HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 534 OF 2006

Judgment:

The petitioners, having got dissatisfied with the amount of Rs.1,40,700/- granted as compensation for the death of one Uma Maheswara Rao, husband of the first petitioner, father of petitioners 2 and 3 and son of petitioners 4 and 5, in MVOP No. 242 of 2001, on 28.09.2005, by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Guntur (for short "Tribunal"), as against the claim laid under Sections 166 and 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') seeking compensation of Rs.5,00,000/- for the death of said Uma Maheswara Rao in a road accident, preferred the present appeal.

2. For the sake of convenience, the parties hereinafter referred to as arrayed before the Tribunal in the Original Petition.

3. The facts, in brief, are that the said Uma Maheswara Rao boarded the Jeep bearing registration No.APW-4004 at Kodada to proceed to Chiluvuru along with others on 26.12.2000 at about 6.30 PM. When it reached Mulapadu village on National Highway-9 since the driver of the jeep driven it in a rash and negligent manner unable to control the speed dashed a stationary tractor parked by the side of the road margin, due to which the said Uma Maheswara Rao and two others sustained

injuries. He was immediately shifted to the hospital of Dr.M.J. Naidu, Vijayawada, who succumbed to injuries while undergoing treatment. The Station House Officer, Ibrahimpatnam Police Station, also registered a case in Crime No.319 of 2000 initially, under Section 337 IPC against the driver of the jeep.

4. The petitioners contending that the deceased was owner and driver of the tractor and also an agriculturist was earning Rs.10,000/- per month and on account of his death they lost dependency, sought the above amount from the respondents 1 and 2 who are the insured and insurer respectively.

5. The first respondent filed written statement, though, initially sought to dismiss the claim, but however, on the ground that the policy issued by the second respondent bearing No.986882 since valid from 09.08.2000 to 08.08.2001 and, thus, was in force as on the date of accident, sought to make the insurance company liable and to exonerate him from the liability.

6. The second respondent – Insurance Company opposed the claim taking a specific plea that the tractor was planted to create an accident and to claim compensation and also disputed that the death of Uma Maheswara Rao had taken place due to the alleged accident as projected by the petitioners. Thus, finally sought to dismiss the claim.

7. The Tribunal, basing on the said pleadings, framed three issues, thus:

"1. Whether the deceased died in the accident due to rash and negligent driving of the jeep No.APW-4004 by its driver?

2. To what compensation amount the petitioners are entitled and against whom?
3. To what order?"

8. To substantiate their claim, the petitioners examined PWs.1 to 3 amongst whom the first petitioner was examined as PW.1,

Dr. M.J. Naidu as PW.2 and Palimetla Mallikarjuna Rao, an eye witness, as PW.3 and marked Exs.A1 to A9. On behalf of the respondents, no witnesses were examined and no documents were filed except marking copy of policy as Ex.B1 on consent.

9. On appraisal of evidence on record, the Tribunal held issue No.1 in favour of the petitioners. Discarding the stand taken by the Insurance Company on issue No.2, the Tribunal, observing that there was no convincing evidence placed to prove the income said to have derived by the deceased at the time of accident at Rs.10,000/- per month as tractor driver-cum-owner and Rs.15,000/- per annum on agriculture, taken the notional income of the deceased at Rs.15,000/- per annum under Section 163-A of the Act, deducted 1/3rd there from towards personal expenses and towards contribution to the family taken Rs.10,000/- per annum, applied multiplier '9' taking the age of the deceased as 45 years and granted Rs.90,000/- towards loss of dependency. The Tribunal also granted Rs.5,000/- towards funeral expenses, Rs.5,000/- towards consortium and Rs.40,700/- towards medical expenses, thus, a total sum of Rs.1,40,700/- was granted with interest at 6% p.a., by giving further directions as to the apportionment of

compensation amongst the sharers and as regards withdrawal of their respective shares.

10. The aforementioned order is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal did not view the evidence on record in proper perspective and the relevant multiplier was not applied in determining the compensation and even the compensation under the head of consortium was not in accordance with the dicta laid down by the Hon'ble Apex Court and sought to grant the balance amount.

11. Heard Sri Subbarao Korrapati, learned counsel for the appellants, Sri N. Subba Rao, learned counsel for the first respondent and Sri R. Venkat Rao, learned counsel for the second respondent – Insurance Company.

