

THE HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

+ MACMA. No.1476 of 2009

%11-07-2018

#Panchareddi Ramu and another

... Appellants

Vs.

\$Suggu Uma @ Umasankar and others.

... Respondents

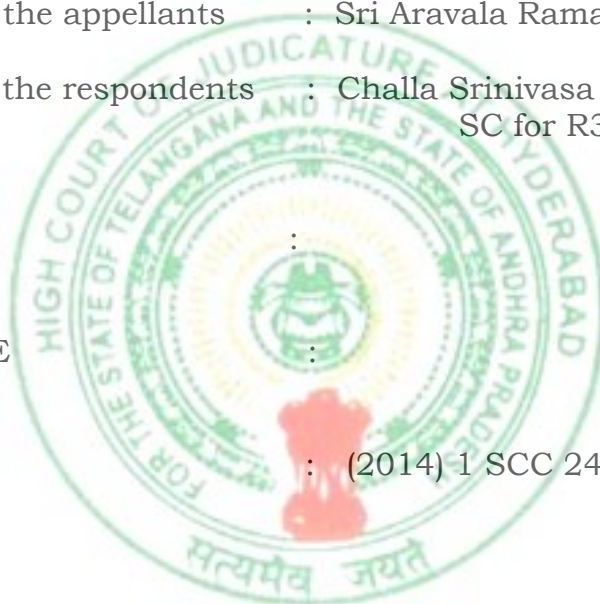
! Counsel for the appellants : Sri Aravala Rama Rao

^Counsel for the respondents : Challa Srinivasa Reddy
SC for R3

<GIST

>HEAD NOTE

? CITATIONS : (2014) 1 SCC 244



HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**M.A.C.M.A. No.1476 of 2009****JUDGMENT :**

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellants-petitioners seeking enhancement of compensation, challenging the order and decree dated 12.02.2008 in M.V.O.P.No.672 of 2004 passed by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Srikakulam District (for brevity "the Tribunal"), awarding compensation of Rs.95,000/- as against the claim of Rs.2,00,000/- laid by them under Section 166 of the Act, for the death of the deceased in a motor accident that occurred on 15.02.2003 near Primary School, Voppangi Village, Srikakulam District.

The appellants are petitioners, respondent Nos.1 and 2 are driver and owner, respectively, of the offending private Bus bearing No.TN 55B 4699, and respondent No.3 is United India Insurance Company Limited with which the offending Bus was insured.

The brief facts of the case are that the petitioners are parents of the deceased boy, aged about 8 years and studying 3rd Class, who died in a motor vehicle accident. On the fateful day i.e., on 15.02.2003 at about 12.30 Noon, while the

deceased boy on the extreme left side of the road was attending to the calls of nature, the offending Bus bearing No.TN 55B 4699 driven by respondent No.1 – Driver in a rash and negligent manner dashed against the deceased, resulting in his instantaneous death. On the report given by the Panchayat Secretary, Srikakulam Rural Police, registered a case in Crime No.20/2003 under Section 304-A IPC, investigated into the crime and filed charge sheet, which was numbered as C.C.No.101 of 2003 on the file of the Judicial Magistrate of First Class, Srikakulam. The petitioners, who are parents of the deceased, having lost their son, have filed the above M.V.O.P.No.672 of 2004 before the Tribunal claiming compensation of Rs.2,00,000/- against respondent Nos.1 to 3. Respondent No.1-driver adopted the counter filed by respondent No.2-owner of the offending Bus, denying their liability holding that respondent No.1 was having a valid licence and that respondent No.3-insurer is liable to pay compensation as the offending Bus was having a valid insurance coverage by the date of accident. Respondent No.3-insurer filed separate counter denying its liability and also the quantum of compensation. The Tribunal, on consideration of the evidence of witnesses PWs.1 and 2 and the documentary evidence under Exs.A.1 to A.4, vide order and decree dated 12.02.2008, has allowed the O.P. in part awarding compensation of Rs.95,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit. Having dis-

satisfied with the said amount of compensation awarded by the Tribunal, the petitioners have preferred the present appeal seeking enhancement of compensation.

