HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1114 of 2005

JUDGMENT

Having got dissatisfied with the amount of Rs.1,92,000/-awarded as compensation, as against the claim of Rs.10,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), by order dated 17.02.2005 in O.P.No.785 of 2002 on the file of Motor Accidents Claims Tribunal (District Judge), Nizamabad, the instant appeal is preferred.

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

3. The facts, in brief, are that on 23.05.2002, the son of the first and second petitioners, by name Rajaram, was proceeding towards Varadakaluva and when he reached near Bussapur limits, a tractor bearing No.AP-25/G-7719 driven by its driver in a rash and negligent manner and proceeding towards Varadakaluva, dashed him, due to which he sustained grievous injuries and later succumbed to the injuries. According to the petitioners, the deceased was hale and healthy and was earning Rs.20,000/-per month on business and agriculture and sought to grant an amount of Rs.10,00,000/-.

4. Respondents 1 and 2 are the owner and insurer of aforesaid tractor respectively. The first respondent remained *ex parte* and the second respondent contested the claim raising various pleas.

5. The Tribunal, basing on the pleadings, framed three issues in order to fix responsibility for the accident. During enquiry, the first petitioner examined himself as P.W.1 besides examining one
J. Bhoomanna as P.W.2 and marked Exs.A1 to A13. On behalf of the second respondent, no witness was examined and no document was filed.

6. The Tribunal, on appraisal of evidence on record, held issue No.1 in favour of the petitioner.

7. On issue Nos.2 and 3, the Tribunal having found that there is no convincing evidence to show that the deceased was earning Rs.6,000/-per month fixed his income at Rs.15,000/-per annum notionally as he was not an earning member as per Schedule II of Section 163-A of the Act and deducted Rs.3,000/-towards his personal expenses and the remainder Rs.12,000/- as contribution and applied multiplier '16' taking the age of the mother of the deceased and arrived at Rs.1,92,000/- towards loss of dependency and held that the first and second respondents are jointly and severally liable to pay the costs and interest at 9% per annum from the date of petition till the date of realisation.

8. Having not satisfied with the award of the said amount, the instant appeal is preferred contending that the Tribunal somehow, overlooked the certificate issued by the Mandal Revenue Officer, Balkonda under Ex.A13, showing the income of the deceased and even the entries recorded in Exs.A6 to A13 also not taken in assessing the income of the deceased. Therefore, the petitioners sought to grant the balance amount.

9. Heard Sri S. Rajasekhar Rao, learned counsel for the appellants and Sri Kota Subba Rao, learned Standing Counsel for the second respondent. Despite service of notice, none appears for the first respondent-owner of the vehicle, however, it makes no difference since he remained *ex parte* before the Tribunal and suffered decree.

10. Perused the order and the oral and documentary evidence let in by the petitioners. The finding recorded by the Tribunal that there is no tangible evidence to prove the income of the deceased at Rs.6,000/- per month and that Ex.A13 cannot be taken into consideration, cannot be faulted with and what all found from Exs.A9 to 12 and Exs.A6 to A8, the father of the petitioner is the owner of land with the extents mentioned therein, which are Ac.0.12 gts, Ac.0.08 gts, Ac.0.7½ gts, Ac.0.3¼ gts, Ac.0.7½ gts, and Ac.0.26 gts, in total Ac.1.26 ¼ gts in distinct survey numbers, from which it is difficult to assess the income of Rs.1,00,000/- being derived and the Tribunal has rightly observed the same. However, the Tribunal deducted Rs.3,000/-towards personal expenses and taken Rs.12,000/-as contribution and applied '16' multiplier and arrived at Rs.1,92,000/-. When an unmarried person dies in a road accident, as per the settled law, half of the amount has to be deducted towards his personal expenses. However, since the Tribunal has not granted compensation towards funeral expenses, a sum of Rs.5,000/- is granted and towards loss of love and affection, Rs.10,000/- each is granted to the first and second petitioners i.e., Rs.20,000/-. Thus, the amount of Rs.1,92,000/-granted by the Tribunal is enhanced to Rs.2,17,000/-. The Tribunal granted interest at 9% per annum. However, the petitioners are entitled to interest at 7.5% per annum on the entire compensation of Rs.2,17,000/- 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.**

11. 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% to 7.5% per annum as indicated above. There shall be no order as to costs. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

26th March, 2015

sj