

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.182 of 2006

JUDGMENT:

This Appeal is filed by the claimants, having dissatisfied with the award of Rs.80,000/- towards compensation, as against Rs.3,00,000/-, claimed under Section 166 of the Motor Vehicles Act, 1988, seeking enhancement of the same against the order dated 24-10-2005 in O.P. No.11 of 2004, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum -IV Addl.District Judge, Warangal (for short 'the Tribunal'). Though the Tribunal passed Common Award in two Original Petitions, i.e., O.P.No.11 of 2004 and O.P.No.147 of 2005, the claimants in O.P.11 of 2004 alone filed the present Appeal seeking enhancement of the compensation, as such, the averments with regard to O.P.No.11 of 2004 are only taken into consideration for deciding this Appeal.

2. The appellants herein are claimants 1 to 3 i.e., the 1st appellant is the wife of the deceased Mundrathi Laxminarayana, who died in the instant accident, and appellants 2 and 3 are the sons of the deceased respectively, while respondent Nos.1 and 2, who are

owner and insurer, respectively of the tractor bearing No. AP 36G 8972 that involved in the accident, are respondent Nos.1 and 2, respectively, in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal and late Mundrathi Laxminarayana, who died in the accident, as deceased.

4. The facts, in brief, are that on 27.06.2003, Mundrathi Laxminarayana, Penchala Komuraiah and another were engaged as labourers on the tractor bearing No.AP 36G 8972 to go to Warangal. On the same day, during evening hours, while they were returning, the aforesaid persons sitting on the fertilizer bags in the tractor and when the tractor was going towards Palakurthy Village at about 8.00 p.m, in the course of journey, the driver of the tractor drove it in a rash and negligent manner and at high speed, as a result of which, the link (hook) connecting the tractor and trailer got separated. Thereafter, the aforesaid persons fell on the road from the trailer and suffered serious injuries. The driver of the tractor managed to escape from the scene. The deceased

Mundrathi Laxminarayana sustained serious injuries on the head and died while undergoing treatment in MGM Hospital, Warangal on the same day at about 11.00 p.m. The deceased was aged 50 years working an agriculturist and was also earning as a labourer. Therefore, the petitioners being legal heirs and dependants of the deceased, are claiming an amount of Rs.3,00,000/- for the death of the deceased in a motor vehicle accident.

5. The 1st respondent being the owner of the offending tractor filed counter denying the averments in the affidavit with regard to death of deceased in the accident, rash and negligent driving of the offending tractor driver, age of the deceased and his income and stated that since the offending tractor was registered with the 2nd respondent insurance company, the 2nd respondent has to indemnify the claims, if any against him and requested to dismiss the petition.

6. The 2nd respondent, insurer of the offending tractor, contested the claim denying the material allegations and requiring the claimants to prove the age, income and avocation of the deceased.

7. Based on the above pleadings, the Tribunal framed the following issues:

- “1. Whether the accident occurred on account of rash and negligent driving of the offending tractor trailer AP 36 G 8972/8973 resulting in death of Laxminarayana and injuries to Komuraiah?
2. Whether the respondents are liable to satisfy the claim of the petitioners and if it shall be in accordance with the Workmen’s Compensation Act, to what extent and by whom?
3. To what relief?

8. In order to prove the case of the petitioners, 2nd petitioner is examined himself as P.W.1 and Exs.A1 to A9 are marked on their behalf. The first respondent did not choose to let-in any evidence. On behalf of the 2nd respondent, Ex.B1, a copy of insurance policy is produced and it is marked by consent.

9. After considering the oral and documentary evidence on either side, an amount of Rs.80,000/- was awarded towards compensation with interest at 12% per annum from 27.08.2003 till realization against respondents 1 and 2 jointly and severally in favour of the 1st petitioner and claim of the petitioners 2 and 3 dismissed without costs. Aggrieved by the same, present appeal is filed.

10. Learned counsel for the petitioners submits that the petitioners have option either to invoke the provisions of the Motor Vehicles Act or Workmen Compensation Act, but they cannot invoke both. In the present case, the petitioners invoked Section 166 of the Act claiming compensation, as such, the Tribunal erred in applying

the principles under Workmen Compensation Act for awarding compensation, which is erroneous. In support of his contention, he relied on the judgment reported in **Oriental Insurance Co. Ltd., v. Dyamavva**¹.

