

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL MISCELLANEOUS APPEAL No.4259 of 2004

JUDGMENT:

This appeal is preferred by the parents of the deceased who was aged about 8 years and who died in a motor accident that occurred on 06.07.2003. They filed O.P.No.2015 of 2003 before the learned IV Additional Chief Judge – cum – MVAT – CCC - Hyderabad, claiming compensation of Rs.2,00,000/- for the death of their minor child. The Tribunal awarded an amount of Rs.84,000/- along with interest @ 9% per annum by its award dated 09.08.2004, and seeking enhancement of the same, the present appeal is filed.

In the petition filed by the appellants before the Tribunal it was stated that on 06.07.2003 at about 4.40 pm they boarded the auto bearing No.AP 22U 5150 along with their child after completing pooja at the temple of Goddess Mysamma and paid the fare to go to their native village Veljal. When the auto reached near Pancha Peerlagutta in the outskirts of Amangal at about 5.00 pm, the driver drove the auto in a high speed and in a rash and negligent manner and applied sudden breaks and due to that impact the deceased fell down on the road from the auto and the auto ran over the head of the boy resulting in the instantaneous death of the boy. He was shifted to Government Hospital, Kalwakurthy, Mahabubnagar District, for postmortem

examination. The Police of Amangal Police Station registered a case in Crime No.47 of 2003. The boy was aged about 8 years and studying 3rd class in Veljal Village. It was stated that the boy was assisting his father who is a pot maker by contributing Rs.1,500/- per month and due to the death of the boy, they lost their assistance. The first respondent, owner of the auto, remained *ex parte* and the second respondent contested the case by filing a counter. It was stated that the accident occurred due to the negligence of the parents of the deceased and the income by contribution alleged in the petition was also denied. It was stated that they were claiming protection under Sections 147 and 149 of the Motor Vehicles Act and they are entitled to take defence under Section 170-B of the said Act.

On the basis of the pleadings, the following issues were framed by the Tribunal.

“i. Whether the deceased M.Shiva Ganesh died in a motor accident that took place on 6-7-2003 due to rash and negligent driving of auto bearing No.AP 22U 5150?

ii. Whether the petitioners are entitled for compensation, if so, to what amount and from whom?

iii. To what relief?”

The first petitioner was examined as P.W.1 and Exs.A1 to A7 were marked. The second respondent did not examine anyone, but filed insurance policy under Ex.B1. The Tribunal held that the accident occurred due to the rash and negligent driving of the auto and Ex.B1 Policy covers the accident. The plea of the petitioners that the boy was assisting his parents

was rejected. However, the Tribunal relying on various decisions of the different High Courts and that of the Supreme Court in **Lata Wadhwa v. State of Bihar**¹ came to the conclusion that a sum of Rs.61,000/- can be awarded as compensation and Rs.2,000/- towards funeral expenses apart from an amount of Rs.1,000/- towards transportation and Rs.20,000/- towards love and affection. Thus, in all, an amount of Rs.84,000/- was awarded.

Learned Counsel for the appellants submits that in **Kishore Gopal v. Lala**² in the case of a boy who was aged about 10 years and who was assisting his parents in their agricultural occupation, applying the multiplicand of 30,000 and multiplier of 15, an amount of Rs.5,00,000/- was awarded, and the present case is not different from the ratio laid down therein.

In the said decision, the decision of **Lata Wadhwa** (supra) was considered and was held that the principle laid down therein is applicable to the facts and circumstances of the case of a boy aged about 10 years assisting the appellants therein in agricultural occupation. The Supreme Court observed that the notional income of non-earning member prior to the date of accident was fixed at Rs.15,000/- and the rupee value has come down drastically from the year 1994. Taking the age of the mother and the notional income at 30,000/- by applying the multiplier 15 the amount was arrived at Rs.4,50,000/-. The

¹ 2002 (1) TAC 138 (SC) : (2001) 8 SCC 197

² (2014) 1 SCC 244

said decision in **Lata Wadhwa** (supra) was noticed by the Tribunal. But, the Tribunal was of the opinion that the status of the parents in the society was different since they were working in TISCO and the management of TISCO at its own volition came forward to pay the sum for the age groups between 10 and 15 and 5 to 10. The ratio laid down in **Lata Wadhwa** (supra) is not applicable to the facts of the present case.

However, as observed by the Supreme Court, since the rupee value has come down since 1994 and there is no dispute with regard to the accident on 06.07.2003 and in view of the nature of the profession of the father and undeniable assistance of the male child to the profession of the father, the conservative amount of Rs.84,000/- awarded by the Tribunal is liable to be enhanced.

Accordingly, the amount of compensation is enhanced from Rs.61,000/- to Rs.1,77,000/- and the funeral expenses of Rs.2,000/- and transportation charges of Rs.1,000/- and loss of love and affection of Rs.20,000/- is retained. Thus, the appeal is allowed by allowing the claim of Rs.2,00,000/- (Rupees two lakhs only) instead of Rs.84,000/- awarded by the Tribunal. The enhanced amount of compensation shall carry interest at 9% per annum from the date of the decision till the date of realization.

The appeal is, accordingly, allowed. The miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

12.04.2018

vs

