

**HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

**MACMA No.586 of 2006**

**JUDGMENT:**

This appeal is filed by the appellants/claimants under Section 173 of the Motor Vehicles Act for enhancement of compensation against Award dated 29.11.2005 in OP No.238 of 2005, wherein the Tribunal has granted an amount of Rs.1,64,000/- though the claimants claimed Rs.3,00,000/-.

2. For the sake of convenience, the parties hereinafter will be referred to as arrayed in the Original Petition. Brief facts which are necessary for disposal of this Appeal are as follows:

The 1<sup>st</sup> petitioner is the mother, 2<sup>nd</sup> petitioner is the father, 3<sup>rd</sup> petitioner is younger brother and 4<sup>th</sup> petitioner is the elder sister of the deceased; that on the date of accident, the deceased was going on foot on Rajiv Rahadari at about 14.15 hrs, then a lorry bearing No.AP 25T 4486 driven by its driver came in a rash and negligent manner in reverse direction, without taking any precautions and dashed against the deceased, as a result, the deceased fell underneath the lorry and sustained fatal injuries. He succumbed to injuries while undergoing treatment at Government Hospital, Karimnagar. The deceased was aged

26 years and working as Coolie and earning Rs.5,000/- per month and has been contributing the income to the petitioners. Due to sudden death of the deceased, the petitioners are put to future loss of income and support.

3. The 1<sup>st</sup> respondent remained exparte while the respondents 2 and 3 filed counters denying the averments of the petition and contended that there is no negligence on the part of the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent contended that the 1<sup>st</sup> respondent had valid driving licence and that the vehicle is validly insured with the 3<sup>rd</sup> respondent. The contention of the 2<sup>nd</sup> respondent is denied by the 3<sup>rd</sup> respondent.

4. Based on the above pleadings, the following issues were framed by the Tribunal.

1. Whether the accident had occurred due to rash and negligent driving of the vehicle bearing No. AP 25T 4486 by the 1<sup>st</sup> respondent?
2. Whether the petitioners are entitled to recover compensation and if so to what amount and from whom?
3. To what relief?

5. To prove the case of the petitioners, P.Ws.1 and 2 were examined and got marked Exs.A1 to A6. On behalf of 3<sup>rd</sup> respondent, Ex.B1 was marked.

6. The Tribunal, after considering both the oral and documentary evidence adduced on either side, awarded compensation of Rs.1,64,000/- against the respondents 1 to 3 along with interest @ 9% per annum. Being dissatisfied

with the compensation awarded by the Tribunal, petitioners filed the present appeal.

7. With regard to the responsibility in causing the accident, after considering the oral evidence of PWs.1 and 2 and Ex.A-1 contents of the FIR, in the absence of any rebuttal evidence adduced on behalf of the respondents, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the offending lorry resulting the death of the deceased, and in view of the acceptable evidence, the finding recorded by the Tribunal on this issue needs no interference. Moreover, the petitioners are claiming only enhancement of compensation, this Court need not examine the other aspects, as the respondents have not raised any objections in that regard and also not filed any appeal.

8. Learned counsel for the petitioners submits that though petitioners claimed meagre amount, the compensation awarded by the Tribunal is not the just compensation. He submits that the Tribunal, instead of taking 2/3<sup>rd</sup> income of the deceased towards loss of future income, had taken only 1/3<sup>rd</sup> income of the deceased. He submits that the Tribunal erred in taking the age of the mother into consideration for selecting the multiplier as 12 instead of taking the age of the deceased and multiplier as 17 as the deceased was aged 26 years at the time of the

accident. He submits that 30% of the income should be added to the income, as future prospects of the deceased. He also submits that the income of the deceased was taken as Rs.3,000/- per month, whereas the Hon'ble Supreme Court in contemporaneous situations, had taken the income of the deceased as Rs.4,500/- per month, while reversing the judgment of High Court in reducing the income of the deceased.

9. On the other hand, learned Standing Counsel appearing on behalf of the 3<sup>rd</sup> respondent-Insurance Company submits that since the deceased is unmarried, only 1/3 of the income should be taken for calculating the compensation. As far as income of the deceased is concerned, he submits that the Tribunal has rightly taken Rs.3,000/- per month as income of the deceased, since the deceased was working as Coolie only. He also submits that the claim is only for Rs.3,00,000/-, as such, compensation shall be restricted to the amount claimed by the petitioners.

