

**HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO**

**MACMA No.782 OF 2015**

**JUDGMENT:**

1. Aggrieved by the order dated 14.08.2012 in M.V.O.P. No.770 of 2009 passed by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Kadapa (for short 'the Tribunal'), the claimants have preferred this appeal not being satisfied with the compensation awarded by Tribunal.
2. For convenience, the parties will hereinafter be referred to as they were arrayed in the M.V.O.P.
3. The claimants had filed an application before the Tribunal under Section 163-A of the Motor Vehicles Act,1988, claiming compensation of Rs.5,00,000/- for the death of their son- Jyothi Muneeswara @ Munisekhar, in a motor vehicle accident. The said Jyothi Muneeswara would hereinafter refer to as "the deceased".
4. It is the claimants' case that on 24.05.2009 in the night, the deceased and four other coolies proceeded in the tractor and trailer bearing No. A.P. 04 U 8568 AND 8869 TO Kadapa to unload the cement bricks at Kadapa, and they were returning in the same tractor and trailer from Kadapa to Sidhout and at

about 11.30 P.M. when the vehicle reached near New bridge at Obulamma Vanka on Bhakarapet-Sidhout road, the R.T.C. bus bearing No. A.P. 28 Z 2997, driven by its driver, came in the opposite direction in a rash and negligent manner at high speed and dashed against the tractor and trailer and causing the accident.

5. The respondent-APSRTC filed counter disputing the manner of the accident and also submitted that the claim of the petitioners is highly excessive.
6. Based on the pleadings, the Tribunal has formulated relevant issues. On behalf of the claimants, P.Ws.1 and 2 got examined, and Exs.A., 1 to A.5, were marked. No oral evidence or documentary evidence on behalf of the respondent.
7. After evaluating the evidence on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the offending vehicle's driver. The Tribunal awarded compensation of Rs.1,55,000/- with proportionate costs and interest @ 6% per annum from the date of petition till the date of realization.
8. Heard the learned counsel appearing for both parties.

9. The learned counsel for the appellants/claimants has contended that the Tribunal ought to have seen that the deceased was the sole earning member of the family and claimants lost their livelihood as they depend on the earnings of the deceased.
10. Learned counsel for the respondent/A.P.S.R.T.C. supported the findings and observations of the Tribunal.
11. Now the point for determination is whether the compensation amount fixed by the Tribunal is just and reasonable.

**POINT:**

- a. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the offending vehicle's driver is not disputed by the respondent/R.T.C. corporation. The death of the deceased due to the injuries sustained in the accident is also not disputed. It is also evident from Ex.A.1-copy of F.I.R., Ex.A.2-copy of inquest report and Ex.A.3-copy of P.M.E. report and Ex.A.4-certified copy of charge sheet. The said findings of the Tribunal are not disputed by the second respondent. The said findings have attained finality. Since the claimants' case with regard to the manner of the accident is not disputed by the respondents. The claimants

are able to establish the said fact by adducing documentary evidence. The Tribunal has accepted the said case of the petitioners and gave a finding as referred to above; thus, this Court finds that the details of the accident and the evidence adduced regarding the manner of the accident need not be discussed.

- b. Admittedly, the claimants are the parents of the deceased. The deceased was aged about 19 years at the time of the accident. The said finding of the Tribunal is also not disputed. As seen from the order of the Tribunal, it has given a finding that the parents of the deceased are not the dependants on the earnings of the deceased and awarded compensation only under the head of love and affection.
- c. To consider the loss of dependency, this Court relied on the decision of the Division Bench of Kerala High Court in **Kadeeja and others Vs. Managing Director, Kerala State Road Transport Corporation and another**<sup>1</sup>, wherein it was held that in the case of a claim under section 163-A, the person entitled to claim compensation is a legal heir. It is further held that,

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<sup>1</sup> 2014 ACJ 1492

*“For a claim under Section 163-A, the dependency has no relevancy because the person's legal heirs are entitled to apply for compensation for the death of the deceased are the legal heirs and not the legal representatives. Once the appellants prove that they are legal heirs of the deceased, then, in a claim under Section 163-A, they are entitled to claim compensation for the death of the deceased. Legal representatives include legal heirs as well and not vice versa.*

*Once it is proved that death occurred on account of the use of the motor vehicle, the legal heirs are entitled to claim compensation, as provided under the Second Schedule to the Motor Vehicle's Act, which is based on only two factors, namely, the age of the deceased and annual income of the deceased.”*