11. Though notice is served on the respondents, none appeared on their behalf.

12. The Tribunal, based on the evidence of P.W.2 coupled with documentary evidence Exs.A1 to A4, came to the conclusion that the accident occurred due to rash and negligent driving of the offending tractor and trailer No. AP 36 G 8972, by its driver, resulting the death of the deceased. Since there is no appeal from the respondents, that issued need not be considered in this appeal. The only issue to be considered in this appeal is whether the Tribunal is right in awarding compensation basing on the principles of Workmen Compensation Act though the petitioners claimed claim under Section 166 of the Motor Vehicles Act. In **Oriental Insurance Co. Ltd., v. Dyamavva (supra)**, the Hon'ble Supreme Court held as follows:

“14. In the aforesaid view of the matter, we hereby affirm the determination rendered by the Motor Accidents Claims Tribunal, Bagalkot, and the High Court in awarding compensation quantified at Rs.11,44,440/- to the claimant. The Motor Accidents Claims Tribunal, Bagalkot, as also, the High Court, ordered a deduction therefrom of a sum of Rs.3,26,140/- (paid to the claimants under the Workmen's Compensation Act, 1923). The said deduction gives full effect to Section 167 of the Motor Vehicles Act, 1988, inasmuch as, it award compensation to the respondents-claimants under the enactment based on the option first

¹ 2013 AIR (SC) 1853; (2013) 9 SCC 406

exercised, and also ensures that, the respondents-claimants are not allowed dual benefit under the two enactments.”

In the aforesaid judgment, the Hon’ble Supreme Court while considering claim under Section 167 of the Act, upheld the compensation granted by the Tribunal under Section 166 of the Motor Vehicles Act, 1988 by rejecting the contention of the insurance company that they are only liable to pay compensation determined under Workmen’s Compensation Act. Though the Tribunal calculated the compensation under Workmen’s Compensation Act, as per the judgment reported in **Oriental Insurance Co., ltd., v. Devireddy Konda Reddy²**, but in view of **Dyamayya’s case (supra)**, when once the claimants/petitioners have exercised their option to claim compensation under Section 166 of the Motor Vehicles Act, the view taken by the Tribunal in calculating the compensation cannot be sustained, as such, the petitioners are entitled for compensation to be calculated under Section 166 of the Motor Vehicles Act.

13. It is the case of the petitioners that the deceased was working as an agriculturist and also as a labourer and earning Rs.2,500/- per month. Though the said contention is supported by the evidence of P.W.2, the

² 2003 (5) ALT 6 (SC)

Tribunal has taken only Rs.1,000/- per month as his income. But as per the judgment of Hon'ble Supreme Court in **Syed Sadiq etc v. Divisional Manager, United India Insurance Company**³, the income of a labourer was taken as Rs.4,500/- per month. Since the deceased was stated to be working as a labourer, his income shall be taken as Rs.4,500/- per month. Since there are three claimants, as per **Sarla Verma v. Delhi Transport Corporation**⁴, one-third of the amount shall be deducted towards his personal and living expenses, which comes to Rs.3,000/- per month (Rs.4,500-Rs.1,500/-) and Rs.36,000/- per annum.

14. Coming to the multiplier, it is the case of the petitioners that the deceased was aged 50 years at the time of the accident. The Tribunal basing on the evidence of P.W.1 coupled with the Exs.A1 to A3 and since there is no rebuttal evidence with regard to the age of the deceased as 50 years at the time of the accident, came to the conclusion that the deceased was aged 50 years at the time of the accident. Therefore, the same can be taken for calculating the multiplier. As per **Sarla Verma' case**, the appropriate multiplier to be applied for calculating loss of income to the

³ AIR 2014 Supreme Court 1052

⁴ (2009) 6 SCC 121

petitioners is 12. If the same is calculated it comes to Rs.4,32,000/- (Rs.36,000/- x 12) towards loss of dependency. Besides the same, as per the judgment of the Constitution Bench of the Supreme Court in **National Insurance Company Limited vs. Pranay Sethi**⁵ petitioners are also entitled for the loss of estate, loss of consortium and funeral expenses an amount of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively which comes to Rs.70,000/- is awarded. Thus the petitioners are entitled to Rs.4,32,000+ Rs.70,000/- = Rs.5,02,000/-.

15. So far as the interest is concerned, the Tribunal awarded 12% per annum on Rs.80,000/-, the same is not interfered with, since the claim was adjudicated in 2005 and no appeal is filed by 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**⁶. Though the claimants made a claim only for a sum of Rs.3,00,000/- the Hon'ble Supreme Court in **NAGAPPA vs. GURDAYAL SINGH**⁷ ruled that award of compensation in excess of amount claimed in the claim petition is permissible, as

⁵ 2017 ACJ 2700

⁶ 2013 ACJ 1403

⁷ 2002 AIR SCW 5348

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** (supra), the appellants-claimants are awarded compensation of Rs.5,02,000/- with interest at 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.5,02,000/- (Rupees five lakhs two thousand only), with interest at the rate of 12% per annum on the amount of Rs.80,000/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.4,22,000/- (Rupees four lakhs twenty two

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.11 of 2004 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: 15-03-2018.
kvs



HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Date: 15.03.2018

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