HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

<u>MACMA No.592 OF 2005</u>

JUDGMENT:

The claimants, having got dissatisfied with the award of Rs.1,03,000/- granted as compensation in M.V.O.P.No.590 of 2003 on 20.12.2004 by the Chairman, Motor Accidents Claims Tribunal-cum- III Additional District Judge (FTC), Kadapa (for short "Tribunal"), against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, preferred the present appeal.

2. The appellants herein are the claimants, while respondents 1 and 2 herein, who are owner of the lorry bearing No.AAQ 2779, its insured and insurer respectively, are respondents 1 and 2 respectively, in O.P before the Tribunal.

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

4. The facts, in brief, are that on 12.11.2003 at about 10.00 AM, when the deceased Santaiah along with his caste men went to canal to attend the funeral ceremony of their caste man, Nagaiah and in order to take bath along with others, they reached culvert near bugga at which time a lorry bearing No.AAQ 2779 driven at high speed in a rash and negligent manner by its driver, dashed him, due to which he sustained serious injuries and was shifted to Government Hospital in an auto and he died on the same day while undergoing treatment. The deceased was hale and healthy at the time of accident and was expert in making baskets with bamboo sticks by purchasing from outside and earning Rs.4,000/- per month and that the petitioners lost their livelihood and, therefore, sought Rs.3,00,000/- towards compensation, making respondents 1 and 2 jointly and severally liable to pay compensation as owner and insurer of the lorry respectively.

5. The 1st respondent remained ex-parte before the Tribunal. The 2nd respondent filed written statement opposing the claim requiring the petitioners to prove various pleas raised in the claim petition contending that the 2nd and

3rd petitioners are majors and they cannot be considered as dependants on the deceased and sought to dismiss the claim of the petitioners.

6. Based on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, before the Tribunal, the son of the petitioner was examined as PW.1 and marked Exs.A1 to A.5 to substantiate their claim as regards their entitlement for compensation. On behalf of the respondents, none were examined and no documents were marked.

7. On appraisal of evidence both, oral and documentary, the Tribunal held issue No.1 in favour of the petitioners, having found that only due to rash and negligent driving of the driver of the lorry, the accident had occurred.

8. On issue No.2, as to quantum of compensation, the Tribunal determined the same at Rs.1,03,000/- by taking income of the deceased at Rs.12,000/- per annum and as the age of the deceased was 50 years, as per Schedule II, total compensation was Rs.1,44,000/- and that out of it, deducted 1/3rd towards personal expenses and arrived at Rs.96,000/-. Further, the Tribunal granted Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium with interest at 9% per annum.

9. Being aggrieved by the compensation granted by the Tribunal, the petitioners preferred the instant appeal contending that the Tribunal did not properly appreciate the evidence and only taken Rs.12,000/- as annual income as against Rs.4,000/- per month. The multiplier ought to be as '15', as the age of the deceased was 50 years on the date of accident. Even granting Rs.2,000/- and Rs.5,000/- towards non-pecuniary damages are also on lower side and meagre and hence, sought for enhancement of compensation.

10. Heard learned counsel for the claimants - appellants and no representation on behalf of the 2nd respondent – insurance company.

11. Memo in SR No.1077 of 2005 was filed along with postal acknowledgment as to proof of service on the 1st respondent. None appears

for the 1st respondent.

12. Learned counsel for the appellants submits that the Tribunal was not right in taking annual income of Rs.12,000/- without there being any basis despite the evidence of PW.1 showing that the deceased was earning Rs.4,000/- per month by making baskets which was his profession. He further submits that granting Rs.2,000/- and Rs.5,000/- towards funeral expenses and loss of consortium, by any stretch of imagination is on the lower side and sought to grant balance amount.

13. The short point that arises for consideration is - whether the claimants-petitioners are entitled to enhancement of compensation?

14. Perused the order and the evidence on record, both, oral and documentary let in by the petitioners. A perusal of Ex.A.1 – first information report, in Col.No.II, shows the description of the deceased as coolie and belongs to erukula caste. Therefore, fixing loss of income at Rs.12,000/- per annum appears to be on lower side. Hence, taking the income of the deceased as Rs.75/- per day, as the accident occurred in the month of November, 2003, the monthly income works out to Rs.2,250/-. Since the dependants are '3' in number, when deducted 1/3rd there from, i.e. Rs.750/- it works out to Rs.1500/- per month towards contribution to his family and the loss of dependency works out to Rs.18,000/- (Rs.1500/- x 12) per annum. The relevant multiplier is '13' as per the decision of the Hon'ble Apex Court in **Sarla Varma v. Delhi Transport Corporation**[1]**.** The same works out to Rs.2,34,000/- (Rs.18,000/- x 13). The Tribunal granted Rs.2,000/- towards funeral expenses and the same is enhanced to Rs.5,000/- and Rs.5,000/- granted towards loss of consortium is enhanced to Rs.15,000/-. As the Tribunal has not granted any amount towards loss of estate, Rs.15,000/- is granted towards loss of estate and Rs.1,000/- towards transportation charges. Thus, the petitioners are entitled to a total compensation of Rs.2,70,000/- as against Rs.1,03,000/- granted by the Tribunal. The compensation amount is apportioned as per the directions of the Tribunal.

15. Concerning the rate of interest, the petitioners are entitled to the same at 7.5% per annum on the entire compensation from the date of petition

till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**[2].

16. Accordingly, the Civil Miscellaneous Appeal is allowed-in-part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest from 9% per annum to 7.5% per annum as stated supra. There shall be no order as to costs.

17. As a sequel, Miscellaneous Applications, if any, pending shall stand disposed of.

A. SHANKAR NARAYANA, J

February 16, 2015.
Kvrm

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

<u>MACMA No.592 OF 2005</u>

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DATE: 16.02.2015

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[1] (2009) 6 SCC 121

[2] 2013ACJ 1403 = 2013(4) ALT 35