- d. Since the claimants filed their claim under Section 163-A of the MV Act, this Court finds force in the contention of the appellants/claimants for a claim under Section 163-A of the MV Act, dependency has no relevance, and the claimants are entitled to compensation for the deceased's death. Considering the settled legal position, this Court views the Tribunal's finding as unsustainable.
- e. The Tribunal has accepted the case of the claimants that the deceased was a coolie. On behalf of the claimants, the father of the deceased himself got examined as P.W.1. It is the evidence of P.W.1 that the deceased was working as a coolie and was earning Rs.200/- per day and contributing the same towards

the maintenance of their family and the deceased was the only sole earning member in their family, and due to the death of his son, they lost their livelihood and dependency at their old age. In the cross-examination of P.W.1 by the respondent's counsel, it is suggested that he is not depending on the income of the deceased. By taking into consideration of the said suggestion, the Tribunal has given a finding that the parents of the deceased are not dependents on the earnings of the deceased. The Tribunal is not supposed to have taken into consideration the suggestion as an established fact with regard to the dependency. The respondent corporation has not let in any evidence in support of the said stand taken. Admittedly the deceased was unmarried; he was supposed to reside along with his parents, so he was expected to contribute his earnings to the welfare of the family. The Tribunal has not given any reason to discard the evidence of P.W.1. Based on the suggestions, the evidence of P.W.1 given by oath is not supposed to be ignored lightly in the facts and circumstances of the case. Thus, this Court views that the Tribunal's finding is not supported by any reason or the evidence on record. The Tribunal's finding that the deceased was working as a coolie is

not disputed by the other side.

- f. To consider the loss of earnings, this Court relied on a principle laid down by the Apex Court in **Lakshmi Devi and others Vs. Mohammad Tabber**<sup>2</sup>, wherein it was held that in today's world, even common labour could earn Rs.100/- per day. As far as the future prospectus is concerned, the Apex Court in **R.K.Malik and others vs Kiran Paul**<sup>3</sup> while considering the grant of the future prospectus for the deceased child aged about ten years, held in paragraph 31 as follows:

*"31. A forceful submission has been made by the learned Counsels appearing for the claimants-appellants that both the Tribunal and the High Court failed to consider the claims of the appellants concerning the future prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the Courts below. On perusal of the evidence on record, we find merit in such submission that the Courts below have overlooked that aspect of the matter while granting compensation. It is well settled legal principle that in addition to awarding compensation for pecuniary losses, it must also grant compensation with regard to the prospects of the children. It is incumbent upon the Courts to consider the said aspect while awarding compensation."*

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<sup>2</sup> 2008 ACJ 1488

<sup>3</sup> 2009 A.C.J. 1924

*It is held in paragraph 32 that denying compensation towards future prospects seems unjustified. Accordingly, the Apex Court awarded compensation for future prospects in a claim under section 163-A of the MV Act, 1988.*

g. In **National Insurance Company Limited v. Pranay Sethi**

**and others**<sup>4</sup> it held that where the deceased was a bachelor and the claimants are the parents; the deduction follows a different principle. In regard to a bachelor's, normally, 50% is deducted as personal and living expenses because it is assumed that a bachelor would tend to spend more on himself. Further observed that taking into consideration the cumulative factors, namely, the passage of time, the changing society, escalation of price, the change in the price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards prospects.

h. By following the principles laid down by the Apex Court, this Court considers that 50% of the income is to be deducted towards personal expenses and 40% of the income to be

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<sup>4</sup> (2017) 16 SCC 680



added towards future prospectus. This Court considers the monthly earnings, including future prospects, at Rs.4,200/-. Out of which, deducting 50% of the income, the loss of monthly earnings arrived at Rs.2,100/-. By applying the multiplier '16' as provided by the II schedule of the M.V. Act for persons above 15 but not exceeding 20 years, the loss of earnings would arrive at Rs.4,03,200/- (2,100 x 12x 16). As the claim under section 163-A of MV Act, an amount of Rs.2,000/- can be awarded towards funeral expenses, and an amount of Rs.2,500/- can be awarded towards loss of estate and Rs.10,000/- (Rs.5,000/- each of the claimants. In all, the claimants are entitled to the compensation as detailed hereunder:

Towards loss of dependency	Rs.4,03,200/-
Towards funeral expenses	Rs. 2,000/-
Towards loss of estate	Rs. 2,500/-
Towards filial consortium	Rs. 10,000/- (each Rs.5,000/-)
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Total:	Rs.4,17,700/-
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i. Accordingly, the point is answered.

12. As a result, the appeal is *partly* allowed without costs, enhancing the compensation amount from an amount of Rs.1,55,000/- to an amount 4,17,700/- (Rupees four lakhs

seventeen thousand and seven hundred only) together with interest at 6% p.a. as awarded by the Tribunal. The respondent A.P.S.R.T.C. is directed to deposit the balance compensation within two months from the date of receipt of a copy of this order. The mother of the deceased, who is the second claimant, is entitled to 75% of the enhanced compensation amount with accrued interest thereon and total costs. The father of the deceased, who is the first claimant, is entitled to the remaining 25% compensation amount with accrued interest; they are permitted to withdraw compensation by filing an appropriate application before the Tribunal.

13. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

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**T. MALLIKARJUNA RAO, J**

Dt.27.12.2022  
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