HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

<u>MACMA No.382 OF 2005</u>

<u>JUDGMENT</u>:

The instant appeal is preferred by the New India Assurance Company Limited, who is respondent No.3 in O.P.No.1959 of 2003 on the file of the learned Chairman, Motor Accidents Claims Tribunal – cum- II Additional District Judge, Visakhapatnam, aggrieved by the order dated 08.12.2004, whereby and whereunder, a sum of Rs.4,34,000/- was awarded to respondent Nos.1 and 2 herein towards compensation with interest @ 9% per annum with further directions as to withdrawal of amounts.

2. The appellant herein, which is insurer of the lorry bearing No.AP5 Y 2556, is respondent No.3, while respondent Nos.1 and 2, who are parents of V.Shyam Sunder (who died in the accident), are claimants, and respondent No.3 and 4, who are driver and owner of the lorry bearing No.AP5 Y 2556 are respondent Nos.1 and 2 in the O.P. before the Tribunal.

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

4. The facts, in brief, are that on 19.02.2003, one

V.Shyam Sunder and G.Zinna were proceeding on a motor cycle bearing No. AP 32 3696 and the deceased was pillion rider and G.Zinna was riding the said motor cycle. At about 12.00 noon when they reached near Ramannapalem of Atchutapuram Mandal, a lorry bearing No.AP 5 Y 2556 driven in a rash and negligent manner came in opposite side and hit the motor cycle. Due to which the said V.Shyam Sunder, pillion rider died instantaneously, where as the said G.Zinna sustained injuries. On a report lodged by G.Zinna, the police concerned registered a case in Crime No.13 of 2003 under Sections 304-A and 338 IPC against the driver of the lorry and observed other formalities.

5. The claimants are parents of the deceased, V.Shamsunder and they sought a sum of Rs.6,00,000/- as compensation having laid the claim under Section 166 of the Motor Vehicles Act, 1988 against respondent Nos. 1 to 3, who are driver, owner and insurer of the offending lorry respectively. The driver and owner of the lorry remained ex-party.

6. The 3rd respondent resisted the claim requiring the petitioners to prove the material averments mentioned in the petition. In fact, it is the specific contention that there was collision between the two vehicles and, therefore, not only the owner but also the insurer of the two wheeler are necessary parties and the claim is,

therefore, bad and sought to dismiss the same.

7. The Tribunal framed four (4) issues in the direction of fixing responsibility for the accident. During enquiry, on behalf of the claimants, the father of the deceased, who is the 1st petitioner, was examined as PW.1, G.Ginna, who is the eye witness, was examined as PW.2, and one Md. Sadik was examined as PW.3 and marked
Exs.A - 1 to A - 8 as regards their entitlement for the amount claimed.

8. The Tribunal, on overall assessment of the evidence let in by the petitioners and basing on the evidence of PW.2 supported by Exs.A - 1 to A - 3, which are attested copies of FIR, Post-mortem certificate and charge sheet respectively, held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal taken the age of the deceased as 26 years and he was earning Rs.3,000/- per month by working as Fitter in Brothers Engineering Erectors Private Limited and deducted 1/3rd towards personal expenses and worked out contribution to the family at Rs.2,000/- per month (Rs.3000/- minus Rs.1000/-). The Tribunal applied multiplier '18' which works out to Rs.4,32,000/-(Rs.24,000/- x 18) and granted a sum of Rs.2,000/- towards funeral expenses. Thus, a total sum of Rs.4,34,000/- was granted by the Tribunal apportioning

the same into two equal shares to the petitioners and recorded a finding that only due to rash and negligent driving of the lorry driver, the accident had occurred, and, therefore, the respondents are jointly and severally liable to pay the compensation to the claimants.

9. The aforesaid order is under challenge by the insurer contending that there is an error on the part of the Tribunal in applying the multiplier and taking the age of the deceased when the petitioners are parents of the deceased. It is also contended by the learned counsel for the appellant that as per the decision of the Hon'ble Supreme Court in **Sarla Varma v. Delhi Transport Corporation**[1], if the deceased died in unmarried status, the age of the parents has to be taken in to consideration while assessing the compensation, but not the age of the deceased. The income of the deceased fixed by the Tribunal is highly excessive and to reduce it considerably.

10. Heard Sri Kota Subba Rao, learned counsel for the

3rd respondent - Insurance Company (appellant), and Sri K.Sarvabhouma Rao, learned counsel for the claimants (respondents 1 and 2), and perused the material on record.

11. Learned counsel for the appellant submits that the Tribunal ought to have taken 50% of the earnings, but not 1/3rd towards loss of dependency. So far as interest is concerned, it is well settled law that as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**[2] 7.5% interest is to be awarded and, therefore, sought to modify the award and decree to that extent.

12. Learned counsel for the claimants submitted that the Tribunal did not commit any error in assessing the compensation and therefore, supports the compensation granted by the Tribunal and sought to confirm the same.

13. Now the short point that arises for consideration is whether the Tribunal was right in deducting 1/3rd as against half of the earnings of the deceased in computing loss of dependency and whether the Tribunal is right in adopting multiplier '18' when the age of the deceased was 26 years.

POINTS:

14. So far as the earnings of the deceased is concerned, the Tribunal worked out the same at Rs.3,000/- basing on his profession and that finding is not disturbed. However, concerning deduction, the Tribunal has deducted 1/3rd though, the deceased died in

unmarried status. Therefore, instead of 1/3rd, 50% of the income has to be deducted towards personal expenses. The contribution to his family therefore, is taken at Rs.1500/- per month, which works out to Rs.18,000/- per annum. As per the decision of the Hon'ble Apex Court in **Sarla Verma's case** (1st cited) since the deceased was aged 26 years as on the date of accident, the relevant multiplier is '17'. The loss of dependency, therefore, works out to Rs.3,06,000/-(Rs.18,000/- x 17). The Tribunal granted Rs.2,000/- towards funeral expenses, the same is not disturbed. Thus, the claimants are entitled to a total compensation of Rs.3,08,000/- which is equally apportioned between the claimants. Concerning the rate of interest, the Tribunal granted interest at 9% per annum, but in view of the decision of the Hob'ble Apex Court in **Rajesh's** case (Supra 2), the claimants are entitled for interest at 7.5% per annum and the same is accordingly granted.

15. Thus, the order and decree passed by the Tribunal is modified by reducing the compensation from Rs.4,34,000/- with interest at 9% per annum to Rs.3,08,000/- with interest at 7.5% per annum from the date of petition till realisation.

16. Accordingly, the appeal is partly allowed by reducing the compensation as well as rate of interest as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

January, 19, 2015.
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HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

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DATED: 19.01.2015

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[1] (2009) 6 SCC 121

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