12. The submission of the learned counsel for the appellants is that the Tribunal did not properly appreciate the evidence on record and taken the notional income despite the fact that PW.1's evidence proves that the deceased was tractor driver owning tractor and owning agricultural fields also and further, the amounts granted towards conventional sums was also on lower side and not in accordance with the law laid down by the Hon'ble Apex Court and sought to enhance the compensation amount.

13. Since the Insurance Company did not prefer any appeal, though, a definite stand was taken in the counter that the tractor was planted and the case was concocted by the petitioners to claim compensation, but the Tribunal's finding that, the accident

has occurred due to rash and negligent driving of the driver of the jeep, is based on convincing reasons and, therefore, nothing is required to probe further into that finding.

14. Coming to the compensation awarded by the Tribunal, certainly, it appears to be on lower side, *ex facie*, when examined in the light of the evidence on record. So far as the findings recorded by the Tribunal that the deceased cannot be construed as owner of the tractor since no evidence was placed before it, certainly that finding cannot be disturbed as nothing is placed to show that the deceased did own the tractor. Concerning the agricultural fields said to have owned by the deceased even no evidence was forthcoming except oral evidence of PW.1. Even in the copy of inquest report marked as Ex.A4, there is no reference to the occupation of the deceased. Be that as it may, even taking that the deceased was driver, an amount of Rs.2,000/- per month can be taken as his earnings, since nothing is forthcoming in the cross-examination of PW.1 who made an assertion that the deceased was the driver of the tractor, and thus, it works out to Rs.24,000/- per annum. Since the petitioners are numbering 5, as per the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**[1], 1/4th deduction is permissible towards personal expenses and, thus, an amount of Rs.6,000/- towards personal expenses of the deceased in proportion to 1/4th of the annual income if deducted, the remainder works out to Rs.18,000/- towards contribution to the family. The deceased was shown as 44 years old as on the date of accident based on the entries in Ex.A3 - charge sheet. In view of the very same

decision of the Apex Court, the multiplier '14' is applicable for the age group of persons between 41 and 45 years as per the table formulated by the Hon'ble Apex Court. Therefore, when '14' multiplier is applied, it works out to Rs.2,52,000/-. This apart, the petitioners are entitled to Rs.15,000/- towards loss of estate and the first petitioner is entitled to Rs.15,000/- towards consortium as against Rs.5,000/- granted by the Tribunal and so far as Rs.5,000/- granted by the Tribunal towards funeral expenses is concerned the same is confirmed. The Tribunal granted Rs.40,700/- towards medical expenses basing on Exs.A7 and A8. As seen from the evidence on record, evidence of PW.2, who is medical officer who treated the deceased for 15 days in his hospital and Ex.A7 since reflects that a sum of Rs.52,910/- was covered by it and Ex.A8 reflects the medical bills worth Rs.17,210-80 ps. The Tribunal has taken Rs.27,300/- under Ex.A7 and Rs.13,378-40 ps., under Ex.A8 without assigning any reasons as to why the rest of the amounts covered by Exs.A7 and A8 were not considered. In such an event, the Tribunal was not justified in restricting the amounts covered under Exs.A7 and A8. Thus, towards medical expenses a sum of Rs.52,910/- and Rs.17,210/- amounting to Rs.70,120/- is granted as against Rs.40,700/- granted by the Tribunal. Thus, the petitioners are totally entitled to Rs.3,57,120/-.

15. The Tribunal granted interest at 6% p.a., but, however, in view of the judgment of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**[2], interest is enhanced to 7.5% p.a., on the total amount of Rs.3,57,120/-. Thus, the

compensation is enhanced from Rs.1,40,700/- to Rs.3,57,120/- and even the interest is enhanced from 6% p.a., to 7.5% p.a., awarding the same on the entire amount of Rs.3,57,120/-. Concerning the apportionment, the directions given by the Tribunal on the enhanced amount shall be followed. Thus, the award and decree are modified to that extent.

16. Accordingly, the appeal is allowed in part, as indicated above. There shall be no order as to costs.

17. As a sequel thereto, the Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 03.03.2015
Nsr

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[1] (2009) 6 SCC 121

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