

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

C.M.A.No.4312 OF 2004

JUDGMENT:

This appeal is filed by the appellants-claimants under Section 173 of the M.V. Act, aggrieved by the order, dated 03.03.2000, in O.P.No.957 of 1998, passed by the Motor Accident Claims Tribunal-cum-District Judge, Ranga Reddy at NTR Nagar, Hyderabad, wherein compensation of Rs.50,000/- was granted towards no fault liability.

2. Heard the learned counsel for the appellants, the learned standing counsel for the Insurance Company and perused the record.

3. Learned counsel for the appellants would submit that the death of the deceased-Tharia Singh occurred due to rash and negligent driving of the lorry bearing No. AP 9 U 9339 by its driver. There is evidence of P.W.2 to that effect. There is no dispute that the deceased was not the cleaner of the offending lorry. The Tribunal erred in granting compensation of Rs.50,000/- towards no fault liability and declining to grant compensation on the score of fault liability and ultimately, prayed to enhance the compensation.

4. On the other hand, learned standing counsel for the Insurance Company would submit that there is specific finding of the Tribunal basing on the evidence that the deceased fell down from the lorry due to his own negligence. The Tribunal had assigned reasons for the same. Had there been rashness or negligence on the part of the driver of the lorry, the other passengers sitting on the sand load of the lorry would have also fallen down and

suffered injuries. It indicates that the deceased himself was responsible for his death. There are no circumstances to vary the same and ultimately, prayed to dismiss the appeal.

5. In view of submissions made by both sides, the point for determination is whether the Tribunal is justified in granting compensation of Rs.50,000/- towards no fault liability under Section 144 of the M.V. Act and whether the appellants are entitled for enhancement of compensation as prayed for?.

6. The appeal against respondent No.1-owner of the vehicle was dismissed on 13.10.2017 for default. However, dismissal of the appeal for default against respondent No.1-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹, wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

¹ 2001(1) ALT 495 (D.B.)

7. P.W.1 is the wife of the deceased. There is no dispute that the deceased was not the cleaner of the offending lorry bearing No. AP 9 U 9339. P.W.2 is the person said to be sitting on the sand load and co-traveller of the deceased. Ex.A1 is the CC of FIR, Ex.A2 is the CC of charge sheet, Ex.A3 is the CC of inquest report and Ex.A4 is the CC of post-mortem report. There is specific evidence of P.W.2 that the lorry driver took a sudden turn and due to that, the deceased, who was sitting on the sand load on the offending lorry, had fallen down and suffered injuries and thereafter, succumbed to the injuries. As seen from the record, Ex.A1 was issued against the driver of the lorry. Ex.A2-charge sheet was also filed against the driver of the lorry and he was being charged for the offence punishable under Section 304-A IPC. Ex.A3 indicates rash and negligent driving of the driver of the lorry and Ex.A4 indicates accidental injuries of the deceased. No evidence was adduced on behalf of any of the respondents. Even the driver of the lorry did not get into the witness box and state that the deceased died due to his own negligence. Investigation conducted by the police reveals, rashness and negligence on the part of the driver of the offending lorry and occurrence of the death of the deceased. There is specific evidence of P.W.2 that the driver took sudden turn. The driver is not supposed to do so. When a sudden turn is taken, it is possible for one or few people sitting on the lorry to fall down and suffer injuries. Merely because, other travelers did not fall and suffer injuries, that does not mean there was no sudden turn or negligence on the part of the driver of the lorry. The deceased fell down due to rash and negligent driving of the driver of the lorry. Therefore, it cannot be held that there was no negligence on the part

of the driver of the lorry. There is ample oral and documentary evidence to substantiate the same.

8. As far as assessment of compensation is concerned, monthly income of the deceased was taken as Rs.900/-. If one third is deducted towards personal expenses, the amount of contribution to family comes to Rs.600/- per month. As the deceased was 22 years old, the suitable multiplier for the age group is 18 as per **SARLA VERMA (SMT) AND OTHERS V DELHI TRANSPORT CORPORATION AND ANOTHER** ². Therefore, the appellants are entitled to compensation of Rs.1,29,600/- (Rs.600/- X 12 X 18). The 1st appellant, who is the wife of the deceased, is entitled for a sum of Rs.25,000/- towards loss of consortium. The appellants are also entitled for a sum of Rs.15,000/- towards loss of estate and another sum of Rs.15,000/- towards funeral expenses. In all, the appellants are entitled for a sum of Rs.1,84,600/- towards compensation.

9. In the result, the compensation awarded by the Tribunal is enhanced from Rs.50,000/- to Rs.1,84,600/-. The appellants are entitled to interest at 7.5% p.a., on the enhanced compensation amount from the date of petition till the date of deposit. On deposit, the appellants are entitled to withdraw the same. The apportionment is as follows:

Appellant No.1 (wife)	Rs.1,04,000/-
Appellant No.2 (father)	Rs. 40,000/-
Appellant No.3 (mother)	Rs. 40,000/-

² (2009) 6 SCC 121

10. Accordingly, the Appeal is partly allowed. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

DR.SHAMEEM AKTHER, J

DATED: 12-06-2018

Hsd

