HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.694 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.3,17,000/- granted as compensation by order dated 20.09.2004 in M.V.O.P.No.689 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Guntur (for short, 'the Tribunal') as against the claim for Rs.10,60,000/- laid under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') and the Rules framed thereunder, the instant appeal is preferred.

2. The appellants 1 to 3 and respondents 3 and 4 herein are the petitioners, while the respondent Nos.1 and 2, who are the owner and insurer of the lorry bearing registration No.ABK 1017 respectively, were respondents in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 21.03.2000 at about 9-30 a.m., one Lavu Tyagaraju, husband of the 1st petitioner, father of petitioners 2 and 3 and son of petitioners 4 and 5, was proceeding on a scooter bearing registration No.AP 7160 from Guntur to Vijayawada, a lorry bearing registration No.ABK 1017 driven by its driver at high speed and in a rash and negligent manner, hit his scooter near Kaza bus stop and ran over the said Tyagaraju causing his instantaneous death. The Station House Officer, Mangalagiri Rural Police Station also registered a case in Crime No.40 of 2000 against the driver of the lorry. The petitioners herein claim that the deceased was Director in Ajantha Polymers Private Limited, Marturu, drawing Rs.10,000/- per month and owns Acs.14-00 cents of land, and, thus, he was deriving total income of Rs.2,00,000/- per annum, and, therefore, sought Rs.10,60,000/- as compensation against the respondents 1 and 2, who are the owner and insurer of the lorry respectively.

5. The 1st respondent, owner of the lorry, opposed the claim contending that it is the deceased solely responsible for the accident as he lost control over his scooter and dashed the lorry, however, claimed that since the lorry was insured with the 2nd

respondent, the 2nd respondent is liable to pay compensation. Hence, he sought to exonerate him. The 2nd respondent also opposed the claim by raising various pleas, requiring the petitioners to prove the material allegations mentioned in the petition.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, on behalf of the petitioners, P.Ws.1 to 4 were examined besides marking Exs.A.1 to A.6 in order to substantiate their claim made before the Tribunal. On behalf of the respondents, no witnesses were examined and no documents were marked.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal observed that the petitioners failed to place any evidence either oral or documentary as to whether the deceased was earning Rs.50,000/- per year in Priya cotton and Rs.1,50,000/- per year in Ajantha Polymers, and in the light of the answers given by P.Ws.1 and 2 that the said Ajantha Polymers Private Limited was closed in the year 1994 itself, taking the income of the deceased at Rs.3,500/- per month and deducting 1/3rd therefrom towards his personal expenses, applied multiplier ‘11’ and arrived at Rs.3,08,000/- towards loss of dependency. The Tribunal further granted Rs.5,000/- towards consortium and Rs.4,000/- towards funeral expenses, and, thus, awarded a total sum of Rs.3,17,000/- with interest at 9% per annum.

8. It is that order which is challenged by preferring the instant appeal contending in the grounds of appeal that the Tribunal ought to have awarded Rs.10,60,000/- as compensation, but limited it to Rs.3,17,000/- without there being any proper reasoning despite the fact that the respondents have not placed any evidence to rebut the evidence of the petitioners, and, therefore, sought to grant Rs.10,60,000/-.

9. Heard Sri B.Adinarayana Rao, learned counsel for the appellants. It is endorsed that the respondents 3 and 4 are not necessary parties to the instant appeal. None appears for the 1st respondent-owner of the accident vehicle. No representation for the 2nd respondent-Insurance Company. Therefore, proceeded to decide in the instant appeal on merits.

10. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioners. The finding recorded by the Tribunal that the petitioners failed to place any convincing material as to the income said to have

been derived by the deceased on agriculture as Director of Ajantha Polymers Private Limited, basing on the answers given by P.Ws.1 and 2 in their cross-examination, cannot be faulted with. However, so far as deduction is concerned, the Tribunal arrived the annual income at Rs.42,000/- and deducted 1/3rd therefrom. Since the dependents are numbering five, as per the guidelines laid down by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**, 1/4th has to be deducted, and, therefore, 1/4th of Rs.42,000/-, i.e., Rs.10,500/-, is deducted towards personal expenses of the deceased and the reminder works out to Rs.31,500/-. So far as the multiplier is concerned, the Tribunal applied multiplier '11'. Relevant multiplier for a person aged 39 years is '15' as per **Sarla Verma's** (1 supra) case. When the same is applied, it works out to Rs.4,72,500/- (Rs.31,500/- x '15'). The Tribunal granted Rs.5,000/- towards consortium, the same is enhanced to Rs.15,000/-. Towards funeral expenses, the Tribunal granted Rs.4,000/-, which is enhanced to Rs.5,000/-. The Tribunal has not granted any amount towards loss of estate. Therefore, Rs.15,000/- is granted towards loss of estate.

11. Thus, the petitioners are totally entitled to a sum of Rs.5,07,500/- (Rupees five lakhs seven thousand and five hundred), as against Rs.3,17,000/- granted by the Tribunal, and the same is accordingly granted, with interest at 7.5% per annum on the entire amount from the date of petition till realisation, as against 9% granted by the Tribunal, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**, and the same shall be apportioned among the petitioners as directed by the Tribunal.

12. Accordingly, the instant appeal is allowed in part modifying the order under challenge passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

09th February, 2015

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