THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1591 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.1,56,000/- as compensation by order, dated 16.02.2005, in O.P.No.309 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – II Additional District Judge, Kadapa at Proddatur, as against the claim of Rs.5,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the instant appeal is preferred seeking enhancement of compensation.

2. The appellants are the petitioners, whereas the respondent
is the respondent in the O.P. before the Tribunal.

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

4. The fact situation occurring in the instant case is that on 31.01.2002, son of the petitioners by name 'K. Subba Rao', who was aged about 22 years prosecuting Post Graduation in M.A. and also working as Office Assistant in an Auditor's office earning Rs.3,000/- per month, was waiting to board a bus at built-up junction, at

which time, an R.T.C. bus bearing No.AP-10-Z-4911 belonging to Pulivendla Depot arrived with full load of passengers and as directed by the Conductor of the bus, the said K. Subba Rao along with some other passengers boarded the bus on its top. While the bus started proceeding, since the Driver of the bus driven it in a rash and negligent manner at high speed, near Riyaz Cinema Theatre, a telephone wire came into contact with the neck of the said
K. Subba Rao, due to which, he was dragged and fallen from the bus and suffered injuries and was immediately shifted to Government Hospital, Kadapa. As his condition was found to be serious, he was referred to Government General Hospital, Kurnool, and on 08.02.2002, he succumbed to injuries. Petitioners, claiming that they suffered mental agony on the death of the deceased, who was earning Rs.3,000/- per month and contributing the entire amount for the maintenance of family, sought compensation of Rs.5,50,000/- under Section 166 of the Act.

5. The respondent filed written statement stating that despite the Conductor warning the deceased not to climb on the top of the bus, the deceased climbed on the top of the bus and sat there and thus, due to his negligence, the accident has occurred resulting in his death. The respondent also sought the petitioners to prove the other

allegations made in the petition as regards the income and education of the deceased.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed three issues. During enquiry, petitioner No.1 examined himself as PW.1 besides examining an eye witness to the occurrence as PW.3 and the Auditor, under whom the deceased said to had been working on the date of accident, as PW.2 and marked Exs.A1 to A10 to substantiate the claim laid. On behalf of the respondent, the Driver of R.T.C. bus was examined as RW.1.

7. The Tribunal, on issue No.1, after elaborately discussing the evidence on record and placing reliance on the decisions in **Vijay Singh v. Haryana Roadways and another**[1] and **Manjit Kaur and others v. Pepsu Road Transport Corporation and others**[2], where the fact situation was alike, tendered finding in favour of the petitioners.

8. On issue No.2, the Tribunal has not agreed with the stand of petitioners that the deceased was working under PW.2 assisting him and drawing salary of Rs.3,000/- per month, and assigning reasons therefor, however, construing that he was a non-earning member

and taking the notional income of the deceased at Rs.15,000/- per annum and by applying multiplier '13', taking the age of younger parent of the deceased i.e., petitioner No.2, aged 55 years, as per second schedule to the Act, arrived the income of the deceased at Rs.1,95,000/- and after deducting 1/3rd therefrom, determined the amount at Rs.1,30,000/-. Besides the said amount, the Tribunal has also granted Rs.8,000/- towards medical expenses, Rs.2,000/- towards transport charges, Rs.3,000/- towards funeral and obsequies, Rs.8,000/- towards pain and suffering and Rs.5,000/- towards mental agony to the petitioners and thus, granted a total sum of Rs.1,56,000/- with interest at 9% per annum from the date of petition till realisation.

9. Feeling that the amount awarded by the Tribunal is very meagre, petitioners preferred the instant appeal seeking to grant the balance amount on the grounds that the Tribunal has not properly appreciated the evidence on record, the computation of compensation is not in accordance with the established principles of law and that the Tribunal ought to have granted interest at 12% per annum.

10. Heard Sri Allur Manjunath, learned counsel for the appellants. Despite service of notice on the respondent – Corporation, there is no appearance on behalf of it to defend the case.