Heard Sri Aravala Rama Rao, learned counsel for the appellants-petitioners and Sri Challa Srinivasa Reddy, learned Standing Counsel for the respondent No.3 – United India Insurance Company Limited. Perused the order under challenge and also the evidence on record.

The point that arises for consideration in this appeal is, whether the appellants-petitioners are entitled for enhancement of compensation?

Learned counsel for the appellants-petitioners submits that the deceased was a boy, aged about 8 years, and his income was taken as Rs.500/- per month. The age of the mother of the boy was taken as 28 years for assessment of compensation and the multiplier '15' was taken, instead of taking the appropriate multiplier '18'. Therefore, the petitioners are entitled for enhancement of compensation.

While placing reliance on the judgment in KISHAN GOPAL v. LALA¹, learned counsel for the appellants-petitioners contended that in a case of death of a boy of 10 years old, the Hon'ble Apex Court has taken the notional income of the boy as Rs.30,000/- per annum and adopted the

¹ (2014) 1 SCC 244

multiplier '15', therefore, in the instant case also, since the deceased was aged about 8 years, the same multiplier '15' may be adopted.

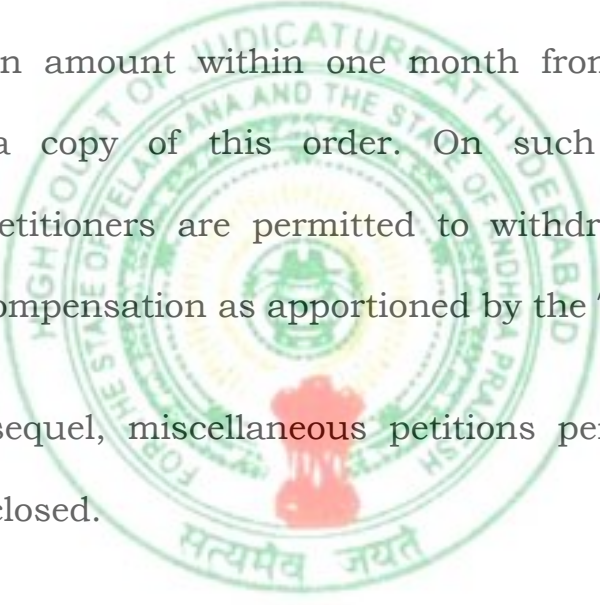
On the other hand, the learned Standing Counsel for respondent No.3 – insurer contended that the deceased in the above decision, who was aged about 10 years, was helping his parents in agricultural operations and hence his income was taken as Rs.30,000/- per annum, whereas in the instant case, the deceased was aged about 8 years and there is no record to show that he was doing any work or helping his parents, therefore, the Tribunal has rightly fixed the income of the deceased as Rs.500/- per month and the same may not be interfered with.

On consideration of the rival contentions, it is to be seen that in KISHAN GOPAL's case (supra), the Hon'ble Apex Court, in a case of death of 10 years old boy, who was travelling in a Tractor-Trailor, has taken the notional income of the boy as Rs.30,000/- per annum and multiplier '15' was adopted for assessment of compensation. In the instant case, the deceased was aged about 8 years and there is no record to show that he was earning any income by doing any work or helping his parents in any way. It is also not probable for a boy of aged about 8 years to help his parents at that tender age. However, keeping in view the ratio laid down in the above decision in KISHAN GOPAL's case (supra), in the instant case,

it would be just and appropriate to award a compensation of Rs.2,50,000/-, as the very claim of the appellants-petitioners is Rs.2,00,000/-.

For the foregoing reasons, the appeal is allowed enhancing the compensation awarded by the Tribunal from Rs.95,000/- to Rs.2,50,000/- (Rupees two lakhs fifty thousand only) with proportionate costs and interest @ 7.5% per annum from the date of petition till realization. Respondent No.3-insurer is directed to deposit the compensation amount within one month from the date of receipt of a copy of this order. On such deposit, the appellants-petitioners are permitted to withdraw the entire amount of compensation as apportioned by the Tribunal.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.


GUDISEVA SHYAM PRASAD, J

11.07.2018.

NOTE: L.R. Copy be marked.
(B/O)
Msr

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.1476 of 2009



11.07.2018
Msr