

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.440 OF 2005

JUDGMENT:

The second respondent – insurance company in O.P.No.452 of 2001 on the file of Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Nalgonda, who is the appellant herein aggrieved by the order dated 30.09.2004 rendered by the said Tribunal granting a total sum of Rs.4,77,856/- as compensation with 9% per annum interest thereon, preferred the present appeal questioning the quantum of compensation only.

2. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

3. The facts in brief are that on 16.01.2001 at about 1.00 p.m., one Devarapalli Venkateswara Rao (the deceased herein) and others have stationed their lorry bearing No. ATK 7255 for replacing the punctured tyres, at which time, the driver of the lorry bearing registration No.AP-10-T-5959, driven it in a rash and negligent manner at high speed and dashed the stationed lorry, which caused the instant death of one Nageshwar Rao and the deceased Devarapalli Venkateswara Rao on 11.02.2001 while undergoing treatment. The concerned police registered a case in Crime No.5 of 2001 against the driver of the opposite vehicle bearing No.AP-10-T-5959. The petitioners, who are the legal heirs of the deceased contend that the deceased was earning Rs.5,000/- per month on average as a lorry driver and thereby sought a total sum of Rs.4,50,000/- against respondents 1 and 2, who are owner and insurer of the lorry respectively under Section 166 of the Motor Vehicles Act, 1988.

4. Before the Tribunal, the 1st respondent, owner of the lorry, remained *ex parte*. The 2nd respondent, insurer, opposed the claim.

5. The Tribunal framed the point for determination thus:

“Whether the petitioners are entitled to a compensation of Rs.4,50,000/- from R-1 owner and R-2 insurer for the rash, negligent and high speed driving of lorry, AP-10-T-5959 on 16.01.2001 mid night at about 1.00 O’ clock, causing grievous injuries and hospital death of Deverapally Venkateshwar Rao?”

6. During enquiry, the first petitioner examined herself as PW.1 besides examining one Yanadi Durga Rao, as P.W.2 and marked Exs.A-1 to A-8 to substantiate their claim. On behalf of the second respondent, no oral evidence was adduced, however marked the copy of the insurance policy as Ex.B-1.

7. The Tribunal, while dealing with the point comprehensively both as regards rash and negligent driving of the driver of the lorry and the determination of compensation, while holding the point in favour of the petitioners taken the income of the deceased at Rs.3,271/- per month rejecting the stand of the petitioners that the deceased was earning Rs.5,000/- per month, basing on the wage as fixed by the government for heavy vehicle drivers in private motor transport and arrived at Rs.39,252/- per annum and having deducted 1/3rd i.e., Rs.13,084/-towards his personal expenses, Rs.26,168/- was taken as contribution of the deceased to the family and applying multiplier ‘17’ arrived the loss of dependency at Rs.4,44,856/- besides granting Rs.15,000/- towards loss of consortium and Rs.15,000/- towards loss of estate, love, affection, care, guidance and another sum of Rs.3,000/- towards funeral expenses and, thus, arrived the total compensation at Rs.4,77,856/- as against the claim for Rs.4,50,000/- and granted the said amount by apportioning the same amongst the petitioners towards their respective shares with interest at 9% per annum.

8. Aggrieved by the said order, the insurance company preferred the

instant appeal contending in the grounds of appeal that the Tribunal was not right in taking the wage of the deceased as Rs.3,271/- as per GOMs.No.81, which was adopted for a private motor transport instead of Rs.2587/- as per GOMs.No.30, which has to be adopted for public motor transport.

9. Heard Sri Naresh Byrapaneni, learned counsel for the appellant and Sri G.Chandra Sekhar Reddy, learned counsel for respondents 1 to 3. Memo was filed by the appellant indicating that R4 is not a necessary party.

10. The submission of the learned counsel for the appellant based on the grounds of appeal as mentioned above besides contending that the multiplier ought to have been '16' as per the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation** and the interest ought to be at 7.5% as per the decision of the Supreme Court in **Rajesh and others v. Rajbir Singh and others** and accordingly sought to reduce the compensation granted by the Tribunal.

11. On the other hand, learned counsel for the respondents 1 to 3 supports the compensation granted by the Tribunal on the ground that it is just and adequate as future prospects were not taken into consideration which ought to have been taken into consideration by the Tribunal.

12. So far as the monthly income taken by the Tribunal for the deceased is concerned, the Tribunal has taken Rs.3,271/- basing on the minimum wage fixed by the Government for heavy vehicle drivers in private motor transport. Whereas, the stand of the appellant is that the Tribunal ought to have adopted Rs.2,587/- as monthly income as per G.O.Ms.No.30 to the drivers working in public motor transport. In view of the fact that the Tribunal has not taken into consideration the future prospects while determining the compensation, the amount of Rs.3,271/- per month taken by the Tribunal as monthly earnings of the deceased need not be interfered with. So far as the multiplier is concerned, the Tribunal applied '17'. In view of the decision of the Hon'ble Supreme Court

in Sarla Verma's case(1 supra) multiplier '17' is relevant and when the same is applied, it works out to Rs.4,18,688/-. The conventional sums granted by the Tribunal are not interfered, which are to a tune of Rs.33,000/-. Thus, the total sum works out to Rs.4,51,688/- and the same is granted in place of Rs.4,77,856/- granted by the Tribunal by reducing the said amount. Concerning interest the Tribunal granted 9% per annum. But, in view of the decision of the Hon'ble Supreme Court in Rajesh's case(2 supra), the interest also is reduced to 7.5% per annum on the total amount of Rs.4,51,688/-.

13. Thus, the appeal is allowed in part reducing the compensation from Rs.4,77,856/- to Rs.4,51,688/- as well as the interest from 9% per annum to 7.5% per annum. No order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

February 19, 2015.

Rns