HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.559 and 755 of 2006

COMMON JUDGMENT:

In M.A.C.M.A. No.559 of 2006 (for short, 'the former appeal'), the petitioners, having got dissatisfied with the award of Rs.3,81,000/- as compensation, for the death of A.Bhimraj @ Yadala Bhim Rao, as against the claim of Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), preferred the former appeal seeking enhancement of compensation. M.A.C.M.A. No.755 of 2006 (for short, 'the latter appeal') is preferred by the petitioners requesting the Court to grant Rs.5,15,000/-, determined by the Tribunal towards compensation, but restricted the same to Rs.3,00,000/-, which was even the claim made by the petitioners under Section 166 of the Act.

2. By order dated 14.11.2005, in O.P.No.777 of 2002, the learned Chairman, Motor Vehicles Accidents Claims Tribunal-cum-Additional Metropolitan Sessions Judge for the trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Red Hills, Nampally at Hyderabad (for short, '**the Tribunal-I**') has awarded a compensation of Rs.3,81,000/-, which is the subject matter of the former appeal, whereas, by order dated 29.09.2005, in O.P. No.775 of 2002, the learned Chairman-cum-XII Additional Chief Judge, City Civil Court, Hyderabad (Fast Track Court) (for short, **'the Tribunal-II'**), has awarded a compensation of Rs.3,00,000/-, despite determining the compensation at Rs.5,15,000/- to which the petitioners entitled, which is the subject matter of the latter appeal.

3. Since, both the claim petitions arise out of one and the same accident and the respondents are one and the same, though disposed of by two different Courts, these two appeals are taken up together for hearing and being disposed of by way of a common judgment.

4. The facts, in brief, are that on 19.12.2001 one A.Bhimraj @ Yadala Bhim Rao along with Lal Bihari @ Subhash, Bharath, Beesabathini Mani Kumar, while proceeding in a Tata Sumo bearing registration No.AP 10N 2124 from Hyderabad to Utakuru, Guntur District, and when they crossed Lakshman

Nayak Thanda, since the driver of the vehicle drove it in a rash and negligent manner at high speed, he lost control over the vehicle and dashed the tree by the side of road, due to which the said Beesabathini Mani Kumar and the driver of vehicle A.Bhimraj died on the spot and Bharath sustained grievous injuries. The Station House Officer, Chinthapally Police Station, Nalgonda District, registered a case in Cr. No.124 of 2001 under Sections 304-A and 337 of the Indian Penal Code.

5. The wife, children and parents of the deceased, A.Bhimraj @ Yadala Bhim Rao, filed O.P. No.777 of 2002 before the Tribunal-I, seeking total compensation of Rs.5,00,000/-, under Section 166 of the Act, against respondent Nos.1 and 2, who are the owner and insurer of the Tata Sumo respectively, which relates to the former appeal. The wife, minor son and parents of the deceased Lal Bihari @ Subhash, filed O.P. No.775 of 2002 before the Tribunal-II, seeking total compensation of Rs.3,00,000/-, having laid the claim under Section 166 of the Act read with Rule 455 of the A.P. Motor Vehicles Rules, 1989 and Section 140 of the Act, which relates to the latter appeal.

6. In O.P. No.775 of 2002, respondent No.1, owner of vehicle, did not file counter, but in O.P. No.777 of 2002, he filed counter and has taken a plea that the accident vehicle was insured with respondent No.2 and that the driver of the vehicle was holding a valid driving licence, and, therefore, sought to dismiss the claim petition against him. Respondent No.2-insurance company opposed the claims raising various pleas and lastly mentioning that the claim made by the petitioners in the claim petitions being excessive and exorbitant, sought to dismiss the claim petitions.

7. On the basis of the said pleadings, the Tribunals have framed three issues, which are almost identical and there is no need to extract the said issues. During enquiry, in O.P. No.777 of 2002, petitioner No.1, besides examining herself as P.W.1, examined one Matangi Premaiah as P.W.2 and marked Exs.A.1 to A.12. In O.P. No.775 of 2002, petitioner No.1 examined herself as P.W.1, besides examining the said Matangi Premaiah as P.W.2, and marked Exs.A.1 to A.8. On behalf of the respondents, none were examined. A copy of insurance policy was marked as Ex.B.1 in both the claim petitions.

