

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2481 OF 2005

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the appellants, who are petitioners in O.P. No.112 of 2002 filed under Section 166 of the Act on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District and Sessions Judge (Fast Track Court), Ranga Reddy District at L.B. Nagar, (for short, 'the Tribunal'), aggrieved by the award dated 24.11.2004, whereby the Tribunal granted a compensation of Rs.80,000/-, against the original claim of Rs.1,00,000/-, for the death of Kesagoni Vani (hereinafter referred to as 'the deceased'), who was the minor daughter of the petitioners, in a motor accident occurred on 16.01.2002, directed that both the respondents are jointly and severally liable to pay the same with interest at the rate of 9% p.a. from the date of petition till the date of deposit.

2. Appellants herein are the petitioners; 1st respondent herein is the owner and 2nd respondent herein is the insurer of Bajaj Tempo Trax bearing registration No.AP 09AH 3741 (for short, 'the crime vehicle').

3. Heard the learned counsel for the appellants-petitioners, learned standing counsel for the 2nd respondent-insurer and perused the record. In spite of service of notice on the 1st respondent-owner, none entered appearance and there is no representation on his behalf. However, absence of owner of crime vehicle is of no consequence to decide the quantum of compensation in this appeal, in view of a Division Bench of

this Court in **Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others**¹, wherein it is held as follows:

"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 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."

4. Learned counsel for the appellants-petitioners would submit that the appellants are the parents of the deceased, aged 9 years, who died in a motor accident, occurred on 16.01.2002, caused by the driver of crime vehicle. The Tribunal granted a compensation of Rs.80,000/- against the claim of Rs.1,00,000/-, which is un-reasonable and un-just. The learned counsel further submits that though the compensation claimed by the appellants is less, the Courts/Tribunals can grant just compensation, relied on a Larger Bench decision of this Court in **Adam Indur Muttemma and others Vs. Rathod Reddi and others**² and an unreported decision of this Court in **M.Madhava Reddy Vs. The Vice-Chairman and Managing Director, A.P.S.R.T.C., Hyderabad and another**³, wherein this Court relying on a decision of the Apex Court in **Manju Devi and another Vs.**

¹ 2001(1) ALT 495 (D.B.)

² 2015 (4) ALD 585

³ MACMA No.2931/2005 Dt.29.01.2016

Musafir Paswan and another⁴, fixed the annual earnings of a non-earning minor boy aged 3 years as Rs.15,000/- and adopted the relevant multiplier '15', referring to Second Schedule of the Act, and awarded a total compensation of Rs.2,75,000/- under various heads and ultimately prayed to award just compensation.

5. Learned standing counsel appearing for the 2nd respondent-insurer would contend that since the accident pertains to the year 2002, an amount of Rs.50,000/- towards no fault liability and some amount under other heads totalling to Rs.60,000/- used to be awarded at that time; the Tribunal, after analyzing the entire evidence on record, awarded just and reasonable compensation of Rs.80,000/- and hence there are no circumstances to warrant interference by this Court and ultimately prayed to dismiss the appeal.

6. In the circumstances put forth by both parties, the point that arises for determination is whether the appellants-petitioners are entitled for enhancement of compensation?

7. **POINT**: Admittedly, there is no dispute with regard to the death of Kesagoni Vani in the motor accident on 16.01.2002 caused by the driver of crime vehicle. There is also no dispute that the appellants are not the parents of the deceased. As far as the age of the deceased and existence of valid insurance policy are concerned, there is record to show that the deceased was aged 9 years and there was valid insurance of crime vehicle from 09.03.2001 to 08.03.2002. On behalf of petitioners, there is evidence of P.Ws.1 and 2 and Exs.A-1 to A-7 on record. Ex.A-1 is the certified copy of F.I.R., Ex.A-2 is the certified copy of charge sheet, Ex.A-3 is the certified copy of Inquest Report, Ex.A-4 is the certified copy of Post-

⁴ 2003 (2) PLJR 120

mortem examination report, Ex.A-5 is the certified copy of Motor Vehicle Inspectors report, Ex.A-6 is the certified copy of scene of offence panchanama and Ex.A-7 is the Xerox copy of cover note. While dealing with the matter, the Tribunal held that the deceased was aged 9 years at the time of accident, granted a compensation of Rs.50,000/- towards loss of life, Rs.2,000/- towards funeral expenses, and Rs.28,000/- towards loss of estate and amenities of life; in all, granted a compensation of Rs.80,000/-, with interest at the rate of 9% p.a. from the date of petition till payment.

