

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**M.A.C.M.A. No. 2216 OF 2005**

**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.1910 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.1,95,000/- with interest at the rate of 9% per annum from the date of petition till realisation, granted by the Tribunal, *vide* the order dated 20.01.2005, as against the claim of Rs.12,00,000/- laid under Section 166(1) of the Act for the death of Dondadi Yerra Chinna Mallaiah in a motor accident occurred on 21.06.2001. The deceased-Dondadi Yerra Chinna Mallaiah was son of appellant Nos.1 and 2 and husband of appellant No.3.

2. There is no representation for the appellants-petitioners. Heard the learned Standing Counsel for respondent No.2-insurer. The appeal against respondent No.1-owner of the crime vehicle is dismissed on 08.02.2016 for default. However, dismissal of the appeal for default against respondent No.1-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**<sup>1</sup>.

3. The parties hereinafter are referred to as arrayed before the Tribunal.

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<sup>1</sup> 2001(1) ALT 495 (D.B.)

4. Learned Standing Counsel for respondent No.2-insurer would contend that the deceased was 18 years old, the Tribunal had taken his notional income as Rs.15,000/- per annum, deducted 1/3<sup>rd</sup> therefrom towards the personal expenses of the deceased, applied multiplier '16' and determined compensation of Rs.1,60,000/- towards loss of dependency, Rs.15,000/- towards consortium, Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses and transportation charges, totalling Rs.1,90,000/-; but the Tribunal erroneously granted Rs.1,95,000/-; however, the compensation granted by the Tribunal is just and reasonable and based on the evidence on record; there are no circumstances to enhance the compensation; and ultimately, prayed to dismiss the appeal.

5. Though there are no submissions on behalf of the appellants-petitioners, it is appropriate to dispose of the appeal on merits. The contentions put forth in the pleadings are that the deceased was an earning member; the Tribunal erroneously took his earnings as Rs.15,000/- per annum hypothetically; the Tribunal did not award compensation of Rs.30,000/- towards conventional heads; and ultimately, prayed to enhance the compensation as claimed.

6. To substantiate the claim of the petitioners, petitioner No.1 deposed as P.W.1. There is evidence to believe that the deceased-Chinna Mallaiah is a married person. Petitioner No.3 is his wife. Petitioner Nos.1 and 2 are his parents. The petitioners claimed that the deceased was 22 years old, doing cattle and milk business and earning Rs.12,000/- per month from cattle business and Rs.10,000/- per month from agriculture. The petitioners have not filed any certificate to show the earnings of the deceased. As per Ex.A.3-postmortem examination report, the deceased

was 18 years old. There is also ample evidence on record to believe that the accident occurred on 21.06.2001 due to the rash and negligent driving of the driver of the crime vehicle, i.e., lorry DCM bearing No.AHT 2427. There is nothing to take a different view.

7. The only point that is to be considered is, whether the petitioners are entitled for enhancement of compensation?

8. Though the petitioners have not filed certificate of age, it can be safely concluded that the deceased was a married person, aged 18 years old and an earning member, died on 25.06.2001 due to the accidental injuries. Therefore, the annual income of the deceased can be taken as Rs.30,000/-. Out of which, 1/3<sup>rd</sup> is deducted towards personal living expenses of the deceased, which comes Rs.10,000/- and the remaining amount of Rs.20,000/- is taken as the contribution to the family. As per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**<sup>2</sup>, the suitable multiplier is '18' for the age of the deceased. So, the loss of dependency comes to Rs.3,60,000/- (Rs.20,000/- x 18). Petitioner No.3-wife of the deceased is also entitled for a sum of Rs.30,000/- towards loss of consortium and all the petitioners are entitled for a sum of Rs.50,000/- towards loss of estate, love and affection and funeral expenses. In all, the petitioners are entitled for a total sum of Rs.4,40,000/- as against Rs.1,95,000/- granted by the Tribunal. The petitioners are entitled to share the enhanced amount of Rs.2,45,000/- equally. The Tribunal awarded rate of interest at 9% per annum and the same is maintained on the amount awarded by the Tribunal. In view of the decision of the Hon'ble Supreme

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<sup>2</sup> (2009) 6 SCC 121

Court in **Rajesh and others v. Rajbir Singh and others**<sup>3</sup>, the appellants-petitioners are entitled to the rate of interest at 7.5% per annum from the date of petition till the date of realisation on the enhanced amount of compensation.

9. In the result, this appeal is allowed in part, modifying the order dated 20.01.2005 passed by the Tribunal in O.P. No.1910 of 2001 and the amount of Rs.1,95,000/- granted by the Tribunal is enhanced to Rs.4,40,000/-. On deposit of the enhanced compensation, all the petitioners are entitled to share the enhanced compensation amount equally and they are permitted to withdraw their respective shares with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The other terms of the order under challenge remained unchanged. There shall be no order as to costs.

10. Miscellaneous Petitions pending, if any, shall stand closed.

Date: 23.10.2017

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Dr. SHAMEEM AKTHER, J

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<sup>3</sup> 2013 ACJ 1403