Rs.68,564/- granted by the Tribunal is not just and reasonable; and therefore, prayed to enhance the same as prayed for.

7. On the other hand, learned Standing Counsel for respondent No.3-insurer contended that the Tribunal has rightly granted just and adequate compensation to the appellants-petitioners; there are no mitigating circumstances to enhance the compensation; and finally, prayed to dismiss the appeal.

8. Perused the order and the evidence on record. The manner in which the accident had taken place is not in dispute. The liability fastened by the Tribunal on all the respondents is also not in dispute. Now, the only short question is, whether the amount awarded by the Tribunal as compensation is just and adequate or whether the appellants-petitioners are entitled to enhancement of compensation?

9. The Tribunal, holding that except the self-serving and interested testimony of P.W.1-father of the deceased, there is no other circumstance brought on record to show that either the deceased was meritorious student or she would have gone for professional course or higher studies, granted Rs.60,000/- towards loss of dependency, Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate, Rs.3,500/- towards treatment of the deceased and Rs.564/- towards optirary, totalling Rs.68,564/-. As per the record placed before the Court, it can be safely concluded that the deceased was 10 years old and studying fourth class, but there is no record that she was meritorious student. Had it true, the appellants would have filed the school record. But however, the amounts granted by the Tribunal under various heads appear to be on lower side. Therefore, the amount of Rs.60,000/- granted by the Tribunal towards loss of dependency is enhanced to Rs.1,00,000/-; Rs.2,000/- granted towards funeral expenses is enhanced to Rs.20,000/-; Rs.2,500/- granted towards loss of estate is enhanced to Rs.10,000/-; and the amounts of Rs.3,500/- granted towards treatment and Rs.564/- granted towards optirary are maintained. Besides the said amounts, the appellants are also entitled to Rs.15,000/- towards loss of love and affection. In all, the appellants-petitioners are entitled to a sum of Rs.1,49,064/- as against the amount of Rs.68,564/- granted by the Tribunal.

10. So far as the rate of interest is concerned, the Tribunal granted interest at the rate of 9% per annum from the date of petition till realization and the same is reduced to 7.5% per annum as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**².

11. Accordingly, this appeal is allowed in part modifying the order dated 31.10.2005 passed by the Tribunal, enhancing the compensation from

² 2013 ACJ 1403

Rs.68,564/- to Rs.1,49,064/- with interest at the rate of 7.5% per annum from the date of petition till realisation. The amount of compensation shall be apportioned between the appellants-petitioners equally and they are permitted to withdraw their amounts with interest. The other terms of the order under challenge remain unchanged.

12. Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 06.03.2017

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