8. On issue No.1**,** the Tribunals, on appraisal of evidence on record let in by the respective petitioners, since P.W.2 is an eye witness in both the claim petitions, believing the evidence of P.W.2 supported by the certified copies of the F.I.R, Inquest Report, Post Mortem Examination Report, Charge Sheet and M.V.I. reports, relating to the deceased in both the claim petitions, which are marked as Exs.A.1 to A.5 respectively, held issue No.1 in both the claim petitions in favour of the petitioners therein.

9. On Issue No.2, in O.P.No.777 of 2002, though, the petitioners have taken the stand that the deceased therein was earning Rs.6,000/- per month and was aged 42 years on the date of accident, the Tribunal-I while disbelieving the said version and Ex.A.6, since none connected with Ex.A.6 was examined, fixed the monthly income of the deceased at Rs.3,000/- and after deducting 1/3rd therefrom towards personal expenses of the deceased, by taking the remainder of Rs.2,000/- per month or Rs.24,000/- per annum towards contribution to the family, and applied multiplier ‘14’ as per the entries in the second schedule to Section 163-A of the Act, arrived the loss of dependency at Rs.3,36,000/-, besides granting Rs.15,000/- each towards loss of consortium and loss of estate, Rs.5,000/- towards transportation and funeral expenses, Rs.10,000/- towards loss of love and affection, and thus, granted a total sum of Rs.3,81,000/- towarrds compensation with interest at 6% per annum, while giving suitable directions as to apportionment and withdrawal of the amounts by the respective petitioners.

10. On issue No.2, in O.P. No.775 of 2002, the Tribunal-II by taking the age of the deceased therein as 24 years, fixed his monthly income at Rs.3,000/-, which works out to Rs.36,000/- per annum, applied multiplier ‘17’, and arrived at Rs.6,12,000/- towards loss of dependency, by deducting 1/3rd therefrom towards personal expenses, arrived the actual loss of dependency at Rs.5,08,000/-, while mentioning a sum of Rs.1,04,000/- towards 1/3rd deduction, which appears to be wrong since 1/3rd of 6,12,000/- comes to 2,04,000/-, in which case the loss of dependency works out to Rs.4,08,000/-. The Tribunal-II has granted Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium, and thus, arrived at Rs.5,15,000/-. In fact, the compensation would work out to Rs.4,15,000/-, but, however, the

Tribunal-II has restricted it to Rs.3,00,000/-, basing on the claim made by the petitioners, with interest at 9% per annum while giving suitable directions as to apportionment of compensation as well as withdrawal of the amounts that would fall to their respective shares.

11. The aforesaid orders are under challenge in the instant appeals. In the former appeal, the appellants contend that the Tribunal-I awarded a meager sum without properly appreciating the evidence on record and even a wrong multiplier was applied instead of the appropriate multiplier '15', and, therefore, urged to grant the balance amount.

12. In the latter appeal, the appellants contend that the Tribunal-II ought to have granted Rs.5,15,000/-, having determined the said amount as compensation, without restricting the same to their claim of Rs.3,00,000/-, as per the decision of this Court in **Branch Manager, Oriental Fire and General Insurance Company Limited, Hyderabad v. Dr. C.Chandra Obula Reddy and others,** and, therefore, sought to grant the balance amount.

13. Heard Smt. K.Rajitha, learned counsel for the appellants in both the appeals. Despite service of notice on respondent Nos.1 and 2 in both the appeals, none appears for them. Though, respondent No.2 is none other than the New India Assurance Company Limited, represented by its Divisional Officer, Hyderabad, during the course of arguments, learned counsel for the appellants in these two appeals submits that no notices were received by the appellants in these two appeals indicating the insurance company preferring the appeals against the orders in both the O.Ps which are under challenge in these two appeals.

14. The short question that arise for consideration, in the former appeal, is whether the petitioners are entitled to enhancement of compensation?

