

THE HON'BLE MS. JUSTICE J. UMA DEVI

MA CMA NO. 1210 OF 2008

JUDGMENT:

The appellants are the claimants in OP No. 236 of 1998 on the file of the IV-Addl. District Judge-cum-Motor Accident Claims Tribunal, Kurnool. Their grievance is that the Tribunal has awarded compensation of Rs.75,000/- in respect of death of their son aged about 10 years who died in a road accident dated 31.7.1997 and that the compensation so awarded is not just and reasonable. According to their contention, the Tribunal ought to have taken note of the fact that the deceased Rahul Rajani was 10 years by the date of accident and was a bright student and he would have got good employment if he had not died suddenly in the road accident that took place due to the negligent driving of the lorry bearing No. AP-02-V-0540 belonging to the first respondent. Their further contention is that the Tribunal, without proper appreciation of the evidence on record, awarded compensation of Rs.75,000/- which is not just and fair. The appellants relied on the case law reported in ***Puttamma and others Vs. K.L. Narayana Reddy and another***¹.

Opposing the above contentions raised by the appellants, the learned standing counsel appearing for the 2nd respondent contends that the accident in question had not taken place due to the negligent driving of the lorry belonging to the first respondent by its driver. The 2nd respondent was totally unaware of the manner in which the accident took place. The Tribunal taking into consideration of the evidence given by

¹ (2013) 15 Supreme Court Cases 45

the 1st petitioner who stated that the deceased Rahul Rajani was a student of 4th class, awarded compensation of Rs.75,000/-, though the driver of the lorry was not at fault. Thus they finally intend to say that not only the interest awarded by the Tribunal, but also the compensation is on higher side.

The 2nd respondent-insurance company alone contested the case before the Tribunal and in the counter filed by it, a plea was raised expressing ignorance about the occurrence of the accident.

The appellants got examined PWs 1 and 2 and marked Exs.A1 to A6 to prove their case. Ex.B1 was marked on behalf of the 2nd respondent-insurance company. The evidence given by P.W.2 who was the eye-witness to the accident clearly indicates that the driver of the lorry which hit the scooter on which the deceased was proceeding along with P.W.2, was responsible for the occurrence of the accident. The Tribunal placing reliance on the evidence of P.W.2 whose evidence was corroborated on all aspects with the contents of the Exs.A1, A2 and A6, came to the conclusion that the driver of the offending lorry was at fault and due to the negligent driving of the lorry by him, the accident in question took place. The Tribunal, on appreciation of the evidence given by P.W.2, who stated that the deceased Rahul Rajani was studying 4th class in Chinmaya Vidyalaya, Adoni by the date of accident, had awarded a minimum compensation of Rs.50,000/- under Section 140 of the Motor Vehicles Act. In addition to it, it awarded Rs.25,000/- towards loss of estate and other incidental expenses, totaling to Rs.75,000/-. The claimants in OP, having felt aggrieved by the award so passed, preferred

the present appeal contending that no reasonable compensation was awarded to them in respect of death of their son Rahul Rajani.

In *Puttamma and others Vs. K.L. Narayana Reddy and another* (1st supra) relied upon by the learned counsel for the appellants, the Apex Court, while expressing its displeasure as to the inaction of the Central Government for not taking proper steps for amendment to the Second Schedule which was of the year 1994, has held as follows,

“The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under Sub-section (3) of Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs. 1,00,000/- (Rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs. 1,50,000/- (Rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163A of the Act, 1988”

Contrary to the ratio laid down by the Apex Court, no other case is submitted by the learned standing counsel for the 2nd respondent-insurance company.

Having regard to the ratio laid down in *Puttamma and others Vs. K.L. Narayana Reddy and another* (1st supra), this Court hereby orders for enhancement of compensation from Rs.75,000/- to Rs.1,50,000/- (Rupees One Lakh and Fifty Thousands only). The enhanced compensation is payable to the appellants by the respondents 1 and 2 jointly and severally together with interest @ 7.5% per annum from the date of claim petition till the date of realization.

The appeal is partly allowed accordingly. Miscellaneous applications, if any pending, shall stand closed. No order as to costs.

Dt.16.3.2018
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