HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 298 of 2005
and
Cross Objections (SR) No.24533 of 2005

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COMMON JUDGMENT:

The third respondent – National Insurance Company Limited in MVOP No.145 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, East Godavari, Rajahmundry, is the present appellant. Aggrieved by the order, dated 27.10.2004, whereby and whereunder, an amount of Rs.6,75,000/- with interest at 7% p.a., was granted by the Tribunal, the instant appeal is preferred.

2. The petitioners in the said petition have also preferred cross-objections in SR No.24533 of 2005, seeking enhancement of compensation for granting balance amount as the claim laid by them was for Rs.8,50,000/- as compensation, under Section 166 of the Motor Vehicles (Amendment) Act, 1994 (Act 54 of 1994).

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

4. The facts, in brief, are that on 07.12.1997 one Manthina Arjuna Rao, whose wife and children are the petitioners in the petition, had visited his relatives at Chendurthi village and in order to return to his house at about 8.30 PM, he reached the

main road and waiting for the bus at Chendurthi village and at about 8.45 PM an oil tanker bearing registration No.AP-31V-4345, driven by the first respondent coming from Rajahmundry in a rash and negligent manner, dashed him and then dashed another lorry bearing registration No.AHJ-8442. The death of said Arjuna Rao was instantaneous. The petitioners, claiming that late Arjuna Rao was 50 years old on the date of accident, earning Rs.5,000/- per month as salary, sought compensation of Rs.8,50,000/- from the respondents 1 to 3 who are the driver, owner and insurer of the oil tanker respectively.

5. Before the Tribunal, the first and second respondents remained *ex parte*. The third respondent opposed the claim raising various pleas and requiring the petitioners to prove the material allegations mentioned in the petition.

6. The Tribunal framed three issues about the responsibility for the accident. Later, on 26.08.2004, the Tribunal also framed an additional issue to the effect "whether driver, owner and insurer of lorry bearing No.AHJ-8442 are necessary parties to the petition?"

7. During enquiry, the first petitioner, besides examining herself as PW.1, has examined five more witnesses as PWs.2 to 6 and marked Exs.A1 to A6 and Ex.X1 as regards their entitlement for the compensation claimed. On behalf of the third respondent, no witnesses were examined, however, copy of policy was marked as Ex.B1.

8. The Tribunal, initially, taken up issue No.1 and additional issue together. On appraisal of evidence of PWs.3 to 5 - eye

witnesses to the occurrence, supported by Exs.A1 to A4 – attested true copies of First Information Report, Post-mortem certificate, Motor Vehicle Inspector's report and charge sheet filed against the first respondent, recorded a definite finding that the accident has occurred only due to rash and negligent driving of the driver of the oil tanker and, accordingly, held both the issues in favour of the petitioners and against the respondents.

9. On issue No.2, the Tribunal, basing on the evidence of PW.6, who was examined to prove the salary drawn by the deceased on the date of accident, and taking the age of the deceased as 50 years, with 8 years of service remaining, and taking into account the future prospects that he would have drawn Rs.9,000/- as salary on the date of his superannuation, taken Rs.7,500/- per month as net salary and deducted 1/3rd there from and arrived the contribution to the family at Rs.5,000/- per month and Rs.60,000/- per annum, applied multiplier '11' and arrived the loss of dependency at Rs.6,60,000/- besides granting Rs.15,000/- towards loss of consortium and, thus, a total sum of Rs.6,75,000/- was granted fastening joint and several liability on the respondents 1 to 3 with further directions as to the apportionment of compensation amongst the sharers and as regards withdrawal of their respective shares.

10. Heard Sri Kota Subba Rao, learned counsel for the appellant. No representation for the respondents 1 to 3 who have filed cross objections. The fourth respondent was recorded as 'not necessary party' and even a memo was filed stating that the fifth respondent is not a necessary party.

11. Learned counsel for the appellant fairly concedes that in view of the latest pronouncements of the Hon'ble Apex Court, the ground taken that the multiplier '11' is inapplicable would not stand.

12. A short question is involved in the instant appeal to the effect - whether the request of the petitioners 1 to 3, who are the respondents 1 to 3 in the instant appeal, in their cross objections can be acceded to?

13. Perused the order and the evidence let in by the petitioners, more particularly, the evidence of PW.6. The Tribunal has discussed the evidence of PW.6 in paragraph '21' of the order. There is no need to repeat the same. The Tribunal has even taken the future prospects into consideration, basing on the evidence of PW.6, opining that the deceased would have got promotion as Chief Warden and there would have been revision of pay scales and the Tribunal, therefore, recorded the finding that had the deceased survived till the date of superannuation, would have drawn Rs.9,000/- salary at least. In that view of the matter, the amount of Rs.5,000/- taken towards contribution is maintained. However, concerning the multiplier '11' applied by the Tribunal, it was based on the law then holding the field, but in view of the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**[1], for the age group of persons between 46 and 50 years, the relevant multiplier is '13'. When '13' multiplier is applied, the loss of dependency works out to Rs.7,80,000/-. Concerning the conventional sums, the Tribunal, somehow, awarded only

Rs.15,000/- towards loss of consortium to the first petitioner and so far as the loss of estate as well as funeral expenses are concerned they were left untouched. In view of the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar v. National Insurance Company Limited**[2], the petitioners are entitled to a total sum of Rs.50,000/- towards conventional sums and, therefore, the same is awarded as against Rs.15,000/- granted by the Tribunal, in which case, the petitioners are entitled to a total sum of Rs.8,30,000/- as against the amount of Rs.6,75,000/- granted by the Tribunal. Therefore, the compensation granted by the Tribunal is enhanced from Rs.6,75,000/- to Rs.8,30,000/- with interest at 7.5% p.a., as against the interest at 7% p.a., granted by the Tribunal, in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**[3].

14. Accordingly, the appeal filed by the Insurance Company is dismissed and the cross-objections filed by the petitioners is allowed in part as indicated above. There shall be no order as to costs.

15. As a sequel thereto, miscellaneous applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 06.03.2015.
Nsr

[1] (2009) 6 SCC 121

[2] 2014 ACJ 1430

[3] 2013 ACJ 1403 = 2013(4) ALT 35