15. In the former appeal, the finding recorded by the Tribunal-I as to fixing the monthly income of the deceased at Rs.3,000/- is confirmed, since there is no proof as regards the deceased A.Bhimraj earning Rs.6,000/- per month as per the stand putforth by the petitioners therein. However, in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another,** since the dependants of the deceased are numbering ‘7’, instead of 1/3rd deduction towards personal expenses of the deceased, deduction at 1/5th is permissible; in which case, when 1/5th is calculated, it works out to Rs.7,200/- (36,000x1/5), and when the same is deducted, the remainder, towards contribution to the family, would work out to Rs.28,800/- (36,000-7,200). The Tribunal-I has taken the age of the deceased as 42 years, and applied multiplier ‘14’ as per the second schedule to Section 163-A of the Act. As per the said decision, the relevant multiplier provided in the table formulated is ‘15’, and when the multiplier ‘15’ is applied, the loss of dependency works out to Rs.4,32,000/- (28,800x15). The Tribunal-I has granted Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.5,000/- towards transportation and funeral expenses, making a total of Rs.35,000/-, but, in view of the decision of the Hon’ble Supreme Court in **Ramilaben Chinubhai Parmar & others Vs. M/s. National Insurance Company & others,** the petitioners are entitled to Rs.50,000/- as conventional sum. Thus, the petitioners are totally entitled to a compensation of Rs.4,82,000/- (4,32,000+50,000). The Tribunal-I has granted interest at 6% per annum. In view of the decision of the Hon’ble Supreme Court in **Rajesh and others v. Rajbir Singh and others,** the rate of interest at 7.5% per annum is granted as against 6% per annum granted by the Tribunal-I.

16. Coming to the latter appeal, the Tribunal-II has taken monthly income of the deceased at Rs.3,000/-, and the age of deceased as 24 years, which finding is not under challenge. However, since the dependants are numbering ‘4’, in view of the decision of the Hon’ble Supreme Court in **Sarla Verma**’s case (2 Supra), deduction of 1/4th amount is permissible towards personal expenses, and when 1/4th is calculated, it comes to Rs.9,000/- (36,000x1/4), and when the same is deducted, the remainder works out to Rs.27,000/- (36,000–9,000) per annum towards contribution to the family. So far as the multiplier is concerned, the Tribunal-II has applied the multiplier ‘17’, but in view of the said decision, for the age group of persons between 21 and 25 years, the relevant multiplier is ‘18’, and when the same is applied, the loss of dependency works out to Rs.4,86,000/-(27,000x18). The conventional sum of Rs.50,000/- is granted as per the decision of the Hon’ble Supreme Court in **Ramilaben’s** case (3 Supra) as against Rs.7,000/- granted by the Tribunal-II. Therefore, the petitioners are totally entitled to a sum of Rs.5,36,000/- (4,86,000+50,000) towards compensation. The Tribunal-II has granted rate of interest at 9% per annum, but, in view of the decision of the Hon'ble Supreme Court in **Rajesh**'s case (4 Supra), the rate of interest is reduced to 7.5% per annum. It is needless to mention that, though, the amount now determined as compensation i.e., Rs.5,36,000/- far exceeds the claim of Rs.3,00,000/- made by the petitioners, the petitioners are entitled to the said amount of Rs.5,36,000/- towards just, fair and reasonable compensation, in view of the decisions of the Hon'ble Supreme Court in **Laxman v. Divisional Manager, Oriental Insurance Company Limited** and **Rajesh and others v. Rajbir Singh and others**, and the same is accordingly awarded.

17. In the result, the former appeal is allowed in part, and the latter appeal is allowed, as under:

(i) **M.A.C.M.A. No.559 of 2006** is allowed in part, and the award and decree dated 14.11.2005 passed by the Tribunal-I in O.P.No.777 of 2002 is modified, enhancing the compensation from Rs.3,81,000/- to Rs.4,82,000/- (Rupees Four lakhs and eighty two thousand) and also the interest at the rate of 7.5% per annum from 6% per annum from the date of petition till realization;

(ii) **M.A.C.M.A. No.755 of 2006** is allowed, and the award and decree dated 29.09.2005 passed by the Tribunal-II in O.P.No.775 of 2002 is modified, enhancing the compensation from Rs.3,00,000/- to Rs.5,36,000/- (Rupees Five lakhs and thirty six thousand) but reducing the rate of interest from 9% per annum to 7.5% per annum from the date of petition till realization. The petitioners are directed to pay the Court fee on the enhanced compensation of Rs.2,36,000/- within two months from today. There shall be no order as to costs.

18. As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

A. SHANKAR NARAYANA, J

Date: **20.04.2015**

MVA

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

<u>M.A.C.M.A. Nos.559 and 755 of 2006</u>

<u>Dt. 20.04.2015</u>

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