HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

<u>M.A. C.M.A. No.23 OF 2008</u>

<u>JUDGMENT</u>:

Dissatisfied with the award of Rs.1,47,000/- towards compensation, as against the claim for Rs.8,00,000/-, laid under Section 166(1) of the Motor Vehicles Act, 1988, seeking enhancement of the same, claimants preferred instant Civil Miscellaneous Appeal against the order and decree, dated 10-10-2007, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Madanapalle, in O.P. No.232 of 2006.

2. The appellant herein are the petitioners in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the Hero Honda Motor Cycle bearing No.AP-03-Q-1724 that involved in the accident, are respondent Nos.1 and 2, respectively.

3. The appellants - petitioners are parents of one P. Ramamohan Reddy, who died in the accident.

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

5. The facts, in brief, are that on 28-02-2006, at about 7-30 a.m., while Ramamohan Reddy was proceeding on Hero Honda Motor Cycle bearing No.AP-04-E-9382, another Hero Honda Motor Cycle bearing No.AP-03-Q-1724, driven at high speed in a rash and negligent manner, hit his motor cycle, due to which he fell down and succumbed to the injuries instantaneously. The police concerned registered a case in Crime No.10 of 2006 against driver of the opposite motor cycle. The petitioners claim that the deceased was
24 years old, earning Rs.14,000/- per month by working in AMMACTS as credit officer and also by way of doing agriculture, and, therefore, they sought Rs.8,00,000/- towards compensation with interest at 24% per annum against both the respondents.

6. The 1st respondent, owner of the Hero Honda Motor Cycle that involved in the accident, attributed rash and negligent driving to the deceased himself, however, claimed that since the vehicle was validly insured with the 2nd respondent, it has to indemnify him.

7. The 2nd respondent, insurer, opposed the claim by raising various pleas.

8. The Tribunal framed three issues in the direction of fixing responsibility for the accident. During enquiry, the

1st petitioner, father of the deceased, examined himself as PW.1 besides examining one D. Sankar Raju, an eyewitness to the accident, and

R. Vijayakumar Reddy, an employee from the office of the deceased, and marked Exs.A-1 to A-12 and Ex.X-1, bunch of vouchers. On behalf of the respondents, RWs.1 and 2 were examined and marked a copy of the insurance policy of the offending motor cycle, as Ex.B-1.

9. The Tribunal, having found from the evidence of PW.2 and Exs.A-1, A-2, A-3 and A-10, which are certified copies of FIR, inquest report, post-mortem report and charge sheet, respectively, held issue no.1 in favour of the claimants.

10. On issue No.2, disbelieving the evidence of PW.3 and discarding the bunch of vouchers marked as Ex.X-1, which do not contain registration number and location of the office of PW.3 where deceased said to have worked as Credit Officer, at the relevant time, taking monthly income of the deceased as Rs.2,000/- and after deducting 1/3rd therefrom towards his personal expenses, arrived at Rs.16,000/- towards contribution of the deceased to his family, and taking the age of the younger parent of the deceased, applying multiplier ‘8’, based on Schedule - II to Section 163 of the Motor Vehicles Act, arrived at Rs.1,28,000/- (Rs.16,000/- x 8) towards loss of

dependency besides granting Rs.15,000/- towards loss of estate and Rs.4,000/- towards funeral expenses and, thus, awarded a total sum of Rs.1,47,000/- towards compensation with interest at 7.5% per annum.

11. It is the aforementioned order, which is under challenge in the instant appeal by the claimant contending in the grounds of appeal that the Tribunal went wrong in granting Rs.1,47,000/- as against the claim for Rs,8,00,000/- as it did not properly appreciate the evidence on record, more particularly, the evidence of PW.3 proving that the deceased was drawing a salary of Rs.3,900/- per month based on Ex.X-1, bunch of vouchers, and that even the deceased was having landed property as per Ex.A-11, Photostat copy of pattadar pass-book, and the Tribunal taking note of all these characters, taken only Rs.2,000/- as monthly earnings of the deceased.

12. Heard Sri K. Suresh Kumar Reddy, learned counsel for the petitioners (appellants), and Sri P. Jagdish Chandra Prasad, learned counsel for respondent No.1.

13. None appears for the 2nd respondent, though, served with notice.

14. The short point that arises for consideration is whether the compensation granted by the Tribunal is just

and adequate?

15. Perused the order and evidence on record, more particularly, the evidence of PW.3 in regard to earnings of the deceased. Ex.A-7, which is, though, described as salary certificate of the deceased, is not on the letter-head of the office concerned and no details are mentioned as to what were the amounts granted towards salary and even the registered number of the office/society is not mentioned on it besides its location, such as address of its Head Office. It is also stated by PW.3 that their Head Office is located at Madanapally, but the finding recorded by the Tribunal that the evidence of PW.3, based on his answers given in the cross-examination, would not prove income of the deceased as Rs.3,900/- per month, as such, the finding tendered by it discarding the evidence of PW.3 and Ex.A-7 and X-1 cannot be faulted with.

16. Now, coming to the question whether the Tribunal is right in taking Rs.2,000/- as monthly income of the deceased, since Ex.A-1 also shows that he was working as Credit Officer including in the police record, wherever his description occurred, his income can be taken as Rs.2,500/- per month. Since he died in unmarried status, half of the earnings therefrom can only be deducted towards his personal expenses and when the same is deducted, it works out to Rs.1,250/- per month

and Rs.15,000/- per annum towards contribution of the deceased to his parents. Since the deceased died at the age of 24 years, as per the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**[1], the appropriate multiplier is '18' and when the same is applied, it works out to Rs.2,70,000/- towards loss of dependency. Besides the same, the amount of Rs.15,000/- granted by the Tribunal towards loss of estate is confirmed. However, the amount of Rs.4,000/- granted towards funeral expenses is enhanced to Rs.5,000/-

17. Thus, the petitioners are entitled to a total sum of Rs.2,90,000/- (Rupees two lakhs ninety thousand only) as against Rs.1,47,000/- granted by the Tribunal, towards compensation and the same is accordingly granted, with interest at 7.5% per annum 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**[2]. The point is accordingly answered.

18. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation, as indicated above. There shall be no order as to costs.

19. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

February 20, 2015.

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[1] **(2009) 6 SCC 121**

[2] **2013ACJ1403 = 2013(4)ALT35**