8. In **Madhava Reddy** (3rd supra), this Court had an occasion to deal with similar circumstances *i.e.*, where a boy aged 3 years died in a motor accident occurred on 11.06.2002, referring to Second Schedule of the Act, took multiplier '15' and his annual earnings as Rs.15,000/- by multiplying the same arrived at an amount of Rs.2,25,000/- towards loss of dependency and further relying on a decision of the Apex Court in **Ramilaben Chinubhai Parmar and others Vs. National Insurance Company Limited and others**⁵ awarded an amount of Rs.50,000/- towards conventional amount; in all, granted a total compensation of Rs.2,75,000/- with interest at the rate of 7.5% p.a. on the enhanced amount from the date of appeal till the date of realization.

9. The facts of the case in hand are also akin to **Madhava Reddy** (3rd supra). Hence, in view of the facts and circumstances and relying on a decision of this Court in **Madhava Reddy** (3rd supra), the deceased girl is aged 9 years, referring to Second Schedule of the Act, multiplier '15' is taken and her annual earnings as Rs.15,000/-; by multiplying the same, an amount of Rs.2,25,000/- be awarded to the appellants herein towards loss

⁵ 2014 (15) SCC 722

of dependency and Rs.50,000/- towards conventional amount *i.e.*, towards loss of estate, love and affection etc.,

10. Now the point is when the claim of the petitioners is Rs.1,00,000/-, whether they can be awarded more than the compensation claimed?

11. It is pertinent to note that in the decisions referred above, the accident relates to the year 2002, where a boy of 3 years died and a total compensation of Rs.2,75,000/- was awarded. In the instant case also a 9 years girl died in the motor accident occurred in the ear 2002. It is also appropriate to state that this Hon'ble Court in **Muttemma** (2nd supra) held that to meet the ends of justice, the Courts can grant more than the compensation claimed. So, to meet the ends of justice, an amount of Rs.2,75,000/- is awarded to the appellants-petitioners, in the circumstances of the same just and quite reasonable. All the contentions raised on behalf of the 2nd respondent-insurer are un-sustainable.

12. The following is the tabular form showing the amount of compensation awarded by the Tribunal and modified by this Court, if any, under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Modified by this Court
01.	Loss of life	Rs.50,000/-	Rs.2,25,000/-
02.	Funeral expenses	Rs.2,000/-	---
03.	Loss of estate and amenities in life	Rs.28,000/-	---
04.	Conventional amount	----	Rs.50,000/-
TOTAL		Rs.80,000/-	Rs.2,75,000/-

13. In the result, the Appeal is allowed enhancing the compensation awarded by the Tribunal from Rs.80,000/- to Rs.2,75,000/-. The rate of interest awarded by the Tribunal at the rate of 9% p.a. is on higher side and in view of the principle laid down by the Apex Court in **Rajesh and**

others Vs. Rajbir Singh and others⁶, the appellants-petitioners are entitled to interest at the rate of 7.5% p.a. from the date of filing of petition till the date of realization, on the entire compensation as determined above. Accordingly, both the respondents are directed to deposit the compensation amount within 1 month from today. On such deposit, the appellants-petitioners are permitted to withdraw the entire amount in equal share. The other conditions imposed by the Tribunal remain unchanged. It is needless to mention that the appellants-petitioners shall pay the requisite deficit court fee on the enhanced amount of compensation in the Registry of this Court. On such payment, the Registry is directed to prepare the decree.

14. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

Date: 12.10.2017.
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⁶ 2013 ACJ 1403

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