

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.No.1003 of 2005

JUDGMENT:

Not satisfied with the amount of Rs.1,64,000/- granted as compensation, by the order dated 02.11.2004 in M.V.O.P.No.567 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal – cum- II Additional District Judge, Guntur, as against the claim of Rs.2,40,000/-, laid under Sections 166 and 163-A of the Motor Vehicles Act, 1988

(for short 'the Act'), the petitioners preferred the instant appeal.

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

The fact - situation, occurring in the instant case, is that, on 20.03.2000 at about 4.00 p.m., one Narasimha Rao was travelling in a lorry bearing No.ABP 5166 from Macherla to Guntur to unload polish stones and, when reached Nallakunta on Perecherla road near Guntur, since the driver of the lorry, driven it in a rash and negligent manner, hit the road side electric pole occasioning serious injuries to him. He was admitted in Government General Hospital, Guntur. He succumbed to injuries while undergoing treatment. The concerned Station House Officer also registered a case in Crime No.91 of 2000 of P.S. Guntur Taluk, under Section 304-A IPC, against the driver of the lorry.

The petitioners claim that the deceased was working as a mutta coolie in the first respondent's lorry, and also in the Mahesh Marble Industry at Macherla owned by the first respondent, earning Rs.100/- as loading and unloading coolie. They lost complete dependency and, therefore, they sought the above amount from the respondents, who are the owner and insurer of the lorry. The first respondent, owner of the lorry, remained ex parte. The second respondent – Insurance Company opposed the claim by filing a counter raising various pleas.

The Tribunal in order to fix the liability framed three issues. During enquiry, the first petitioner, being the wife, examined herself as PW.1 besides examining PW.2, an eye-witness to the accident, and marked Exs.A.1 to A.5 as regards their entitlement for compensation. On behalf of the second respondent – Insurance Company, no witnesses were examined and no documents were filed.

The Tribunal, on overall assessment of the evidence on record let in by the petitioners, recorded a finding that due to the rash and negligent driving of the driver the accident occurred and, thus, held issue No.1 in favour of the petitioners. On issue No.2, since the petitioners failed to substantiate that the deceased was earning Rs.100/- per day by legally acceptable evidence, the Tribunal, fixed the daily earnings at Rs.40/-, by way of guess work and Rs.1,200/- p.m and deducted 1/3rd towards personal expenses of the deceased, taken the remainder of Rs.800/-

as contribution to the family and worked out the annual income at Rs.9,600/-, took the multiplier '15' viewing the age of the deceased as 26 years and determined the loss of dependency at Rs.1,44,000/-. The Tribunal has also granted Rs.10,000/- towards loss of consortium and Rs.10,000/- towards loss of estate. Thus, a total compensation of Rs.1,64,000/- was granted and given further directions as to apportionment as well as withdrawal of their respective shares by the petitioners.

It is the aforesaid order which is under challenge in the instant appeal seeking enhancement of the balance amount contending in the grounds of appeal that the Tribunal ought to have taken Rs.100/- as daily earnings and, without there being any material, fixing the daily wage at Rs.40/- is improper and, even, the multiplier ought to be '18' and not '15' for the age group of persons between 26 and 30 years as contemplated by the second Schedule to Section 163A of the Act and, therefore, sought to grant the balance amount.

Heard Sri A.Rajendra Babu, learned counsel for the appellants, and Sri Ravishankar Jandhyala, learned counsel for the second respondent – Insurance Company. Despite service of notice, none appears for the first respondent.

Perused the order and evidence, both, oral and documentary, let in by the petitioners. The Tribunal, though taken Rs.40/- per day as daily wages, keeping in view the decision of the Hon'ble Supreme Court in *Sarla Verma v. Delhi Transport Corporation*^[1], deduction towards personal

expenses to the extent of 1/4th on the earnings is permissible since there are as many as six dependents, who are shown as petitioners herein and, therefore, when 1/4th amount of Rs.300/- is deducted, the remainder Rs.900/- would account for contribution to the family, and it works out to Rs.10,800/- p.a. Since the age of the deceased was taken as 26 years by the Tribunal, as per the table formulated in the very same decision, the relevant multiplier is '17' and, when the same is applied, the loss of dependency works out to Rs.1,83,600/-. This apart, the petitioners are entitled to the conventional sum of Rs.50,000/- in view of the decision of the Hon'ble Supreme Court in Ramilaben Chinubhai v. National Insurance Company^[2]. Thus, the petitioners, in total, are entitled to Rs.2,33,600/- towards compensation. The Tribunal awarded interest at 9% p.a. but, however, the same is reduced to 7.5% p.a. in view of the decision of the Supreme Court in Rajesh v. Rajbir Singh^[3].

Thus, the Appeal is partly allowed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

A.SHANKAR NARAYANA,J

Date: 17.03.2015
usd

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- [\[1\]](#) 2009 ACJ 1298
- [\[2\]](#) 2014 ACJ 1430
- [\[3\]](#) 2013 ACJ 1403