

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

MACMA No. 478 OF 2012

Judgment:

This appeal is preferred by the appellants – claimants, seeking enhancement of compensation, not satisfied with the award of Rs.57,000/-, vide order dated 05.07.2006, in OP No.1314 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District and Sessions Judge (FTC), Nizamabad, as against the claim of Rs.3,00,000/- laid under Section 166 (1)(c) of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Rules framed thereunder.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that, the petitioners 1 and 2 are the sons of late Pitla Chinnamma and petitioners 3 and 4 are her grand children; on 22.07.2002 at about 10.00 AM the deceased Pitla Chinnamma and others were going by walk from Nyavanandi village towards the agricultural fields situated at Narayanpalli and when they reached Nyavanandi village limits one Tractor bearing registration No.AP-25-E-6548 came at high speed in a rash and negligent manner and dashed the deceased and others, who were going by foot, as a result of which, the deceased fell down with head injury and died on the spot; the deceased was an agriculturist and a milk vendor by occupation and was aged about 55 years as on the date of accident; she was earning Rs.6,000/- per month on agriculture and Rs.4,000/- per month by vending the milk and she used to contribute the entire amount for maintenance of the petitioners; the 1st respondent being the owner of the Tractor and the 2nd respondent being its insurer

are liable for payment of compensation which the petitioners have worked out to Rs.25,10,000/-, but restricted the claim to Rs.3,00,000/-.

4. The 1st respondent – owner of the Tractor remained *ex parte*. The 2nd respondent – Insurance Company filed its written statement denying the age and earnings of the deceased Pitla Chinnamma and the petitioners entitlement to claim compensation; the person who drove the Tractor was not having a valid and subsisting driving license to drive the same and the vehicle was not roadworthy to ply; the compensation claimed by the petitioners is excessive and they are not entitled for the same, hence the Insurance Company is not liable for payment of compensation.

5. The Tribunal, based on the above pleadings, framed the following issues.

1. Whether the motor vehicle accident occurred due to rash and negligent driving of the vehicle, tractor bearing No.AP-25-E-6548 by its driver resulting in death of the deceased?
2. Whether the petitioner is entitled for compensation? If so, to what amount and from which of the respondents?
3. To what relief?

6. During enquiry, the 2nd petitioner was examined as PW.1 and one Pitla Lasmal @ Chinnubai was examined as PW.2 and got marked Exs.A1 to A7. On behalf of the respondents no witnesses were examined, but the copy of policy was marked as Ex.B1.

7. The Tribunal, on issue No.1, recorded a finding in favour of the petitioners holding that the accident occurred due to rash and negligent driving of the vehicle by its driver. On issue No.2, the Tribunal, taking the age of the deceased as 59 years, based on Ex.A3 - Post-Mortem Report and Ex.A2 - charge sheet, and taking the income of the deceased at

Rs.50/- per day i.e., Rs.1500/- per month deducted 1/3rd towards her personal expenses and after applying the multiplier '1.79' as per the decision of Bhagawandas v. Mohd. Arif¹, estimated the compensation amount at Rs.17,900/-, but by observing that in a fatal accident case the claim amount shall not be less than Rs.50,000/-, the Tribunal awarded Rs.50,000/- as compensation for the death of the deceased. In addition to that, the Tribunal also awarded Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of estate. Thus, in all the Tribunal awarded Rs.57,000/- and directed the respondents 1 and 2 jointly and severally to pay the same with interest at 7.5% from the date of petition till realization to the petitioners 1 and 2 only. The Tribunal held that since the petitioners 3 and 4 are grand children of the deceased, they are not the legal heirs of the deceased and they are not entitled for any compensation. Aggrieved by the same, the petitioners filed the present appeal.

8. The instant appeal was dismissed against the 1st respondent – owner of the vehicle for default, as per the orders of this Court, dated 12.09.2011, however, since the first respondent has suffered a decree by remaining *ex parte* before the Tribunal, the dismissal order passed against him by this Court is of no consequence in view of the decision of the Division Bench of this Court in Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma².

9. Heard Sri Y.S. Yella Nand Gupta, learned counsel for the appellants, and Sri S. Agestya Sarma, learned counsel for the 2nd respondent – Insurance Company.

¹ ACJ 1987 1052

² 2001(1) ALD 453 (DB)

10. Learned counsel for the appellants contends that at the time of accident the deceased was aged about 55 years, but the Tribunal has taken her age as 59 years. He further contends that the Tribunal has not properly appreciated the evidence on record and instead of applying the multiplier '11', applied the multiplier '1.79' and granted very meager compensation.

11. On the other hand, learned counsel for the 2nd respondent - Insurance Company contends that based on Exs.A3 – Post-Mortem Report and Ex.A2 – Charge Sheet, the Tribunal has taken the age of the deceased as 59 years and though the petitioners claimed that the deceased was earning Rs.6000/- per month on agriculture and Rs.4000/- per month on vending milk, they have not placed any material evidence to prove the same. He further contends that the petitioners, who were aged about 45 and 43 years respectively, cannot be claimed that they are dependants on the deceased and they are not entitled for any compensation.

12. Perused the order under challenge and the evidence on record.

13. The contention of the petitioners is that the deceased was earning Rs.10,000/- per month by doing agriculture and vending milk, but the Tribunal has taken her income at Rs.1500/- per month. The petitioners failed to produce any material evidence to substantiate the income of the deceased. But, as could be seen from the Post-mortem report – Ex.A3 the deceased was going to agricultural field situated at Narayanaplli at the material time of accident for weeding operations, hence it can be safely presumed that the deceased was an agricultural labourer and her income may be taken at Rs.100/- per day i.e., Rs.3000/- per month and after deducting 1/3rd towards her personal expenses it comes to Rs.2,000/- per

month and Rs.24,000/- per annum. Though the Tribunal held that as per the Post-Mortem Report and Charge Sheet Exs.A3 and A2, the deceased was aged 59 years by the date of accident, in Ex.A3 - Post-Mortem Report the age of the deceased was mentioned as '58' years. Further, as per the decision of *Sarla Verma v. Delhi Transport Corporation*³, the appropriate multiplier to be applied for the age group of 56 – 60 years is '9'. If the same is applied, the compensation amount for the death of the deceased comes to Rs.2,16,000/- (Rs.24,000 x 9). Further, the amount of Rs.2,000/- awarded by the Tribunal towards funeral expenses is enhanced to Rs.5,000/- and the amount of Rs.5,000/- granted by the Tribunal towards loss of estate is enhanced to Rs.10,000/-. Thus, the petitioners are entitled to a total sum of Rs.2,31,000/- (Rs.2,16,000/- + Rs.5,000/- + Rs.10,000/-), as against Rs.57,000/- granted by the Tribunal. The enhanced amount shall also carry interest at 7.5% p.a., from the date of petition till realization.

14. The MACMA is, accordingly, allowed in part. There shall be no order as to costs.

15. As a sequel thereto, the miscellaneous petitions, if any, pending in this MACMA shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 20th September 2018
Nsr

³ (2009) 6 SCC 121