11. Learned counsel for the petitioners would submit that the Tribunal ought not to have disbelieved the evidence of PW.2, under whom the deceased used to work and earn Rs.3,000/- per month, and despite the Certificate issued by the Auditor exhibited as Ex.A7 and proved through the evidence of PW.2, rejecting the same is improper. Learned counsel, therefore, submits to fix the income of the deceased at Rs.3,000/- per month and apply the relevant multiplier for the age group of persons between 21 and 25 as the deceased was aged 22 years at the time of occurrence, in view of the decision of the Honourable Supreme Court in **Munna Lal Jain and another v. Vipin Kumar Sharma and others**[3].

12. Perused the impugned order and the evidence on record.

13. The Tribunal has assigned cogent reasons in not accepting Ex.A7 and the evidence of PW.2 observing that PW.2 has not filed Income Tax Returns to show that the deceased was an employee under him and he was paying salary of Rs.3,000/- per month. In the absence of any documentary evidence filed by PW.2 to show that he was tendering Rs.3,000/- per month to the deceased and the deceased was employed by him one year prior to the accident, certainly, the stand of the petitioners that he was

earning Rs.3,000/- per month by working as an employee under PW.2 cannot be accepted.

14. The next question that arises for consideration is whether the Tribunal was right in taking the notional income of the deceased at Rs.15,000/- per annum as mentioned in the second schedule to the Act to a non-earning member. Certainly, it cannot be viewed in that manner for the reason that the deceased was prosecuting Post Graduation, and in the inquest report, which is marked as Ex.A6, the description against Column No.3 shows that the deceased was a student and therefore, his income can be fixed at Rs.2,000/- per month approximately as there is no income proof forthcoming in the instant case.

15. So far as the multiplier is concerned, the Tribunal has taken the age of the younger parent of the deceased, who is petitioner No.2 aged 55 years, and applied multiplier '13' as per the second schedule to Section 163A of the Act, but in view of the decisions of the Honourable Supreme Court in **Munna Lal Jain's case (supra 3)** and **Sarla Verma v. Delhi Transport Corporation**[4] for the age group of persons between 21 and 25, the relevant multiplier is '18'. The deceased was admittedly a bachelor having died in unmarried status. Therefore, as per the decisional law, 50% has to be deducted towards his

personal expenses and thus, his contribution to the family works out to Rs.12,000/- per annum and when multiplier '18' is applied, it works out to Rs.2,16,000/- and thus, the petitioners are entitled to an amount of Rs.2,16,000/-. Concerning the other sums awarded by the Tribunal, the amount of Rs.8,000/- granted towards medical expenses is confirmed as it is based on the contents of Ex.A8. Towards transport charges, the Tribunal has granted only Rs.2,000/-, but the same is enhanced to Rs.5,000/-. Towards funeral expenses, the Tribunal has granted Rs.3,000/-, but the same is enhanced to Rs.5,000/-. Towards pain and suffering, the Tribunal has granted Rs.8,000/-, but taking into consideration that the deceased survived for some time after the occurrence, the petitioners are not entitled to such amount, but as there is no challenge to the same from the other side by way of preferring any appeal, awarding of Rs.8,000/- is maintained. The amount of Rs.5,000/- granted towards mental agony is also maintained. Thus, the petitioners are entitled to a total sum of Rs.2,47,000/- as against Rs.1,56,000/- granted by the Tribunal. The interest awarded by the Tribunal at 9% per annum is maintained on the original amount of Rs.1,56,000/- awarded by the Tribunal and on the enhanced amount, the petitioners are entitled to interest at 7.5% per annum, as per the decision of the Honourable Apex Court in **Rajesh and others v. Rajbir Singh and others**[5].

16. Subject to the above modifications, the appeal is allowed in part. There shall be no order as to costs.

17. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

December 10, 2015.
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THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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[1] 1990 ACJ 18

[2] 1990 ACJ 471

[3] (2015) 6 SCC 347

[4]. 2009 (3) ALD 83 (SC)

[5] (2013) 9 SCC 54