10. In this case, it is to be seen that the Tribunal has recorded a specific finding on appraisal of the evidence adduced by both parties. In fact, as seen from the documents, P.W.1 has not come up with any documentary evidence to show that the deceased was working as centering mastery, but the said version is supported by P.W.2, who deposed that the deceased was working as

centering mastery, therefore, the finding recorded by the Tribunal cannot be faulted. The Hon'ble Supreme Court in the judgment reported in **Sri Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited**<sup>1</sup> held as follows:

"14. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning `4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of `3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was `100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of `3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between `100/- to 150/- per day or `4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from `4500/- to `3000/- per month. We, therefore, accept his statement that his monthly earning was `4500/-."

In the aforesaid judgment also the appellant was working as Coolie and the Tribunal has taken the income of the deceased as Rs.3,000/- per month, but the same was considered as Rs.4,500/- per month and that the claim petition therein was filed in the year 2004. In the instant case, the deceased was attending 'Centering work' as and the evidence to that effect accepted by the Tribunal. In view of aforesaid judgment, the income of the deceased, who was

---

<sup>1</sup> 2011 (6) ALT 48 (SC)

attending Centering work at the time of the accident, can be taken as Rs.4,500/- per month and Rs.54,000/- per annum. Since the deceased is unmarried, the deduction should be 50% but not 1/3<sup>rd</sup> as the deceased died in unmarried status, as per the decision in **Smt. Sarla Verma v. Delhi Transport Corporation**<sup>2</sup>. When the same is applied, it works out to Rs.27,000/- per annum towards loss of contribution to the petitioners. The Tribunal has taken the age of the deceased as 26 years, in view of evidence of P.W.1 and also as per the Postmortem report Ex.A4, therefore, for the age of the deceased, the relevant multiplier being '17' when applied as per **Sarla Verma's case** (supra). The said view was also affirmed by the Hon'ble Supreme Court in **Amrit Bhanu Shali vs. National Insurance Co.Ltd.**,<sup>3</sup>. When applying the multiplier '17', considering the age of the deceased as 26, the amount works out to Rs.4,59,000/- (Rs.27,000/- x 17). The petitioners are also entitled to Rs.15,000/- towards loss of estate against Rs.5,000/- awarded by the Tribunal and Rs.15,000/- towards funeral expenses as per the judgment of the Constitution Bench of the Supreme Court in **National Insurance Company Limited vs. Pranay Sethi**<sup>4</sup>. Thus, the petitioners are entitled to a total sum of Rs.4,89,000/-

---

<sup>2</sup> (2009) 6b Supreme Court Cases 121

<sup>3</sup> 2012 (6) ALD 2 (SC)

<sup>4</sup> 2017 ACJ 2700

(Rs.4,59,000+Rs.15,000+Rs.15,000/-). So far as the interest is concerned, the Tribunal awarded 9% per annum on Rs.1,64,000/-, the same is not interfered with, since the claim was adjudicated in 2005, and that too, in the absence of any indication about the same being deviated from the prevailing rate of interest at the relevant point of time and no appeal is filed by the respondents. However, the interest on enhanced amount shall be at the rate of 7.5% per annum from the date of petition till realization, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**<sup>5</sup>. The claimants made a claim only for a sum of Rs.3,00,000/-. The Supreme Court in **NAGAPPA vs. GURDAYAL SINGH**<sup>6</sup> ruled that award of compensation in excess of amount claimed in the claim petition is permissible, as there is no stipulation in the Motor Vehicle Act to restrict award of compensation limited to the claim made by the claimants. It was also observed that technicalities of law should not be permitted to stand in the way and a fair compensation should be paid in respect of deaths. The claimants therein were awarded more than claim made by them, as it was found they were entitled for more compensation than claimed. Applying the ratio laid down in **Nagappa's** case (supra), the appellants-claimants are awarded compensation of Rs.4,89,000/- with interest at

---

<sup>5</sup> 2013 ACJ 1403

<sup>6</sup> 2002 AIR SCW 5348

the rate of 7.5% per annum from the date of petition till the date of realization of the amounts. The claimants are required to pay the differential Court fee on the enhanced amounts as they have paid the Court fee on Rs.3,00,000/-. The apportionment of compensation amount including the enhanced compensation shall be as per the apportionment made by the Tribunal and the same shall remain unaltered.

8. In the result, the appeal is allowed enhancing the compensation to Rs.4,89,000/- (Rupees four lakhs eighty nine thousand only), with interest at the rate of 9% per annum on the amount of Rs.1,64,000/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.3,25,000/- (Rupees three lakhs twenty five thousand only) from the date of petition till realization. There shall be no order as to costs. The impugned award of the Tribunal in OP No.586 of 2006 is modified to the extent indicated above. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

---

**A.RAJASHEKER REDDY, J**

Dated: 08-03-2018.  
kvs

**HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**



kvs